



Bhubaneswar Development Authority

Akash Shova Building, Sachivalaya Marg

Bhubaneswar- 751001, Odisha

Notice No. **23453/ BDA**

Date: **30 / 09 /2019**

REQUEST FOR PROPOSAL (RFP) FOR APPOINTMENT OF INDEPENDENT ENGINEER FOR AHP & SRRH PROJECTS OF BHUBANESWAR DEVELOPMENT AUTHORITY (BDA)

Bhubaneswar Development Authority invites Request for Proposal (RFP) for Appointment of Independent Engineer for implementation of Chandrashekharpur Affordable Housing Project and Shanti Nagar Awaas Yojana Project being executed through Public-Private Partnership (PPP) mode in Bhubaneswar.

The RFP Documents will be available from 01/10/2019 to 31/10/2019 and can be downloaded from **www.bda.gov.in**. The Last date for receipt of proposals is 31/10/2019 by 4:00 P.M. and the same would be opened on 31/10/2019 at 05:00 P.M. The Pre-bid meeting will be held on 15/10/2019 at 03:30 P.M. in the Conference Hall of BDA Office. Please refer the RFP documents for further details.

Sd /-

Secretary-cum-Member Estate,
BDA, Bhubaneswar

RFP NOTICE No.- 23453 dated 30-09-2019

REQUEST FOR PROPOSAL (RFP)

**For Appointment of Independent Engineer for implementation of
Chandrashekharpur Affordable Housing Project and Shanti Nagar
Awaas Yojana, Bhubaneswar**



BHUBANESWAR DEVELOPMENT AUTHORITY

**AKASH SHOVA BUILDING, SACHIVALAYA MARG,
BHUBANESWAR – 751 001, ODISHA
TEL: (0674) 2396437, 2390998, 2392801, FAX: 0674-2390633**

Letter of Invitation (LoI)

1. Sealed Tenders are invited by Secretary cum Member Estate, Bhubaneswar Development Authority, Govt Of Odisha, here after referred as "The Client" for Appointment of Independent Engineer for implementation of Chandrashekharapur Affordable Housing Project and Shanti Nagar Awaas Yojana Project being executed through PPP mode from interested, qualified, experienced, registered and eligible Firm/Company/Organization of Govt./Semi-Govt./Private/Govt. Undertaking or Enterprise, hereinafter mentioned as "Agency" fulfilling the eligibility criteria mentioned in the RFP.
2. **Pre-bid meeting** will be held on **15/10/2019 at 03:30 P.M** in the Conference Hall of Bhubaneswar Development Authority. The Bidders shall submit their proposals latest by **31/10/2019 up to 4.00 P.M.** (Proposal Due Date hereinafter referred to as PDD)
3. The Technical Proposal shall be opened on **31/10/2019 at 05:00 P.M** in the presence of representatives of bidders at office of The Special Secretary.
4. **The BDA reserves its right to cancel/ suspend the process at any stage without assigning any reasons.** (Please see Clause No.- 6 of RFP for details)
5. Interested Bidders may obtain further information from the office of:

Address:

Secretary cum Member Estate
Bhubaneswar Development Authority
Akash Shova Building, Sachivalaya Marg,
Bhubaneswar, Odisha 751001

Sd/-
Secretary cum Member Estate
Bhubaneswar Development Authority

1. Introduction

1.1 Background of Projects:

a) Affordable Housing Project at Chandrashekharpur: -

BDA has identified 20.21 acres of land at Chandrashekharpur in Bhubaneswar for which it proposes to identify a private developer to develop affordable housing units for the economically weaker section on 13.71 acres and the developer would have a right to construct residential housing project or commercial development on balance land parcel of 6.50 acres in accordance with Applicable Laws and the Development Agreement (“Project”). BDA proposes to develop the ‘Project’ through Public Private Partnership (PPP) model with participation of a Developer under Model III of the “Policy on Housing for All in Urban Areas”, 2015. The total land area of 20.21 acres (“Project Area”) is divided into (i) Affordable Housing Area (AHP Area) of 13.71 acres and (ii) Developer Area of 6.50 acres.

BDA has signed a Development Agreement with Paramitra Smart Infra Private Limited (Project SPV incorporated by Consortium of Shyam Indus Power Solutions Private Limited and GSBA Builders Private Limited) to undertake this project.

The Developer shall be responsible to construct and handback to BDA, free of cost, AHP Assets, including 2,540 EWS units and Infrastructure Facilities on the Affordable Housing Area within 36 months. This can be done over two phases -

- Phase I: minimum of 800 affordable housing units, along with specified infrastructure, within 24 months
- Phase 2: balance affordable housing units, along with remaining infrastructure within the next 12 months (cumulative 36 months)

During such time, BDA and the Developer will jointly appoint an Independent Engineer who shall be required to act independently, reasonably, fairly and expeditiously during the construction period of 36 months, to facilitate the timely completion of the affordable housing units in a sound and timely manner.

b) Slum Redevelopment & Rehabilitation Project at ShantiNagar

With a view to redevelop and rehabilitate the existing slums in the Shantipalli slum, BDA has decided to undertake in-situ slum re-development of the existing slum on the Site in a Phased manner as per availability of Land.

Accordingly, 6.246 Acres (Net) area has already been handed over to the developer for Phase- I development. For incorporating phased manner development, BDA has signed a Development Agreement with Paramitra Smart Infra Private Limited (Project SPV incorporated by Consortium of Shyam Indus Power Solutions Private Limited and GSBA Builders Private Limited) on 8th Feb 2019 to undertake this project.

The Developer shall be responsible to construct and handback to BDA, free of cost, AHP Assets, including 840 EWS units and Infrastructure Facilities on the Affordable Housing Area within 30 months from Effective date.

During such time, BDA and the Developer will jointly appoint an Independent Engineer who shall be required to act independently, reasonably, fairly and expeditiously during the construction period of 30 months, to facilitate the timely completion of the affordable housing units in a sound and timely manner.

1.2 Request for Proposal: The Client Invites Proposals (the "Proposals") for Appointment of Independent Engineer for implementation of the Chandrashekharpur Affordable Housing Project & Shanti Nagar Awaas Yojana Project being executed through PPP mode.

1.3 Validity of the Proposal: The proposal shall be valid for a period of not less than 180 (one hundred eighty) days from the last date of submission of proposal ("Proposal Due Date").

1.4 Brief description of the Selection Process: The Client shall adopt a two stage selection process in evaluating the Proposals. In the first stage Technical Evaluation will be carried out with respect to minimum eligibility criteria set out in clause no 2.1.1, 2.1.2 and Clause 3.1. Based on this technical evaluation, a list of short-listed bidders shall be prepared as specified in Clause 3.2. In the second stage, a financial evaluation will be carried out as specified in Clause 3.3. Proposals will finally be ranked according to their combined technical and financial scores based on Combined Quality and Cost Based Selection (CQCBS) as specified in Clause 3.4. The first ranked bidder (the "Selected Bidder") shall be selected for negotiation while the proposal of the second ranked bidder will be kept in reserve.

1.5 Currency rate and payment: All payments to the Consultant shall be made in INR in accordance with the provisions of this RFP.

1.6 Schedule of Selection Process: The Client would endeavour to adhere to the following schedule

Sl.No.	Event Description	Date & Time
1	Date of Publication of RFP	01/10/2019
2	Pre-bid meeting	15/10/2019 at 03:30 P.M.
3	Proposal Due date (PDD)	31/10/2019 at 4:00 P.M.
4	Date of Technical Opening	31/10/2019 at 5:00 P.M.
5	Date of Presentation	To be intimated later
6	Date of Financial Opening	To be intimated later

1.7 Pre-Proposal Conference/Pre-bid meeting:

The date, time and venue of Pre-Proposal /Pre Bid Conference shall be:

Date: 15/10/2019

Time: 03:30 P.M.

Venue: Conference Hall, Bhubaneswar Development Authority (BDA),
Aakash Shova Building, Sachivalya Marg, Bhubaneswar

INSTRUCTIONS TO BIDDERS

A. General

2.1 Conditions of Eligibility of Bidders

2.1.1 Bidders must read carefully the minimum conditions of eligibility (the "Conditions of Eligibility") provided herein. Proposals of only those Bidders who satisfy the Conditions of Eligibility will be considered for evaluation.

- a) Experience in undertaking atleast 2 Independent Engineer work/ project / assignment for construction of residential/ commercial/ institutional real estate projects of a capital cost of atleast INR 15 crores (excluding cost of land), in last 5 financial years immediately preceding the bid due date.
- b) Must be a Firm registered/incorporated in India or a consortium of firms registered/incorporated in India
- c) Bidder should have average turnover of at least of Rs. 4 Cr. from consultancy business in last three years. The Bidder must ensure that they submit the evidence of eligibility criteria on turnover in the form of audited financial statements signed by Chartered Accountant for the last three financial years along with their Technical Proposal
- d) Proposal of bidders who do not fulfill any of the criteria laid down in 2.1.1(a), (b) AND (c) will stand rejected forthwith and no further processing would be undertaken since these are minimum qualifying criteria. However Technical Bids of the qualified Bidder as per Clause no. 2.1.1(a), (b) & (c) shall be evaluated for CVs of Key Personnel, Approach & Methodology details of which are given in Clause no. 3.1.2 & 3.1.3

Conditions for Key Personnel:

Each of the Key Personnel must fulfill the Conditions specified below:

Sr. No.	Position	No of Man month	Qualification & Experience
1	Team Leader/. Project Manager	36 (Thirty-Six)	Minimum Qualification required: B.Tech in Civil / Structural Engineering from institute recognized by AICTE Minimum Experience required: Atleast 15 years of experience in field of on-site construction management / project implementation in the real estate sector and with experience of working on atleast 2 housing projects of capital cost of atleast INR 15 crores (excluding cost of land), 5 years immediately preceding the bid due date

Sr. No.	Position	No of Man month	Qualification & Experience
2	Senior Architect (One No.)	24(Twenty Four)	<p>Minimum Qualification required: B.Arch from institute recognized by AICTE</p> <p>Minimum Experience required: Atleast 8 years of experience in field of project design and / or implementation in the real estate sector and with experience of working on atleast 2 housing project of atleast INR 10 crores (excluding cost of land), 5 years immediately preceding the bid due date.</p>
3	Junior Architect (One No.)	36 (Thirty-Six)	<p>Minimum Qualification required: B.Arch from institute recognized by AICTE</p> <p>Minimum Experience required: Atleast 4 years of experience in field of project design and / or implementation in the real estate sector and with experience of working on atleast 1 housing project of atleast INR 5 crores (excluding cost of land), 3 years immediately preceding the bid due date</p>
4	Project Engineer Civil (Four Nos)	<p>Minimum 12 months each</p> <p>At any point of time, any 2 Project Engineers must be working on the project</p>	<p>Minimum Qualification required: B.Tech in Civil / Structural Engineering from institute recognized by AICTE</p> <p>Minimum Experience required: Atleast 5 Years of experience in field of on-site construction oversee in construction projects and with experience of working on atleast 1 construction project of atleast INR 5 crores (excluding cost of land), 5 years immediately preceding the bid due date.</p>
5	Project Engineer MEP (2 Nos)	Minimum 12 months each	Minimum Qualification required: B.Tech in Electrical/Mechanical

Sr. No.	Position	No of Man month	Qualification & Experience
		At any point of time, any 1 Project Engineer must be working on the project	Engineering from institute recognized by AICTE Minimum Experience required: Atleast 5 Years of experience in field of on-site construction oversee in construction projects and with experience of working on atleast 1 construction project of atleast INR 5 crores (excluding cost of land), 5 years immediately preceding the bid due date.

Note: - Person having qualification and experience less than the prescribed Qualification and experience in the RFP will be will be marked as nil.

It may be noted that the Project Manager and the Architect proposed for the Project shall be available for the entire duration of the Project. Replacement of Key personnel during the period of the assignment should be with same or higher qualification with due approval of the Authority.

2.1.2 Any entity which has been barred by the Central Government, any State Government, a statutory authority or a public sector undertaking, as the case may be, from participating in any project, and the bar subsists as on the date of Proposal, would not be eligible to submit a Proposal either by itself or through its Associate (“Associate” means a firm have common controlling shareholders or other ownership interest as that of the Bidder).

2.2 Conflict of Interest: Bidder shall not have a conflict of interest that may affect the Selection Process or the assignment (the "Conflict of Interest"). Any Bidder found to have a Conflict of Interest shall be disqualified. In the event of disqualification, the Client shall have the right to forfeit and appropriate the Bid Security, without prejudice to any other right or remedy that may be available to the Client hereunder or otherwise.

2.3 Number of Proposals: No Bidder or its Associate shall submit more than one Proposal.

2.4 Cost of Proposal: The Bidders shall be responsible for all of the costs associated with the preparation of their Proposals and their participation in the Selection Process including subsequent negotiations, visits to the Client, Project site etc. The Client will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Selection Process.

2.5 Due Diligence by Bidder: Bidders are encouraged to submit their respective Proposals after ascertaining for all matter considered relevant to them.

2.6 Right to reject any or all RFPs

- 2.6.1 Notwithstanding anything contained in this RFP, the Client reserves the right to accept or reject any RFP and to annul the Selection Process and reject all RFPs, at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof.
- 2.6.2 Without prejudice to the generality of Clause 2.6.1, the Client reserves the right to reject any Proposal if :a) At any time, a material misrepresentation is made or uncovered, or b) The Bidder does not provide, within the time specified by the Client, the supplemental information sought by the Client for evaluation of the Proposal.
- 2.6.3 Misrepresentation/ improper response by the Bidder may lead to the disqualification of the Bidder. If such disqualification / rejection occurs after the Proposals have been opened and the highest ranking Bidder gets disqualified / rejected, then the Client reserves the right to consider the next best Bidder, or take any other measure as may be deemed fit in the sole discretion of the Client, including annulment of the Selection Process.

B. Documents

2.7 Contents of the RFP

- 2.7.1. This RFP comprises the contents as listed below and will additionally include any Addendum / Amendment issued in accordance with Clause 2.9:

Request for Proposal

- Introduction
- Instructions to Bidders
- Criteria for Evaluation
- Fraud and corrupt practices
- Pre-Proposal Conference/Pre-bid Meeting
- Miscellaneous

Annexures:

- Annexure I: Terms of Reference
- Annexure II: Cover Letter
- Annexure III: Statement of Legal Capacity
- Annexure IV: Power of Attorney
- Annexure V: Details of Bidder
- Annexure VI: Financial Qualification of Bidder
- Annexure VII: Eligible Project Experience
- Annexure VIII: CV of Key Personnel
- Annexure IX: Legally binding signed declaration of undertaking

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- Annexure X: Salient Aspect of Technical Proposal
 - Annexure XI: Financial Proposal
 - Annexure XII: Format of the EMD

2.8 Clarifications

- 2.8.1 Bidders requiring any clarification on the RFP may send their queries to the Client in writing/through e-mail before the date of pre bid meeting. The emails shall clearly bear the following identification: "Queries/Request for Additional Information concerning RFP for selection of Consultant for Appointment of Independent Engineer for implementation of Chandrashekharpur Affordable Housing Project and Shanti Nagar Awaas Yojana Project being executed through PPP mode ". The Client shall endeavour to respond to the queries during Pre-bid meeting.
- 2.8.2 The Client reserves the right not to respond to any questions or provide any clarifications, in its sole discretion, and nothing in this Clause shall be construed as obliging the Client to respond to any question/s or to provide any clarification/s.
- 2.8.3 The Minutes of the Pre-Bid Meeting shall form an integral part of the Contract.

2.9 Amendment of RFP

- 2.9.1. At any time prior to the deadline for submission of RFP, the Client may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFP document by the issuance of Addendum/ Amendment and posting it on its website and notification through email.
- 2.9.2. In order to afford the Bidders a reasonable time for taking into account the amendments/ addendum, or for any other reason, the Client may, in its sole discretion, extend the PDD.

C. Preparation and Submission of Proposal

2.10 Language: The Proposal with all accompanying documents (the "Documents") and all communications in relation to or concerning the Selection Process shall be in English language and strictly in the format provided in this RFP. No supporting document or printed literature shall be submitted with the Proposal unless specifically asked for and in case of any of these documents is in another language, it must preferably be accompanied by an accurate translation of all the relevant passages in English, in which case, for all purposes of interpretation of the Proposal, the translation in English shall prevail.

2.11 Format and signing of RFP

- 2.11.1. The Bidder shall provide all the information sought under this RFP. The Client would evaluate only those Proposals that are received in the specified format and complete in all respects.
- 2.11.2. The Bidder shall prepare one original set of Technical Proposal (together with originals/ copies of Documents required to be submitted along therewith pursuant to

this RFP) and clearly marked "ORIGINAL". In addition, the Bidder shall submit 1 (one) copy of Technical Proposal, along with Documents, marked "Copy". In the event of any discrepancy between the original and its copies, the original shall prevail. Bidder shall also submit copy of Technical Proposal in a CD/ DVD.

2.11.3. The Technical Proposal and its copy shall be typed or written in indelible ink and signed by the authorized signatory of the Bidder who shall initial each page. In case of printed and published Documents, only the cover shall be initialed. All the alterations, omissions, additions, or any other amendments made to the Proposal shall be initialed by the person(s) signing the Proposal. The Proposals must be properly signed by the authorized representative (the "Authorized Representative") as detailed below:

- a) By a partner, in case of a partnership firm and/or a limited liability partnership;
- b) By a duly authorized person holding the Power of Attorney, in case of a Limited Company or a corporation;

A copy of the Power of Attorney certified under the hands of a Partner or Director of the Bidder and notarized by a notary public in the form as specified in Annexure IV shall accompany the Proposal.

2.11.4. Except as specifically provided in this RFP, no supplementary material will be entertained by the Client, and that evaluation will be carried out only on the basis of Documents received by the closing time of PDD. Bidders will ordinarily not be asked to provide additional material information or documents subsequent to the date of submission, and unsolicited material if submitted will be summarily rejected. For the avoidance of doubt, the Client reserves the right to seek clarifications under and in accordance with the provisions of Clause 2.21.

2.12 Technical Proposal

2.12.1. Bidders shall submit the technical proposal in the formats from Annexure II to Annexure X (the "Technical Proposal").

2.12.2. While submitting the Technical Proposal, the Bidder shall, in particular, ensure that:

- a) The Bid Security is provided;
- b) All forms are submitted in the prescribed formats and signed by the authorized signatories;
- c) Power of Attorney, is executed as per Applicable Laws;
- d) All the Annexures are filled and signed by Authorized Signatory along with all supporting documents as per Minimum Eligibility Criteria clause 2.1.1 & 2.1.2.
- e) CVs of all Key Personnel have been included;
- f) Key Personnel have been proposed only if they meet the Conditions of Eligibility laid down at Clause 2.1.2 of the RFP; The CV of each Key Personnel shall be submitted as per the format at Annexure VIII.

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- g) No alternative proposal for any Key Personnel is being made and CV for each position has been furnished;
 - h) Key Personnel would be available for the period indicated in the ToR;
 - i) No Key Personnel should have attained the age of 65 years at the time of submitting the proposal; and
 - j) The proposal is responsive in terms of Clause 2.19.3.

2.12.3. Failure to comply with the requirements spelt out in this Clause 2.12 shall make the Proposal liable to be rejected.

2.12.4. If an individual Key Personnel makes a false statement regarding his qualification, experience or other particulars, he shall be liable to be debarred for any future assignment of the Client for a period of 3 (three) years. The award of work to the Bidder may also be liable to cancellation in such an event.

- k) The Client reserves the right to verify all statements, information,
- l) and documents submitted by the Bidder in response to the RFP. Any such verification or the lack of such verification by the Client to undertake such verification shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Client there under.

2.12.5. In case it is found during the evaluation or at any time before signing of the Agreement or after its execution and during the period of subsistence thereof, that one or more of the eligibility conditions have not been met by the Bidder or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the Consultant either by issue of the LOA or entering into of the Agreement, and if the Selected Bidder has already been issued the LOA or has entered into the Agreement, as the case may be, the same shall notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by the Client without the Client being liable in any manner whatsoever to the Selected Bidder or Consultant, as the case may be.

2.12.6. In such an event, the Client shall have the right to forfeit and appropriate the Bid Security without prejudice to any other right or remedy that may be available to the Client.

2.13 Financial Proposal

2.13.1. Bidders shall submit financial proposal (Financial Proposal) as per the format given in Annexure XI clearly indicating the total cost of the Consultancy in both figures and words, in Indian Rupees, and signed by the Bidder's Authorized Representative. In the event of any difference between figures and words, the amount indicated in words shall prevail.

2.13.2. While submitting the Financial Proposal, the Bidder shall ensure the following:

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- a. All the costs associated with the assignment shall be included in the Financial Proposal.
 - b. The Financial Proposal shall take into account all expenses and applicable tax.
 - c. Costs shall be expressed in INR.

2.14 Submission of Proposal

- 2.14.1. The Bidders shall submit the Proposal in bound form with all pages numbered serially and by giving an index of submissions. In case of any discrepancy between the version of the RFP submitted and the original RFP issued by the Client, the latter shall prevail.
- 2.14.2. The Proposal will be sealed in an outer envelope which will bear the address of the Client, RFP Notice number, name of assignment i.e. "RFP for Appointment of Independent Engineer for implementation of Chandrashekharapur Affordable Housing Project & Shanti Nagar Awaas Yojana Project being executed through PPP mode" and the name, address and contact number of the Bidder. It shall bear on top, the following: **"DO NOT OPEN, EXCEPT IN PRESENCE OF THE AUTHORIZED PERSON OF THE CLIENT"** If the envelope is not sealed and marked as instructed above, the Client assumes no responsibility for the misplacement or premature opening of the contents of the Proposal submitted and consequent losses, if any, suffered by the Bidder.
- 2.14.3. The aforesaid outer envelope will contain two separate sealed envelopes; one clearly marked 'Technical Proposal' and the other clearly marked 'Financial Proposal'. The envelope marked "Technical Proposal" shall contain the bid in the prescribed format Annexure II to X and the supporting documents. .
- 2.14.4. The envelope marked "Financial Proposal" shall contain the financial Proposal in the prescribed format Annexure XI.
- 2.14.5. The completed Proposal must be delivered in hard copy on or before the specified time on PDD. Proposals submitted by fax, telex, telegram or e-mail shall not be entertained.
- 2.14.6. The rates quoted shall be firm throughout the period of performance of the assignment up to and including discharge of all obligations of the Consultant under the Agreement.

2.15 Proposal Due Date

- 2.15.1. Proposal should be submitted on or before 04:00 PM on the PDD specified at Clause 1.7 at the address provided in Clause 1.7 in the manner and form as detailed in this RFP.
- 2.15.2. The Client may, in its sole discretion, extend the PDD by issuing an Addendum in accordance with Clause 2.9 uniformly for all Bidders.

2.16 Late Proposals

- 2.16.1. Proposals received by the Client after the specified time on PDD shall not be eligible for consideration and shall be summarily rejected.

2.17 Modification/ substitution/ withdrawal of Proposals

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- 2.17.1. The Prequalified Bidder may modify, substitute, or withdraw its Proposal after submission, provided that written notice of the modification, substitution, or withdrawal is received by the Client prior to PDD. No Proposal shall be modified, substituted, or withdrawn by the Bidder on or after the PDD.
- 2.17.2. The modification, substitution, or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clause 2.14, with the envelopes being additionally marked "MODIFICATION", "SUBSTITUTION" or "WITHDRAWAL", as appropriate.
- 2.17.3. Any alteration / modification in the Proposal or additional information or material supplied subsequent to the PDD, unless the same has been expressly sought for by the Client, shall be disregarded.

2.18 Bid Security

- 2.18.1. The Bidder shall furnish as part of its Proposal, a bid security of Rs. 200,000/- (Rupees Two Lakh only) in the form of a Bank Guarantee as per Annexure XII of the RFP, issued by Nationalized/ Scheduled Banks in India in favor of the "Bhubaneswar Development Authority" payable at Bhubaneswar (the "Bid Security"), returnable not later than 180 days from PDD except in case of the two highest ranked Bidders. In the event that the first ranked Bidder commences the assignment, the second ranked Bidder, whose proposal has been kept in reserve, shall be returned forthwith, but in no case not later than 180 (one hundred and eighty) days from the PDD.
- 2.18.2. The successful Bidder shall submit a Performance Guarantee for an amount equal to 10% of the value of the Contract in the form of a Bank Guarantee. The Performance Guarantee shall be returned, after the Consultancy Services by the Consultant.
- 2.18.3. The Client shall not be liable to pay any interest on the Bid Security and the same shall be interest free.
- 2.18.4. The Bidder, by submitting its Proposal pursuant to this RFP, shall be deemed to have acknowledged that without prejudice to the Client's any other right or remedy hereunder or in law or otherwise, the Bid Security shall be forfeited and appropriated by the Client under the following conditions:
- a) If a Bidder engages in any of the Prohibited Practices specified in Section 4 of this RFP;
 - b) If a Bidder withdraws or modify its Proposal during the period of its validity as specified in this RFP and as extended by the Bidder from time to time;
 - c) In the case of a Selected Bidder, if the Bidder fails to sign the Agreement or commence the assignment as specified in Clauses 2.26 due to the reason solely attributed to the bidder; or
 - d) If the Bidder is found to have a Conflict of Interest as specified in Clause 2.2; and
 - e) If the selected bidder commits breach of the Agreement

D. Evaluation Process

2.19 Evaluation of Proposals

- 2.19.1. The Client shall open the Proposals at 04.30 P.M. on the PDD, at the place specified in Clause 1.7 and in the presence of the Bidders who choose to attend. The envelopes marked "**Technical Proposal**" shall be opened first. The envelopes marked "**Financial Proposal**" shall be kept sealed for opening at a later stage.
- 2.19.2. Proposals for which a notice of withdrawal has been submitted in accordance with Clause 2.17 shall not be opened.
- 2.19.3. Prior to evaluation of Proposals, the Client will determine whether each Proposal is responsive to the requirements of the RFP. A Proposal shall be considered responsive only if:
- a) The Technical Proposal is received in the format from Annexure II to Annexure X
 - b) It is received by the PDD including any extension thereof pursuant to Clause 2.15;
 - c) It is accompanied by the Bid Security as specified in Clause 2.18;
 - d) It is accompanied by the Power of Attorney;
 - e) It contains all the information (complete in all respects) as requested in the RFP;
 - f) It does not contain any condition or qualification; and
 - g) It is not non-responsive in terms hereof.
- 2.19.4. The Client reserves the right to reject any Proposal which is non responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Client in respect of such Proposals.
- 2.19.5. The Client shall subsequently examine and evaluate Proposals in accordance with the Selection Process specified at Clause 1.4 and the criteria set out in Section 3 of this RFP.
- 2.19.6. After the technical evaluation, the Client shall prepare a list of shortlisted Bidders in terms of Clause 3.2 for opening of their Financial Proposals. A date, time and venue will be notified to all shortlisted Bidders for announcing the result of technical evaluation and opening of Financial Proposals. Before opening of the Financial Proposals, the list of shortlisted Bidders along with their Technical Score will be read out. The opening of Financial Proposals shall be done in presence of respective representatives of Bidders who choose to be present. the Client will not entertain any query or clarification from Bidders who fail to qualify at any stage of the Selection Process. The financial evaluation and final ranking of the Proposals shall be carried out in terms of Clauses 3.3 and 3.4. The Financial Proposal of Bidders whose bids are disqualified in technical evaluation will not be opened for financial evaluation.
- 2.19.7. Bidders are advised that selection shall be entirely at the discretion of the Client. Bidders will be deemed to have understood and agreed that the Client shall not be

required to provide any explanation or justification in respect of any aspect of the Selection Process or Selection.

2.19.8. Any information contained in the Proposal shall not in any way be construed as binding on the Client, its agents, successors or assigns, but shall be binding against the Bidder if the Consultancy is subsequently awarded to it.

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

2.21 Clarifications

2.21.1. To facilitate evaluation of Proposals, the Client may, at its sole discretion, seek clarifications from any Bidder regarding its Proposal. Such clarification(s) shall be provided within the time specified by the Client for this purpose. Any request for clarification(s) and all clarification(s) in response there to shall be in writing.

2.21.2. If any Bidder does not provide clarifications sought under Clause 2.21.1 above within the specified time, its Proposal shall be liable to be rejected. In case the Proposal is not rejected, THE CLIENT may proceed to evaluate the Proposal by construing the particulars requiring clarification to the best of its understanding, and the Bidder shall be barred from subsequently questioning such interpretation of the Client.

E. Appointment of Consultant

2.22 Negotiations

2.22.1. The Selected Bidder may, if necessary, be invited for negotiations. The negotiations shall generally be related to the scope of work and Terms of Reference.

2.23 Indemnity

The Consultant shall, subject to the provisions of the Agreement, indemnify the Client, for an amount not exceeding the value of the Agreement, for any direct loss or damage that is caused due to any deficiency in Services.

2.24 Award of Consultancy

After selection, a Letter of Award (the "LOA") shall be issued, in duplicate, by the Client to the Selected Bidders and the Selected Bidders will, within 15 (Fifteen) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement

thereof. In the event the duplicate copy of the LOA duly signed by the Selected Bidders are not received by the stipulated date, the Client may, unless it consents to extension of time for submission thereof, cancel the LOA and the next highest ranking Bidder may be considered.

2.25 Execution of Agreement

After acknowledgement of the LOA as aforesaid by the Selected Bidders, they will execute the Agreement within the period prescribed in Clause 1.6. The Selected Bidders will not be entitled to seek any deviation in the Agreement.

2.26 Commencement of assignment

The Independent Engineer shall commence the Services at the Project site within 30 (Thirty) days of the date of the Agreement or such other date as may be mutually agreed. If the Consultants fail to either sign the Agreement as specified in Clause 2.25 or commence the assignment as specified herein, the Client may invite the second ranked Bidder for negotiations. In such an event, the LOA or the Agreement, as the case may be, may be cancelled /terminated and the Bid Security of the first ranked Bidder shall be forfeited and appropriated in accordance with the provisions of Clause 2.18.4.

2.27 Proprietary data

Subject to the provisions of Clause 2.20, all documents and other information provided to the Client or submitted by any Bidder to the Client shall remain or become the property of the Client. Bidders are required to treat all information as strictly confidential. The Client will not return any Proposal or any information related thereto. All information collected, analyzed, processed or in whatever manner provided by the Consultants to the Client in relation to the Consultancy shall be the property of the Client.

2. CRITERIA FOR EVALUATION

3.1 Evaluation of Technical Proposals

3.1.1. In the first stage Technical Proposal (Annexure II to X) will be evaluated on the basis of Minimum Eligibility Criteria set out in clause no. 2.1.1 and clause no. 2.1.2(a), (b) & 2.1.2(c). Those bidders whose bids would not qualify as per any of the eligibility criteria laid out in Clause nos. 2.1.2(a), (b) and 2.1.2(c) are rightly rejected and no further evaluation will be done on Technical Proposal. Those Bidders who qualify their Technical Proposal will be evaluated on the basis of Bidder's Project Experience, understanding of TOR, proposed methodology and Work Plan as per Annexure X and the qualification and experience of Key Personnel as per Annexure VIII. Only those Bidders whose Technical Proposals get a score of 75 (Seventy-Five) marks or more out of 100 (hundred) shall qualify for further consideration, and shall be ranked from highest to the lowest on the basis of their technical score (ST).

3.1.2. The scoring criteria to be used for evaluation shall be as follows.

Sr. No.	Position/Criteria	Marks
1	Key Personnel (as detailed in Clause 2.1.1) Project Manager / Team Leader - 24 marks Senior Architect (1 no.) - 5 marks Junior Architect (1 No.) - 3 marks Project Engineer (6 nos.) - 3 marks each The CVs would be evaluated on basis of qualification, overall experience and experience in eligible projects, as defined in the eligibility criteria above	50
2	Past Experience - to be evaluated based on number of projects undertaken and capital cost of the project (which should be atleast Rs. 15 crores (excluding cost of land), as defined in Clause 2.1.1)	30
2	<p>I. Approach & Methodology-10 Marks</p> <p>a. Understanding of the scope of work (6 marks)</p> <p>b. Site appreciation (2 Marks)</p> <p>c. Proposed methodology of Consultant for undertaking the assignment (2 marks)</p> <p>II. Work Plan-5 Marks</p> <p>III. Manning Schedule-5 Marks</p> <p>Approach and Methodology, Work Plan and Manning Schedule shall be provided as per the formats given in Annexure X</p>	20
	Total	100

*The Key Expert shall make a presentation on the proposed approach for undertaking the assignment and also demonstrate their capability to undertake the tasks proposed. Power Point Presentation shall be made only by the Key Expert. Any other representative of the Bidder shall not be permitted to make the presentation.

3.2 Short-listing of Bidders

Of the Bidders ranked as aforesaid in Clause 3.1.1, shall be short-listed for financial evaluation in the second stage.

3.3 Evaluation of Financial Proposal

- 3.3.1. In the third stage, the financial evaluation will be carried out as per this Clause 3.3. Each Financial Proposal will be assigned a financial score (SF).
- 3.3.2. For financial evaluation, the total fee indicated in the financial proposal as per Annexure XI will be considered.
- 3.3.3. The Client will determine whether the Financial Proposal is complete, unqualified and unconditional. The fee indicated in the Financial Proposal shall be deemed as final and reflecting the total cost of services. The lowest Financial Proposal (FM) will be given a financial scoring (SF) of 100 points, the financial scores of other proposals will be computed as follows:

$$SF=100 \times FM/F$$

FM = Lowest financial Proposal Amount

F = Amount of other Financial Proposal

3.4 Combined Evaluation of Proposal

- 3.4.1. Following completion of evaluation of Technical and Financial Proposals, final ranking of the Proposals will be determined. This will be done by applying a weightage of 80% (Eighty percent) and 20% (Twenty percent) respectively to the technical and financial scores of each evaluated qualifying Technical and Financial Proposals. The relevant combined total score for each Consultant Proposals will finally be ranked according to their combined technical scores (ST) as defined in clause 3.1.2 and financial (SF) scores as evaluate in clause 3.3.3 as follows : $S = (0.80*ST + 0.20*SF)$ Where "S" is the combined score The Selected Bidder shall be the first ranked bidder (having the highest combined score). The second ranked bidder shall be kept in reserve and may be invited for as and when required.

3. FRAUD AND CORRUPT PRACTICES

- 4.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Selection Process. Notwithstanding anything to the contrary contained in this Invitation of RFP document, the Client shall reject a RFP without being liable in any manner whatsoever to the Bidder, if it determines that the Bidder has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice (collectively the "Prohibited Practices") in the Selection Process.
- 4.2 Without prejudice to the rights of the Client under Clause 4.1 here in above and the rights and remedies which the Client may have under the shortlisting process, if an Bidder is found to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice ,undesirable practice or restrictive practice during the Selection Process, or after the shortlisting process, such Bidder shall not be eligible to participate in any tender issued by the Client during a period of 3 (three) years from such date.

4.3 For the purposes of this Clause, the following terms shall have the meaning here in after respectively assigned to them:

"Corrupt practice: means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the action of any person connected with the Selection Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Client who is or has been associated in any manner, directly or indirectly with the Selection Process or arising there from, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Client, shall be deemed to constitute influencing the actions of a person connected with the Selection Process or (ii)engaging in an manner whatsoever, whether during the Selection Process or after shortlisting ,as the case may be, any person in respect of any matter relating to the Project, who at any time has been or is a legal, financial or technical consultant/adviser of the Client in relation to any matter concerning the Project;

"Fraudulent practice" means a misrepresentation or omission of facts or disclosure of incomplete facts, in order to influence the Selection Process;

"Coercive practice: means impairing or harming or threatening to impair or harm, directly or indirectly, any persons or property to influence any person's participation or action in the Selection Process;

"Undesirable practice" means establishing contact with any person connected with or employed or engaged by the Client with the objective of canvassing, lobbying or in any manner influencing the outcome of the procedure for selection of bidders.

4. PRE-PROPOSAL CONFERENCE

- 4.1. Pre-Proposal Conference of the Bidders shall be convened at the designated date, time and place. A maximum of two representatives of each Bidder shall be allowed to participate on production of an authority letter from the Bidder.
- 4.2. During the course of Pre-Proposal Conference, the Bidders will be free to seek clarifications and make suggestions for consideration of the Client. The Client shall endeavor to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Selection Process.

5. MISCELLANEOUS

- 5.1. The Selection Process shall be governed by, and construed in accordance with, the laws of India and shall have exclusive jurisdiction over all disputes arising under, pursuant to and/or in connection with the Selection Process.
- 5.2. The Client, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to:

-
- a) Suspend and/or cancel the Selection Process and/or amend and/or supplement the Selection Process or modify the dates or other terms and conditions relating thereto;
 - b) Consult with any Prequalified Bidder in order to receive clarification or further information;
 - c) Retain any information and/or evidence submitted to the Client by, on behalf of and/or in relation to any Bidder; and/or
 - d) Independently verify, disqualify, reject and/or accept any and all submissions or other Information and/or evidence submitted by or on behalf of any Prequalified Bidder.
- 5.3.** It shall be deemed that by submitting the Proposal, the Bidder agrees and releases the Client, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in anyway related to or arising from the exercise of any rights and/or performance of any obligation here under, pursuant hereto and/or in connection herewith and waives any and all rights and/or claims it may have in this respect, whether actual or contingent, whether present or future.
- 5.4.** The Client reserves the right to make inquiries with any of the clients listed by the Bidder sin their previous experience record.
- 5.5. Dispute resolution**
- i. Any dispute arising out of this proposal which cannot be amicably settled between the parties shall be referred to the Vice Chairman, BDA who shall appoint an independent Arbitrator not connected with the affairs of both the parties.
 - ii. The proceeding shall be inconsonance with the Arbitration and Conciliation Act, 1996 amended from time to time.
 - iii. The Principal Civil Court at Bhubaneswar shall have the jurisdiction to deal with issues(s) not covered under the Arbitration in exclusion of any other jurisdiction provided in any other Act(s).

ANNEXURE I: TERMS OF REFERENCE

TERMS OF REFERENCE FOR THE INDEPENDENT ENGINEER

1 Scope

These Terms of Reference for the Independent Engineer (the “TOR”) are being specified pursuant to the:-

- I. Development Agreement dated 06-06-2017 (the “**Agreement**”), which has been entered into between BDA and M/s Paramitra Smartinfra Pvt. Ltd. (the “**Developer**”) to undertake the development of the Project over 20.21 Acres at Chandrashekharpur (Bhubaneswar) under Model III of the Housing for All Policy of the Government of Odisha and a copy of which is annexed hereto and marked as Annex-A to form part of this TOR.
- II. Development Agreement dated 06-06-2017 followed by Supplementary Agreement dated 08-02-2019 (the “**Agreement**”), which has been entered into between BDA and M/s Paramitra Smartinfra SNA Pvt. Ltd. (the “**Developer**”) to undertake the development of the Project over 6.246 Acres at SatyaNagar (Bhubaneswar) under Model IV of the Housing for All Policy of the Government of Odisha and a copy of which is annexed hereto and marked as Annex-B to form part of this TOR.

- 1.2 This TOR shall apply to the rights and obligations of the Independent Engineer for the AHP & SRP Assets, to be performed from the date of its appointment until the expiry of the AHP & SRP Construction Period, unless the appointment is revoked or the Development Agreement is terminated earlier.

2 Definitions and interpretation

- 2.1 The words and expressions beginning with or in capital letters used in this TOR and not defined herein but defined in the Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Agreement.
- 2.2 References to Articles, Clauses and Schedules in this TOR shall, except where the context otherwise requires, be deemed to be references to the Articles, Clauses and Schedules of the Agreement, and references to Paragraphs shall be deemed to be references to Paragraphs of

this TOR.

- 2.3 The rules of interpretation of the Development Agreement shall apply, mutatis mutandis, to this TOR.

3 Role and functions of the Independent Engineer

3.1 The role and functions of the Independent Engineer shall include the following:

- i. review of or assist BDA in the review of, as the case may be, any documents submitted by the Developer to ensure compliance with the **Agreement, Applicable Laws, Applicable Permits, AHP Requirements, the AHP Construction Plan, the AHP & SRP Construction Schedule, the EHS Plan, the Demarcation Plan, the EHS Standards and Good Industry Practices;**
- ii. review, inspection and monitoring of construction of the AHP & SRP Assets as per the Development Agreement;
- iii. **identify defects and/or deficiencies in the construction of AHP& SRP Assets and provide its comments / suggestions to the Developer for the rectification of the same;**
- iv. conducting inspection of the AHP& SRP Assets as per provision of the Development Agreement on completion of an AHP& SRP Construction Milestone and issuing AHP & SRP Milestone Completion Certificate as per the format provided in the Development Agreement;
- v. determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;
- vi. assessing the cost of any Variation to the Agreement;
- vii. determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;
- viii. carrying out the safety & quality audits as per industry standards;
- ix. assisting the Parties in resolution of disputes;
- x. Periodic review of the progress done for the project by the developer and appraising the Authority about same.
- xi. **Mandatory submission of monthly progress reports to the Authority; and undertaking all other duties and functions in accordance with the Development Agreement.**

3.2 The Independent Engineer shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practices.

4 Conditions Precedent Period

4.1 During the Conditions Precedent period, the Independent Engineer shall undertake a review of the documents required by BDA or as prescribed in the Development Agreement to ensure compliance with the AHP&SRP Requirements and other provisions of the Development Agreement. The Independent Engineer shall complete such review and send its comments/observations to BDA and the Developer as per timelines stipulated by BDA.

4.2 Upon reference by BDA, the Independent Engineer shall review and comment on the Subcontracts, if any, with relation to construction of the AHP& SRP Assets.

5 Construction Period

5.1 In respect of the drawings and documents received by the Independent Engineer for its review and comments during the AHP &SRP Construction Period, the provisions of Paragraph 4 shall apply, mutatis mutandis.

5.2 The Independent Engineer shall review the monthly progress report furnished by the Developer and send its comments thereon to BDA and the Developer.

5.3 The Independent Engineer shall inspect the construction of AHP &SRP Assets once in every fortnight and make out a report of such inspection (the “**Inspection Report**”) setting forth an overview of the status, progress, quality and safety of construction, including the work methodology adopted, the materials used and their sources, and conformity of construction works with the AHP &SRP Requirements and other provisions of the Development Agreement. In a separate section of the Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the construction of the AHP& SRP Assets and provide its suggestions and comments for the rectification of the same. The Independent Engineer shall send a copy of its Inspection Report to BDA and the Developer within 7 (seven) days of the inspection.

5.4 The Independent Engineer may inspect the AHP & SRP Assets more than once in a fortnight

if any lapses, defects or deficiencies require such inspections.

- 5.5 For determining that the construction works conform to the **Agreement, Applicable Laws, Applicable Permits, AHP &SRP Requirements, the AHP &SRP Construction Plan, the AHP &SRP Construction Schedule, the EHS Plan, the Demarcation Plan, the EHS Standards and Good Industry Practices**, the Independent Engineer shall require the Developer to carry out, or cause to be carried out, necessary inspection, to be specified by the Independent Engineer in accordance with Good Industry Practice for quality assurance. The Independent Engineer shall issue necessary directions to the Developer for ensuring that the inspection is conducted in a fair and efficient manner, and shall monitor and review the results thereof.
- 5.6 The criteria for acceptance/ rejection of inspection results shall be determined by the Independent Engineer. The inspection shall be undertaken on a random sample basis and shall be in addition to, and independent of, the tests that may be carried out by the Developer for its own quality assurance in accordance with Good Industry Practice.
- 5.7 In the event that the Developer carries out any remedial works for removal or rectification of any defects or deficiencies, the Independent Engineer shall require the Developer to carry out, or cause to be carried out, necessary inspection to determine that such remedial works have brought the construction works into conformity with the **Agreement, Applicable Laws, Applicable Permits, AHP &SRP Requirements, the AHP &SRP Construction Plan, the AHP &SRP Construction Schedule, the EHS Plan, the Demarcation Plan, the EHS Standards and Good Industry Practices**, and the provisions of this Paragraph 5 shall apply to such inspection.
- 5.8 In the event that the Developer fails to achieve any of the AHP &SRP Construction Milestones, the Independent Engineer shall undertake a review of the progress of construction and identify potential delays, if any. If the Independent Engineer shall determine that completion of the construction of AHP &SRP Assets is not feasible within the time specified in the Agreement, it shall require the Developer to indicate the steps proposed to be taken to expedite progress, and the period within which the Scheduled Phase I AHP &SRP Completion Date and/or the Scheduled AHP &SRP Completion Date shall be achieved. Upon receipt of a report from the Developer, the Independent Engineer shall review the same and send its comments to BDA and the Developer forthwith.
- 5.9 The Independent engineer will carry out the necessary Safety Audit as per provisions of the

Development Agreement, EHS Plan, Safety Requirements, AHP & SRP Construction Plan and Applicable Laws and Applicable Permits, to ensure that the AHP & SRP Assets are safe and fit for purpose;

- 5.10 The Independent engineer shall be required to conduct inspection of the AHP & SRP Assets at every AHP & SRP Construction Milestone as per provision of the Development Agreement, identify any defects or deficiencies and provide suggestion and comments for their rectification until the same have been resolved, and upon their resolution, issue a AHP & SRP Milestone Completion Certificate as per the format provided in the Development Agreement;
- 5.11 If at any time during the AHP & SRP Construction Period, the Independent Engineer determines that the Developer has not made adequate arrangements for the safety of workers and others concerned in the zone of construction or that any work is being carried out in a manner that threatens the safety of the workers and the others concerned, it shall make a recommendation to BDA forthwith, identifying the whole or part of the construction works that should be suspended for ensuring safety in respect thereof.

6. Defects Warranty Period

- a. The Independent Engineer shall inspect the handed over SRP asset once every month (before the 20th day of each month) during the defects warranty period and prepare an Inspection report setting forth an overview of the status, quality and safety requirements. In a separate section of the Inspection report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the Project. The Independent Engineer shall send a copy of its inspection report to BDA and the Developer within 7 days of the inspection.
- b. The Independent Engineer may inspect the Project more than once in a month, if any lapses, defects or deficiencies require such inspections.
- c. The Independent Engineer shall determine if any delay has occurred in completion of repair or remedial works in accordance with the Agreement, and shall also determine the damages if any payable by the Developer to BDA for such delay.
- d. The Independent Engineer shall monitor and review the rectification of defects and deficiencies by the Developer.

7 Determination of costs and time

7.1 The Independent Engineer shall determine the costs, and/or their reasonableness, that are required to be determined by it under the Agreement.

7.2 The Independent Engineer shall determine the period, or any extension thereof, that is required to be determined by it under the Agreement.

8 Penalties for Delay

If the Agency fails to perform any of the Services under this Contract within the requisite time period, for reasons he must warrant, the Authority shall, unless the Special Conditions Include derogation, be authorized to inflict a penalty of 0.5% of the Order Value for every week of delay, subject to a cap of 8% of the Contract Value.

9. Assistance in Dispute resolution

9.1 When called upon by either Party in the event of any Dispute, the Independent Engineer shall mediate and assist the Parties in arriving at an amicable settlement.

9.2 In the event of any disagreement between the Parties regarding the meaning, scope and nature of Good Industry Practice, as set forth in any provision of the Agreement, the Independent Engineer shall specify such meaning, scope and nature by issuing a reasoned written statement relying on good industry practice and authentic literature. The Independent engineer will also undertake an assessment of cost of construction of AHP & SRP Assets constructed till such time, in case of Termination events.

10 Other duties and functions

The Independent Engineer shall perform all other duties and functions specified in the Agreement.

11 Miscellaneous

11.1 The Independent Engineer shall notify its programme of inspection to BDA and to the Developer, who may, in their discretion, depute their respective representatives to be present during the inspection.

11.2 A copy of all communications, comments, instructions, documents sent by the Independent

Engineer to the Developer pursuant to this TOR, and a copy of all the inspection results with comments of the Independent Engineer thereon shall be furnished by the Independent Engineer to BDA forthwith.

- 11.3 The Independent Engineer shall obtain, and the Developer shall furnish in two copies thereof, all communications and reports required to be submitted, under this Agreement, by the Developer to the Independent Engineer, whereupon the Independent Engineer shall send one of the copies to BDA along with its comments thereon.
- 11.4 The Independent Engineer shall retain at least one copy each of all documents received by it and keep them in its safe custody.
- 11.5 Upon completion of its assignment hereunder, the Independent Engineer shall duly classify and list all documents, results of inspection and other relevant records, and hand them over to BDA or such other person as BDA may specify, and obtain written receipt thereof. Two copies of the said documents shall also be furnished in USB drive form or in such other medium as may be acceptable to BDA.

ANNEXURE II: COVER LETTER

(On the letter head of Bidder)

Dated:

The Secretary cum Member Estate
Bhubaneswar Development Authority
Akash Shova Building
Sachivalaya Marg
Bhubaneswar

Subject: Appointment of Independent Engineer for implementation of Chandrashekharapur Affordable Housing Project & Shanti Nagar Awaas Yojana Project being executed through PPP mode

Dear Sir,

With reference to your RFP document dated , I/we, having examined the RFP and understood its contents, hereby submit our proposal

1. The technical and financial proposals are unconditional and unqualified.
2. 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.
3. This statement is made for the express purpose of appointment as the Consultant for the aforesaid Project.
4. I/ We shall make available to the Client any additional information it may find necessary or required to supplement or authenticate the proposal.
5. I/ We acknowledge the right of the Client to reject our proposal without assigning any reason or otherwise and hereby waive our right to challenge the same on any account whatsoever.
6. I/ We certify that in the last 3 (three) years, we or any of our Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty 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 for breach on our part.
7. I/ We declare that:
 - a. I/ We have examined and have no reservations to the RFP Document, including any Addendum issued by the Client.

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- b. I/ We do not have any conflict of interest in accordance with Clauses 2.2 of the RFP document;
- c. I/ We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 4 of the RFP document, in respect of any tender issued by or any agreement entered into with the Client or any other public sector enterprise or any government, Central or State;
- d. We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 4 of the RFP document, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
8. 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 2.6 and Clause 6 of the RFP document.
9. We believe that we satisfy the Conditions of Eligibility and meet the requirements as specified in the RFP document and are qualified to submit proposal in accordance with the provisions of the RFP document.
10. We certify that in regard to matters other than security and integrity of the country, we or any of our Associates have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Consultancy for the Project or which relates to a grave offence that outrages the moral sense of the community.
11. We further certify that in regard to matters relating to security and integrity of the country, we have not been charge-sheeted by any agency of the Government or convicted by a Court of Law for any offence committed by us or by any of our Associates.
12. We further certify that no investigation by a regulatory authority is pending either against us or against our Associates or against our CEO or any of our Directors/Managers/employees.
13. We undertake that in case due to any change in facts or circumstances during the Selection Process, we are attracted by the provisions of disqualification in terms of the guidelines referred to above, we shall intimate the Client of the same immediately.

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14. We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Client in connection with the selection of Consultant or in connection with the Selection Process itself, in respect of the above mentioned Project.
 15. The Bid Security of Rs. 1,00, 000/- (Rupees One Lakh) in the form of demand draft, in accordance with the RFP document.
 16. We agree and understand that the proposal is subject to the provisions of the RFP document. In no case, shall/we have any claim or right of whatsoever nature if the Consultancy for the Project is not awarded to me/us or our proposal is not opened or rejected.
 17. We agree to keep this offer valid for 180 days from the proposal Due Date specified in the RFP.
 18. A Power of Attorney in favor of the authorized signatory to sign and submit this Proposal and documents is attached herewith in Annexure IV.
 19. We certify that we shall have no claim, right or title arising out of any documents or information provided to us by the Client or in respect of any matter arising out of or concerning or relating to the Selection Process including the award of Consultancy.
 20. We, _____ (Bidder's name) herewith enclose the Financial Proposal as Annexure XI for selection of my/our firm as Consultant.
 21. We agree and undertake to abide by all the terms and conditions of the RFP document.
 22. We certify that we are owning the minimum measuring instruments specified in the RFP and calibration certificate is not more than one year old.
 23. In witness thereof, we submit this Proposal under and in accordance with the terms of the RFP document.

Yours faithfully,

(Signature, name and designation of the of the Authorized signatory)

(Name and stamp of Bidder)

ANNEXURE III: STATEMENT OF LEGAL CAPACITY

(To be forwarded on the letter head of the Bidder)

Ref.

Date:

The Secretary cum Member Estate
Bhubaneswar Development Authority
Akash Shova Building
Sachivalaya Marg
Bhubaneswar

Dear Sir,

Sub: Appointment of Independent Engineer for implementation of Chandrashekharpur Affordable Housing Project & Shanti Nagar Awaas Yojana Project being executed through PPP mode

We hereby confirm that we, the Bidder , satisfy the terms and conditions laid down in the RFP document.

We have agreed that (**insert individual's name**) will act as our Authorized Representative and has been duly authorized to submit our Proposal. Further, the authorized signatory is vested with requisite powers to furnish such proposal and all other documents, information or communication and authenticate the same.

Yours faithfully,

(Signature, name and designation of the authorized signatory)

For and on behalf of.....

ANNEXURE IV: POWER OF ATTORNEY

Know all men by these presents, we, (name of Firm and address of the registered office) do hereby constitute, nominate, appoint and authorize Mr./Ms. (name & residential address) who is presently employed with us and holding the position of _____ as our true and lawful attorney (hereinafter referred to as the "**Authorized Representative**") to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our Proposal for "Appointment of Independent Engineer for implementation of Chandrashekharpur Affordable Housing Project & Shanti Nagar Awaas Yojana Project being executed through PPP mode" in response to the RFP floated by the Client including but not limited to signing and submission of all applications, proposals and other documents and writings, participating in pre-bid and other conferences and providing information/ responses to the Client, representing us in all matters before the Client, signing and execution of all contracts and undertakings consequent to acceptance of our proposal and generally dealing with the Client in all matters in connection with or relating to or arising out of our Proposal for the said Project and/or upon award thereof to us till the entering into of the Agreement with the Client, and, we do hereby agree to ratify and confirm all acts, deeds and things lawfully done or caused to be done by our said Authorized Representative pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Authorized Representative in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

IN WITNESS WHEREOF WE, THE ABOVE NAMED PRINCIPAL HAVE EXECUTED
THIS POWER OF ATTORNEY ON THIS.....DAY OF, 2016

For

(Signature, name, designation and address)

Witnesses:

- 1.
- 2.

Notarized

Accepted

(Signature, name, designation and address of the Attorney)

Notes:

- 1) The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the

executant(s) and when it is so required the same should be under common stamp affixed in accordance with the required procedure. Copy of such document should be submitted along with the power of Attorney.

2) Also, wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a resolution/power of attorney in favor of the Person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.

ANNEXURE-V

Details of Bidder

(To be submitted on Letterhead of Bidder)

- 1 a) Name:
 - b) Date of Incorporation/Commencement:
2. Brief Description of Company including details of its main line of Business
3. Shareholding of the Bidder
4. List of Directors:
5. Details of Individual who will serve as the point of contact/communication to Client:
 - a) Name:
 - b) Designation:
 - c) Company:
 - d) Address:
 - e) Telephone No:
 - f) Email Address:
 - g) Fax Number:
6. Particular of Authorized Signatory of Bidder:
 - a) Name:
 - b) Designation:
 - c) Address:
 - d) Telephone No.:
 - e) Email Address:
 - f) Fax No:

ANNEXURE-VI**Financial Qualification of Bidder**

SL No	Financial Year	Total Annual Turnover (Rs. Lakhs)	Annual Turnover (Rs. Lakhs) From Consultancy Business in Real Estate / Construction Sector
1	2016-2017		
2	2017-2018		
3	2018-2019		

Statutory Auditor**Name of Audit Firm:****Seal of Audit Firm:****Name of Partner:****Membership No:****Contact No:****Address:****Note:**

The Bidder shall attach copies of the Balance Sheets, financial statements certified by Chartered Accountant in Practice with his registration no for each financial year. The bidder will submit Statutory Audit Report for each year reflecting annual turnover of Consultancy Business for each year.

ANNEXURE VII

Project Experience Details of Completed Eligible Housing Projects

(Following Tables shall be filled in by Bidder)

S L N o	Eligible Assignme nt Name, Location & Brief Descripti on of Project (number of units)	Start and Completi on Date	Name of Client, Address, Key Contact Person (name, designati on and contact details including number and email)	Approve d Project Cost (INR Crores) - (Value of Project, (excludi ng cost of land)	Approxim ate Contract fee Value in INR Lakhs	Role of Bidder in Eligible Assignme nts (Brief Descriptio n of role, deliverabl es/inputs)	Whether as Lead Bidder or Consorti um Partner
1							
2							
3							

*add rows as necessary

**Name & Signature of
Authorized Signatory**

- For each Eligible assignment, the Bidder should indicate the duration of the assignment, the Contract Amount, the amount paid to bidder) and the bidders role and involvement.
- Bidders are expected to provide information in respect of Eligible Assignment
- For each assignment bidder should provide supporting proof of self-attested work order/contract copy, completion certificate.
- Experience as minor bidder will not qualify for evaluation

ANNEXURE-VIII: CV OF KEY PERSONNEL

A.

SL No	Position	Name of the Expert	Qualification	Year of Relevant Experience (as required for Key Personnel) in years	Details of Eligible Projects
1	Project Manager / Team Leader ^t				
2	Senior Architect				
3	Junior Architect				
4	Project Engineer - 1 (Civil)				
5	Project Engineer - 2 (Civil)				
6	Project Engineer - 3 (Civil)				
7	Project Engineer - 4(Civil)				
8	Project Engineer - 5 (MEP)				
9	Project Engineer - 6 (MEP)				

B.CV of Key Position

1	Proposed Position			
2	Name of Firm			
3	Name of Staff			
4	Date of Birth			
5	Nationality			
6	Education	Degree	Institution	Year
7	Professional Memberships			
8	Other Training & Publications			
9	Countries of Work Experiences			
10	Language	Speak	Write	Read
11	Employment Record	From :		Position Held
		To:		
	Employer Name & Address with Contact No			
	Detail task assigned as per TOR			
	Details of Projects Handled (to be provided for all the eligible projects)	<ul style="list-style-type: none"> • Name: • Location: • Client name: • Description of Project: • Project Duration-Start Date: End Date: • Project Cost (INR Crores): • Role performed on the project 		

(Signature and name of the Key Personnel and authorized signatory of the Bidder)

Notes:

- Use separate form for each Key Personnel
- CV shall be signed and dated by both the Personnel concerned and by the Authorized Representative of the Bidder firm along with the seal of the firm.

ANNEXURE-IX: LEGALLY BINDING SIGNED DECLARATION OF UNDERTAKING

We underscore the importance of a free, fair and competitive procurement process that precludes fraudulent use. In this respect we have neither offered nor granted, directly or indirectly, any inadmissible advantages to any public servants or other persons in connection with our bid, nor will we offer or grant any such incentives or conditions in the present procurement process or, in the event that we are awarded the contract, in the subsequent execution of the contract.

We also underscore the importance of adhering to minimum social standards ("Core Labour Standards") in the implementation of the project. We undertake to comply with the Core Labour Standards ratified by the country of India.

We will inform our staff about their respective obligations and about their obligation to fulfill this declaration of undertaking and to obey the laws of the country of India.

Signature of the authorized representative of Bidder

Place:

Date:

ANNEXURE X: SALIENT ASPECT OF TECHNICAL PROPOSAL

The salient aspects of the technical proposal shall be described as follows:

1. Clarity on Completeness of Bids

The bid for services must take full account, in content and form, the terms of reference and the conditions of the bid for services in the request for proposal. All the components of the bid for services that are required must be presented. Clarity in the bid means a clear structure, text statements supported with appropriate tables, lists and other editorial aids in accordance with the complexity of the terms of reference, and a balanced use of annexes to keep the main text clear and precise. If there are minor omissions in relation to the terms of reference, points will be deducted. Omissions that considerably restrict comparison with other bids can cause the bidder to be excluded.

2. Approach & Methodology, Work Plan & Manning Schedule

The bid for services must present the methodological approach and the programme of work in such a way that their suitability in regard to the terms of reference can be assessed and they can be compared with other qualified bids. This includes a statement of the work organization planned, staff to be hired, approach and methodology towards executing the required work and coordinating between BDA and the Developer etc. If there is an evident and considerable discrepancy between the terms of reference and the quantities given, the bid will not be considered. The text should state clearly how the task is to be proposed to be undertaken and the deployment schedule of staff. In case the key staff is to be supported by additional staff, the same shall be reflected in the approach and methodology. The work plan and manning schedule shall be provided in the form of bar chart. It must be supplemented with diagrams, tables and in case of complex work, appropriate graphics.

The approach and methodology to be covered under the following heads:

- a. Understanding of the scope of work
- b. Project appreciation
- c. Proposed methodology of Consultant for undertaking the assignment
 - i. Deployment of staff and logistics – local staff stationed in Bhubaneswar and out-of-station staff
 - ii. Technical approach
 - iii. Methodological framework for project execution and undertaking required scope of work

-
- iv. Any other aspect proposed for project execution

3. Comments on Term of Reference

In this section, the bidder shall comment on the following

- i. Adequacy of the Terms of Reference in fulfilling the project objectives
- ii. Timeline proposed for various milestones of the assignment and the support required for adhering to the timelines
- iii. Problems that are likely to be encountered during the assignment and the mitigation measures

The proposal should cover the above three aspects.

The Key Expert shall make a presentation on the proposal approach for undertaking the assignment and also demonstrate their capability to undertake the tasks proposed. Power point Presentation shall be made only by key Expert. Any other representative of the Bidder shall not be permitted to make the presentation

ANNEXURE XI: FINANCIAL PROPOSAL

(On the letter head of Bidder)

“Appointment of Independent Engineer for implementation of Chandrashekharpur Affordable Housing Project & Shanti Nagar Awaas Yojana Project being executed through PPP mode”

Having gone through the RFP and having fully understood the scope of work for the Project as set out in the TOR, we are pleased to quote the following Professional fees for the Assignment as per the specified scope of Work:

<i>Particulars</i>	Total Consultancy Fees (Rs.) In figures	Total Consultancy Fees (Rs.) in words
Consultancy fee proposed for role of Independent Engineer for implementation of Chandrashekharpur Affordable Housing Project and ShantiNagar Awaas Yojana Project being executed through PPP mode		
GST as applicable @____%		
Total Contract Value In Rs.		

Signature of authorized representative of the Bidder

Note:

1. The Financial Proposal is inclusive of all out pocket expenses which may be incurred towards travel, accommodation, documentation and communication, during the period of assignment.
2. In case of difference in amount quoted in figures and words, the value in words shall be considered for evaluation.
3. The breakup of expenses shall be provided by Bidder as given below.
4. The Financial Proposal is inclusive of all applicable tax
5. In cases wherein there is reasonable extension of timeline due to delay, the selected bidder shall carry out the services as per the proposed rate in the financial proposal and the man-month required for same shall be ascertained by the Client.

(We understand you are not bound to accept any proposal you receive)

Cost Estimation of Services (only for reference)

Contract to be operated on lump sump fee quoted basis.

I. Remuneration of Staff

Staff	Name	Man month rate (Rs.)	Working days (month)	Total cost (Rs.)
Team Leader /Project Manager			36 Month	
Senior Architect			24 Month	
Junior Architect			36 Month	
Project Engineer, Civil-1 st			Minimum 12 Months	
Project Engineer,Civil-2 nd			Minimum 12 Months	
Project Engineer, Civil-3 rd			Minimum 12 Months	
Project Engineer,Civil-4 th			Minimum 12 Months	
Project Engineer, MEP-5 th			Minimum 12 Months	
Project Engineer MEP 6 th			Minimum 12 Months	
Other staff proposed for the assignment				
		Subtotal Staff		

II. Direct expenses

Expenses	Rs.
Cost of survey and field investigation expenses	
Printing and stationery	
Other expenses (please specify)	
Sub total (Direct Expenses)	

III. Out of pocket expenses

Expenses	Rs.
Room rent	
Air fare	
Other travel and local conveyance expenses	
Lump sum miscellaneous expenses	
Subtotal (out of pocket expenses)	

Annexure XII: Format of the EMD

(To be executed on stamp paper of appropriate value)

B.G. No. [___]

Dated:

1. In consideration of you, Bhubaneswar Development Authority (referred to as **BDA**, which expression will, unless it is repugnant to the subject or context thereof include, its successors and assigns) having agreed to receive the Bid of [*insert name of Bidder*] with its registered office at [*Insert Address*] (referred to as the **Bidder** which expression will unless it be repugnant to the subject or context thereof include its/their executors, administrators, successors and assigns), for selection of Independent Engineer for Affordable Housing Project at Chandrasekharapur & Shanti Nagar Awaas Yojana, pursuant to the Request for Proposal dated [___] (referred to as the **RFP**) and other related documents including without limitation the draft Contract (collectively referred to as **Bid Documents**), we (Name of the Bank) having our registered office at [___] and one of its branches at [___] (referred to as the **Bank**), at the request of the Bidder, do hereby in terms of the RFP, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfilment and compliance of the terms and conditions of the Bid Documents (including the RFP) by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to BDA an amount of Rs. [___] (referred to as the **Guarantee**) as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder, if the Bidder will fail to fulfil or comply with all or any of the terms and conditions contained in the said Bid Documents.
1. Any such written demand made by BDA stating that the Bidder is in default of due and faithful compliance with the terms and conditions contained in the Bid Documents will be final, conclusive and binding on the Bank.
2. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of BDA is disputed by the Bidder or not, merely on the first demand from BDA stating that the amount claimed is due to BDA by reason of failure of the Bidder to fulfil and comply with the terms and conditions contained in the Bid Documents, including but not limited to the following events:
 - i. If a Bidder withdraws its Proposal during the Proposal validity period or any extension agreed by the Bidder thereof.
 - ii. If a Bidder is disqualified in accordance with Clause 2.12;
 - iii. If the Bidder tries to influence the evaluation process or engages in corrupt, fraudulent, coercive or undesirable practice or restrictive practice as set out in Section 5 of the RFP.
 - iv. If a Bidder is declared the first ranking Bidder and it:
 - (i) withdraws its Proposal during negotiations. However, failure to arrive at a consensus between the Client and the first ranked Bidder

-
- shall not be construed as withdrawal of proposal by the first ranked Bidder;
- (ii) fails to furnish the Performance Security in accordance with Clause 2.182 of the RFP;
 - (iii) fails to sign and return, as acknowledgement, the duplicate copy of the letter of award;
 - (iv) fails to fulfil any other condition precedent to the execution of the Contract, as specified in the letter of award; or
 - (v) (e) fails to execute the Contract.

Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee.

3. This Guarantee shall be irrevocable and remain in full force till the validity of the Proposal, including any extensions thereof, and will continue to be enforceable till all amounts under this Guarantee have been paid.

If the Bidder is declared as the Consultant, then the validity of the EMD of such Bidder shall be extended until the date on which the Consultant submits the Performance Security. The EMD of the Consultant will be returned upon the Consultant furnishing the Performance Security.

4. We, the Bank, further agree that BDA will be the sole judge to decide as to whether the Bidder is in default of due and faithful fulfilment and compliance with the terms and conditions contained in the Bid Documents including, those events listed at clause 3 above. The decision of BDA that the Bidder is in default as aforesaid will be final and binding on us, notwithstanding any differences between BDA and the Bidder or any dispute pending before any court, tribunal, arbitrator or any other authority.
5. The Guarantee will not be affected by any change in the constitution or winding up of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.
6. In order to give full effect to this Guarantee, BDA will be entitled to treat the Bank as the principal debtor.
7. The obligations of the Bank under this Guarantee are absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of the Bid Documents or the Bid submitted by the Bidder.
8. The obligations of the Bank under this Guarantee shall not be affected by any act, omission, matter or thing which, but for this provision, would reduce, release or prejudice the Bank from or prejudice or diminish its liability under this Guarantee, including (whether or not known to it, or BDA):
 - (a) any time or waiver granted to, or composition with, the Bidder or any other person;

-
- (b) any incapacity or lack of powers, authority or legal personality of or dissolutions; or change in the Bidder, as the case may be;
 - (c) any variation of the Bid Documents, so that references to the Bid Documents in this Guarantee shall include each such variation;
 - (d) any unenforceability, illegality or invalidity of any obligation of the Bidder or BDA under the Bid Documents or any unenforceability, illegality or invalidity of the obligations of the Bank under this Guarantee or the unenforceability, illegality or invalidity of the obligations of any Person under any other document or guarantee or security, to the extent that each obligation under this Guarantee shall remain in full force as a separate, continuing and primary obligation, and its obligations be construed accordingly, as if there were no unenforceability, illegality or invalidity; and
 - (e) any extension, waiver, or amendment whatsoever which may release a guarantor or surety (other than performance of any of the obligations of the Bidder under the Bid Documents).
9. Any notice by way of request, demand or otherwise will be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.
 10. We undertake to make the payment on receipt of your notice of claim on us addressed to [*name of Bank along with branch address*] and delivered at our above branch which will be deemed to have been duly authorized to receive the notice of claim.
 11. It shall not be necessary for BDA to proceed against the Bidder before proceeding against the Bank and the Guarantee will be enforceable against the Bank, notwithstanding any other security which BDA may have obtained from the Bidder or any other person and which will, at the time when proceedings are taken against the Bank, be outstanding or unrealized.
 12. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of BDA in writing.
 13. The Bank represents and warrants that it has power to issue this Guarantee and discharge the obligations contemplated herein, and the undersigned is duly authorized and has full power to execute this Guarantee for and on behalf of the Bank.
 14. For the avoidance of doubt, the Bank's liability under this Guarantee will be restricted to Rs. [___]. The Bank will be liable to pay the amount or any part of the Guarantee only if BDA serves a written claim on the Bank in accordance with clause 11 of this Guarantee, on or before (Indicate date corresponding to the Proposal validity period).
 15. Capitalized terms used but not defined herein shall have the meanings given to them in the RFP.
-

Signed and Delivered by.....Bank

By the hand of Mr./Ms. its and authorised official.

(Signature of the Authorised Signatory)

(Official Seal)

ANNEXURE- A

**DEVELOPMENT AGREEMENT (DA) DEVELOPMENT OF AN AFFORDABLE
HOUSING PROJECT OVER 20.21 ACRES AT CHANDRASEKHARPUR
UNDER MODEL III OF THE “HOUSING FOR ALL POLICY” OF
GOVERNMENT OF ODISHA**



DEVELOPMENT AGREEMENT

**DEVELOPMENT OF AN AFFORDABLE HOUSING PROJECT
OVER 20.21 ACRES AT CHANDRASEKHARPUR
UNDER
MODEL III OF THE “HOUSING FOR ALL POLICY” OF
GOVERNMENT OF ODISHA**

BHUBANESWAR DEVELOPMENT AUTHORITY

Akash Shova Building, Pandit Jawaharlal Nehru Marg
Bhubaneswar - 751001, Odisha

DEVELOPMENT AGREEMENT

This Development Agreement (**Agreement**) is executed on this 6th day of June Two Thousand and Seventeen at Bhubaneswar:

BETWEEN

- (1) **BHUBANESWAR DEVELOPMENT AUTHORITY**, a statutory body constituted under the Orissa Development Authorities Act, 1982 by notification no. 37627-HUD/31.8.1983, with its registered office at Ashok Shova Building, Pandit Jawaharlal Nehru Marg, Bhubaneswar – 751 001, Odisha (hereinafter referred to as **BDA**, which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns);

AND

- (2) **PARAMITRA SMART INFRA PRIVATE LIMITED**, a company organized, incorporated, registered and existing under the Companies Act, with its registered office at 154, Golf Links, Ground Floor, New Delhi – 110003, (hereinafter referred to as the **Developer**, which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns).

BDA and the Developer shall collectively be referred to as the **Parties** and individually as a **Party**.

WHEREAS:

- A. Rapid urbanisation and increase in Odisha's population has resulted in a proliferation of slums due to a shortage of housing units for EWS households and low income group households in urban areas and the existing housing schemes are not adequate to meet the housing needs of such households. With a view to address the supply and demand gaps in affordable housing in urban areas, the GoO has introduced the Housing for All Policy. Through the Housing for All Policy, the GoO seeks to create an appropriate policy and implementation framework, which would facilitate creation of adequate affordable housing stock through partnership between public agencies and private developers.
- B. For the purpose of undertaking an affordable housing project in the Bhubaneswar Development Area, the GoO has transferred 20.21 (twenty point two one) Acres of land, through the GoO Land Allotment Notification, at Chandrasekharpur to BDA. The details of the Site are provided in Schedule A and the Site Layout Plan is set out in Schedule B.
- C. With a view to increase the housing stock for EWS households in the Bhubaneswar Development Area, BDA has decided to undertake an affordable housing project at the Site under Model III of the Housing for All Policy.
- D. For this purpose, BDA intends to engage a developer who will: (i) design, develop, finance, construct, complete and hand over AHP Assets to BDA free of cost on the AHP Area in accordance with the terms of this Agreement; and (ii) have the right to design, finance, construct, market, allot, complete and transfer PDP Units on the Developer's Area in accordance with this Agreement (collectively the **Project**).
- E. On 15 December, 2016, BDA commenced a competitive Bid Process for the Project by issuing a request for proposal, as amended from time to time, including amendment dated 25 January, 2017 (the **RFP**), inviting interested parties to submit their technical proposals and financial proposals to BDA for undertaking the Project.
- F. Pursuant to the terms of the RFP, BDA received proposals from various bidders, including a proposal submitted by the Selected Bidder on 7 March, 2017.
- G. Following a process of evaluation of technical proposals and financial proposals submitted by the bidders (including the Selected Bidder), BDA has on 20 April, 2017 in its 134th Authority Meeting vide additional agenda item number 01/134, accepted the proposal submitted by the Selected Bidder for the development of the Project. Subsequently, BDA has issued the letter of award dated 27 April, 2017 to the Selected

Bidder (the **LOA**).

- H. The Selected Bidder has accepted the LOA and has agreed to undertake the Project in accordance with the terms of this Agreement.
- I. The Selected Bidder has incorporated a special purpose vehicle to act as the Developer, to implement the Project and perform the obligations and exercise the rights of the Developer, including the obligation to enter into this Agreement.
- J. BDA has agreed to enter into this Agreement with the Developer for implementation of the Project, subject to and on the terms and conditions set out in this Agreement.

IT IS AGREED as follows:

1. **DEFINITIONS AND INTERPRETATION**

1.1. **Definitions**

In this Agreement, unless the context otherwise requires, the following terms have the following meaning:

Abandonment means, with respect to the AHP, the cessation of all or substantially all the obligations of the Developer under this Agreement for a continuous period of 30 (thirty) days, other than as a result of a BDA Event of Default, Force Majeure Event, a Qualifying Change in Law, a Fundamental Change in Law or a suspension in accordance with this Agreement, which is not attributable to the Developer.

Acres means a unit of land area equal to 43,560 (forty three thousand five hundred and sixty) sq. ft.

Affordable Housing Area or AHP Area means the land admeasuring 13.71 (thirteen point seven one) Acres, situated at Chandrasekharpur, Bhubaneswar, which forms part of the Site and

which has been earmarked for the AHP, as described in greater detail in the Demarcation Plan.

Affordable Housing Project or AHP means the design, development, finance, construction, completion and hand over of the AHP Assets on the AHP Area, and rectification of defects in the AHP Assets, in accordance with this Agreement, the Demarcation Plan, the AHP Construction Plan, the EHS Standards, Applicable Laws (including specifically, the Housing for All Policy) and Applicable Permits.

AHP Assets means, collectively, the Phase I AHP Assets and the Phase II AHP Assets (comprising the EWS Units and the Infrastructure Facilities), on the AHP Area.

AHP Capital Cost means the capital expenditure to be incurred by the Developer in constructing and completing the AHP Assets, which for the purpose of this Agreement shall be deemed to be INR 155,00,00,000 (Rupees one hundred and fifty five crores), or such lower amount as may be determined in accordance with Clause 3.4(c).

AHP Completion Certificate means the certificate issued by BDA to the Developer to certify completion of construction of the Phase II AHP Assets and the satisfaction of all other conditions required to be fulfilled by the Developer prior to the handover of possession of the Phase II Balance EWS Units by the Developer to BDA, in accordance with Clause 6.11(e).

AHP Completion Date means the date on which the AHP Completion Certificate is issued for all the AHP Assets to the Developer in accordance with this Agreement.

AHP Construction Milestones	means the milestones for achieving completion of the AHP, as set out in the AHP Construction Schedule and the term “ AHP Construction Milestone ” shall mean any one of them as the context may require.
AHP Construction Period	means the period commencing on and from the Effective Date, until the AHP Completion Date.
AHP Construction Plan	means the detailed construction plan for the AHP Assets to be prepared by the Developer on the basis of the AHP Requirements, the Demarcation Plan, all Applicable Laws, Applicable Permits and Good Industry Practices, which shall be approved by BDA in accordance with Clause 6.4.
AHP Construction Schedule	means the schedule of dates for the construction and completion of the AHP Assets, as set out in Schedule I.
AHP Delay Event	has the meaning ascribed to it in Clause 6.9(b).
AHP Milestone Completion Certificate	means, in respect of any AHP Construction Milestone, a certificate issued by the Independent Engineer in accordance with Clause 6.11, to certify the completion of such AHP Construction Milestone in accordance with the requirements of this Agreement, to be issued in the format set out at Schedule G.
AHP Requirements	means, collectively, (a) the broad specifications, plans, designs and drawings, setting-out dimensions, and other details provided by BDA in Schedule B and Schedule C for each EWS Unit and to the extent relevant, each Infrastructure Facility, on the basis of which, the

Developer and/or its Subcontractors are required to design and construct the AHP Assets; and

- (b) the technical requirements for the AHP Assets prescribed by BDA, which the Developer and/or its Subcontractors must comply with during the construction and completion of the AHP Assets, as set out in Schedule D.

Agreement or Development Agreement means this Agreement together with the Schedules and Annexures to this Agreement, as may be amended, supplemented or modified in accordance with its terms.

Annexure means an annexure to this Agreement.

Applicable Laws means the Constitution of India and all and any laws, enacted or brought into force and effect by the Gol, any State Government (including the GoO), any Government Authority or any local government having jurisdiction over the Parties, Site, the AHP or the PDP, including rules, regulations and notifications made thereunder, and judgments, decrees, injunctions, writs and orders of any court of record, as may be applicable to the execution of this Agreement and the performance of the respective rights and obligations of the Parties, as may be in force and effect during the subsistence of this Agreement. For the avoidance of doubt, and without in any way limiting the generality of the foregoing, Applicable Laws shall include the RERA, Housing for All Policy, the ODA Act, the Planning and Building Standards Regulations and the National Building Code of India, 2005.

Applicable Permits	means any permissions, clearances, concessions, authorizations, consents, licenses, permits, rulings, exemptions, no objections, resolutions, filings, orders, notarizations, registrations or approvals of whatsoever nature that are required to be obtained from time to time in connection with the Project, and for generally performing the obligations contemplated by this Agreement in accordance with the Applicable Laws, as set out in Schedule E.
Appointed Date	means the date of signing of this Agreement.
Arbitration Act	means the Arbitration and Conciliation Act, 1996, as amended from time to time.
Article	means an article of this Agreement.
Associate	means, in relation to the Selected Bidder or a Member of the Selected Bidder or the Developer, a Person who Controls, or is Controlled by, or is under the common Control of the Selected Bidder or Member of the Selected Bidder.
BDA Event of Default	has the meaning ascribed to it in Clause 16.3.
BDA Related Parties	means any of the following: (a) an officer, servant, employee or agent of BDA, acting in that capacity; (b) any contractor or sub-contractor of BDA and their directors, officers, servants, employees or agents, acting in that capacity; (c) the EWS Allottees or any other Person lawfully occupying or using the AHP Assets; or (d) any Person acting on behalf of BDA. For the avoidance a doubt, 'BDA Related Parties' does not include the Developer.

BDA's Representative	means any officer nominated or appointed by BDA, from time to time, to act on its behalf and liaise with the Developer for the purposes of this Agreement and notified as such in writing to the Developer.
Bid Process	means the single-stage bidding process adopted by BDA to award the Project to the Selected Bidder on the terms and conditions set out in the RFP, which commenced with the issuance of the RFP and ends on the Appointed Date.
Bid Security	means the bid security submitted by the Selected Bidder pursuant to the provisions of the RFP.
BMC	means Bhubaneswar Municipal Corporation.
Business Day	means a day on which banks are open for domestic business in Bhubaneswar.
Capital	means, the total capital of the Developer that will be raised by the issuance of equity shares, preference shares or convertible instruments.
Change in Law	means the occurrence of any of the following events subsequent to the Proposal Due Date: <ul style="list-style-type: none"> (a) the modification, amendment, variation, alteration or repeal of any existing Applicable Law; (b) the enactment of any new Applicable Law or the imposition, adoption or issuance of any new Applicable Law by any Government Authority; (c) changes in the interpretation, application or enforcement of any Applicable Law or judgement by any court/Government Authority; (d) the introduction of a requirement for the

- Developer to obtain any new Applicable Permit or the unlawful revocation of an Applicable Permit; or
- (e) the introduction of any new Tax or a change in the rate of an existing Tax.

It is clarified that Change in Law shall not include:

- (i) any change in the (Indian) Income Tax Act, 1961 with regard to the taxes on the income of the Developer;
- (ii) any statute that has been published in draft form or as a bill that has been placed before the legislature or that has been passed by the relevant legislature as a bill but has not come into effect prior to the Proposal Due Date; or
- (iii) a draft statutory instrument or delegated legislation that has been published prior to the Proposal Due Date, which is under the active consideration or contemplation of any Government Authority.

Clause	means a clause of this Agreement.
Companies Act	means the (Indian) Companies Act, 1956 and the (Indian) Companies Act, 2013, as amended from time to time, as the context may require.
Concession Fee	means, the Grant quoted by the Selected Bidder in its proposal for undertaking the Project.
Conditions Precedent	means collectively, the obligations of the Developer that are set out at Clause 3.2 and the obligations of BDA that are set out at Clause 3.3, and ' Condition Precedent ' means any one of them.

Confidential Information	means any part of this Agreement, or any information contained therein or any material provided to either Party pursuant to this Agreement, all of which information shall be deemed to be confidential, except to the extent that this Agreement otherwise requires.
Control	<p>with respect to a Person, means:</p> <ul style="list-style-type: none"> (a) the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such Person; or (b) the power, directly or indirectly, to direct or influence the management and policies of such Person by operation of law, contract or otherwise, <p>and the term “Controlled” shall be construed accordingly.</p>
Conveyance Deed	means the agreement(s) required to be entered into between BDA and the Developer to transfer freehold rights over the Developer’s Area (or part thereof) to the Developer in accordance with this Agreement.
Cost	means all documented expenditure reasonably incurred by the Developer, whether on or off the Site, including overhead and similar charges, but does not include profit.
CP Long-stop Date	has the meaning ascribed to it in Clause 3.4 (a).
Defects Warranty	has the meaning ascribed to it in Clause 7.1.
Defects Warranty Period	has the meaning ascribed to it in Clause 7.1.
Delay Liquidated Damages	has the meaning ascribed to it in Clause 6.10(a).

Demarcation Plan	means the detailed plan to be prepared by the Developer on the basis of the Site Layout Plan, all Applicable Laws, Applicable Permits and Good Industry Practices, demarcating the land parcels earmarked for the AHP and the PDP, and the alignment of the Public Thoroughfare, which shall be approved by BDA in accordance with Clause 6.3.
Derived Price of the Developer's Area	means the value assigned to the Developer's Area for the purposes of this Agreement, which shall be calculated as follows: Derived Price of the Developer's Area shall be equal to: (AHP Capital Cost + Project Development Fees + Project Development Expenses) – Grant
Developer Escrow Account	means the interest bearing account opened by the Developer with the Developer Escrow Agent in accordance with the Developer Escrow Agreement, which shall be operational in accordance with the RERA.
Developer Escrow Agent	means the Scheduled Bank with which the Developer opens the Developer Escrow Account, pursuant to the Developer Escrow Agreement.
Developer Escrow Agreement	means the agreement to be executed among the BDA, the Developer, Lenders' representative and the Developer Escrow Agent in relation to the opening and operations of the Developer Escrow Account in the form set out at Schedule O.
Developer Event of Default	has the meaning ascribed to it in Clause 16.1.
Developer Related Parties	means any of the following: (a) the Selected Bidder or affiliates of the

- Developer; or
- (b) an officer, servant, employee or agent of the Developer acting in that capacity; or
- (c) any Subcontractor engaged by the Developer and their directors, officers, servants, employees or agents acting in that capacity; or
- (d) any Person acting on behalf of the Developer.

Developer’s Area means the land admeasuring 6.50 (six point five zero) Acres, mouza Chandrasekharpur, situated in Bhubaneswar, which forms part of the Site and has been earmarked for the PDP, as described in greater detail in the Demarcation Plan.

Developer’s Representative means the Person nominated or appointed by the Developer to act on its behalf and liaise with BDA for the purposes of this Agreement and notified as such in writing to BDA.

Direct Political Force Majeure Events has the meaning ascribed to it in Clause 14.1(b)(iii).

Dispute has the meaning ascribed to it in Clause 19.1.

Dispute Notice has the meaning ascribed to it in Clause 19.1.

Dispute Meeting has the meaning ascribed to it in Clause 19.1.

Effective Date means the date on which all the Conditions Precedent have either been satisfied or waived by BDA or the Developer, as the case may be, in accordance with this Agreement.

EHS Standards means the environmental, social, labour, health and safety related performance requirements, including any requirements based on ESIA/EIA or related

studies which shall be implemented in the Project by the Developer, including any of its Subcontractors, as set out in Schedule H and Schedule L.

ESIA/EIA

means the Environment and Social Impact Assessment study, or the EIA as conducted under the Environment (Protection) Act, 1986 and the Environment (Protection) Rules, 1986 (as amended from time to time).

Emergency

means a condition or situation that endangers, or which in the reasonable opinion of BDA or the Developer, may endanger the lives or security of people at or around the Site or that poses an imminent threat of material damage to any property at or around the Site, including the AHP Assets and/or the PDP units.

Encumbrance(s)

means mortgage, charge, pledge, lien (statutory or otherwise), assignment by way of security, hypothecation, right of set-off, trust, priority, retention of title or ownership or other security interest and any other agreement or arrangement having substantially the same effect.

Environment Clearance

means the environment clearance required to be obtained by the Developer for the Project in accordance with the Environment (Protection) Act, 1986 and the Environment (Protection) Rules, 1986, as may be amended from time to time.

Event of Default

means a BDA Event of Default or a Developer Event of Default, as the context may require.

EWS

means the economically weaker section, as per the Housing for All Policy.

EWS Allottee	means an EWS household, who has been selected by BDA and issued an allotment letter for allotment of an EWS Unit by the BDA and the term “ EWS Allottees ” shall be construed accordingly.
EWS Unit	means a housing unit to be constructed by the Developer on the AHP Area in accordance with the AHP Requirements and other conditions set out in this Agreement for allotment by BDA to an EWS Allottee and the term “ EWS Units ” shall be construed accordingly.
External Development Works	includes roads and road systems landscaping, water supply, sewage and drainage systems, electricity supply transformer, sub-station, solid waste management and disposal systems available at the periphery of, or outside the Site.
FAR	means floor area ratio.
Financial Assistance	means all funded and non-funded financial assistance, including loans, advances and guarantees or any re-financing that the Developer may avail of for the Project from the Lenders.
Financial Capacity	means the financial capacity and strength of the Members determined in accordance with the RFP.
Financial Close	means, the date on which the Financing Documents become effective, the conditions precedent under the Financing Documents for disbursements are fulfilled and the Developer has access to the Financial Assistance.
Financing Documents	means, collectively, the documents entered into or to be entered into by the Developer with the Lenders, in respect of all funded and non-funded

financial assistance, including loans, advances and or any re-financing that the Developer may avail of for the Project from the Lenders and includes any document providing Security for the Financial Assistance and the Lenders' Direct Agreement.

First Performance Security means, the unconditional, irrevocable bank guarantee for INR 4,50,00,000 (Rupees four crores and fifty lakhs), to be furnished by the Developer or the Selected Bidder to BDA on or before the Appointed Date to secure the obligations of the Developer to satisfy the Conditions Precedent under this Agreement.

FM Notice has the meaning ascribed to it in Clause 14.2.

Force Majeure Event means a Non-Political Force Majeure Event, an Indirect Political Force Majeure Event or a Direct Political Force Majeure Event, as the case may be.

Fundamental Change in Law means any Change in Law that:

- (a) renders unenforceable, illegal, invalid or void any material right or material obligation of the Developer under this Agreement; or
- (b) renders a material part of this Agreement invalid, illegal or unenforceable; or
- (c) results in the Developer being deprived of the whole or a substantial part of the benefit of this Agreement.

GoI means the Government of India.

GoO means the Government of Odisha.

GoO Land Allotment Notification means the Notification no. 21228 dated 29 August 2015, issued by the General Administration Department, GoO for transfer of 61.553 (sixty one

point five hundred and fifty three) Acres to the BDA, of which the Site comprising 20.21 (twenty point twenty one) Acres forms a part.

Good Industry Practices

means the exercise of such degree of skill, diligence and prudence, and those practices, methods, specifications and standards of equipment, safety and performance, as may change from time to time and which would reasonably and ordinarily be expected to be used by a skilled and experienced developer engaged in construction, management, and maintenance of housing projects in India of the type and size similar to the Project.

Government Authority

means the GoI, any state government (including the GoO), any local government or any other ministry, governmental department, commission, board, body, bureau, agency, authority, instrumentality, inspectorate, statutory corporation or body corporate over which the GoI or the GoO exercises control, court, tribunal or other judicial or administrative body or official or person, having jurisdiction over the Developer, the Site, the Project, or any portion thereof and the performance of obligations and exercise of rights of the Parties in accordance with the terms of the Agreement.

Grace Period

has the meaning ascribed to it in Clause 6.10(d).

Grant

means the amount quoted by the Selected Bidder in its proposal being INR 45,70,00,000 (Rupees forty five crores and seventy lakhs), or such lower amount as may be determined in accordance with Clause 3.4(c), which it requires from BDA to undertake the Project, in accordance with the terms of this Agreement.

Housing for All Policy	means the “ Policy for Housing for All in Urban Areas, Odisha, 2015 ”, issued by the Housing and Urban Development Department, GoO.
EHS Plan	means the Environment, Health and Safety plan prepared by the Developer and approved by BDA in accordance with Clause 6.7.
IFC	means the International Finance Corporation.
Independent Engineer	means the engineering firm appointed jointly by BDA and the Developer as the independent engineer for the AHP, pursuant to the provisions of Clause 6.2.
Indirect Political Force Majeure Events	has the meaning ascribed to it in Clause 14.1(b)(ii).
Infrastructure Facilities	means: <ul style="list-style-type: none"> A. Social Infrastructure Facilities: Neighbourhood shopping including community facilities (primary school, market place and primary health centre) equivalent to 5% (five per cent) of the built-up area developed as EWS Units (out of which 3% (three per cent) of the built-up area will be exclusively for neighbourhood shopping) on the AHP Area in accordance with the design and construction requirements of BDA; and B. Internal Development Works: comprising all common infrastructure facilities, including Public Thoroughfare, internal roads, footpaths, water supply, sewage treatment plant, drainage, parks, street lighting, solid waste management and disposal, water

conservation, energy management, fire protection and fire safety,

to be financed, constructed and completed by the Developer as a part of the AHP Assets, in accordance with the AHP Requirements and other provisions set out in this Agreement, as described in greater detail in Schedule B, Schedule C and Schedule D.

Invoice means an invoice for payment of the relevant tranche of the Grant, submitted by the Developer to BDA in accordance with Clause 8.

Lead Member means the Member nominated by the Members of the Selected Bidder to act as the lead member in accordance with the RFP.

Lenders includes banks, financial institutions, funds and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide Financial Assistance to the Developer under the Financing Documents but does not include any shareholder or associates of the Developer who have provided any shareholder loan to the Developer.

Lenders' Direct Agreement means an agreement that may be required to be executed by BDA and the Developer in favour of the Lenders, in accordance with Clause 10.1(c).

LOA has the meaning ascribed to it in Recital G.

Material Adverse Effect means the effect of any act or event, which materially and adversely affects the ability of either Party to exercise its rights or perform any of its obligations under and in accordance with this

Agreement and which act or event causes a material financial burden or loss to either Party.

Member means, where the Selected Bidder is a Consortium, a member of the Selected Bidder.

Non-Political Force Majeure Event has the meaning ascribed to it in Clause 14.1(b)(i).

ODA Act means the Orissa Development Authorities Act, 1982, as amended from time to time.

Parent Company Guarantee means the irrevocable and unconditional guarantee to be provided by the Lead Member in the form set out at Schedule M.

Payment Certificate has the meaning ascribed to it in Clause 8.2(f).

Payment Schedule means the schedule for payment of the Grant to the Developer, as set out in Schedule F.

Person means any individual, company, corporation, partnership, joint venture, trust, society, sole proprietor, limited liability partnership, co-operative society, government company, unincorporated organization or any other legal entity.

Planning and Building Standards Regulations means the BDA (Planning and Building Standards) Regulations, 2008, as amended from time to time (including the amendment in 2013).

PDP Allottee means a Person who has been allotted a PDP Unit by the Developer.

PDP Construction Plan means the detailed construction plan for the PDP to be prepared and submitted by the Developer to the relevant authority under the RERA, on the basis of

the Demarcation Plan, all Applicable Laws and Applicable Permits.

Private Development Project or PDP means the design, finance, construction, marketing, allotment, completion and transfer of residential and/or commercial units and other infrastructure facilities by the Developer on the Developer's Area in accordance with this Agreement, the Demarcation Plan, the PDP Construction Plan, the EHS Standards, Applicable Laws (including specifically, the Housing for All Policy) and Applicable Permits.

PDP Commencement Date means the date from which the Developer shall have the right to allot and commence construction of the PDP Units on the Developer's Area, as certified by the Independent Engineer or BDA, as the case may be, which should be no earlier than the date on which each of the conditions set out in Clause 4.1(b) are satisfied or waived by the BDA in its sole discretion.

PDP Units means the residential and/or commercial units developed by the Developer on the Developer's Area in accordance with this Agreement, the PDP Construction Plan, the Demarcation Plan, Applicable Laws (including specifically, the Housing for All Policy and the RERA) and Applicable Permits.

Phase I AHP Completion Certificate means the certificate issued by BDA to the Developer to certify completion of construction of the Phase I AHP Assets and the satisfaction of all other conditions required to be fulfilled by the Developer prior to the handover of possession of the Phase I AHP Assets by the Developer to BDA, in accordance with Clause 6.11(d).

Phase I AHP Completion Date means the date on which Phase I AHP Completion Certificate is issued for the Phase I AHP Assets in accordance with this Agreement.

Phase I AHP Assets means, collectively, (a) the Phase I Committed EWS Units; and (b) Internal Development Works forming part of the Infrastructure Facilities (other than the Public Thoroughfare) that the Developer is required to construct within 24 (twenty four) months from the Effective Date, in accordance with this Agreement.

Phase I Committed EWS Units means the number of EWS Units of the Total EWS Units that the Developer commits to construct within 24 (twenty four) months from the Effective Date, as specified by it in the AHP Construction Plan, which shall be no less than 800 (eight hundred) EWS Units.

Phase I Corpus Fund means the amount to be deposited by the Developer in the bank account designated by BDA for future maintenance of the Phase I AHP Assets, calculated as follows:

$2\% \times \text{AHP Capital Cost} \times [\text{Phase I Committed EWS Units} / \text{Total EWS Units}]$

Phase II AHP Assets means the AHP Assets (other than the Phase I AHP Assets), comprising the Phase II Balance EWS Units, the Social Infrastructure Facilities and the Public Thoroughfare, which the Developer is required to construct within 36 (thirty six) months from the Effective Date, in accordance with this Agreement.

Phase II Balance EWS Units	means the Total EWS Units less the Phase I Committed EWS Units.
Phase II Corpus Fund	means the amount to be deposited by the Developer in the bank account designated by BDA for future maintenance of the Phase II AHP Assets, calculated as follows: 2% x AHP Capital Cost X [Phase II Balance EWS Units/Total EWS Units]
Project	has the meaning ascribed to it in Recital D.
Project Development Expenses	has the meaning ascribed to it in Clause 5.3.
Project Development Fee	has the meaning ascribed to it in Clause 5.2.
Promoter	has the meaning ascribed to it under the RERA.
Proposal Due Date	means the last date of submission of the proposals of bidders in accordance with the RFP.
Public Thoroughfare	means a road required to be constructed by the Developer on the Site as part of the Internal Development Works, in accordance with the dimensions set out in Schedule A, Schedule B and Schedule C, by the Scheduled AHP Completion Date, which, upon handover to BDA, will be converted into a public thoroughfare on the AHP Completion Date.
Qualifying Change in Law	means any Change in Law, which: <ul style="list-style-type: none"> (a) is directly applicable to the Project; (b) impacts the cost of undertaking the AHP and/or the AHP Construction Schedule; and (c) which was not reasonably foreseeable by

the Developer as on the Proposal Due Date.

Replacement EPC Contractor means a third party contractor that may be appointed by BDA in its sole discretion, which in BDA's opinion has the requisite skill, expertise and capability to complete the construction of the AHP Assets, in case of a Developer Event of Default after the PDP Commencement Date, in accordance with this Agreement.

RERA means the Real Estate (Regulation and Development) Act, 2016, as amended from time to time.

RFP has the meaning ascribed to it in Recital E.

Rupee or INR means Indian Rupees, the lawful currency of India.

Schedule means a schedule of this Agreement.

Scheduled AHP Completion Date means the date falling 36 (thirty six) months from the Effective Date, which date may be extended in accordance with this Agreement.

Scheduled Phase I AHP Completion Date means the date falling 24 (twenty four) months from the Effective Date, which date may be extended in accordance with this Agreement.

Scheduled Bank means a bank as defined under section 2(e) of the Reserve Bank of India Act, 1934.

Second Performance Security means the performance security required to be provided by the Developer in accordance with Clause 5.1.

Security means and includes any mortgage, pledge, lien,

Encumbrance, security interest, right of set-off, hypothecation, assignment, by way of retention of title or ownership or any other charge or encumbrance and any other agreement or arrangement having substantially the same economic effect.

Selected Bidder

means the consortium consisting of Shyam Indus Power Solutions Private Limited and GSBA Builders Private Limited and lead by Shyam Indus Power Solutions Private Limited (as the Lead Member).

Site

means, collectively, the AHP Area and the Developer's Area.

Site Layout Plan

means the indicative layout of the Site, broadly indicating the areas demarcated for the AHP and the PDP, provided by BDA, as set out in Schedule B.

Sq. ft.

means square feet.

Subcontract

means a contract entered into by the Developer to procure any goods, materials, labour or services for the Project or otherwise in connection with the performance of its obligations in relation to the Project.

Subcontractor

means the Developer's counterparty under any Subcontract.

Taxes

means all taxes, levies, imposts, cesses, duties and other forms of taxation, including (but without limitation) income tax, sales tax, value added tax, service tax, octroi, entry tax, corporation profits tax, advance corporation tax, capital gains tax, residential and property tax, customs and other

import and export duties, excise duties, stamp duty or capital duty, and any interest, surcharge, penalty or fine in connection therewith which may be payable by the Developer or the Subcontractors and the term “**Tax**” shall be construed accordingly.

Technical Capacity means the technical capacity and experience of the Members determined in accordance with the RFP.

Term has the meaning ascribed to it in Clause 3.6.

Termination Compensation means the compensation payable to the Developer or BDA, as the case may be, upon the termination of the AHP and/or this Agreement, in accordance with Clause 18.

Threshold Limit has the meaning ascribed to it in Clause 12.2(d)(i).

Total EWS Units means 2600 (two thousand six hundred) EWS Units or such lower number of EWS Units as specified by the Developer in the AHP Construction Plan, which are required to be constructed by the Developer in accordance with this Agreement.

US Dollars or USD means United States Dollars, the lawful currency of United States of America.

Variation means any alteration in the number of EWS Units or the AHP Requirements, as instructed by BDA as a variation in accordance with Clause 6.12.

Variation Order has the meaning ascribed to it in Clause 6.12(a).

Wilful Misconduct means an intentional or reckless breach or disregard by a Party of any of its obligations under this Agreement.

1.2. Rules of Interpretation

In this Agreement, unless the context otherwise requires:

- (a) Any reference to a statutory provision shall include such provision as modified or re-enacted or consolidated from time to time.
- (b) The words importing the singular shall mean the plural and vice-versa; and words importing the masculine shall include the feminine and neuter and vice-versa.
- (c) Headings in this Agreement are for convenience of reference only.
- (d) The references to the word 'include' or 'including' or to the phrase 'in particular', shall be construed without limitation.
- (e) References to any date or time of day are to Indian Standard Time; any reference to day shall mean a reference to a calendar day; and any reference to a month shall mean a reference to a calendar month.
- (f) The references to any agreement or deed or other instrument shall be construed as a reference to such agreement, deed, or other instrument as may be amended, varied, supplemented or novated, from time to time.
- (g) Unless otherwise provided, any late payment charges to be calculated and payable under this Agreement shall accrue *pro rata* on a monthly basis and from the respective due dates as provided for in this Agreement.
- (h) A requirement that a payment be made on a day which is not a Business Day shall be construed as a requirement that the payment be made on the next Business Day.
- (i) Whenever provision is made for the giving or issuing of any notice, endorsement, consent, approval, permission, certificate or determination by any person, such notice, etc., shall be reasonably given, shall not be unreasonably withheld or delayed and shall be in writing and the words 'notify', 'endorse', 'approve', 'permit', 'certify' or 'determine' shall be construed accordingly. Where any notice, consent or approval is to be given by either of the Parties, the notice, consent or approval shall be given on their behalf only by any authorized persons.
- (j) The words written and in writing include a facsimile transmission and any means of reproducing works in a tangible and permanently visible form.
- (k) The provisions of the Clauses and the Schedules and Annexures of this Agreement shall be interpreted in such a manner that will ensure that there is no inconsistency in interpretation between the intent expressed in the Clauses and the Schedules or Annexures.
- (l) In the event of any ambiguities or discrepancies within this Agreement, the following shall apply:
 - (i) between two Clauses of this Agreement, the provisions of the specific Clause relevant to

- the issue under consideration shall prevail over those in other Clauses;
- (ii) between the requirements of two or more Schedules or Annexures of this Agreement, the provisions of the specific Schedule or Annexure relevant to the issue under consideration shall prevail over the more general; and
 - (iii) between the Clauses and the Schedules and Annexures, unless specified otherwise, the Clauses shall prevail over the Schedules and Annexures.
- (m) Subject to the provisions of this Agreement, the Developer shall be responsible to and indemnify, BDA for the acts and omissions of the Developer Related Parties as if they were the acts and omissions of the Developer and BDA shall be responsible to the Developer for the acts and omissions of the BDA Related Parties as if they were the acts and omissions of BDA.
 - (n) Neither the giving of any approval or consent, the review, knowledge or acknowledgement of the terms of any document by or on behalf of BDA, nor the failure to do so, shall, unless expressly stated in this Agreement, relieve the Developer of any of its obligations under this Agreement or of any duty which it may have under this Agreement to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, review, knowledge or acknowledgement.
 - (o) The rule of construction, if any, that an agreement should be interpreted against the Party responsible for the drafting and preparation thereof shall not apply to this Agreement.
 - (p) The Parties acknowledge that damages for specific defaults prescribed under this Agreement (including the Delay Liquidated Damages) are a genuine pre-estimation of and reasonable compensation for the loss and damage that shall be suffered by either Party, due to failure by the defaulting Party to perform its obligations in accordance with this Agreement, and are not in the nature of a penalty.

1.3. **Units of Measurement**

All measurements and calculations shall be in the metric system and calculations done to 4 (four) decimal places, with the 5th (fifth) digit of 5 (five) or above being rounded up and below being rounded down.

2. **SCOPE OF THE PROJECT AND GRANT OF DEVELOPMENT RIGHTS**

2.1. **Scope of the Project**

The scope of the Project shall include:

- (a) designing, developing, financing, constructing, completing and handing over the AHP Assets to BDA free of cost, in accordance with this Agreement, Applicable Laws, Applicable Permits, AHP Requirements, the AHP Construction Plan, the AHP Construction Schedule, the EHS Plan, the Demarcation Plan, the EHS Standards and Good Industry Practices;
- (b) rectification of defects and deficiencies in the AHP Assets during the Defects Warranty Period;
- (c) the right to design, finance, develop, construct, and complete the PDP in accordance with this Agreement, Applicable Laws, Applicable Permits, the Demarcation Plan, the EHS Plan, the PDP Construction Plan, the EHS Standards and Good Industry Practices; and
- (d) the right to market, allot and transfer by way of sale, lease or license the PDP Units to the PDP Allottees on terms and conditions that are consistent with this Agreement and the Conveyance Deed(s).

2.2. Development of the Project

(a) ***Development Rights for the AHP***

Subject to and in accordance with the terms of this Agreement, Applicable Laws and Applicable Permits (including the registration received under the RERA), BDA grants and the Developer accepts and agrees to:

- (i) on and from the Effective Date, design, develop, finance, construct, develop and complete the AHP Assets on the AHP Area during the AHP Construction Period;
- (ii) on completion of construction of the Phase I AHP Assets, to hand over the Phase I AHP Assets to BDA;
- (iii) on completion of construction of the Phase II AHP Assets, to hand over the Phase II AHP Assets to BDA; and
- (iv) repair and rectify the AHP Assets during the Defects Warranty Period.

In addition to the rights, incentives and benefits set out in this Agreement, the Developer shall also have all other rights and be entitled to all other incentives, exemptions or benefits in relation to the AHP, which may otherwise be available under the Housing for All Policy, the Planning and Building Standards Regulations and any other Applicable Laws.

(b) ***Development Rights for the PDP***

Subject to and in accordance with the terms of this Agreement, Applicable Laws and

Applicable Permits (including the registration received under the RERA), BDA grants and the Developer accepts and agrees to:

- (i) on and from the Effective Date, the exclusive right to design, finance and market the PDP Units and any related infrastructure facilities on the Developer's Area; and
- (ii) on and from the PDP Commencement Date, the exclusive right to develop, allot (and issue allotment letters) and construct the PDP Units and any related infrastructure facilities on the Developer's Area, in accordance with this Agreement.

2.3. **Subcontracting**

Without prejudice to Clause 21.12, the Developer shall be entitled to enter into Subcontracts for the purposes of performing its obligations or in exercise of its rights under this Agreement, provided that:

- (a) the Subcontractors appointed by the Developer possess the requisite skill, expertise and capability to perform the relevant obligations of the Developer under this Agreement;
- (b) the Subcontracts are on terms consistent with this Agreement;
- (c) the Developer shall ensure that each Subcontract executed by the Developer in connection with the Project shall contain provisions that provide, at BDA's option, for the subcontract to be novated or assigned to the BDA or its nominee without any further consent or the approval from the Developer or the Subcontractor or entitle BDA or its nominee to step into such Subcontract, in substitution of the Developer, if this Agreement is liable to be terminated due to a Developer Event of Default. However, the step-in rights of BDA shall be subject to the rights of the Lenders' under the Lenders' Direct Agreement, if any;
- (d) the Developer is responsible for the supervision, monitoring and control of the Project and rectification of defects in the AHP Assets during the Defects Warranty Period and the performance of any work or services by the Subcontractors, necessary for compliance with the terms of this Agreement;
- (e) within 7 (seven) days of the execution of a Subcontract or an amendment to or replacement of a Subcontract in connection with the AHP, the Developer shall submit a true copy of such Subcontract or amendment or replaced Subcontract to BDA for its records;
- (f) the Developer shall be and remain liable under this Agreement for all work and services subcontracted under this Agreement and for all acts, omissions or defaults of any Subcontractor. No default under any Subcontract shall excuse the Developer from its obligations or liabilities under this Agreement. All references in this Agreement to any act, default, omission, breach or negligence of the Developer shall be construed accordingly to include any such act, default, omission, breach or negligence of the Subcontractors; and

- (g) the Developer shall require prior consent of BDA to subcontract the entire construction of the AHP Assets.

3. CONDITIONS PRECEDENT, EFFECTIVENESS AND TERM

3.1. Effectiveness

- (a) The day on which all of the Conditions Precedent have been satisfied or waived in accordance with this Article 3 shall be the Effective Date.
- (b) This Article 3 and Article 2 (*Scope of the Project and Grant of Development Rights*), Clause 5.1 (*First Performance Security and Second Performance Security*), Clause 5.2 (*Project Development Fee*), Clause 5.3 (*Project Development Expenses*), Clause 5.4 (*Parent Company Guarantee*), Clause 6.2 (*Independent Engineer*), Article 10 (*Financing Arrangements and Security*), Clause 11.1 (*Indemnity*), Article 12 (*Change in Law*), Article 13 (*Change in Ownership*), Article 14 (*Force Majeure*), Article 19 (*Dispute Resolution*), Article 20 (*Representations and Warranties*) and Article 21 (*Miscellaneous*) and the related Schedules or Annexures (if any), shall come into full force and effect and be binding on the Parties on and from the Appointed Date and continue until such time as this Agreement expires or is terminated in accordance with its terms. The other provisions of this Agreement shall come into full force and effect and be binding on the Parties on and from the Effective Date and continue until such time as this Agreement expires or is terminated in accordance with its terms.

3.2. Conditions Precedent to be satisfied by the Developer

Unless waived in writing by BDA (in its sole discretion), the Developer shall satisfy the following Conditions Precedent (if not already fulfilled on the Appointed Date):

- (a) Deleted;
- (b) procure the registration of the Project, in its capacity as the 'Promoter' under RERA, with the relevant Government Authority identified by BDA;
- (c) submit a copy of the application for registration of the Project under RERA to BDA for its approval, at least 30 (thirty) days prior to submission;
- (d) prepare and submit the Demarcation Plan in accordance with Clause 6.3;
- (e) prepare and submit the AHP Construction Plan, and obtain all the Applicable Permits from BDA and other Government Authorities for the AHP Construction Plan in accordance with Clause 6.4;
- (f) obtain all Applicable Permits that are required for achieving Financial Close and for

commencement of construction of the AHP Assets (including the Environment Clearance and any other necessary environmental consents or permits and building permission(s) under the Planning and Building Standards Regulations) at its own cost and expense and if such Applicable Permits are subject to any conditions, then, to the extent relevant, complying with all such conditions, such that the Applicable Permits are and shall be kept in full force and effect for the entire AHP Construction Period, or such longer period as may be required under Applicable Laws. Provided that BDA shall make reasonable endeavours to ensure that all Odisha-specific Applicable Permits (other than the Environment Clearance) are issued within 2 (two) months of an application being made by the Developer, subject to the Developer having applied for such Applicable Permit within the prescribed timelines, on payment of the prescribed fees, and having complied with the requirements of Applicable Laws in making such application;

- (g) submit to BDA certified true copies of all resolutions adopted by the board of directors of the Selected Bidder or the Developer, as the case may be, **authorising** execution, delivery and performance of this Agreement, the Conveyance Deed(s), the shareholders agreement and the Developer Escrow Agreement by the Developer;
- (h) achieve Financial Close as certified by the Lenders and submit a copy of the Financing Documents to BDA, duly certified by a director of the Developer;
- (i) execute a shareholders agreement amongst the shareholders of the Developer, and deliver to BDA a certified true copy thereof (attested by a director of the Developer);
- (j) execute the Developer Escrow Agreement with BDA, the Lenders' representative and the Developer Escrow Agent in the agreed form set out at Schedule O and open the Developer Escrow Account with the Developer Escrow Agent;
- (k) submit to BDA certified true copies of the constitutional documents of the Developer;
- (l) submit to BDA a legal opinion stating that: (i) this Agreement, the shareholders agreement and the Developer Escrow Agreement have been duly executed and are legally valid, binding and enforceable in accordance with their terms against the Developer; and (ii) all actions, conditions and things required by Applicable Laws to be taken, fulfilled and done (including the obtaining of any necessary Applicable Permits and resolutions of the board of directors) in order for the Developer to enter into and comply with its obligations under this Agreement, the shareholders agreement and the Developer Escrow Agreement have been taken, fulfilled or done;
- (m) if the Lead Member has submitted unaudited annual accounts along with the Proposal, the Developer shall be required to submit to BDA within 60 (sixty) days of the date of this Agreement: (i) a duly certified copy of the Lead Member's duly audited balance sheet, annual report and profit and loss account for the latest financial year occurring prior to 7 March, 2017; and (ii) also submit a certificate duly certified by the statutory auditor stating that the Selected

- Bidder continues to meet the requirements for demonstrating Financial Capacity;
- (n) submit to BDA a certificate, duly attested by a director, certifying the shareholding pattern of the Developer;
 - (o) Deleted;
 - (p) appoint the Independent Engineer along with BDA in accordance with Clause 6.2;
 - (q) submit to BDA, the duly executed Second Performance Security issued by a Scheduled Bank in accordance with Clause 5.1;
 - (r) cause the Lead Member to submit to BDA, a duly executed Parent Company Guarantee, in accordance with Clause 5.4; and
 - (s) submit to BDA certified true copies of all resolutions adopted by the board of directors of the Selected Bidder authorising execution, delivery and performance of the Parent Company Guarantee by the Selected Bidder.

3.3. **Conditions Precedent to be satisfied by BDA**

Unless waived in writing by the Developer (in its sole discretion), BDA shall satisfy the following Conditions Precedent (if not already fulfilled on the date of this Agreement):

- (a) obtain all necessary rights of way to the Site and hand over the Site to the Developer;
- (b) obtain all necessary third party consents, rights of way and easement rights over land adjacent to the Site for the purposes of implementing the Project on the Site and for the performance of the Developer's obligations and exercise of the Developer's rights under this Agreement;
- (c) obtain all approvals and consents that may be required for BDA to enter into this Agreement and undertake the Project, including any approvals required under the Housing for All Policy, the Planning and Building Standards Regulations and the Orissa PPP Policy, 2007;
- (d) obtain land-use approval from the Development Plan and Building Permission (DP&BP) Committee of BDA for the Project;
- (e) review and provide comments on the application submitted by the Developer (as per Clause 3.2(c) for registration of the Project under the RERA, within 15 (fifteen) days of receipt of the application;
- (f) appoint the Independent Engineer along with the Developer in accordance with Clause 6.2;
- (g) approve the draft Demarcation Plan in accordance with Clause 6.3;
- (h) approve the draft AHP Construction Plan in accordance with Clause 6.4; and
- (i) subject to the Developer having executed and procured execution of the Developer Escrow Agreement, execute the Developer Escrow Agreement with the Developer, the Lenders' representative and the Developer Escrow Agent in the agreed form set out at Schedule O.

3.4. Satisfaction of Conditions Precedent

- (a) Unless otherwise specified, each Party shall satisfy or procure the satisfaction or the waiver of the Conditions Precedent that it is responsible for, within 180 (one hundred and eighty) days from the Appointed Date (the **CP Long-stop Date**).

- (b) If either party fails to satisfy any Condition Precedent that it is required to fulfil by the CP Long-stop Date due to:
 - (i) a Force Majeure Event;
 - (ii) a Qualifying Change in Law;
 - (iii) in case of the Developer, delay by BDA in approving the application for registration of the Project under RERA in accordance with Clause 3.3(e);
 - (iv) in case of the Developer, delay by BDA in approving the draft Demarcation Plan within the timelines prescribed in Clause 6.3;
 - (v) in case of the Developer, delay by BDA in approving the draft AHP Construction Plan within the timelines prescribed in Clause 6.4;
 - (vi) in case of the Developer, undue delay by the relevant Government Authority in granting the registration under the RERA; despite the Developer having applied for such registration with the prescribed timelines and having complied with the requirements of the RERA and other Applicable Laws in making such application;
 - (vii) in case of the Developer, undue delay by the relevant Government Authority in granting any Applicable Permit (including specifically, the Environment Clearance), despite the Developer having applied for such Applicable Permit within the prescribed timelines, on payment of the prescribed fees and having complied with the requirements of Applicable Laws in making such application; or
 - (viii) delay by the other Party in fulfilling any Condition Precedent required to be satisfied by it or in performing any other obligation under this Agreement, which impacts its ability to satisfy its Conditions Precedent,

then the CP Long-stop Date shall be extended on a day-for-day basis for the period of such delay.

- (c) If for the purposes of obtaining the Environment Clearance or any other Applicable Permit required for the Project, the Developer is required to limit the number of EWS Units to less than 2,600 (two thousand six hundred) EWS Units, then the Developer shall specify the Total EWS Units in the AHP Construction Plan. In such case, notwithstanding anything to the

contrary contained in this Agreement, the AHP Capital Cost and the Grant quoted by the Selected Bidder will be revised as follows:

- (i) the revised AHP Capital Cost will be

INR 155,00,00,000

LESS

(2,600 – number of EWS Units that can be developed as specified in AHP Construction Plan) x 341 sq.ft. x INR 1750 per sq. ft.)

- (ii) the revised Grant will be

Grant (quoted by the Selected Bidder in its Bid)

LESS

(2600 – number of EWS Units that can be developed as specified in AHP Construction Plan) x 341 sq. ft. x (lower of (A) INR 1750 per sq. ft.; or (B) total cost of construction of AHP Assets as per the Financing Documents/ total built-up area of the AHP Assets as per the approved AHP Construction Plan)

- (d) Each Party shall cooperate and use its reasonable efforts to assist the other Party in satisfying the Conditions Precedent.

3.5. **Consequences of failure to satisfy Conditions Precedent**

- (a) Subject to this Clause 3.5:

- (i) If either Party fails to satisfy any of the Conditions Precedent that it is required to fulfil by the CP Long-stop Date, as may be extended in accordance with Clause 3.4(b) (unless waived by mutual consent of the Parties), the other Party shall be entitled to terminate this Agreement forthwith by issuing a notice to the defaulting Party.
- (ii) A waiver shall be effective only if given in writing, with the extension of time for satisfaction of such Condition Precedent, if any, being specified in the waiver notice. The Party responsible for fulfilling such Condition Precedent shall be obliged to fulfil the Condition

Precedent within the time allowed under the waiver notice.

- (iii) If either Party fails to satisfy a Condition Precedent within the extended period stated in a waiver notice, the other Party shall be entitled to terminate this Agreement forthwith by issuing a notice to the defaulting Party.
- (b) If the Developer has failed to satisfy any of the Conditions Precedent required to be satisfied by it and this Agreement is terminated in accordance with this Clause 3.5, then:
- (i) BDA shall be entitled to forfeit the First Performance Security up to INR 4,50,00,000 (Rupees four crores and fifty lakhs) as a genuine pre-estimate of and reasonable compensation for loss and damage caused to BDA as a result of the Developer's failure to satisfy any of the Conditions Precedent and the consequent termination of this Agreement;
 - (ii) if the Developer has submitted the Second Performance Security prior to the termination of this Agreement, BDA shall return the Second Performance Security to the Developer;
 - (iii) the Developer shall not be entitled to receive any payment or compensation from BDA for the costs and expenses incurred by the Developer in performing any of its obligations under this Agreement prior to the termination of this Agreement;
 - (iv) the Developer shall hand over to BDA all documents, designs, plans, data and any Confidential Information provided by BDA to the Developer prior to termination of this Agreement; and
 - (v) if the possession of the Site has been handed over to the Developer prior to termination of this Agreement, then upon termination of this Agreement, the Developer shall clear the Site and remove all debris, hazardous materials, construction materials, equipment, temporary works, work sheds, labour camps and all other temporary installations on the Site, and thereafter, the Site will be deemed to automatically vest with BDA, free from all Encumbrances.
- (c) If BDA has failed to satisfy any of the Conditions Precedent required to be satisfied by it and this Agreement is terminated in accordance with this Clause 3.5 or this Agreement is terminated prior to the Effective Date due to a prolonged Force Majeure Event, then BDA shall:
- (i) reimburse to the Developer, the amount of the Project Development Expenses;
 - (ii) reimburse to the Developer, the amount of the Project Development Fee; and
 - (iii) return the First Performance Security or the Second Performance Security, as the case may be, submitted by the Developer.

If the possession of the Site has been handed over to the Developer prior to termination of this Agreement, then upon termination of this Agreement, the Developer shall clear the Site and remove all debris, hazardous materials, surplus construction materials, equipment, temporary works, work sheds, labour camps and all other temporary installations on the Site, and thereafter, the Site will be deemed to automatically vest with BDA, free from all Encumbrances.

- (d) Upon termination of this Agreement pursuant to this Clause 3.5, other than to the extent specified in this Clause 3.5, neither Party shall have any liability to the other Party in connection with this Agreement.

3.6. **Term**

Subject to early termination in accordance with Article 14 or Article 16, this Agreement shall come into full force and effect in accordance with Clause 3.1(b) and remain in full force and effect until the expiry of 5 (five) years from the handover of all the AHP Assets to BDA or such longer period as may be subsequently notified under the RERA (**Term**).

4. **RIGHT, TITLE AND INTEREST OVER THE SITE**

4.1. **Grant of License and Freehold Rights over the Site**

- (a) ***AHP Area***

On and from the Effective Date and subject to the provisions of this Agreement, Applicable Laws and Applicable Permits, BDA shall grant the Developer a license over the AHP Area to enter upon and access the AHP Area, including the exclusive right and authority, to undertake the AHP at the AHP Area, in accordance with this Agreement.

- (b) ***Developer's Area***

Subject to the following conditions being met prior to the PDP Commencement Date and other provisions of this Agreement, Applicable Laws and Applicable Permits, BDA shall grant to the Developer, on and from the PDP Commencement Date, a license over the Developer's Area to enter upon and access the Developer's Area, including the exclusive right to undertake the PDP on the Developer's Area if:

- (i) the Developer has completed the roof casting for at least 300 (three hundred) EWS Units

- in accordance with the AHP Construction Plan to the satisfaction of BDA;
- (ii) the Developer has increased the value of the Second Performance Security to INR 15,00,00,000 (Rupees fifteen crores) in accordance with Clause 5.1;
 - (iii) the Developer has obtained all Applicable Permits necessary for commencement of construction of the PDP (including any necessary environmental consents or permits and building permission under the Planning and Building Standards Regulations) and all such Applicable Permits are in full force and effect. If such Applicable Permits are subject to any conditions, then the Developer has complied with or is complying with all conditions then applicable;
 - (iv) no Developer Event of Default has occurred and is subsisting; and
 - (v) the Developer is not in breach of any Applicable Law and/or Applicable Permit.
- (c) On handover of possession of the Phase I AHP Assets to BDA, the Developer shall have the right to acquire freehold rights over the following area comprised within the Developer's Area, by executing a Conveyance Deed in accordance with this Agreement:

6.5 Acres x [Phase I Committed EWS Units/Total EWS Units]

The Developer shall have the right to identify the land parcels for the above area, for which the Conveyance Deed shall be executed upon handover of possession of the Phase I AHP Assets.

- (d) On handover of possession of the Phase II AHP Assets to BDA, the Developer shall have the right to execute a Conveyance Deed with BDA to acquire freehold rights over the entire Developer's Area less the area covered by the Conveyance Deed executed pursuant to (c) above.
- (e) For the purpose of acquiring freehold rights over the Developer's Area (or part thereof) in accordance with (c) or (d) above, the Developer and the BDA shall execute Conveyance Deed(s) in the format set out in Part B of this Volume, setting out the terms and conditions of such transfer of the Developer's Area or part thereof, within 30 (thirty) days of handover of the Phase I AHP Assets or handover of the Phase II AHP Assets to BDA, as the case may be.
- (f) The Developer shall not have any rights, interest or title to the Site, other than to the extent expressly specified in this Agreement and the Conveyance Deed(s). For the avoidance of doubt, it is clarified that until the execution of the Conveyance Deed(s) for the Developer's Area or a part thereof, the full ownership and title to the Site shall, at all times, vest with the

BDA. Upon execution of a Conveyance Deed, the ownership and title of the Developer's Area or a part thereof shall be transferred to the Developer.

4.2. **Site Data and Verification**

- (a) BDA has made available to the Developer, the Site Layout Plan and all other relevant data, studies and reports in BDA's possession in connection with the Site.
- (b) The Developer shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the implementation of the Project at the Site.
- (c) The Developer shall also be deemed to have inspected and examined the Site and its surroundings, analysed and verified the accuracy and reliability of the studies, reports and data provided by BDA and any other information available with respect to the Site and to have satisfied itself as to all the relevant matters including:
 - (i) the nature of the Site, including the subsurface, hydrological, climatic and general physical conditions of the Site;
 - (ii) the suitability of the Site for undertaking the AHP and the PDP;
 - (iii) the condition of the External Development Works;
 - (iv) market demand and commercial viability of undertaking the PDP over the Developer's Area;
 - (v) the extent, nature and availability of labour, material, transport, accommodation, storage facilities and other facilities and resources necessary for undertaking the AHP and the PDP;
 - (vi) the nature of design and construction work necessary for the performance of its obligations under this Agreement;
 - (vii) Applicable Laws and Applicable Permits required to be obtained and maintained for undertaking the AHP and the PDP;
 - (viii) the risk of injury or damage to property adjacent to the Site and to the occupiers of such property or any other risk;
 - (ix) the suitability and adequacy of any access roads to the Site and other utilities and facilities to be provided by the relevant Government Authority; and
 - (x) all other matters that may affect the performance of its obligations under this Agreement.

The Developer acknowledges and agrees that if any error or discrepancy is subsequently discovered in the Site data made available by BDA, then, such error or discrepancy shall not

entitle the Developer to any extension of the Scheduled Phase I AHP Completion Date, the Scheduled AHP Completion Date and/or compensation for additional costs incurred. Further, any misinterpretation of the Site data, studies and reports provided by BDA shall not relieve the Developer from the performance of its obligations under this Agreement on the ground that it did not or could not reasonably be expected to have foreseen any of the matters listed in paragraphs (i) to (x) above, which affect or may affect the AHP and/or PDP or the performance of any of its other obligations under this Agreement.

4.3. **Unforeseen Site Conditions**

Without prejudice to Clause 4.2 above, if during the execution of the AHP or the PDP, the Developer encounters any adverse physical conditions, which, in its opinion, are not covered under Clause 4.2 and which could not have been reasonably foreseen by acting in accordance with Good Industry Practices, the Developer shall give written notice of such adverse physical conditions to BDA's Representative/the Independent Engineer. Upon receipt of such written notice from the Developer, if, in the opinion and sole discretion of BDA's Representative/the Independent Engineer, such conditions could not have been reasonably foreseen by a prudent developer acting in accordance with Good Industry Practices, then BDA shall grant reasonable extension of the Scheduled Phase I AHP Completion Date and/or the Scheduled AHP Completion Date in accordance with Clause 6.9 (b). Provided that, the Developer shall implement appropriate measures, including any measures suggested by BDA/the Independent Engineer to mitigate the delay caused by any such unforeseen Site conditions. Further, it is clarified that any decision of the Independent Engineer regarding the existence of any unforeseen Site conditions and the corresponding extension of time to be allowed to the Developer shall be final and binding.

4.4. **Site Related Covenants**

The Developer agrees and undertakes that:

- (a) the Developer shall not transfer, alienate, dispose of, sub-lease or create any Security over any part of the Site or its rights and interest in the Site, other than as specifically permitted under this Agreement and the Conveyance Deed(s);
- (b) the Developer shall not allow any encroachment on, or unauthorised occupation of any part of the Site and in the event of any encroachment or unauthorised occupation, the Developer shall immediately cause such encroachment or any unauthorized occupants to be removed from the Site. The Developer shall not be entitled to any extension of time or compensation

for costs incurred in removal of any encroachment or any unauthorized occupants from the Site;

- (c) the grant of any license rights to a Subcontractor or any other third party shall not interfere with or hinder the performance of the Developer's obligations under this Agreement;
- (d) the Developer shall be wholly responsible for safety at and security of the Site, the AHP and the PDP;
- (e) the Developer shall take all necessary measures to confine its operations, personnel and equipment to the Site and not encroach on any adjacent land;
- (f) all minerals, fossils, articles of value or antiquity, structures and other remains or things of geological or archaeological interest and other objects with historic, antique or monetary value discovered at, on or under the Site shall be dealt with in accordance with Applicable Laws and the Developer shall take all necessary precautions to prevent its or its Subcontractor's personnel from removing or damaging any such article or thing. Further, immediately upon the discovery of any such article or thing of value, the Developer shall inform BDA's Representative of such discovery and carry out the instructions of BDA's Representative in this regard;
- (g) the Developer shall ensure execution of the AHP and the PDP in a manner so as to prevent any avoidable destruction, scarring or defacing of natural surroundings in the vicinity of the Site; and
- (h) the Developer has made an independent evaluation of the Site as a whole and has determined the nature and extent of the difficulties, risks, costs and hazards that are likely to arise in the course of performance of its obligations under this Agreement. Subject to Clause 4.3, if the Site is subsequently found to be deficient in any manner, except any deficiency in BDA's rights and interests in the Site, the Developer shall remedy such deficiency at its own cost and risk and BDA shall not be liable in any manner whatsoever to the Developer for such deficiency.

4.5. Access to BDA Related Parties and Government Authorities

The Developer shall ensure egress and ingress to BDA Related Parties and Government Authorities without any additional cost to BDA and the license over the Site granted to the Developer under this Agreement shall always be subject to:

- (a) the rights of BDA, BDA's Representative, the Independent Engineer and other BDA Related Parties to enter upon and access the Site to inspect and monitor the AHP, and for the exercise of their rights and the performance of their obligations under this Agreement, provided that

- BDA shall ensure that the exercise of the inspection or monitoring rights do not impede or obstruct the construction of the AHP Assets or the PDP Units in any manner whatsoever; and
- (b) the rights of Government Authorities or other utility providers to enter upon and access the Site for laying or installing telegraph lines, electric lines or for any other public purpose.

5. PERFORMANCE SECURITY, PROJECT DEVELOPMENT FEE, PROJECT DEVELOPMENT EXPENSES AND PARENT COMPANY GUARANTEE

5.1. First Performance Security and Second Performance Security

- (a) The Developer shall have submitted an unconditional and irrevocable bank guarantee of INR 4,50,00,000 (Rupees four crores and fifty lakhs) towards the First Performance Security to BDA prior to the Appointed Date, which shall be released to the Developer upon the Developer satisfying all the Conditions Precedent set out in Clause 3.2 (including providing the Second Performance Security).
- (b) The Developer shall, as a Condition Precedent, submit to BDA an unconditional and irrevocable bank guarantee of INR 10,00,00,000 (Rupees ten crores) and in the form set out at Schedule N towards the Second Performance Security. The Second Performance Security will initially be valid for 36 (thirty six) months from the Effective Date.
- (c) As a condition precedent to the PDP Commencement Date (as per Clause 4.1(b), the Developer shall increase the value of the existing Second Performance Security to INR 15,00,00,000 (Rupees fifteen crores). Alternatively, the Developer may submit a new Second Performance Security for the revised value of INR 15,00,00,000 (Rupees fifteen crores), upon which, the initial Second Performance Security of 10,00,00,000 (Rupees ten crores) will be returned forthwith.
- (d) On and from the PDP Commencement Date, the value of the Second Performance Security of INR 15,00,00,000 (Rupees fifteen crores) shall be reduced as follows:
- (i) Upon issuance of the AHP Milestone Completion Certificate for the 2nd (second) construction milestone as per the AHP Construction Schedule, the Developer shall reduce the value of the Second Performance Security to INR 10,00,00,000 (Rupees ten crores);
 - (ii) Upon issuance of the AHP Milestone Completion Certificate for the 3rd (third) AHP Construction Milestone as per the AHP Construction Schedule, the Developer shall reduce the value of the Second Performance Security to INR 7,00,00,000 (Rupees seven crores); and
 - (iii) Upon issuance of the AHP Completion Certificate and hand over of the Phase II AHP Assets to BDA, the Developer shall reduce the value of the Second Performance Security

to INR 5,00,00,000 (Rupees five crores) and increase the validity of the Second Performance Security until the expiry of 5 (five) years from the AHP Completion Date.

- (e) The cost of procuring the First Performance Security and the Second Performance Security shall be borne solely by the Developer.
- (f) The Developer shall maintain the First Performance Security in full force and effect, from the date on which it was issued until the Effective Date and receipt of the Second Performance Security.
- (g) The Developer shall maintain the Second Performance Security in full force and effect, from the date on which it was issued until the expiry of 5 (five) years from the AHP Completion Date (with the values set out in (d) above. The Second Performance Security shall be released to the Developer upon the expiry of the above time period.
- (h) If the Second Performance Security is scheduled to expire before the expiry of 5 (five) years from the AHP Completion Date, then the Developer shall arrange for an extension of the Second Performance Security at least 30 (thirty) days prior to such expiration. If the Developer fails to procure such extension or replacement, BDA shall be entitled to drawdown the total amount available under the Second Performance Security and retain such amount as cash security until such time that the Developer submits an extension or replacement of the Second Performance Security.
BDA shall be entitled to utilize such retained amount in the same manner as it would utilise the Second Performance Security. Upon receipt of an extension or replacement Second Performance Security or on expiration of 5 (five) years from the AHP Completion Date, BDA shall return the unutilized cash security amount to the Developer.
- (i) The interest earned on any retained amounts or cash security shall be the property of BDA and BDA shall not be required to account to the Developer for any such interest.
- (j) BDA shall have the right to draw on the First Performance Security or the Second Performance Security and claim up to the amount guaranteed upon the Developer's failure to honour any of its obligations, responsibilities or commitments under this Agreement (unless such failure is due to a Force Majeure Event or any default of BDA) or any amount due and payable by the Developer to BDA.
- (k) BDA shall not be required to give any prior notice to the Developer of its intention to make a demand under the First Performance Security or the Second Performance Security. However, BDA shall provide the Developer with a copy of any demand notice issued by BDA under the First Performance Security or the Second Performance Security, as the case may be, promptly after the issuance of the demand notice to the Scheduled Bank that has issued the First Performance Security or the Second Performance Security, as the case may be.
- (l) If BDA makes a demand under the First Performance Security or the Second Performance Security, as the case may be, in part or in full, the Developer shall immediately and in no

event later than 7 (seven) days of such demand, restore the value of the First Performance Security to the amount stated in Clause 5.1(a) and the Second Performance Security to the amount stated in Clause 5.1(b), (c) or (d), as the case may be.

- (m) Upon the expiry of 5 (five) years from the AHP Completion Date or the termination of this Agreement, the Second Performance Security or, as the case may be, the amount retained by BDA as cash security under Clause 5.1(h), shall be released to the Developer after the expiry of 30 (thirty) days Business Days from the date of expiry of the 5 (five) years from the AHP Completion Date or termination of this Agreement, subject to BDA's right to receive any amounts from the Developer before or upon such expiry of the 5 (five) years from the AHP Completion Date or termination of this Agreement.

5.2. **Project Development Fee**

- (a) The Selected Bidder/Developer shall have made a payment of USD 200,000 (US Dollars two hundred thousand) to IFC as the project development fee (the **Project Development Fee**), prior to the Appointed Date. If the Project Development Fee has not been paid by the Developer prior to the Appointed Date, the Developer shall or shall cause the Selected Bidder to pay IFC the Project Development Fee within 7 (seven) days of the Appointed Date.
- (b) The Project Development Fee shall be paid by the Developer or the Selected Bidder to IFC in immediately available funds, without any deductions whatsoever for Taxes, charges or other withholdings (all of which shall be borne by the Developer or the Selected Bidder), into the bank account having the following details:

Account Name: International Finance Corporation

Bank Name: Bank of America, N.A.

Address – 748, Anna Salai, Chennai – 110001, (India)

Account Number – 18163021

For Credit: IBRD

IFSC Code: BOFA0CN6215

or into such other bank account as IFC may designate.

It is clarified that the payment of the Project Development Fee will be exempted from any taxes, duties, charges or other withholdings under the International Finance Corporation (Status, Immunities and Privileges) Act, 1958.

- (c) If the Developer or the Selected Bidder fails to pay the Project Development Fee to IFC in accordance with this Clause 5.2, BDA shall be entitled to:
 - (i) draw upon the First Performance Security; and/or
 - (ii) deduct the amount payable to IFC from any amounts that become due and payable by BDA to the Developer,and pay the Project Development Fee to IFC out of such proceeds.

- (d) If any amount paid by BDA to IFC on behalf of the Developer is insufficient to pay the entire Project Development Fee, then: (i) BDA will be liable to pay IFC, the unpaid portion of the Project Development Fee, with its own resources; and (ii) such unpaid portion of the Project Development Fee shall constitute a debt due from the Developer to BDA that shall be payable on demand.

5.3. **Project Development Expenses**

- (a) The Selected Bidder/Developer shall have made a payment of INR 40,00,000 (Rupees forty lakhs) to BDA as the project development expenses (the **Project Development Expenses**), prior to the Appointed Date. If the Project Development Expenses have not been paid by the Developer prior to the Appointed Date, the Developer shall or shall cause the Selected Bidder to pay BDA the Project Development Expenses within 7 (seven) days of the Appointed Date.
- (b) The Project Development Expenses shall be paid by the Developer or the Selected Bidder to BDA, in immediately available funds, subject to any deductions for Taxes, charges or other withholdings under Applicable Laws, into the bank account designated by BDA.
- (c) If the Developer or the Selected Bidder fails to pay the Project Development Expenses to the BDA in accordance with this Clause 5.3, BDA shall be entitled to
 - (i) draw upon the First Performance Security; and/or
 - (ii) deduct the amount payable to it from any amounts that become due and payable to the Developer, to recover the Project Development Expenses.

5.4. **Parent Company Guarantee**

The Developer shall cause the Lead Member to furnish the Parent Company Guarantee in favor of BDA, as a Condition Precedent, in the format set out in Schedule M, to secure the due performance of all the Developer's obligations under and in accordance with this Agreement,

including specifically the obligation to rectify defects in the AHP Assets during the Defects Warranty Period, if the Developer fails to rectify such defects. The Parent Company Guarantee shall be valid and binding on the Lead Member until the expiry of the Defects Warranty Period.

6. THE AHP CONSTRUCTION PERIOD

6.1. Commencement and Duration

The construction period for the AHP Assets shall commence on and from the Effective Date, and shall continue until the AHP Completion Date (the **AHP Construction Period**). Notwithstanding anything to the contrary in the foregoing paragraph, but without prejudice to the provisions contained in Clause 4.2, the Developer shall be entitled to commence:

- (a) soil or geophysical investigation or testing at the Site; and
- (b) appointment of Subcontractors in preparation for commencement of construction works over the AHP Area and the Developer's Area,

prior to the Effective Date.

6.2. Independent Engineer

- (a) As a Condition Precedent, BDA and the Developer shall jointly appoint an independent engineering firm with requisite technical expertise, knowledge and experience in the design, engineering and construction of housing projects as the independent engineer for the Project (the **Independent Engineer**). The detailed scope of works of the Independent Engineer are set out in Schedule J (Terms of reference for the Independent Engineer).
- (b) All fees, costs, charges and expenses payable to the Independent Engineer shall be paid by BDA and the Developer in the ratio of 50:50.
- (c) BDA and the Developer may replace the Independent Engineer in any of the following circumstances:
 - (i) if they have reason to believe that the Independent Engineer has not discharged its duties in accordance with this Clause 6.2 or the terms set out at Schedule J (Terms of Reference for the Independent Engineer); or
 - (ii) if the Independent Engineer tenders its resignation in accordance with the terms of its appointment.

- (d) In appointing any replacement of the Independent Engineer, BDA and the Developer shall comply with this Clause 6.2 and Schedule J (Terms of Reference for the Independent Engineer).
- (e) The Independent Engineer shall be required to act independently, reasonably, fairly and expeditiously to facilitate the timely completion of the AHP on or before the Scheduled AHP Completion Date.
- (f) Except as specifically provided in this Agreement, the Independent Engineer shall have no authority, whether express or implied, to amend, vary or curtail any of the rights or obligations of the Parties.
- (g) The Independent Engineer shall at all times during the AHP Construction Period have the right to enter upon and access the Site. The Developer shall have the right to accompany the Independent Engineer during its/his inspection of the AHP Assets.
- (h) The Independent Engineer shall at all times during the AHP Construction Period, have the right to attend any meetings held by the Developer to review the progress of the AHP, and to provide its/his comments/suggestions regarding the progress as well as the manner in which the construction works are undertaken for the AHP Assets. Neither any comments/suggestions provided by the Independent Engineer on the construction works nor any failure to provide comments/suggestions shall be deemed to be an acceptance of the construction works or a waiver of the Developer's obligations to execute the AHP, in accordance with this Agreement, the AHP Requirements, the AHP Construction Plan, the EHS Plan, and all Applicable Laws and Applicable Permits.
- (i) The Developer agrees that notwithstanding any review or approval by the Independent Engineer of any or all of the EWS Units or the Infrastructure Facilities, the Developer shall bear all risk, responsibility and liability for the quality, adequacy and suitability of the AHP Assets.

6.3. **Demarcation Plan**

- (a) The Developer shall prepare the Demarcation Plan, clearly demarcating the land parcels earmarked for the AHP and the PDP, and the alignment of the Public Thoroughfare.
- (b) Within 30 (thirty) days from the Appointed Date, the Developer shall submit 4 (four) copies of the draft Demarcation Plan to BDA for its review and approval.
- (c) BDA shall review and provide comments, if any, on the draft Demarcation Plan to the Developer or notify the Developer of its approval of the draft Demarcation Plan within 15 (fifteen) days of the Developer submitting the draft Demarcation Plan. Once approved by BDA, the Demarcation Plan shall form a part of this Agreement and shall replace the Site Layout Plan set out in Schedule B.

- (d) The Developer shall ensure that the Demarcation Plan approved by BDA in accordance with Clause 6.3(c) forms the basis of the application required to be submitted by it for registration under the RERA.
- (e) The Developer shall undertake the construction of the AHP Assets in line with the Demarcation Plan approved by BDA in accordance with Clause 6.3(c). The Developer shall not deviate from or make any subsequent modification or amendment to the approved Demarcation Plan without the prior written approval of BDA.
- (f) Notwithstanding any review or approval of the Demarcation Plan by BDA, the Developer shall bear all risk, responsibility and liability for the timely completion of the AHP Assets.

6.4. **AHP Construction Plan**

- (a) The Developer shall prepare the AHP Construction Plan, setting out its detailed plan for executing the AHP in accordance with the terms of this Agreement, AHP Construction Schedule, the AHP Requirements, Applicable Laws, Applicable Permits and Good Industry Practice. The AHP Construction Plan shall at least include the following:
 - (i) the detailed designs and drawings, plans, dimensions, setting-out details, patterns and models for the AHP Assets, prepared in accordance with the AHP Requirements;
 - (ii) the order in which the Developer proposes to execute the construction of the AHP Assets to ensure that the AHP Assets are completed in accordance with the AHP Construction Schedule;
 - (iii) the Phase I Committed EWS Units that the Developer proposes to complete prior to the Scheduled Phase I AHP Completion Date, which shall be no less than 800 (eight hundred) EWS Units;
 - (iv) the Total EWS Units, if different from 2,600 (two thousand six hundred) EWS Units;
 - (v) the technology that the Developer proposes to use to develop the AHP Assets, which should, at least take into account the climatic conditions of Bhubaneswar, guidelines proposed by the Building Materials and Technology Promotion Council and the AHP Requirements;
 - (vi) the specific activities to be completed for each AHP Construction Milestone and the timelines and scheduled completion dates for each such activity; and
 - (vii) any additional details as may be required under the RERA.

While preparing the AHP Construction Plan, the Developer shall propose the designs and layout of the Infrastructure Facilities on the basis that the Infrastructure Facilities are set up for the exclusive benefit of the EWS Allottees.

- (b) Within 60 (sixty) days from the Appointed Date, the Developer shall submit 4 (four) copies of the draft AHP Construction Plan to BDA for its review and approval.
- (c) BDA shall review and provide comments, if any, on the draft AHP Construction Plan to the Developer or notify the Developer of its approval of the draft AHP Construction Plan within 30 (thirty) days of the Developer submitting the draft AHP Construction Plan.
- (d) The Developer shall ensure that the AHP Construction Plan approved by BDA in accordance with Clause 6.4(c) forms the basis of the application required to be submitted by it for registration under the RERA.
- (e) The Developer shall undertake the construction of the AHP Assets on the basis of the AHP Construction Plan approved by BDA in accordance with Clause 6.4(c). The Developer shall not deviate from or make any subsequent modification or amendment to the approved AHP Construction Plan without the prior written approval of BDA.
- (f) Notwithstanding any review or approval of the AHP Construction Plan by BDA, the Developer shall bear all risk, responsibility and liability for the timely completion of the AHP Assets.

6.5. Developer's Construction Obligations for the AHP Assets

The Developer shall construct, finance and complete the AHP Assets in accordance with this Agreement, Applicable Laws, Applicable Permits, the Demarcation Plan, the AHP Construction Plan and the AHP Requirements and Good Industry Practice.

For this purpose, during the AHP Construction Period, the Developer at its own cost, expense and risk:

- (a) shall comply with and perform all obligations of the 'Promoter' as set out in the RERA;
- (b) shall complete the Phase I AHP Assets by the Scheduled Phase I AHP Completion Date and the Phase II AHP Assets by the Scheduled AHP Completion Date, at its own cost and risk in a manner that:
 - (i) is in compliance with the AHP Requirements, the AHP Construction Plan, the EHS Plan, Applicable Laws, Applicable Permits and Good Industry Practices. For the avoidance of doubt, if there arises any ambiguity or conflict between the AHP Requirements and any Applicable Laws, then the one setting out the more stringent requirements or specifications shall prevail;
 - (ii) is in accordance with the AHP Construction Schedule;
 - (iii) ensures that the EWS Units are safe and fit for habitation and the Infrastructure Facilities

- are safe, reliable and fit for purpose; and
- (iv) the AHP Assets are free from all defects in design and workmanship.
- (c) shall maintain and comply with the conditions of all Applicable Permits in undertaking the construction of the AHP Assets;
- (d) shall, within 30 (thirty) days of the Effective Date, and in any event, prior to the commencement of any construction for the AHP Assets, appoint a Person with sufficient skill and expertise to act as the Developer's Representative. The Developer's Representative shall monitor, coordinate, and supervise the completion of the AHP Assets and liaise with BDA's Representative and the Independent Engineer during the AHP Construction Period and the Defects Warranty Period;
- (e) shall establish and maintain an office with adequate IT and other necessary infrastructure and facilities at the Site to manage, coordinate and monitor the Project and keep the site office operational at least until the expiry of the AHP Completion Date;
- (f) shall within 4 (four) months of BDA providing the list of EWS Allottees in accordance with Clause 6.6(g), organise 2 (two) loan fairs, each for a duration of 3 (three) days, at the Site and keep all the EWS Allottees informed of: (i) the dates and venue of such loan fairs; and (ii) the Scheduled Banks who have agreed to extend home loans to the EWS Allottees for the purchase of EWS Units;
- (g) shall assist the EWS Allottees in negotiating the home loan terms and completing the documentation and any other formalities required to avail of home loans. The Developer shall facilitate at least 80% (eighty percent) of the EWS Allottees who require home loans as per the list provided by BDA in accordance with Clause 6.6(g), in availing of home loans of at least INR 1,50,000 (Rupees one lakh fifty thousand), at an interest rate not exceeding 15% (fifteen percent).
- (h) shall provide all necessary assistance to the Independent Engineer in undertaking inspection of the construction for the AHP Assets, and while performing its other obligations and duties under this Agreement;
- (i) shall reasonably consider and act upon the comments/suggestions made by the Independent Engineer during any meetings of the Developer with its Subcontractors;
- (j) shall rectify any defects and/or deficiencies in the AHP Assets, including any discovered by the Independent Engineer;
- (k) shall take all necessary measures to maintain the safety and security of personnel, material and property at the Site and the construction works for the AHP Assets, in accordance with the approved EHS Manual and all Applicable Laws;

- (l) shall ensure that all excavated materials, earthworks, waste materials and hazardous substances are stored and/or disposed of in accordance with the EHS Plan, Applicable Laws and Applicable Permits;
- (m) shall submit monthly reports to the Independent Engineer (with a copy to BDA), no later than 10 (ten) days after the end of each month, of the construction works undertaken during such month for the AHP Assets, which should set out the following:
 - (i) extent of progress of construction activities performed by the Developer for the AHP Assets;
 - (ii) status of completion of the AHP Construction Milestones;
 - (iii) comparison of actual progress against the planned progress of construction works (as per the AHP Construction Plan), reasons for delay, if any and steps taken by the Developer to mitigate the delay;
 - (iv) details of any accident or hazardous incident at the Site and the steps taken by the Developer to mitigate the consequences of such accident or hazardous incident; and
 - (v) rectification of defects and/or deficiencies discovered by the Independent Engineer.In addition to the reporting requirements set out above, the Developer shall also comply with all reporting requirements under RERA;
- (n) shall ensure that an adequate number of suitably skilled and experienced contractors, architects, workmen and other personnel are engaged for undertaking the AHP. The Developer shall be solely responsible and accountable for the work performed by any staff and labour engaged by it for executing the AHP. The Developer shall and shall ensure that its Subcontractors provide all necessary amenities and welfare facilities for the staff and labour engaged by them at the Site and comply with all applicable labour laws. The Developer shall indemnify and hold harmless BDA from and against all claims, liabilities, expenses, costs and losses suffered or incurred by BDA due to the Developer's or any Subcontractor's failure to comply with all Applicable Laws (including labour welfare legislations);
- (o) shall arrange for all equipment, machinery, tools and other resources required to undertake the AHP and be solely responsible for such equipment, machinery, tools and resources;
- (p) shall take all reasonable measures to ensure that the transportation of any of the Developer's or the Subcontractors' personnel or equipment, to or from the Site, does not interfere with local traffic in the vicinity of the Site;
- (q) shall maintain accurate and systematic accounts and records of goods and material utilised and other costs and expenses incurred in connection with the construction works for the AHP Assets, including all invoices, receipts, challans, vouchers, quotations and other records and documents with respect to the AHP Assets in accordance with Applicable Laws;
- (r) shall obtain and maintain adequate insurances as per this Agreement; and

- (s) shall prepare and keep up-to-date, “as-built” records of the execution of the construction work for the AHP Assets, showing the exact as-built locations, sizes and details of the works as executed in accordance with Applicable Laws. The “as-built” records shall be kept on the Site and be made available to the Independent Engineer for review and verification. The Developer shall provide 2 (two) copies of the complete set of “as-built” drawings for the Phase I AHP Assets to BDA prior to the final inspection of the completed Phase I AHP Assets and issuance of the Phase I AHP Completion Certificate. The Developer shall also provide 2 (two) copies of the complete set of “as-built” drawings for the Phase II AHP Assets to BDA prior to the final inspection of the completed Phase II AHP Assets and issuance of the AHP Completion Certificate.

6.6. **BDA’s Rights and Obligations**

During the AHP Construction Period, BDA shall:

- (a) comply with all its obligations under the GoO Land Allotment Notification;
- (b) make reasonable endeavours to assist the Developer in obtaining the Applicable Permits from the relevant Government Authorities, provided that the Developer has complied with all the requirements as per Applicable Laws for applying for such Applicable Permits;
- (c) provide all necessary assistance and information to the Developer to comply with the obligations of the Promoter under the RERA with respect to the AHP;
- (d) review the Demarcation Plan, AHP Construction Plan, EHS Plan and all other plans and documents submitted by the Developer in an expeditious manner, in accordance with this Agreement;
- (e) cause the Independent Engineer to carry out timely inspection of the EWS Units and the Infrastructure Facilities and perform its other obligations and duties under this Agreement;
- (f) make timely payment of each tranche of the Grant, against an Invoice raised by the Developer on satisfaction of the relevant AHP Construction Milestone, in accordance with Clause 8.2;
- (g) prepare and provide to the Developer, the provisional list of EWS Allottees who want to avail of housing finance, within 180 (one hundred and eighty) days of the Appointed Date;
- (h) provide or shall cause the relevant Government Authority to provide all necessary assistance in facilitating the provision of infrastructure facilities and utilities to the Developer as set out in Schedule K;
- (i) upon completion of construction of the Phase I AHP Assets in accordance with the AHP Requirements and this Agreement, as certified by the Independent Engineer, issue the Phase I AHP Completion Certificate to the Developer;

- (j) upon completion of construction of the Phase II AHP Assets in accordance with the AHP Requirements and this Agreement, as certified by the Independent Engineer, issue the AHP Completion Certificate to the Developer;
- (k) have the right to cause the Independent Engineer to undertake a review of the progress of the construction of the AHP Assets at any time during the AHP Construction Period; and
- (l) have the right to review withdrawals from the Developer Escrow Account at any time until the AHP Completion Date, to assess whether the construction of the AHP Assets is commensurate with the withdrawals from the Developer Escrow Account.

6.7. Environment, Health and Safety Plan

- (a) Within 60 (sixty) days from the Effective Date, the Developer shall prepare and submit to BDA a detailed and comprehensive EHS Plan. The EHS Plan shall set out the health, safety and environment policies, guidelines and procedures to be followed by the Developer in undertaking the AHP and the PDP and shall include a comprehensive Site safety assurance plan, developed in accordance with Applicable Laws, Applicable Permits, the AHP Requirements, the EHS Standards (including specifically, the IFC performance standards on environmental and social sustainability) and Good Industry Practices.
- (b) BDA shall review and provide comments, if any, on the draft EHS Plan to the Developer or notify the Developer of its approval of the draft EHS Plan within 15 (fifteen) days from the date of receipt of the draft EHS Plan from the Developer. BDA shall have the power to require the Developer to amend or modify the draft EHS Plan if BDA identifies any deficiencies or shortcomings in the draft EHS Plan. If the Developer receives any comments, suggestions or instructions to modify the draft EHS Plan from BDA, then the Developer shall incorporate the suggestions made by BDA and modify the draft EHS Plan to correct any shortcomings or deficiencies identified by BDA. Thereafter, the Developer shall submit the revised EHS Plan to BDA for its approval. This process shall continue until the EHS Plan is approved by BDA in accordance with this Clause 6.7(b).
- (c) The Developer shall and shall ensure that its Subcontractors comply with and conform in all aspects to the EHS Plan, approved in accordance with this Clause 6.7, in executing the Project. Any failure of the Developer or the Subcontractors to comply with the EHS Plan shall constitute a Developer Event of Default. The Developer shall indemnify BDA against all costs, expenses, penalties and liabilities incurred/suffered by BDA due to the Developer's or any Subcontractor's failure to comply with the EHS Plan in the course of execution of the Project. The Developer shall not deviate from or make any subsequent modification or amendment to the approved EHS Plan without the prior written approval of BDA.

- (d) Neither any review nor approval of the EHS Plan by BDA, nor any failure to review and provide comments on the EHS Plan shall excuse any failure by the Developer to adopt proper and recognized safety and environment friendly practices during the execution of the Project. The Developer shall bear all risk, responsibility and liability for the accuracy and adequacy of the final EHS Plan in ensuring compliance with all Applicable Laws, Applicable Permits and Good Industry Practices in the execution of the Project. The Developer shall not be entitled to any extension of time and/or compensation for the costs incurred in preparation of the EHS Plan and complying with the requirements of this Clause 6.7.

6.8. Utilities

- (a) The Developer shall furnish, install and maintain at its cost, all utilities necessary for undertaking the Project, including telephone connections, internet connections, sewerage etc. at the Site, as set out in Schedule C.
- (b) BDA shall provide or shall cause the relevant Government Authority to provide all necessary assistance in facilitating the provision of utilities to the Developer as set out in Schedule K.
- (c) It is clarified that the interconnection between the Infrastructure Facilities and the External Development Works (as per the requirements for infrastructure facilities and utilities set out in Schedule K) shall be the responsibility of the Developer. BDA shall however assist the Developer in obtaining necessary approvals to connect the External Development Works with the Infrastructure Facilities.

6.9. Construction Timelines

- (a) The Developer shall comply with the AHP Construction Schedule and the AHP Construction Plan and complete the Phase I AHP Assets on or before the Scheduled Phase I AHP Completion Date and Phase II AHP Assets on or before the Scheduled AHP Completion Date.
- (b) Subject to Clause 6.9(c) below, the Developer shall be entitled to a day-for-day extension of the Scheduled Phase I AHP Completion Date or as the case may be, the Scheduled AHP Completion Date, if the completion of the Phase I AHP Assets or the Phase II AHP Assets, as the case may be, is delayed due to any of the following reasons (each such event, an **AHP Delay Event**):
 - (i) occurrence of a Force Majeure Event, provided that the requirements of Article 14 have been complied with;
 - (ii) a Qualifying Change in Law;
 - (iii) undue delay by the relevant Government Authority in renewing any Applicable Permit,

- despite the Developer having applied for such renewal expeditiously and having complied with the requirements of Applicable Laws in making such application;
- (iv) any delay attributable to unforeseen site conditions in accordance with Clause 4.3; or
 - (v) delay by the Independent Engineer in issuance of an AHP Milestone Completion Certificate in accordance with Clause 6.11(c);
 - (vi) delay by BDA in issuance of the Phase I AHP Completion Certificate in accordance with Clause 6.11(d) or the AHP Completion Certificate in accordance with Clause 6.11(e);
 - (vii) any BDA proposed variation in the number of EWS Units in accordance with Clause 6.12; or
 - (viii) delay caused in complying with any instructions of BDA or the Independent Engineer, which instructions are not attributable to any default or failure of the Developer.

- (c) The Developer shall promptly provide BDA (with a copy to the Independent Engineer) with:
 - (i) a notice upon becoming aware of any AHP Delay Event listed at Clause 6.9(b) above; and
 - (ii) a notice of its claim for extension of the Scheduled Phase I AHP Completion Date or the Scheduled AHP Completion Date, as the case may be, with such notice specifying the nature of the AHP Delay Event, the extent of delay suffered or likely to be suffered by the Developer and mitigation measures being taken by the Developer; and
 - (iii) a revised AHP Construction Plan, which sets out the impact of the AHP Delay Event.

The issuance of the notice under (ii) above and the revised AHP Construction Plan under (iii) above, within 7 (seven) days from the date the Developer became aware of the AHP Delay Event shall be a condition precedent to the Developer's entitlement to an extension under Clause 6.9 (b).

The revised AHP Construction Plan submitted by the Developer will then form a part of this Agreement. It is clarified that any approval by the BDA of the amended AHP Construction Plan does not imply and shall not be construed as an approval for any extension of the Scheduled Phase I AHP Completion Date or the Scheduled AHP Completion Date, as the case may be.

- (d) Without prejudice to the Developer's obligations to notify BDA regarding the occurrence of an AHP Delay Event above, the Developer shall: (i) keep and maintain records as reasonably necessary to substantiate and establish claims for extensions under Clause 6.9(b); and (ii) give BDA and the Independent Engineer access to such records and documents or provide

BDA and the Independent Engineer with copies, if so requested.

- (e) If the Developer claims an extension of time in accordance with Clause 6.9(b) and BDA is of the opinion that such delay was caused or materially contributed to by any concurrent or interacting cause or causes of delay not listed in Clause 6.9(b), then the Developer shall not be entitled to any extension of time for the concurrent period of delay.
- (f) If two or more of the AHP Delay Events listed in Clause 6.9(b) occur concurrently, then such concurrent period shall not be counted twice in determining an extension under Clause 6.9(b).
- (g) Except as provided in Clause 6.9(b), the Developer shall not be entitled to any extension of time for any reason whatsoever, including due to:
 - (i) delay caused in complying with any instructions of BDA or the Independent Engineer which are attributable to any act or omission of the Developer;
 - (ii) failure of any Subcontractor to commence or carry out any work within the prescribed timelines;
 - (iii) unavailability or shortage of equipment, materials, or any other resources (including any utilities); or
 - (iv) any delay in approving the drafts of the Demarcation Plan, AHP Construction Plan, EHS Plan or any other document submitted by the Contractor due to any deficiencies or shortcomings in such drafts of the Demarcation Plan, AHP Construction Plan, EHS Plan or other documents, as the case may be.
- (h) Any Dispute between the Parties with respect to the occurrence, length of subsistence or consequence of any of the AHP Delay Event shall be settled in a final and binding manner in accordance with Clause 19.

6.10. **Delay Liquidated Damages**

- (a) Subject to Clause 6.9(b),
 - (i) if the Developer fails to construct the Phase I AHP Assets by the Scheduled Phase I AHP Completion Date, then BDA shall be entitled to liquidated damages for each day of delay beyond the Scheduled Phase I AHP Completion Date at the rate of INR 25,000 (Rupees twenty five thousand) for each day of delay up to 6 (six) months from the Scheduled Phase I AHP Completion Date, until the Phase I AHP Assets are completed, as certified by the Independent Engineer and BDA in accordance with Clause 6.11; and

- (ii) if the Developer fails to construct the Phase II AHP Assets by the Scheduled AHP Completion Date, then BDA shall be entitled to liquidated damages for each day of delay beyond the Scheduled AHP Completion Date at the rate of INR 25,000 (Rupees twenty five thousand), until the Phase II AHP Assets are completed, as certified by the Independent Engineer and BDA in accordance with Clause 6.11,

(collectively, the **Delay Liquidated Damages**).

- (b) BDA shall be entitled to call upon the Developer to pay the Delay Liquidated Damages, deduct the Delay Liquidated Damages from any amounts due, or to become due from the Developer; and if such amounts are insufficient, BDA shall have a right to invoke the Second Performance Security to the extent of the Delay Liquidated Damages.
- (c) If, for any reason, the foregoing paragraphs relating to the payment of Delay Liquidated Damages are void, invalid or otherwise inoperative so as to disentitle BDA from claiming Delay Liquidated Damages, then BDA will be entitled to claim against the Developer for general damages for delay in completing the Phase I Assets and the Phase II AHP Assets in accordance with the AHP Construction Schedule.
- (d) If the Developer fails to complete the Phase I AHP Assets within 6 (six) months of the Scheduled Phase I AHP Completion Date or if the Developer fails to complete the Phase II AHP Assets within 6 (six) months from the Scheduled AHP Completion Date, other than on account of any AHP Delay Event (**Grace Period**), then such failure shall be deemed to be a Developer Event of Default in accordance with Clause 16.1.

6.11. **Completion of Construction and Transfer of Possession**

- (a) Upon completion of each AHP Construction Milestone, as specified in the AHP Construction Schedule, the Developer shall issue a notice to the Independent Engineer, with a copy to BDA, requiring the Independent Engineer to inspect the completed construction works covered by the relevant AHP Construction Milestone. The purpose of such inspection shall be to determine whether the relevant AHP Construction Milestone has been completed in accordance with the requirements of Clause 6.5.
- (b) If the Independent Engineer is satisfied that the relevant AHP Construction Milestone has been completed in accordance with the requirements of Clause 6.5, the Independent Engineer shall issue an AHP Milestone Completion Certificate to the Developer for such completed AHP Construction Milestone, with a copy to BDA, within 7 (seven) days from the date of inspection of the construction works covered by such AHP Construction Milestone.

If the Independent Engineer is of the view that the relevant AHP Construction Milestone does not satisfy the requirements of Clause 6.5, then the Independent Engineer shall have the right to provide any comments, suggestions and/or instruct the Developer to carry out necessary modifications, to ensure that the relevant AHP Construction Milestone complies with the requirements of Clause 6.5. Upon receipt of such comments, suggestions or instructions from the Independent Engineer, the Developer shall make necessary modifications to the construction works to remedy any defects or deficiencies and re-issue a notice to the Independent Engineer. The Developer shall bear all costs of remedying the defects and deficiencies in the construction works and shall not be entitled to any extension of time for remedying such defects or deficiencies. This process shall be repeated until the Independent Engineer is satisfied that the relevant AHP Construction Milestone has been completed in accordance with the requirements of Clause 6.5 and issues a AHP Milestone Completion Certificate in accordance with this Clause 6.11(b).

(c) If the Independent Engineer fails to:

- (i) inspect the completed portion of the construction works covered by the relevant AHP Construction Milestone, within 7 (seven) days from the date of receipt of a notice from the Developer under Clause 6.11(a); or
- (ii) provide any comments or suggestions or notify the Developer of any defects or deficiencies in the completed portion of the construction works covered by the relevant AHP Construction Milestone, within 7 (seven) days from the date of inspection of such completed portion of the construction works; or
- (iii) issue the AHP Milestone Completion Certificate, within 7 (seven) days from the date of inspection of the completed portion of the construction works covered by the relevant AHP Construction Milestone,

then, such delay shall be treated as an AHP Delay Event, which will entitle the Developer to a day for day extension in the Scheduled Phase I AHP Completion Date or the Scheduled AHP Completion Date, as the case may be, beyond the 7 (seven) day period.

(d) ***Completion of Phase I AHP Assets***

- (i) Upon completion of the Phase I AHP Assets, such that the Phase I AHP Assets are fit for purpose and BDA can transfer possession of the completed Phase I Committed EWS Units to the EWS Allottees, the Developer shall issue a notice to the Independent

Engineer, with a copy to BDA, requiring them to undertake a final inspection of the completed Phase I AHP Assets. The purpose of such inspection shall be to determine whether the completed Phase I AHP Assets conform in all aspects to this Agreement, the AHP Requirements, and all Applicable Laws and Applicable Permits.

- (ii) The Independent Engineer shall also review and assess the actual built-up area of the Phase I Committed EWS Units, and determine whether the actual built-up area is less than 98% of the built-up area approved as per the AHP Construction Plan. If the actual built-up area of the Phase I Committed EWS Units is less than 98% of the built-up area approved as per the AHP Construction Plan as discovered by the Independent Engineer, the Developer shall be liable to pay, by way of compensation to BDA, INR 1,750 (one thousand seven hundred and fifty) per sq. ft. of the shortfall built-up area (i.e., the difference between 98% of the built-up area as per the approved AHP Construction Plan and the actual built-up area). If the Developer fails to pay this amount within 7 (seven) days, BDA shall have the right to recover this amount from the Second Performance Security.
- (iii) The Independent Engineer shall notify the Developer and BDA of the date on which it intends to conduct a final inspection of the Phase I AHP Assets, provided that, such date shall be no later than 7 (seven) days from the date of receipt of a notice from the Developer under Clause 6.11(d)(i).
- (iv) If the Independent Engineer is not reasonably satisfied with the results of the inspection, then the Developer shall remedy any defects or deficiencies in the Phase I AHP Assets, identified by the Independent Engineer and the Phase I AHP Assets shall be inspected again upon rectification of such defects or deficiencies. This process shall be repeated until such time that the Independent Engineer is satisfied that the Phase I AHP Assets have been completed in accordance with this Agreement, the AHP Requirements, the AHP Construction Plan, all Applicable Laws and Applicable Permits and the Phase I AHP Assets are safe and fit for purpose. The Developer shall bear all costs of remedying the defects and deficiencies in the Phase I AHP Assets and shall not be entitled to any extension of time for remedying such defects or deficiencies.
- (v) If the Independent Engineer is satisfied with the results of the inspection of the Phase I AHP Assets, the Independent Engineer shall issue the AHP Milestone Completion Certificate in respect of the last AHP Construction Milestone for the Phase I Assets (i.e., 2nd AHP Construction Milestone in the AHP Construction Schedule) to the Developer, with a copy to BDA, within 15 (fifteen) days from the date of inspection of the completed Phase I AHP Assets. The issue of the AHP Milestone Completion Certificate for the 2nd AHP Construction Milestone for the Phase I AHP Assets shall certify that the Phase I AHP Assets have been completed in accordance with this Agreement, the AHP

Requirements, all Applicable Laws and Applicable Permits and the Phase I AHP Assets are safe and fit for purpose.

(vi) Within 15 (fifteen) days from the date of issuance of the AHP Milestone Completion Certificate for the 2nd AHP Construction Milestone, BDA shall issue the Phase I AHP Completion Certificate to the Developer, subject to the following conditions having been fulfilled by the Developer:

- (A) the submission of 2 (two) complete sets of the “as-built” drawings of the Phase I Committed EWS Units and the related Infrastructure Facilities, duly verified by the Independent Engineer;
- (B) the handover of 2 (two) sets of keys to each Phase I Committed EWS Unit to BDA;
- (C) the Developer having deposited the Phase I Corpus Fund in the bank account designated by BDA, which may be utilised by the resident welfare association or BDA to maintain the Phase I AHP Assets;
- (D) the actual built-up area of the Phase I Committed EWS Units being equal to or more than 98% of the built-up area as per the approved AHP Construction Plan, or the Developer having paid compensation for the shortfall built-up area in accordance with Clause 6.11(d)(ii) above; and
- (E) the Developer having cleared the AHP Area comprising the Phase I AHP Assets and removed all debris, hazardous materials, surplus construction materials, equipment, temporary works, work sheds, labour camps and all other temporary installations on such AHP Area.

If BDA fails to issue the AHP Completion Certificate to the Developer within 7 (seven) days from the date of issuance of the AHP Milestone Completion Certificate for the 2nd AHP Construction Milestone for the Phase I AHP Assets and satisfaction of the conditions set out in sub-clauses (A) to (E) above, then, such delay shall be treated as an AHP Delay Event, which will entitle the Developer to a day for day extension in the Scheduled Phase I AHP Completion Date, until such time that BDA issues the Phase I AHP Completion Certificate to the Developer.

(vii) Upon issuance of the Phase I AHP Completion Certificate in accordance with Clause 6.11(d)(vi), the possession of the Phase I AHP Assets shall be deemed to have been handed over to BDA. Provided that, such deemed handover of possession of the Phase I AHP Assets to BDA shall not excuse the Developer from completing construction of the remaining AHP Assets or performing its obligations during the Defects Warranty Period, including the obligation to rectify any defect or deficiency subsequently discovered in any EWS Unit or Infrastructure Facility.

(e) **Completion of the Phase II AHP Assets**

- (i) Upon completion of the Phase II AHP Assets, such that the Phase II AHP Assets are fit for purpose and BDA can transfer possession of the completed Phase II Balance EWS Units to the EWS Allottees, the Developer shall issue a notice to the Independent Engineer, with a copy to BDA, requiring them to undertake a final inspection of the completed Phase II AHP Assets. The purpose of such inspection shall be to determine whether the completed Phase II AHP Assets conform in all aspects to this Agreement, the AHP Requirements, and all Applicable Laws and Applicable Permits.
- (ii) The Independent Engineer shall also review and assess the actual built-up area of the Phase II Balance EWS Units, and determine whether the actual built-up area is less than 98% of the built-up area approved as per the AHP Construction Plan. If the actual built-up area of the Phase II Balance EWS Units is less than 98% of the built-up area approved as per the AHP Construction Plan as discovered by the Independent Engineer, the Developer shall be liable to pay, by way of compensation to BDA, INR 1,750 (one thousand seven hundred and fifty) per sq. ft. of the shortfall built-up area (i.e., the difference between 98% of the built-up area as per the approved AHP Construction Plan and the actual built-up area). If the Developer fails to pay this amount within 7 (seven) days, BDA shall have the right to recover this amount from the Second Performance Security.
- (iii) The Independent Engineer shall notify the Developer and BDA of the date on which it intends to conduct a final inspection of the Phase II AHP Assets, provided that, such date shall be no later than 7 (seven) days from the date of receipt of a notice from the Developer under Clause 6.11(e)(i).
- (iv) If the Independent Engineer is not reasonably satisfied with the results of the inspection, then the Developer shall remedy any defects or deficiencies in the Phase II AHP Assets, identified by the Independent Engineer and the Phase II AHP Assets shall be inspected again upon rectification of such defects or deficiencies. This process shall be repeated until such time that the Independent Engineer is satisfied that the Phase II AHP Assets have been completed in accordance with this Agreement, the AHP Requirements, the AHP Construction Plan, all Applicable Laws and Applicable Permits and the Phase II AHP Assets are safe and fit for purpose. The Developer shall bear all costs of remedying the defects and deficiencies in the Phase II AHP Assets and shall not be entitled to any extension of time for remedying such defects or deficiencies.
- (v) If the Independent Engineer is satisfied with the results of the inspection of the Phase II AHP Assets, the Independent Engineer shall issue the AHP Milestone Completion

Certificate in respect of the last AHP Construction Milestone for the Phase II AHP Assets to the Developer, with a copy to BDA, within 15 (fifteen) days from the date of inspection of the completed Phase II AHP Assets. The issue of the AHP Milestone Completion Certificate, for the last AHP Construction Milestone, shall certify that the Phase II AHP Assets have been completed in accordance with this Agreement, the AHP Requirements, all Applicable Laws and Applicable Permits and the Phase II AHP Assets are safe and fit for purpose.

(vi) Within 15 (fifteen) days from the date of issuance of the AHP Milestone Completion Certificate for the last AHP Construction Milestone, BDA shall issue the AHP Completion Certificate to the Developer, subject to the following conditions having been fulfilled by the Developer:

- (A) the submission of 2 (two) complete sets of the “as-built” drawings of the Phase II AHP Assets, duly verified by the Independent Engineer;
- (B) the handover of 2 (two) sets of keys to each Phase II Balance EWS Unit to BDA;
- (C) the Developer having extended the validity of the Second Performance Security for the revised amount in accordance with Clause 5.1;
- (D) the Developer having deposited the Phase II Corpus Fund in the bank account designated by BDA, which may be utilised by the resident welfare association or BDA to maintain the Phase II AHP Assets;
- (E) the actual built-up area of the Phase II Balance EWS Units being equal to or more than 98% of the built-up area as per the approved AHP Construction Plan, or the Developer having paid compensation for the shortfall built-up area in accordance with Clause 6.11(e)(ii) above; and
- (F) the Developer having cleared the AHP Area and removed all debris, hazardous materials, surplus construction materials, equipment, temporary works, work sheds, labour camps and all other temporary installations on the AHP Area.

If BDA fails to issue the AHP Completion Certificate to the Developer within 7 (seven) days from the date of issuance of the AHP Milestone Completion Certificate for the last AHP Construction Milestone for the Phase II AHP Assets and satisfaction of the conditions set out in sub-clauses (A) to (F) above, then, such delay shall be treated as an AHP Delay Event, which will entitle the Developer to a day for day extension in the Scheduled AHP Completion Date, until such time that BDA issues the AHP Completion Certificate to the Developer.

(viii) Upon issuance of the AHP Completion Certificate in accordance with Clause 6.11(e)(vi), the possession of the Phase II AHP Assets shall be deemed to have been handed over

to BDA. Provided that, such deemed handover of possession of the Phase II AHP Assets to BDA shall not excuse the Developer from performing its obligations during the Defects Warranty Period, including the obligation to rectify any defect or deficiency subsequently discovered in any EWS Unit or Infrastructure Facility.

6.12. Variation

- (a) BDA may, at any time during the AHP Construction Period, propose a Variation in the number of EWS Units or the AHP Requirements, and any corresponding variation in the AHP Construction Plan and/or the AHP Construction Schedule (**Variation Order**). Provided that, BDA shall not propose a Variation, which:(i) is not technically feasible; or (ii) is not in compliance with the provisions of RERA, or any other Applicable Law or Applicable Permit.
- (b) Within 15 (fifteen) days of receipt of a Variation Order, the Developer shall submit a proposal setting out in sufficient detail the implications of the proposed Variation, including any implications on the AHP Construction Schedule and the AHP Construction Plan, and the costs incurred in undertaking the Variation. The proposal shall be accompanied by a detail bill of quantities (BOQ) of all items and materials necessary to execute the proposed variation.
- (c) Based on its review of the proposal submitted by the Developer, BDA may, at its sole discretion: (i) accept the proposal and the corresponding adjustment to the AHP Construction Schedule, the AHP Construction Plan and the proposed costs for undertaking the Variation; (ii) require the Independent Engineer to assess the Cost of the proposed variation, if, in its view, the Cost quoted by the Developer is much higher than the market-standard cost for similar works; or (iii) reject the proposal submitted by the Developer and withdraw the Variation Order, within 15 (fifteen) days from the date of receipt of the Developer's proposal under Clause 6.12(b). In case BDA exercises the option in (ii) above, and the cost determined by the Independent Engineer is acceptable to BDA, then BDA shall have the right to require the Developer to carry out the proposed variation at the cost determined by the Independent Engineer.
- (d) On implementation of a Variation Order, the Developer shall be entitled to the agreed adjustment to the AHP Construction Schedule, the AHP Construction Plan and payment of amounts agreed pursuant to the proposal submitted by the Developer or as determined by the Independent Engineer in accordance with Clause 6.12(c)(ii) above, for carrying out the Variation.
- (e) Notwithstanding anything to the contrary in Clause 6.12(a), the Developer shall be bound to implement any Variation that is necessitated by a Change in Law and any consequent adjustment in the AHP Construction Schedule, the AHP Construction Plan and/or the

Concession Fee, on account of such Variation, shall be determined in accordance with Article 12.

- (f) Notwithstanding the above, a Variation made necessary due to any act, omission or default of the Developer or any Subcontractor in the performance of the Developer's obligations under this Agreement shall not entitle the Developer to any adjustment to the AHP Construction Schedule and the AHP Construction Plan and/or increase in the Grant, or any other compensation or relief.
- (g) No Variation shall invalidate this Agreement.
- (h) In relation to any proposed Variation, the adjustment to the AHP Construction Schedule and the AHP Construction Plan and/or the Grant shall be reasonably determined by making reference to the time required for similar analogous construction work, availability of the required material and equipment or such other factors as may be relevant.

6.13. **Right, Title and Interest in the AHP Assets**

- (a) The full ownership, rights, interest and title to the EWS Units, Social Infrastructure and Internal Development Works constructed or installed by the Developer on the AHP Area pursuant to this Agreement shall, at all times, vest with BDA.
- (b) The Developer shall not sell, transfer or otherwise dispose of or create any Security over the AHP Assets or any part thereof.

7. **DEFECTS WARRANTY PERIOD**

- 7.1. The Developer shall, at its own cost, expense and risk, remedy any structural defect or deficiency in the AHP Assets (the "**Defects Warranty**") appearing within a period of 5 (five) years from the AHP Completion Date (the "**Defects Warranty Period**"), which is discovered by BDA or any EWS Allottee.
- 7.2. If the Developer or the Parent Company fails to remedy any defect or deficiency in the AHP Assets within 30 (thirty) days of notification of the defect, then BDA may (at its sole discretion) carry out the repair work itself or through others, at the risk and cost of the Developer. Without prejudice to any other rights under this Agreement or otherwise in law, BDA shall be entitled to invoke the Second Performance Security to recover: (a) the amounts expended by it in remedying any defects in the AHP Assets (including any amounts for the full replacement cost of items/materials which had to be replaced for rectification of the defects); (b) 20% (twenty percent) of the amount under (a) above as overhead expenses; and (c) any compensation payable by BDA to the EWS Allottees in accordance with the RERA for failure to rectify defects within the time period specified under the RERA.

7.3. The Defects Warranty is subject to the following exclusions:

- (a) any modification or rectification by BDA, or on its behalf in any way without prior notice to and consent of the Developer;
- (b) defect or deficiency attributable to an EWS Allottee or BDA Related Party; and
- (c) normal wear and tear.

Any dispute regarding the nature of any defect or deficiency in the AHP Assets (i.e., whether the defect or deficiency can be attributable to the Developer or the relevant EWS Allottee) and the Developer's liability to rectify any defect or deficiency in the AHP Assets shall be determined in accordance with Article 19.

7.4. Notwithstanding anything contained in this Clause 7, the Developer will not be required to repair or rectify any defects or damage to the Public Thoroughfare.

8. CONCESSION FEE AND PAYMENT SECURITY

8.1. Grant

- (a) In consideration for the Developer undertaking the Project, the Developer will be entitled to receive from the BDA, the Grant quoted by it in its Bid, or such lower amount as may be determined in accordance with Clause 3.4(c), in accordance with this Article 8.
- (b) The Developer shall be deemed to have satisfied itself regarding the adequacy, accuracy and sufficiency of the Grant. Except for any adjustment in accordance with Clause 12.2 (Consequences of Change in Law) or any permitted Variation, the Grant is the total consideration payable to the Developer for undertaking the Project. The Developer shall not be entitled to receive any additional amounts or payments for providing the Infrastructure Facilities or rectification of defects during the Defects Warranty Period from either BDA or the EWS Allottees.

8.2. Payment of Grant

- (a) The Grant shall be paid by BDA to the Developer in tranches, in accordance with the Payment Schedule set out at Schedule F, with such tranches being linked to the completion of the AHP Construction Milestones and certification of such AHP Construction Milestone by the Independent Engineer in accordance with Clause 6.11.
- (b) BDA shall be required to deposit the Grant in the sub-account of the Developer Escrow Account in accordance with Clause 8.3 and the Developer Escrow Agreement.
- (c) Notwithstanding anything to the contrary in this Agreement, BDA shall have no obligation to pay the Grant or any other amount to the Developer unless:
 - (i) the Second Performance Security remains valid and in effect;
 - (ii) the insurances to be obtained by the Developer in accordance with Clause 11.2 are valid and in effect;
 - (iii) the Applicable Permits required to be obtained by the Developer for undertaking the AHP and the PDP are in full force and effect, unless the withdrawal or cancellation of any Applicable Permit is not attributable to the Developer's failure to comply with Applicable Laws;
 - (iv) the Developer has complied with the EHS Plan in undertaking the construction works for the AHP and the PDP; and
 - (v) there is no subsisting Developer Event of Default.
- (d) It is clarified that the Developer shall be solely responsible for the payments to be made to any Subcontractors engaged by the Developer for executing any part of the Project (including for rectifying defects and deficiencies in the AHP Assets during the Defects Warranty Period). BDA shall not be liable, in any manner whatsoever, to a Subcontractor for any default or delay in payments by the Developer to such Subcontractor.
- (e) During the AHP Construction Period, the payment of the Grant to the Developer shall be linked to the completion and certification of the AHP Construction Milestones. The Developer shall raise an Invoice for a AHP Construction Milestone linked payment within 7 (seven) days of issuance of the AHP Milestone Completion Certificate for the relevant AHP Construction Milestone in accordance with Clause 6.11. Any Invoice raised by the Developer for an AHP Construction Milestone linked payment shall be accompanied by a copy of the relevant AHP Milestone Completion Certificate issued by the Independent Engineer.
- (f) Within 10 (ten) Business Days of receipt of an Invoice from the Developer pursuant to Clause 8.2(e), BDA shall verify and certify the amounts due and payable to the Developer, and either:
 - (i) approve the Invoice and issue a certificate, conveying its approval for the release of the amount specified in the Invoice, less any necessary deductions or adjustments in accordance with this Agreement and/or Applicable Laws;

- (ii) issue a notice to the Developer disputing the Invoice and directing the Developer to issue a revised Invoice, after rectifying the errors or discrepancies identified by BDA. The Developer shall submit a revised Invoice to BDA after rectifying the errors or discrepancies identified by BDA and this process will be repeated until BDA approves the Invoice and issues a certificate, conveying its approval for release of the amount specified in the Invoice.

Any dispute between the Parties in relation to a disputed Invoice will be settled in accordance with Article 19.

A certificate issued by BDA in accordance with this Clause 8.2(f) shall be referred to as a **Payment Certificate**.

- (g) If BDA does not dispute an Invoice within 30 (thirty) days from the date of receipt of such Invoice, then the Invoice shall be deemed to have been accepted by BDA upon the expiry of the prescribed time period. Further, if BDA does not issue a Payment Certificate within 15 (fifteen) days from the date of expiry of such prescribed time period, then the Developer shall be entitled to receive the entire amount specified in the relevant Invoice, without any deductions or adjustments.
- (h) Immediately upon issuance of a Payment Certificate in accordance with Clause 8.2(f) or upon expiry of the time period specified in Clause 8.2(f) for issuance of a Payment Certificate, the Developer shall have the right to utilise the amounts mentioned in the Payment Certificate in the manner set out in Clause 8.3.

8.3. **Developer Escrow Account**

- (a) Prior to the Effective Date, the Developer, BDA, Lenders' representative and the Developer Escrow Agent shall enter into the Developer Escrow Agreement and the Developer shall open the Developer Escrow Account with the Developer Escrow Agent in accordance with the Developer Escrow Agreement, which shall be operational in accordance with the RERA. The Developer Escrow Agreement shall set out the terms of appointment of the Developer Escrow Agent, the obligation of the Developer to ensure deposit of amounts in accordance with this agreement with the Developer Escrow Agent and terms of withdrawal of amounts from the Developer Escrow Account.
- (b) The Developer shall ensure all amounts received by the Developer in connection with the Project are deposited into the Developer Escrow Account or the relevant sub-accounts, in accordance with the Developer Escrow Agreement. Such amounts shall include:

- (i) the Grant received from BDA;
 - (ii) all Financial Assistance received by the Developer from the Lenders for the AHP and the PDP;
 - (iii) all share capital contributions and shareholder loans received from the Selected Bidder or other shareholders of the Developer;
 - (iv) all upfront deposits and booking amounts received from the PDP Allottees for the PDP Units;
 - (v) all construction linked and any other payments received from the PDP Allottees for the PDP Units;
 - (vi) all insurance proceeds;
 - (vii) all damages, claims etc. received from Subcontractors;
 - (viii) termination compensation; and
 - (ix) funds to make up the shortfall in the amount in the Developer Escrow Account as against the cash flow requirement during the AHP Construction Period.
- (c) The Developer shall ensure that the Developer Escrow Account is funded with the minimum amounts required under Applicable Law (including specifically, the RERA).
 - (d) Deleted.
 - (e) The Developer shall be entitled to withdraw amounts from the Developer Escrow Account in accordance with the provisions of the Developer Escrow Agreement.
 - (f) Notwithstanding anything contained in this Agreement, the rights and obligations of BDA under the Developer Escrow Agreement will cease after the AHP Completion Date, except provisions in relation to indemnity, as set out in the Developer Escrow Agreement.

8.4. **Taxes**

- (a) BDA may deduct from the Grant or any other amounts due to the Developer, any income tax that BDA is liable to deduct at source or any withholding tax that BDA is liable to pay directly to the relevant Government Authorities.
- (b) The Developer shall be responsible for all procedural compliances related to the payment of Taxes under this Agreement and shall be solely responsible for any proceedings initiated by any relevant authority, in respect of any non-payment, short-payment, non-compliance, penalty, interest or other such issue, and for all liabilities and expenses related to such proceedings. The Developer shall be responsible for obtaining at its own cost, all permits, licenses and approvals, required by the relevant Government Authorities, arising from undertaking the Project.

- (c) If any proceedings are initiated against BDA by any relevant Government Authority for failure of the Developer to comply with this Clause 8.4, then the Developer shall fully indemnify and compensate BDA for any cost, liability, penalty, interest and legal fees that are incurred or payable as a result of such proceedings.

8.5. Default Interest

Upon any party's failure to make a payment due and payable by it on the due date for such payment, the defaulting Party shall be liable to pay default interest on all such outstanding amounts at 9% (nine percent) per annum or part thereof. This is without prejudice to any Party's right to terminate this Agreement in accordance with Article 16 or any other right or remedy available to it under this Agreement or Applicable Laws.

8.6. Right of Set-Off

The Developer shall not be entitled to retain or set off any amount due to BDA by it, but BDA may retain or set off any amount owed to it by the Developer under this Agreement, which has fallen due and payable against any amount due to the Developer under this Agreement. BDA shall intimate the Developer at the time it exercises its right to set-off and shall provide the Developer its reasons for exercising such right to set-off.

9. PRIVATE DEVELOPMENT PROJECT

9.1. PDP Construction Plan

- (a) The Developer shall have prepared and submitted the PDP Construction Plan to the relevant authority under the RERA, in accordance with Applicable Laws (including specifically the Planning and Building Standards Regulations), Applicable Permits and the Demarcation Plan.
- (b) In preparing the draft PDP Construction Plan and undertaking the PDP in accordance with this Agreement, the Developer shall be permitted to make use of the unutilised FAR from the AHP Area onto the Developer's Area, subject to any conditions set out in Applicable Laws, including specifically the Planning and Building Standards Regulations.
- (c) The Developer shall undertake the PDP on the basis of the PDP Construction Plan submitted to the relevant authority under the RERA.

- (d) The Developer shall bear all risk, responsibility and liability for the timely completion of the PDP Units in accordance with the PDP Construction Plan and the registration under the RERA.

9.2. Construction

- (a) On and from the PDP Commencement Date, the Developer shall have the exclusive right to develop the PDP Units and any related infrastructure facilities on the Developer's Area, in accordance with this Agreement, the PDP Construction Plan, the Demarcation Plan, the EHS Plan, Applicable Laws and Applicable Permits, at its own cost and expense.
- (b) The Developer shall undertake the PDP in a manner such that:
 - (i) the Project continues to comply with the requirements of Applicable Laws (including specifically the RERA and Model III of the Housing for All Policy); and
 - (ii) the PDP does not have a Material Adverse Effect on the AHP or the enjoyment thereof.
- (c) The Developer shall obtain, maintain and comply with all necessary Applicable Permits and Applicable Laws for construction and maintenance of any PDP Units during the Term.
- (d) The Developer may undertake the PDP itself or through subcontractors. In either case, the Developer shall be solely responsible for compliance with this Agreement, the PDP Construction Plan and all Applicable Laws and Applicable Permits.
- (e) Subject to Article 18, the Developer shall not be entitled to receive any payment or any other compensation from BDA for the PDP. BDA shall have no liability whatsoever to the Developer for the PDP, including for any PDP Unit that the Developer is unable to allot.
- (f) The Developer shall be solely responsible for the timely construction and completion of the PDP Units. BDA shall not be liable, in any manner whatsoever, to the PDP Allottee for any delay in the completion and handover of the PDP Unit, any defect or deficiency in the quality of construction of the PDP Unit or any other breach by the Developer of its obligations and representations under the letter of allotment and the PDP Allottee shall have no recourse to BDA for any losses and damages suffered by him on account of such breach.
- (g) The Developer shall be required to maintain a management information system (MIS), for all bookings done, payments received, allotment letters issued in the PDP Units, in accordance with this Agreement and the Conveyance Deed(s), at least until the expiry of the AHP Construction Period. The MIS shall also include the following details:
 - (i) details of the registration under the RERA;
 - (ii) the physical progress of the construction of the PDP Units;
 - (iii) list and values of allotments of the PDP Units;
 - (iv) booking amounts or upfront payments received from the PDP Allottees in respect of the allotted PDP Units;

- (v) status of construction linked or any other payments made by the PDP Allottees for the PDP Units;
- (vi) if relevant, defaults in payments by any PDP Allottee; and
- (vii) any other information required under the RERA.

If requested by BDA, the Developer shall submit a quarterly report covering all the above information to BDA.

- (h) Notwithstanding anything contained in this Agreement, the Developer shall bear all risk, responsibility and liability for the timely completion of the PDP in accordance with the PDP Construction Plan, Applicable Laws and Applicable Permits.

9.3. **Marketing, Branding and Allotment of PDP Units**

- (a) On and from the Effective Date, the Developer shall be entitled to market the PDP Units. On and from the PDP Commencement Date, the Developer shall be entitled to commence bookings of and allot the PDP Units to the PDP Allottees on such terms and conditions (including price) as the Developer deems fit. It is clarified that the Developer shall not be entitled to collect any payments from the PDP Allottees prior to the PDP Commencement Date.
- (b) Any marketing brochures or advertisements with respect to the PDP Units must specify the details of the Developer Escrow Account and that all upfront deposits, booking amounts, construction linked payment and any other payments from the PDP Allottees for the PDP Units are required to be deposited in such Developer Escrow Account.
- (c) Any letter of allotment or conveyance deed agreeing to sell a PDP Unit to a PDP Allottee must include the following terms:
 - (i) details of the Developer Escrow Account, and that all upfront deposits, booking amounts, construction linked payments and any other payments from the PDP Allottees for the PDP Units are required to be deposited in such Developer Escrow Account;
 - (ii) the Developer shall be solely responsible for the timely construction and completion of the PDP Unit. BDA shall not be liable, in any manner whatsoever, to the PDP Allottee for any delay in the completion and handover of the PDP Unit, any defect or deficiency in the quality of construction of the PDP Unit or any other breach by the Developer of its obligations and representations under the letter of allotment and the PDP Allottee shall have no recourse to BDA for any losses and damages suffered by him on account of such breach;
 - (iii) until such time as the Conveyance Deed is executed in accordance with Clause 9.4,

neither the Developer nor the PDP Allottees shall have any title on the Developer's Area or any part thereof; and

- (iv) the letter of allotment shall not confer any title to or ownership or leasehold rights over the PDP Unit in favour of the PDP Allottee, until the execution of the Conveyance Deed which the Developer shall have a right to execute on satisfaction of the conditions set out in Clause 9.4(b) or Clause 9.4(c), as the case may be, for the relevant PDP Unit.
- (d) The Developer shall not under any circumstances market the PDP or any unit or facility forming part of the PDP, as development being undertaken by BDA or in association with BDA or under the patronage of BDA.

9.4. Right, Title and Interest in the PDP Units

- (a) Subject to early termination in accordance with Article 14 or Article 16, the full ownership, rights and title to the PDP Units and other infrastructure facilities forming part of PDP that are constructed or installed by the Developer on the Developer's Area shall vest with the Developer. Provided that the ownership of the Developer's Area shall only transfer to the Developer upon the execution of the Conveyance Deed(s) in accordance with sub-Clauses (b) and (c) below.
- (b) Within 30 (thirty) days of the Phase I AHP Completion Date, the Developer and BDA shall execute a Conveyance Deed in the format set out in Part B of this volume of this Agreement for such part of the Developer's Area as specified in Clause 4.1(c), setting out the terms and conditions of the transfer of the Developer's Area. Upon execution of the Conveyance Deed, the Developer shall also have the right to transfer the PDP Units constructed on the land parcels forming part of such Conveyance Deed, to the PDP Allottees by way of sale, lease or license in accordance with this Agreement and Applicable Laws.
- (c) Within 30 (thirty) days of the Phase II AHP Completion Date, the Developer and BDA shall execute a Conveyance Deed in the format set out in Part B of this volume of this Agreement for the balance Developer's Area (which is not covered in the Conveyance Deed executed pursuant to (b) above), setting out the terms and conditions of the transfer of the Developer's Area. Upon execution of the Conveyance Deed, the Developer shall also have the right to transfer the PDP Units constructed on the land parcels forming part of such Conveyance Deed, to the PDP Allottees by way of sale, lease or license in accordance with this Agreement and Applicable Laws.
- (d) On and from the PDP Commencement Date, the Developer shall have the exclusive right to receive and appropriate payments in respect of any PDP Units that are transferred by the

Developer to the PDP Allottees, subject to compliance with Applicable Laws (including specifically, the RERA).

- (e) Any transfer of ownership or leasehold rights over or possession of a PDP Unit to a PDP Allottee in contravention of this Clause 9.4 shall be deemed to be void and be liable to be set aside.

10. FINANCING ARRANGEMENTS AND SECURITY

10.1 Financing and Bankability Support

- (a) BDA and the Developer acknowledge that for the purposes of implementing the Project, the Developer may require Financial Assistance from the Lenders. To this end, BDA shall cooperate with the Developer to achieve Financial Close, including by signing any relevant documents and providing such consents and waivers as may be reasonably required by the Lenders.
- (b) In case of a Developer Event of Default, BDA acknowledges that the Lenders will have a right to step-in to this Agreement and remedy the Event of Default or substitute the Developer in accordance with Clause 16.2. BDA will suspend its right to step-in or terminate this Agreement until the expiry of the period available to the Lenders to exercise their step-in/substitution rights under Clause 16.2.
- (c) Notwithstanding sub-Clause (b) above, if the Developer makes a request in writing, BDA shall enter into an agreement with the Lenders and the Developer (**Lenders' Direct Agreement**), whereby:
 - (i) BDA shall consent to the assignment of the rights and benefits of the Developer under this Agreement as Security for the grant of Financial Assistance by the Lenders;
 - (ii) BDA shall grant the Lenders certain rights to remedy any default by the Developer by consultation or step-in by the Lenders or substitution of the Developer;
 - (iii) BDA shall agree that upon the occurrence of any Developer Event of Default, it will suspend its right to step-in, suspend or terminate this Agreement or take any actions for the winding-up of the Developer or the appointment of a receiver or administrator in respect of the Developer's business and assets, until the time period available to the Lenders to exercise their step-in or substitution rights has expired; and
 - (iv) BDA agrees that upon the occurrence of any Developer Event of Default, if the Lenders exercise their substitution rights and identify a suitable substitute for the Developer, BDA shall execute all necessary documents and provide all consents required to novate this Agreement in favour of the substitute developer. The Lenders shall ensure that the substitute developer meets the technical and financial criteria set out in the RFP.

10.2 Security Creation

- (a) The Developer shall be entitled to create Security over all of its right, title and interests in and to the Development Agreement and the Developer Escrow Agreement in favour of the Lenders for the purpose of obtaining Financial Assistance for the Project, provided that the creation of such Security will not result in any financial liability to BDA.
- (b) The Developer shall be entitled to include the Lenders as co-insured and/or additional loss payees in any of the insurances taken by the Developer in accordance with Clause 11.2 and/or grant Security over the proceeds of such insurance.
- (c) Except for any Security created by operation of law and any Security created pursuant to this Clause 10.2, the Developer shall not be entitled to create any other Security over the Development Agreement, the Developer Escrow Agreement or insurance policies taken by it in favour of any third Persons, without the prior written consent of BDA, which consent the BDA may deny in its sole discretion.
- (d) The Developer shall not be entitled to create any Security over the AHP Area or the Developer's Area or any part thereof (until execution of the Conveyance Deed), or any of the AHP Assets, whether in favour of the Lenders or any third Persons.

11. INDEMNITY AND INSURANCE

11.1 Indemnity

- (a) Subject to Clause 11.1(b) below, the Developer shall be responsible for, release, hold harmless and indemnify BDA and the BDA Related Parties on demand from and against, all suits, actions, claims, demands, losses, damages, costs or expenses (including costs of legal fees) or liability for:
 - (i) death or personal injury of any person;
 - (ii) loss of or damage to property;
 - (iii) non-compliance with Applicable Laws (including, specifically the RERA) or Applicable Permits;
 - (iv) non-compliance with defect rectification obligations under the RERA; and
 - (v) any third party losses or claims (including any losses or claims from the PDP Allottees),

which may arise out of, or in consequence of the performance or non-performance of the Developer's obligations under this Agreement.

- (b) The Developer shall not be responsible or be obliged to indemnify BDA for any injury, loss, damage, cost and expense caused by the negligence or Wilful Misconduct of BDA or BDA Related Parties or by the breach by BDA of its obligations under this Agreement.
- (c) BDA shall hold harmless and indemnify the Developer from and against, all suits, actions, claims, demands, losses, damages, costs or expenses (including costs of legal fees) or liability that the Developer may suffer due to any use of the Site to develop the AHP and PDP, which results in the breach of any environmental laws. BDA shall however, not be responsible for or be obliged to indemnify the Developer if any such injury, loss, damage, cost or expense is in any manner, attributable to the Developer or a Developer Related Party or is caused by the negligence or Wilful Misconduct of the Developer or a Developer Related Party.
- (d) BDA shall have the right, but not the obligation, to contest, defend, and litigate any claim, action, suit or proceeding by any third party alleged or asserted against it in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified under this Agreement, and the reasonable costs and expenses (including legal fees) thereof shall be subject to the indemnification obligations of the Developer.

If, however, the Developer acknowledges in writing its obligations to indemnify BDA in respect of loss to the full extent provided by this Agreement, the Developer shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding at its expense and through a counsel of its choice if it gives prompt notice of its intention to do so to BDA and reimburses BDA for the costs and expenses incurred by BDA prior to the assumption by the Developer of such defence. Neither Party shall settle or compromise any such claim, action, suit or proceeding without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, BDA shall have the right to employ its own counsel and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of BDA, as and when incurred.

11.2 Insurance

- (a) The Developer shall, obtain and maintain the policies of insurance set out in (b) below in the minimum coverage amounts and during the periods mentioned therein. In addition, the Developer shall obtain any additional coverage required by Applicable Laws and/or deemed necessary by the Developer or BDA in accordance with this Clause 11.2.
- (b) The Developer shall, obtain and maintain at its own cost, during the Term, insurance for such sums as may be prescribed under the Financing Documents and Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practices. The

Developer shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on BDA as a consequence of any act or omission of the Developer during the Term. The Developer shall ensure that each insurance policy requires the insurer to pay the proceeds of insurance into the Developer Escrow Account. The level of insurance to be maintained by the Developer after repayment of Lenders' dues in full shall be determined on the same principles as applicable for determining the level of insurance prior to such repayment of Lenders' dues, in accordance with the Financing Documents. Upon the expiry of the Term, all insurances which are valid as on that date, which are relevant for the AHP, will be assigned to the resident welfare association which is formed for the AHP.

- (c) The Developer shall, within 30 (thirty) days of the Effective Date, provide a notice to BDA, setting out information in respect of the insurances that it proposes to effect and maintain. Within 15 (fifteen) days of receipt of such notice, BDA may require the Developer to effect and maintain such other insurances as it may deem necessary, and in the event of any difference or disagreement relating to any such insurance, the provisions of Article 19 shall apply.
- (d) The Developer shall purchase insurance from reputable Indian and/or international companies licensed to operate in India, at competitive terms, and shall maintain the insurances on terms consistent with Good Industry Practices. Within 15 (fifteen) days of obtaining any insurance cover, the Developer shall furnish to BDA, notarised true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance.
- (e) Each insurance policy shall contain the following endorsements:
 - (i) BDA shall be additional insured under all policies maintained by the Developer in relation to the Site and the Project, against loss or damage;
 - (ii) the insurers shall waive all rights of subrogation against BDA;
 - (iii) the insurance policy may not be cancelled or materially changed by the insurer without giving 45 (forty five) days prior written notice, except in the case of non-payment, in which case it will be 10 (ten) days prior written notice to BDA; and
 - (iv) BDA shall not be responsible for payment of any insurance premium.
- (f) Any changes in the insurances which impact the Site, the AHP and/or the PDP will need the prior written consent of BDA, which consent shall not be unreasonably withheld.
- (g) The proceeds from all insurance claims, except life and injury, shall be deposited in the Developer Escrow Account and the Developer shall apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Documents.

- (h) If the Developer fails to procure or maintain any insurance required pursuant to this Clause 11.2 which is required to be obtained for the Site, the AHP and/or the PDP, BDA shall have the right to procure and maintain such insurance in accordance with the requirements of this Clause 11.2 and charge the full cost thereof to the Developer.

12. CHANGE IN LAW

12.1 Change in Law

The Developer may claim the benefit of and/or relief for a Change in Law event subject to and in accordance with this Article 12.

12.2 Consequences of Change in Law

- (a) The Developer shall not be allowed any relief and/or compensation for any Change in Law which is not a: (i) Qualifying Change in Law; or (ii) Fundamental Change in Law.
- (b) If a Qualifying Change in Law occurs, then the Developer shall notify BDA of such Qualifying Change in Law along with details of:
 - (i) any necessary change in the AHP Construction Schedule, the AHP Construction Plan or the AHP Requirements on the basis of which construction works are required to be undertaken for the AHP Assets;
 - (ii) any changes that are required to the terms of this Agreement to deal with such Qualifying Change in Law;
 - (iii) any extension of the Scheduled AHP Completion Date, to account for the delay, if any, resulting from the Qualifying Change in Law; and/or
 - (iv) any increase in Costs (other than any additional capital expenditure) that will result from the Qualifying Change in Law.
- (c) As soon as practicable after receipt of any notice from the Developer under Clause 12.2(b) above, the Parties shall discuss and agree on the consequences of the Qualifying Change in Law, as specified in the notice, and any way in which the Developer can mitigate the effect of the Qualifying Change in Law, including:
 - (i) providing evidence that the Developer has used reasonable endeavours (including, where practicable, the use of competitive quotes) to minimise any increase in costs or oblige the Subcontractors to minimise any increase in Costs;

- (ii) providing evidence as to how the Qualifying Change in Law has affected prices of materials used for and construction cost of residential and/or commercial projects which are similar to the Project; and
 - (iii) demonstrating to BDA that the Qualifying Change in Law is the direct cause of the increase in Costs or delay and the estimated increase in Costs, or extension of the AHP Construction Schedule could not reasonably be expected to be mitigated or recovered by the Developer.

- (d) If the Developer has complied with Clause 12.2 (c) above and the Parties mutually agree or it is determined in accordance with Article 19 that the Developer is required to incur additional capital expenditure or Costs due to a Qualifying Change in Law, then:
 - (i) the Developer shall be required to bear all Costs resulting from any one or more Qualifying Change in Law events, up to an aggregate of an amount equivalent to 1% (one percent) of the AHP Capital Cost (**Threshold Limit**); and
 - (ii) for any additional capital expenditure and costs resulting from the Qualifying Change in Law, which is in excess of the Threshold Limit, the Developer shall be entitled to be compensated for such additional capital expenditure and Costs, in excess of the Threshold Limit, by way of,
 - (A) an appropriate adjustment in the Concession Fee and the Payment Schedule, if required; or
 - (B) a lump-sum payment of an amount equivalent to the additional capital expenditure and Costs incurred by the Developer, over and above the Threshold Limit.

- (e) If the Parties have complied with Clause 12.2(c) above and the Parties mutually agree or it is determined in accordance with Article 19 that the Developer will suffer any delay as a result of the occurrence of a Qualifying Change in Law, then the Developer shall be entitled to an extension of time in accordance with Clause 6.9(b).

- (f) The quantum of relief (whether extension of time or compensation) that the Developer shall be entitled to under this Clause 12.2 shall be as agreed by the Parties or as determined in accordance with Article 19, provided always that:
 - (i) the Developer shall bear any increased cost or capital expenditure to the extent of the Threshold Limit; and
 - (ii) the Developer shall only be entitled to relief that is reasonable for such Qualifying Change in Law.

- (g) Notwithstanding anything to the contrary in this Agreement, the Developer shall not be entitled to any schedule relief and/or compensation or adjustment in the Grant due to a Qualifying Change in Law, if such Qualifying Change in Law becomes applicable as a result of a delay in the execution of the AHP for reasons other than a AHP Delay Event.
- (h) If a Fundamental Change in Law occurs, then either Party may notify the other giving details of its opinion on:
 - (i) the effects of such Fundamental Change in Law on the validity and enforceability of this Agreement or on the rights of the Developer under this Agreement; and
 - (ii) the ability of the Parties to re-negotiate the terms of this Agreement to mitigate the effects of such Fundamental Change in Law, while adhering to the original commercial and financial position of the Parties.

If the Parties are unable to agree on necessary amendments to the terms of this Agreement or the Fundamental Change in Law event is such that it cannot be mitigated with amendments to the terms of this Agreement, the Fundamental Change in Law event shall be treated as a Direct Political Force Majeure Event in accordance with Article 14.

13. CHANGE IN OWNERSHIP

13.1 Ownership Information

The Selected Bidder shall inform BDA that it has caused the Developer to be incorporated as a special purpose company to implement the Project and undertake other obligations of the Developer under and in accordance with this Agreement. The shareholding pattern of the Developer is as follows:

S. No	Name of the shareholder	No. of shares held	Nature of the shares [Equity/Preference]	Value of the shares held [in Rs.]	Shareholding [in %]
1.	Shyam Indus Power Solutions Private Limited	8,500	Equity	85,000	85%
2.	GSBA Builders Private Limited	1,500	Equity	15,000	15%

The Developer represents and warrants to BDA that as on the date of incorporation, the legal

and beneficial ownership of the Developer is as represented above and that no arrangements are in place that have resulted or may result in any sale, transfer or disposal of any legal, beneficial, equitable or other interest in any or all of the shares of the Developer.

13.2 Change in Ownership Restrictions

- (a) The Members of the Selected Bidder, being the shareholders of the Developer, represent and warrant that:
- (i) the Lead Member shall hold not less than 51% (fifty one per cent) of the total Capital and voting rights of the Developer until the AHP Completion Date, and at least 26% (twenty six per cent) of the total Capital and voting rights of the Developer until the expiry of the Term; and
 - (ii) any Member of the Consortium, other than the Lead Member, whose Technical Capacity or Financial Capacity is being assessed, shall hold at least 15% (fifteen per cent) of the total Capital and voting rights of the Developer until the AHP Completion Date.
- (b) If, at any time:
- (i) the Developer is likely to breach or breaches its representations and undertaking under this Article 13; or
 - (ii) if, any Associate, whose credentials were taken into consideration for determining Technical Capacity, ceases or will cease to be an Associate of the Member,

then, the Developer shall give BDA notice of such occurrence forthwith along with all relevant particulars of such occurrence and shall seek the approval of BDA for such occurrence. While BDA shall not unreasonably withhold or delay such approval, the decision of BDA will be final in this regard. If BDA is of the view that such occurrence is likely to affect the Technical Capacity or Financial Capacity of the Developer to undertake the Project, then BDA may treat such occurrence as a Developer Event of Default, in which case the consequences set out in Clause 16.2 shall follow.

14. FORCE MAJEURE

14.1. Force Majeure Events

- (a) A **Force Majeure Event** means any act, event or circumstance or a combination of acts, events or circumstances or the consequence(s) thereof occurring after the date of this Agreement, which is/are:
- (i) beyond the reasonable control of either Party (the **Affected Party**);

- (ii) such that the Affected Party is unable to overcome or prevent it despite exercise of due care and diligence;
- (iii) which does/do not result from the negligence of such Affected Party or the failure of such Affected Party to perform its obligations hereunder; and
- (iv) such that it/they has/have a Material Adverse Effect.

(b) A Force Majeure Event means the following events and circumstances to the extent that they satisfy the conditions set out in Clause 14.1(a):

(i) Non-Political Force Majeure Events

- (A) acts of God including storm, tempest, cyclone, hurricane, tsunami, flood, whirlwind, lightning, earthquake, washout, landslide, soil erosion, volcanic eruption, or extreme adverse weather or environmental conditions or actions of the elements;
- (B) fire or explosion caused by reasons not attributable to the Developer or any Developer Related Parties;
- (C) chemical or radioactive contamination or ionising radiation;
- (D) epidemic, plague or quarantine; and
- (E) accidents of navigation, air crash, shipwreck, train wreck or other similar failures of transportation of equipment and/or material necessary for construction of the AHP Assets or the PDP Units.

Non-Political Force Majeure Event shall not include the following conditions, except to the extent resulting from a Non-Political Force Majeure Event:

- (A) unavailability, late delivery or changes in cost of plant, machinery, equipment, materials or spare parts required for undertaking the Project;
- (B) a delay in the performance of any Subcontractor;
- (C) non-performance resulting from normal wear and tear; or
- (D) non-performance caused by the non-performing Party's (I) negligent or intentional acts, errors or omissions, (II) failure to comply with the Applicable Laws or Applicable Permits, or (III) breach of, or default under, this Agreement, as the case may be.

(ii) Indirect Political Force Majeure Events

- (A) hostilities (whether declared as war or not), riot, civil disturbance, revolution, rebellion, insurrection, act of terrorism, in each case involving the Gol or the GoO or occurring in Odisha;
- (B) invasion, armed conflict, coup d'etat, act of foreign enemy, blockade, embargo, revolution, insurgency, nuclear blast/explosion, politically motivated sabotage, religious strife or civil commotion, in each case involving the Gol or the GoO or occurring in Odisha;
- (C) strikes, lockout, boycotts or other industrial disputes which are not directly attributable to the actions of the Affected Party;
- (D) any orders issued by the relevant Government Authority, which require the Developer to suspend the construction of the Project in compliance with Applicable Laws, provided that, such orders are not attributable to the Developer's breach or violation of any Applicable Laws or Applicable Permits; and
- (E) delay or failure by the relevant Government Authorities in renewing or granting any Applicable Permit, despite the Developer having applied for such Applicable Permit expeditiously and complied with the requirements of Applicable Laws in making such application or the unlawful revocation of any Applicable Permit.

(iii) Direct Political Force Majeure Events

- (A) occurrence of a Fundamental Change in Law in accordance with Clause 12.2(h);
- (B) compulsory acquisition in national interest or expropriation of the Site (in accordance with the GoO Land Allotment Notification or otherwise); and
- (C) any order, notification or judgement issued or passed by any Government Authority which restricts the Developer from constructing the AHP Assets or the PDP Units as contemplated in this Agreement on the Site, unless such restriction is, in any manner, attributable to the Developer.

(c) Without prejudice to the provisions of Clauses 14.1(a) or 14.1(b) above,

- (i) any act, event or circumstance which primarily affects any of the Developer Related Parties associated with the Project shall constitute a Force Majeure Event hereunder if and to the extent that it is of a kind or character that, if it had directly affected the Developer, it would have come within the definition of Force Majeure Event under this Clause 14.1; and
- (ii) any act, event or circumstance which primarily affects any of the BDA Related Parties

shall constitute a Force Majeure Event hereunder if and to the extent that it is of a kind or character that, if it had directly affected BDA, it would have come within the definition of Force Majeure Event under this Clause 14.1.

- (d) If the Parties are unable to agree in good faith on the occurrence or existence of a Force Majeure Event, such dispute shall be finally settled in accordance with the dispute resolution procedure set out in Article 19, provided however that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Affected Party.

14.2. **Notice of Force Majeure Events**

- (a) The Affected Party shall give notice to the other Party in writing of the occurrence of any Force Majeure Event (the **FM Notice**), as soon as the same arises or as soon as reasonably practicable and in any event within 10 (ten) days after the Affected Party knew of its occurrence, the adverse effect it has or is likely to have on the performance of its obligations under this Agreement, the actions being taken and an estimate of the time period required to overcome the Force Majeure Event and/or its nature and effects (if it is possible to estimate the same).
- (b) If, following the issue of the FM Notice, the Affected Party receives or becomes aware of any further information relating to the Force Majeure Event, it shall submit such further information to the other Party as soon as reasonably practicable.
- (c) Any party claiming to have been affected by a Force Majeure Event shall not be entitled to any relief unless it has complied with all the provisions of this Clause 14.2.

14.3. **Excuse of Performance**

The Affected Party, to the extent rendered unable to perform its obligations or part of the obligation thereof under this Agreement as a consequence of the Force Majeure Event, shall be excused from performance of the affected obligations, provided that the period shall not exceed 120 (one hundred and twenty) days for a Non-Political Force Majeure Event, 90 (ninety) days for an Indirect Political Force Majeure Event and 60 (sixty) days for a Direct Political Force Majeure Event from the date of issuance of the FM Notice.

The Parties may mutually agree to extend the period of excuse from performance due to a Force Majeure Event.

Provided that:

- (a) the excuse from performance shall be of no greater scope and of no longer duration than is reasonably warranted by the Force Majeure Event; and
- (b) nothing contained herein shall absolve the Affected Party from any payment obligations accrued prior to the occurrence of the underlying Force Majeure Event.

14.4. No Liability for Other Losses

Save and except as expressly provided in this Agreement, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss relating to or arising out of the occurrence or existence of any Force Majeure Event or the exercise by it of any right pursuant to this Article 14.

14.5. Resumption of Performance

The Affected Party shall in consultation with the other Party, make all reasonable efforts to limit or mitigate the effects of a Force Majeure Event on the performance of its obligations under this Agreement. The Affected Party shall also make efforts to resume performance of its obligations under this Agreement as soon as possible and upon resumption, shall notify the other Party of the same in writing. The other Party shall afford all reasonable assistance to the Affected Party in this regard.

14.6. Termination due to Force Majeure Event

(a) Termination due to a Non-Political Force Majeure Event

If a Non-Political Force Majeure Event continues for a period of period of 120 (one hundred and twenty) days after the notification of a Non-Political Force Majeure Event or any extended period agreed in pursuance of Clause 14.3, either Party shall, after the expiry of the period of 120 (one hundred and twenty) day period or any other mutually extended period, be entitled to forthwith terminate this Agreement in its sole discretion by issuing a notice to that effect.

(b) Termination due to an Indirect Political Force Majeure Event

If an Indirect Political Force Majeure Event continues for a period of period of 90 (ninety) days after the notification of an Indirect Political Force Majeure Event or any extended period agreed in pursuance of Clause 14.3, either Party shall, after the expiry of the period of 90

(ninety) day period or any other mutually extended period, be entitled to forthwith terminate this Agreement in its sole discretion by issuing a notice to that effect.

(c) **Termination due to a Direct Political Force Majeure Event**

If a Direct Political Force Majeure Event continues for a period of period of 60 (sixty) days after the notification of a Direct Political Force Majeure Event or any extended period agreed in pursuance of Clause 14.3, either Party shall, after the expiry of the 60 (sixty) day period or any other mutually extended period, be entitled to forthwith terminate this Agreement in its sole discretion by issuing a notice to that effect.

All the other consequences of termination that are set out at Article 17 shall apply in case of termination of this Agreement due to a Force Majeure Event.

15. SUSPENSION OF CONSTRUCTION OF THE PROJECT

15.1. Suspension by the Developer

(a) ***Suspension of construction of the AHP Assets***

- (i) At any time during the AHP Construction Period, the Developer may suspend, whether partially or wholly, the construction of the EWS Units and Infrastructure Facilities, as the case may be, in any of the following events or circumstances:
 - (A) if after assessment, the Developer believes that the construction of the AHP Assets whether on account of the designs, use of construction materials or otherwise is or is likely to be unsafe and/or unfit for habitation, and that suspension is necessary and appropriate in the interest of health, safety and environment; or
 - (B) a Force Majeure Event has occurred in respect of the AHP (provided that the requirements of Article 14 have been complied with).
- (ii) The Developer acknowledges that suspension of the construction of the AHP Assets during the AHP Construction Period on account of the event listed at Clause 15.1(a)(i)(A) shall not entitle the Developer to an extension of the AHP Construction Schedule.
- (iii) Upon the occurrence of any of the events or circumstances set out in Clause 15.1(a), the Developer shall as soon as reasonably possible, and in no event later than 3 (three) days after such occurrence, notify the Independent Engineer and BDA of such occurrence.
- (iv) If, upon notification, the Independent Engineer and/or BDA does not concur with the

Developer on the nature of such occurrence, then the Developer shall be required to immediately re-commence the construction of the AHP Assets. Upon re-commencement of the construction, the Developer may initiate a Dispute regarding its claim for the occurrence of such an event or circumstance, and such Dispute shall be finally settled in accordance with the dispute resolution procedure set forth in Article 19, provided however that the burden of proof as to the occurrence or existence of such an event shall be upon the Developer.

(b) ***Mitigation, Resumption and Termination***

(i) The Developer shall make best endeavours to:

- (A) mitigate the effects of any of the events or circumstances listed at Clause 15.1(a)(i) above;
- (B) mitigate the effects and costs of suspension of construction of the AHP Assets; and
- (C) resume the construction of the AHP Assets within 24 (twenty four) hours of the ceasing of any of the events or circumstances listed at Clause 15.1(a)(i) or such longer period as may be reasonably required by the Developer to restore the AHP Assets, but in no case exceeding 3 (three) days, and notify the Independent Engineer and the BDA of the resumption of works.

(ii) Without prejudice to Clause 15.1(b)(i):

- (A) if suspension of the construction of the AHP Assets continues on account of the events or circumstances specified at Clause 15.1(a)(i)(A) for a continuous period of 60 (sixty) days, then such suspension shall amount to a Developer Event of Default in accordance with Clause 16.1; and
- (B) in respect of events set out Clause 15.1(a)(i)(B), the consequences set out in Clause 14.3 shall apply.

(c) ***Costs of Suspension and Resumption***

- (i) Where the suspension of construction of the AHP Assets is caused due to an event set out in Clause 15.1(a)(i)(A), the Developer shall bear its own costs for suspending and resuming the construction of the AHP Assets.
- (ii) Where the suspension of construction of the AHP is caused due to an Indirect Political Force Majeure Event or a Direct Political Force Majeure Event, the reasonable and proper Costs incurred by the Developer in suspending and resuming the construction of the AHP Assets shall be borne entirely by BDA. However, such payment will be made by BDA only

after the relevant Indirect Political Force Majeure Event or Direct Political Force Majeure Event ceases to exist and the Developer has resumed construction of the AHP Assets, as the case may be. It is clarified that if the relevant Indirect Political Force Majeure Event or Direct Political Force Majeure Event continues beyond the time period specified in Clause 14.6, and results in a termination of this Agreement, then the Developer shall only be entitled to payment of the Termination Compensation specified in Clause 18.3(b) or Clause 18.3(c), as the case may be.

It is clarified that the Developer will not be entitled to any payment under this Clause 15.1(c) (ii) in respect of any Non-Political Force Majeure Event or in respect of any PDP Units.

15.2. **Suspension by BDA**

- (a) At any time during the AHP Construction Period, BDA may suspend, whether partially or wholly, the construction of the AHP Assets, in any of the following events or circumstances:
 - (i) upon the occurrence of an Emergency; or
 - (ii) if the Developer fails to comply with Applicable Laws, Applicable Permits, the AHP Construction Plan, the EHS Manual or otherwise fails to perform its obligations in accordance with this Agreement and the AHP Requirements.

In case of any suspension by BDA upon the occurrence of an Emergency, the Developer shall as soon as reasonably possible, and in no event later than 3 (three) days after such occurrence, notify the Independent Engineer and BDA of such occurrence and the Developer shall make best endeavours to mitigate the effects of the Emergency (including costs on suspension of construction of the AHP Assets). Notwithstanding anything to the contrary contained in this Agreement, if BDA, in its sole assessment, is not satisfied with the steps being taken by the Developer to mitigate the effects of the Emergency on the AHP Assets, BDA shall have the right to step-in to this Agreement and undertake necessary measures to mitigate the effect of the Emergency at the cost and risk of the Developer.

- (b) In case of suspension of the construction of the AHP Assets pursuant to Clause 15.2(a)(ii) or Clause 15.2(a)(i) (to the extent such Emergency is attributable to the Developer), all costs and expenses in connection with suspension and resumption of construction of the AHP Assets shall be borne by the Developer. If such suspension of the AHP Assets continues for a period exceeding 60 (sixty) days, then such suspension shall constitute a Developer Event of Default in accordance with Clause 16.1.

16. EVENTS OF DEFAULT AND TERMINATION

16.1. Developer's Events of Default

A “**Developer Event of Default**” means any of the following events arising out of any acts or omissions of the Developer and which have not occurred solely as a consequence of a BDA Event of Default, a Qualifying Change in Law, a Fundamental Change in Law or any other Force Majeure Event, and where the Developer has failed to remedy the defects within any specified time period (to the extent any time period is provided):

- (a) revocation of registration of the Project under the RERA;
- (b) any Abandonment by the Developer of the AHP;
- (c) failure of the Developer to complete the construction of: (i) the Phase I AHP Assets within the Scheduled Phase I AHP Completion Date; or (ii) the Phase II AHP Assets within the Scheduled AHP Completion Date, in each case, including any relevant Grace Period;
- (d) deleted;
- (e) suspension of construction of the AHP Assets pursuant to Clause 15.1(a)(i)(A) or Clause 15.2(b) for a continuous period exceeding 60 (sixty) days;
- (f) a breach by the Developer of its obligations under this Agreement which has a Material Adverse Effect on the ability of the Developer to construct the AHP Assets and such breach, if capable of being remedied, is not remedied within 30 (thirty) days of issuance of written notice from BDA specifying such breach and requiring the Developer to remedy the same;
- (g) any representation made or warranties given by the Developer under this Agreement being found to be false or misleading in any material respect;
- (h) failure of the Developer to submit and maintain a valid First Performance Security or a Second Performance Security in accordance with the terms of this Agreement;
- (i) breach by the Developer of its obligations under Article 4 (*Right, Title and Interest over the Site*), 10.2 (*Security Creation*) or 21.12 (*Assignment*);
- (j) breach of the Developer's obligations under Article 13 (*Change in Ownership*);
- (k) failure of the Developer to obtain, renew and maintain any Applicable Permit;
- (l) failure of the Developer to comply with any Applicable Law (including specifically the RERA and the Housing for All Policy);
- (m) failure of the Developer to obtain and maintain insurance cover in accordance with Clause 11.2;
- (n) failure of the Developer or the Subcontractors to comply with the EHS Plan in accordance with Clause 6.7;

- (o) the Developer entering into liquidation or similar state or if any order is made for the compulsory winding up or dissolution of the Developer or if the Developer becomes unable to pay its debts or the appointment of a receiver or administrator in respect of the Developer, its business and assets or any re-structuring, re-organisation, amalgamation, arrangement or compromise affecting the Developer's ability to fulfil its obligations under this Agreement or that otherwise has or may have a Material Adverse Effect; or
- (p) the breach of the Developer's obligations under or the occurrence of an 'event of default' or analogous event under the Financing Documents or the Developer Escrow Agreement, or termination of the Financing Documents, or the Developer Escrow Agreement (for reasons attributable to the Developer).

16.2. **Notice of Intent to Terminate upon occurrence of a Developer Event of Default**

- (a) Without prejudice to the other provisions of this Agreement, upon the occurrence of a Developer Event of Default, BDA may initiate termination by delivering a notice to the Developer stating its intention to terminate this Agreement (**Notice of Intent to Terminate**). The Notice of Intent to Terminate shall specify with reasonable detail the grounds on which termination is sought. BDA shall also send a copy of the Notice of Intent to Terminate to the Lenders, if any, to enable the Lenders to exercise their step-in and/or substitution rights.
- (b) Within 30 (thirty) days from the date of the Notice of Intent to Terminate, the Lenders shall have a right to step-in to this Agreement and notify BDA of their intent to remedy the Developer Event of Default or alternatively, notify BDA of their intent to substitute the Developer. In case the Lenders intend to exercise their substitution rights, the Lenders will be required to submit a proposal to BDA, which shall contain the particulars and information of the substitute developer, and evidence to demonstrate that the substitute developer meets the technical and financial criteria set out in the RFP. Within 15 (fifteen) days of receipt of a proposal from the Lenders, BDA shall either communicate its approval of the substitute developer or reject the substitute developer. If BDA approves the substitute developer, BDA and the Lenders shall take all necessary steps to amend this Agreement and any other Project documents to enable the substitute developer to perform the obligations of the 'Developer' for undertaking the Project. If BDA does not convey its approval or rejection of the substitute developer within 15 (fifteen) days of receipt of a proposal from the Lenders, then, the time period set out in sub-Clause (d) below shall be extended on a day-for-day basis till such time that BDA conveys its approval or rejection of the proposal. Any approval by BDA of the substitute developer shall not be unreasonably withheld.

- (c) If, within 30 (thirty) days from the date of the Notice of Intent to Terminate or such longer period as may be mutually agreed between BDA and the Lenders:
 - (i) the Developer rectifies or remedies the Event of Default to the satisfaction of BDA or BDA is satisfied with the steps taken or proposed to be taken by the Developer or the Event of Default has ceased to exist; or
 - (ii) the Lenders have exercised their rights to step-in and notified their intent to remedy the Developer Event of Default or notified their intent to substitute the defaulting Developer in accordance with Clause 16.2(b),

then, BDA shall withdraw the Notice of Intent to Terminate, in writing, with a copy to the Lenders. In case of substitution by the Lenders, the procedure set out in Clause 16.2(b) above shall be followed.

- (d) If, within 60 (sixty) days from the date of the Notice of Intent to Terminate or such longer period as may be mutually agreed between BDA and the Lenders:
 - (i) the breach has not been remedied or the Developer has not taken steps or proposed to take steps to remedy the Event of Default to the satisfaction of BDA; and
 - (ii) the Lenders have not: (A) exercised their rights to step-in; (B) notified BDA of their intent to remedy the Developer Event of Default; or (C) notified their intent to substitute the defaulting Developer or if BDA has not approved the substitute developer proposed by the Lenders in accordance with Clause 16.2(b) above,

then, the consequences set out at Article 17 shall apply.

- (e) Notwithstanding anything contained in this Clause 16.2, during the subsistence of a Developer Event of Default, the Parties shall continue to perform such of their respective obligations under this Agreement, which are capable of being performed with the object, as far as possible, for ensuring timely construction of the Project in accordance with this Agreement.

16.3. **BDA's Events of Default**

A "**BDA Event of Default**" means any of the following events, unless such an event has occurred as a consequence of a Developer Event of Default or a Force Majeure Event and where BDA has failed to remedy the defects within any specified time period (to the extent any time period is

provided):

- (a) a failure by BDA to pay any undisputed amounts due and payable for 90 (ninety) consecutive days, notwithstanding service of a formal written demand by the Developer;
- (b) a breach by BDA of Clause 21.12(b) (*Assignment*);
- (c) a breach by BDA of its obligations under this Agreement which has a Material Adverse Effect on the ability of the Developer to construct the AHP Assets and such breach, if capable of being remedied, is not remedied within 30 (thirty) days of a notice being given by the Developer; or
- (d) any representation made or warranties given by BDA under this Agreement being found to be false or misleading in any material respect.

16.4. Notice of Intent to Terminate upon occurrence of a BDA Event of Default

- (a) Without prejudice to the other provisions of this Agreement, upon the occurrence of a BDA Event of Default, the Developer may initiate termination of this Agreement by delivering a Notice of Intent to Terminate, which shall specify with reasonable detail the grounds on which termination is sought.
- (b) If, within 30 (thirty) days from the date of the Notice of Intent to Terminate, BDA rectifies or remedies the BDA Event of Default to the satisfaction of the Developer or the Developer is satisfied with steps taken or proposed to be taken by BDA or the BDA Event of Default has ceased to exist, the Developer shall withdraw the Notice of Intent to Terminate.
- (c) If, within 30 (thirty) days from the date of the Notice of Intent to Terminate, the BDA Event of Default has not been remedied or BDA has not taken steps or proposed to take steps to remedy the BDA Event of Default to the satisfaction of the Developer, then:
 - (i) if such BDA Event of Default has occurred prior to the PDP Commencement Date, the consequences set out in Clause 17.1 shall apply;
 - (ii) if such BDA Event of Default has occurred after the PDP Commencement Date, the consequences set out in Clause 17.2 shall apply and the Developer may terminate the AHP by issuing a notice to BDA. It is clarified that a termination of the AHP pursuant to this Clause 16.4(c)(ii) shall not affect the rights of the Developer to undertake the PDP.
- (d) Notwithstanding anything contained in this Clause 16.4, during the subsistence of a BDA Event of Default, the Parties shall continue to perform such of their respective obligations under this Agreement, which are capable of being performed with the object, as far as possible, for ensuring timely construction of the AHP Assets and the PDP Units in accordance with this Agreement.

17. CONSEQUENCES OF TERMINATION

17.1 Consequences of termination of the Agreement prior to PDP Commencement Date

In case of termination of the Agreement prior to the PDP Commencement Date:

- (a) the Developer shall not commence any PDP;
- (b) the Developer shall cease all work in relation to construction of the AHP Assets;
- (c) the Developer shall take all necessary steps to safeguard and protect the AHP Assets (in whatever stage of completion) and all other equipment, materials and goods on the AHP Area;
- (d) BDA shall (or shall require the Independent Engineer to) assess the cost of the construction undertaken by the Developer in relation to the AHP Assets as on the date of the Notice of Intent to Terminate and based on such assessment, pay the Termination Compensation in accordance with Clause 18.1(a), Clause 18.1(b) or Clause 18.3, as the case may be. Alternatively, BDA shall have the right (but no obligation) to appoint an independent valuer/auditor to determine such costs;
- (e) in case of termination of this Agreement due to a BDA Event of Default, BDA shall be required to return the Second Performance Security within 30 (thirty) days from the date of the Notice of Intent to Terminate;
- (f) the Developer shall hand over peaceful possession of the Site and the AHP Assets on an “as is where is” basis free of all Encumbrances and in a clean and safe condition, after removal of any wreckage, rubbish and debris at the Site;
- (g) the Developer shall deliver to BDA all designs and drawings, “as-built” records and other documents prepared by the Developer in connection with the AHP;
- (h) should BDA so require and to the extent legally possible, the Developer shall transfer all workmen and other personnel engaged by the Developer or the Subcontractors at the AHP Area for executing the AHP;
- (i) should BDA so require and to the extent legally possible, the Developer shall assign or novate to BDA any Subcontracts that BDA elects to take over;
- (j) the Developer shall remove all of the Developer’s equipment and other movable assets from the AHP Area that are not to be transferred to BDA in accordance with this Agreement; and
- (k) the Developer shall transfer to BDA all Applicable Permits for the AHP Assets, which BDA may require and which can be legally transferred.

17.2 Consequences of termination of the Project after the PDP Commencement Date

In case of termination of the Agreement after the PDP Commencement Date, the following consequences shall apply:

(a) ***In case of a termination due to a BDA Event of Default.***

- (i) BDA shall (or shall require the Independent Engineer to) assess the cost of the construction undertaken by the Developer in relation to the AHP Assets as on the date of the Notice of Intent to Terminate. Alternatively, BDA shall have the right to appoint an independent valuer/auditor to determine such costs;
- (ii) the Developer shall cease all work in relation to construction of the AHP Assets;
- (iii) the Developer shall take all necessary steps to safeguard and protect the AHP Assets (in whatever stage of completion) and all other equipment, materials and goods on the AHP Area;
- (iv) the Second Performance Security shall be returned to the Developer within 30 (thirty) days from the date of the Notice of Intent to Terminate;
- (v) the Developer shall hand over peaceful possession of the AHP Area and the AHP Assets on an “as is where is” basis free of all Encumbrances and in a clean and safe condition, after removal of any wreckage, rubbish and debris at the AHP Area;
- (vi) the Developer shall deliver to BDA all designs and drawings, “as-built” records and other documents prepared by the Developer in connection with the AHP;
- (vii) should BDA so require, the Developer shall transfer all workmen and other personnel engaged by the Developer or the Subcontractors at the AHP Area for executing the AHP;
- (viii) should BDA so require and to the extent legally possible, the Developer shall assign or novate to BDA any Subcontracts for the AHP that BDA elects to take over;
- (ix) the Developer shall remove all of the Developer’s equipment and other movable assets from the AHP Area that are not to be transferred to BDA in accordance with this Agreement; and
- (x) the Developer shall transfer to BDA all Applicable Permits for the AHP Assets, which BDA or the replacement contractor may require and which can be legally transferred, provided that all costs incurred in this regard shall be borne by BDA; and
- (xi) BDA shall execute a Conveyance Deed for the entire Developer’s Area (or the remaining Developer’s Area, as the case may be) on payment of the Termination Compensation, if any, by the Developer, as set out in Clause 18.2(a) below.

(b) ***In case of a termination due to a Developer Event of Default.***

In case of a termination due to a Developer Event of Default, BDA shall have the right to, in its sole discretion, to appoint a Replacement EPC Contractor to complete the AHP Assets at the cost and risk of the Developer, and communicate its decision to the Developer by a notice in writing (**Termination Notice**), within 30 (thirty) days of the expiry of the cure period available to the Developer and the Lenders under Clause 16.2.

On receipt issuance of the Termination Notice:

- (i) the Developer shall cease all work in relation to construction of the AHP Assets and the PDP;
- (ii) the Developer shall take all necessary steps to safeguard and protect the AHP Assets (in whatever stage of completion) and all other equipment, materials and goods on the AHP Area;
- (iii) the Developer shall hand over to the Replacement EPC Contractor peaceful possession of the AHP Area;
- (iv) the Developer shall hand over to the Replacement EPC Contractor all designs and drawings, "as-built" records, and all other documents, agreements, communication received or prepared by the Developer in connection with the AHP, and shall provide all other support required by the Replacement EPC Contractor;
- (v) the Developer shall remove all workmen and other personnel engaged by it at the AHP Area, unless instructed otherwise by BDA; and
- (vi) BDA shall have a right to suspend the Developer's rights to undertake the PDP on the Developer's Area (including the right to market or allot the PDP Units) till such time that the Developer has paid BDA the Termination Compensation set out in Clause 18.2(b) below, and will resume thereafter.

17.3 Consequences of termination due to a Force Majeure Event:

In case of termination of the Agreement due to a Force Majeure Event, the following consequences shall apply:

- (a) the Site shall revert to BDA or the GoO, as the case may be, along with all construction on the Site on an "as is where is" basis;
- (b) the Developer shall remove all equipment and other movable assets from the Site;
- (c) the Developer shall transfer all workmen and other personnel engaged by the Developer or the Subcontractors at the Site for executing the Project;
- (d) the Developer shall terminate all Subcontracts executed by it for implementing the Project;

- (e) the Developer shall cancel the allotment letters issued to the PDP Allottees in respect of the PDP Units and pay compensation to the PDP Allottees (including specifically, any compensation liable to be paid as per the RERA);
- (f) BDA shall be required to return the Second Performance Security within 30 (thirty) days from the date of the notice of termination under Clause 14.6; and
- (g) in case of termination due to an Indirect Political Force Majeure Event or a Direct Political Force Majeure Event, BDA shall (or shall require the Independent Engineer to) assess the cost of the construction undertaken by the Developer in relation to the AHP Assets and if applicable, the PDP Units as on the date of the Notice of Intent to Terminate and based on such assessment, pay the Termination Compensation in accordance with Clause 18.3(b) or Clause 18.3(c), as the case may be. Alternatively, BDA shall have the right to appoint an independent valuer/auditor to determine such costs.

17.4 **Accrued Rights and Liabilities**

- (a) Notwithstanding anything to the contrary contained in this Agreement, any termination of this Agreement shall be without prejudice to accrued rights of either Party, including its right to claim and recover damages and other rights and remedies which it may have in law or contract. All accrued rights and obligations of either Party under this Agreement, including without limitation, all rights and obligations with respect to Termination Compensation, shall survive the termination of this Agreement, to the extent such survival is necessary for giving effect to such rights and obligations.
- (b) Nothing in Article 16 or this Article 17 shall prevent or restrict either Party to seek injunctive relief or a decree of specific performance or other discretionary remedies of the court.

18. **TERMINATION COMPENSATION**

18.1 **Termination Compensation for termination prior to the PDP Commencement Date**

(a) ***For a BDA Event of Default***

If the Agreement is terminated prior to the PDP Commencement Date for a BDA Event of Default, BDA shall be liable to pay to the Developer the aggregate of:

- (i) lower of: (A) actual cost of construction of the AHP Assets as on date of the issuance of the Notice of Intent to Terminate, as certified by the Independent Engineer; and (B) the AHP Capital Cost;

- (ii) Project Development Expenses;
- (iii) Project Development Fee; and
- (iv) Deleted;

LESS

- (x) any amounts due and payable to BDA from the Developer under this Agreement ; and
- (y) Grant received by the Developer as on date of the issuance of the Notice of Intent to Terminate.

(b) ***For a Developer Event of Default***

If the Agreement is terminated prior to the PDP Commencement Date for a Developer Event of Default, BDA shall pay to the Developer, an amount equal to:

- (i) the lower of: (A) 70% (seventy per cent) of the actual cost of construction of the AHP Assets as on date of the issuance of the Notice of Intent to Terminate, as certified by the Independent Engineer; and (B) 70% (seventy per cent) of the AHP Capital Cost;

LESS

- (ii) any compensation payable by BDA to the EWS Allottees under RERA for failure or delay in giving possession of the EWS Units; and
- (iii) Grant paid by BDA as on date of the issuance of the Notice of Intent to Terminate..

18.2 Termination Compensation for termination post the PDP Commencement Date

(a) ***For a BDA Event of Default***

- (i) If the Agreement is terminated for a BDA Event of Default, and the aggregate of the actual cost of construction of the AHP Assets, the Project Development Expenses and the Project Development Fees, as on date of the issuance of the Notice of Intent to Terminate, as certified by the Independent Engineer is less than the Derived Price of the Developer's Area, then, the Developer shall pay to BDA

- (A) the Derived Price of the Developer's Area;

LESS

- (B) Project Development Expenses;
- (C) Project Development Fees; and
- (D) the actual cost of construction of the AHP Assets as on date of the issuance of the Notice of Intent to Terminate, as certified by the Independent Engineer.

(ii) If the Agreement is terminated for a BDA Event of Default, and aggregate of the actual cost of construction of the AHP Assets as on date of the issuance of the Notice of Intent to Terminate, as certified by the Independent Engineer, and the Project Development Expenses and Project Development Fees, is higher than or equal to the Derived Price of the Developer's Area, the Developer will not be liable to pay any Termination Compensation to the BDA.

(b) ***For a Developer Event of Default***

If BDA appoints a Replacement EPC Contractor to undertake and complete the AHP, the Developer shall be liable to pay to the BDA, the aggregate of:

- (A) the cost quoted by the Replacement EPC Contractor for completing the construction of the AHP Assets;
- (B) 30% (thirty percent) of the cost of construction set out in (A) above, towards BDA's risk cover and administrative expenses in appointing a Replacement EPC Contractor to complete the construction of the AHP Assets;
- (C) deleted;
- (D) any other amounts due and payable by the Developer to BDA under this Agreement;
- (E) any compensation payable by BDA to the EWS Allottees under RERA for failure or delay in giving possession of the EWS Units;

LESS

- (X) Grant not received by the Developer as on date of the issuance of the Notice of Intent to Terminate;
- (Y) any other amounts due and payable by BDA to the Developer under this Agreement.

It is clarified that in case of termination post the PDP Commencement Date, BDA shall not be liable to the Developer for any losses, damages, costs and expenses suffered or incurred by the Developer or for any claims raised, proceedings initiated or actions taken against the Developer or the BDA by the PDP Allottees due to cancellation of the allotment of the PDP

Units or otherwise. The Developer and/or the Selected Bidder shall be required to indemnify BDA for any such claims raised, proceedings initiated or actions taken against the BDA by the PDP Allottees on termination of this Agreement.

18.3 Termination Compensation for termination due to Force Majeure Events

(a) ***Non-Political Force Majeure Event***

In the event of a termination of this Agreement as a result of a Non-Political Force Majeure Event in accordance with Clause 14.6(a), the Parties agree that the Developer shall be entitled to retain all proceeds received under any insurance policies maintained by it in relation to the Site, the AHP and PDP (subject to the Lenders' rights in respect of such insurance proceeds) and the Developer shall not be entitled to any payment, including any Termination Compensation provided that the Developer shall be entitled to a refund of the Project Development Expenses and the Project Development Fee. The Developer shall however, be required to refund the quantum of the Grant paid by BDA to the Developer as on the date of issuance of the notice of termination.

(b) ***Indirect Political Force Majeure***

- (i) If the Agreement is terminated due to an Indirect Political Force Majeure Event, prior to the AHP Completion Date, BDA shall be liable to pay to the Developer: (A) the lower of: (I) actual cost of construction of the AHP Assets as on date of the issuance of the Notice of Intent to Terminate, as certified by the Independent Engineer; and (II) the AHP Capital Cost; (B) Project Development Fee; and (C) Project Development Expenses.
- (ii) If the Agreement is terminated due to an Indirect Political Force Majeure Event, post the AHP Completion Date, the Developer shall not be entitled to any Termination Compensation. The Developer shall however be entitled to a refund of the Project Development Fee and the Project Development Expenses.

(c) ***Direct Political Force Majeure***

- (i) If the Agreement is terminated due to a Direct Political Force Majeure Event prior to the PDP Commencement Date, BDA shall be liable to pay to the Developer: (A) the lower of: (I) actual cost of construction of the AHP Area Assets as on date of the issuance of the Notice of Intent to Terminate, as certified by the Independent

Engineer; and (II) the AHP Capital Cost; (B) Project Development Fee; and (C) Project Development Expenses.

- (ii) If the Agreement is terminated due to a Direct Political Force Majeure Event post the PDP Commencement Date, BDA shall be liable to pay to the Developer, the aggregate of:
 - (A) the lower of: (1) actual cost of construction of the AHP Assets as on date of the issuance of the Notice of Intent to Terminate, as certified by the Independent Engineer; and (2) the AHP Capital Cost;
 - (B) 20% (twenty percent) of the amount under (A) above as overhead expenses;
 - (C) the actual cost of construction of the PDP Units as on date of the issuance of the Notice of Intent to Terminate, as certified by the Independent Engineer or any independent valuer/auditor appointed by BDA;
 - (D) Project Development Fee; and
 - (E) Project Development Expenses.

18.4 It is clarified that in case of termination due to a BDA Event of Default or a Force Majeure Event, the Developer shall not be liable to any EWS Allottee for any delay in handover of possession of the EWS Units or cancellation of the allotment and BDA shall indemnify the Developer for claims raised, proceedings initiated or actions taken against the Developer by virtue of being a Promoter under the RERA.

18.5 For all amounts payable by the Developer under this Article 18, BDA may invoke the Second Performance Security and/or the Parent Company Guarantee to recover the amounts due from the Developer. If the Second Performance Security or the Parent Company Guarantee is inadequate or not valid, BDA shall have a right to recover the balance from the Developer as a debt due.

18.6 All Termination Compensation required to be paid by the Developer to BDA, shall be paid within 30 (thirty) days of the assessment of such Termination Compensation and shall be deposited in the account designated by BDA.

18.7 All Termination Compensation required to be paid by BDA to the Developer shall be paid within 30 (thirty) days of the assessment of such Termination Compensation and shall be deposited in the Developer Escrow Account and dealt with in accordance with the Developer Escrow Agreement.

18.8 **Full and Final Settlement**

Notwithstanding anything to the contrary elsewhere in this Agreement, any Termination Compensation determined pursuant to this Article 18 shall, once paid, be in full and final settlement of any claim, demand and/or proceedings of the Developer against BDA, in relation to any termination of this Agreement and the Developer shall be excluded from all other rights and remedies in respect of such termination.

19. DISPUTE RESOLUTION

19.1 Amicable Settlement

In the event of any dispute, controversy or difference between BDA and the Developer arising out of or relating to this Agreement (including a dispute relating to the validity or existence of this Agreement and any non-contractual obligations arising out of or in connection with this Agreement) (a **Dispute**), the representatives of the Parties shall, within 15 (fifteen) days of service of a written notice from either Party to the other Party (the **Dispute Notice**) hold a meeting (the **Dispute Meeting**) in an effort to resolve the Dispute in good faith. In the absence of any agreement to the contrary, the Dispute Meeting shall be held at the office of BDA in Bhubaneswar.

19.2 Dispute Resolution by Arbitration

(a) *Arbitration Procedure*

If a Dispute is not resolved within 30 (thirty) days after the service of a Dispute Notice, whether or not a Dispute Meeting has been held, any party to the Dispute shall be entitled to refer the Dispute to arbitration to be finally resolved in the manner set out in this Clause 19.2 by issuing a notice to the other Party (**Notice of Arbitration**). This Agreement and the rights and obligations of the Parties shall remain in full force and effect pending the award in such arbitration proceeding.

(b) *Appointment of Arbitrator*

If a Dispute is referred to arbitration by either Party, such Dispute shall be resolved by a sole arbitrator to be appointed by mutual agreement of the Parties. If the Parties fail to appoint an arbitrator within 30 (thirty) days after service of the Notice of Arbitration, such arbitrator shall be appointed in accordance with the Arbitration Act.

(c) ***Venue, Language and Rules of Arbitration***

The venue of the arbitration shall be Bhubaneswar and the language of the arbitration shall be English. The arbitration shall be conducted in accordance with the Arbitration Act.

(d) ***Award and Apportionment of costs***

- (i) The arbitration award of the arbitrator(s) shall be final and binding on the Parties and shall be enforceable in accordance with its terms. The arbitrator(s) shall state reasons for its findings in writing.
- (ii) The costs of arbitration and the manner of bearing such costs shall be determined by the arbitrator(s).

(e) ***Law Governing the Arbitration***

The arbitration shall be governed by the laws of India.

19.3 **Survival**

The provisions contained in this Article 19 shall survive the termination of this Agreement.

20. REPRESENTATIONS AND WARRANTIES

20.1 **Mutual Representations and Warranties**

Each Party represents and warrants to the other Party that:

- (a) it has full power and authority to execute, deliver and perform its obligations under this Agreement, the Conveyance Deed(s), the Developer Escrow Agreement and any other agreements required to be entered into for transferring rights in the AHP Assets and/or the PDP Units and/or the Site;
- (b) it has taken all necessary action to authorise the execution, delivery and performance of this Agreement, the Conveyance Deed(s), the Developer Escrow Agreement and any other agreements required to be entered into for transferring rights in the AHP Assets and/or the PDP Units and/or the Site; and

- (c) there are no actions, suits or proceedings pending or to its best knowledge, threatened against or affecting it before any court, administrative body or arbitral tribunal which might materially and adversely affect its ability to meet or perform any of its obligations under this Agreement.

20.2 **Developer's Representations and Warranties**

The Developer represents and warrants to BDA that:

- (a) it is duly organised, validly existing and of good standing under the laws of India;
- (b) it has the financial standing and capacity to design, finance, construct and complete the AHP Assets and the PDP Units in accordance with the terms of this Agreement;
- (c) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (d) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (e) the information furnished in the proposal of the Selected Bidder, and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
- (f) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under any of the terms of its memorandum and articles of association/charter documents or any Applicable Laws or Applicable Permits or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (g) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of the GoI or the GoO which may result in any Material Adverse Effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- (h) it has complied with all Applicable Laws and Applicable Permits in all material respects 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 a Material Adverse Effect on its ability to perform its obligations under this Agreement; and
- (i) no representation or warranty by it contained in this Agreement or in any other document furnished by it to BDA or to the GoI or the GoO in relation to Applicable Permits contains or

will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty.

20.3 **BDA's Representations and Warranties**

BDA represents and warrants to the Developer that:

- (a) it is duly organised, validly existing and in good standing under the laws of India;
- (b) it has the financial standing and capacity to perform its obligations under the Agreement;
- (c) this Agreement constitutes legal, valid and binding obligations enforceable against it in accordance with the terms hereof;
- (d) 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 the GoI or the GoO, which may result in any Material Adverse Effect on its ability to perform its obligations under this Agreement;
- (e) it has complied with all Applicable Laws and Applicable Permits in all material respects;
- (f) other than for the creation of any Security as may be permitted in this Agreement, the Site is not subject to any mortgage, lien, charge or any other Encumbrance;
- (g) it does not have any liability for any Taxes, or any interest or penalty in respect thereof, of any nature, that may constitute a lien against the Site; and
- (h) all information provided by it in the RFP, this Agreement or the AHP Requirements in connection with the Project is, to the best of its knowledge and belief, true and accurate in all material respects.

20.4 **Acknowledgement**

- (a) The Parties acknowledge and confirm that the Parties have relied upon and have entered into this Agreement on the basis of the representations, warranties and undertakings made by the Parties hereunder.
- (b) If any occurrence or circumstance comes to the attention of a Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any obligation of a party under this Agreement.
- (c) Neither BDA nor any of its agents or employees or BDA Related Parties shall be liable to the Developer in contract, tort, including negligence or breach of statutory duty, statute or otherwise as a result of:

- (i) any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in the information relating to the Project disclosed by BDA to the Developer; or
- (ii) any failure to make available to the Developer any materials, documents, plans or other information relating to the Project.

21. MISCELLANEOUS

21.1 Survival

- (a) Any cause or action which may have occurred in favour of either Party or any right which is vested in either Party under any of the provisions of this Agreement as a result of any act, omission, deed, matter or thing done or omitted to be done by either Party before the expiry of the term of the Agreement by efflux of time or otherwise in accordance with this Agreement, shall survive the expiry of the Agreement.
- (b) The provisions of this Agreement, to the fullest extent necessary to give effect thereto, survive the term of the Agreement or the termination of this Agreement and the obligations of Parties to be performed or discharged following the termination of this Agreement, shall accordingly be performed or discharged by the Parties.

21.2 Entire Agreement

The Parties hereto acknowledge, confirm and undertake that this Agreement constitutes the entire understanding between the Parties regarding the development of the Project and supersedes all previous written or oral representations and/or arrangements regarding the Project.

21.3 Non-exhaustive Remedies

- (a) Save and except as provided in this Agreement, the remedies available to the Developer under this Agreement are not exhaustive and the Developer and third parties shall be entitled to all other rights and remedies and to take all actions in law and in equity in addition to the remedies provided for herein.

- (b) Save and except as provided in this Agreement, the exercise of any rights by either Party under this Agreement shall not preclude such Party from availing of any other rights or remedies that may be available to it under this Agreement or any other agreement in relation to the Project. All remedies available to the Parties shall be cumulative and the exercise or failure thereof of one or more remedies by any Party shall not limit or preclude the exercise of or constitute a waiver of any other remedies by such Party.

21.4 Notices

- (a) Any notice or request in reference to this Agreement shall be written in English language and shall be sent by registered airmail or facsimile and shall be directed to the other Party at the address mentioned below:

BDA

Attention: Secretary, BDA

Address: Akash Shova Building, Sachivalaya Marg, Bhubaneswar-751001

Tel: (0674) 2392280

Email: secy@bdabbsr.in

Developer

Attention: Mr. Rahul Choudhary, Sr. Executive - Project

Address: Plot No. 133, Near Bilasini Mandap, District Centre, Chandershekharpur,
Bhubaneshwar-751021

Tel: 7894439000

Email: rahul.choudhary@shyamindus.com

Selected Bidder (Lead Member)

Attention: Mr. Sunil Soni, GM, BD & Projects, Shyam Indus Power Solutions Private Limited

Address: 129, Transport Centre, Rohtak Road, Punjabi Bagh, New Delhi - 110035

Tel: 011-45764400, 011-45764444

Fax: 011-47634423

Email: sunil.soni@shyamindus.com

- (b) Any notice or demand served by registered airmail shall be deemed to be duly served 48 (forty eight) hours after posting and a notice or demand sent by facsimile shall be deemed to have been served at the time of its transmission and in proving service of the same it will

be sufficient to prove, in the case of a letter, that such letter was sent by registered airmail, addressed and placed in the post and in the case of a facsimile transmission, that such facsimile was duly transmitted to a current facsimile number of the addressee at the address referred above.

- (c) Each Party may change the above address by prior written notice to the other Party.

21.5 **Governing Law and Jurisdiction**

This Agreement shall be governed by the laws of India and shall be subject to the exclusive jurisdiction of the courts at Bhubaneswar.

21.6 **Counterparts**

This Agreement may be executed in two counterparts, each of which, when executed and delivered, will be an original, and both counterparts together shall constitute one and the same instrument.

21.7 **Language**

- (a) The formal text of this Agreement and other agreements in relation to the Project shall be in the English language.
- (b) All notices and communications between BDA and the Developer, required under this Agreement, shall be in English and all arbitration proceedings undertaken pursuant to this Agreement shall be conducted in English.

21.8 **Confidentiality**

- (a) No recipient Party shall, without the prior written consent of the disclosing Party, at any time divulge or disclose or suffer or permit its representatives to divulge or disclose to any person or use for any purpose unconnected with the Project any Confidential Information during the Term and for a period of 5 (five) years after the expiry or termination of this Agreement, except to its representatives officers, directors, advisors, employers, agents and Associates (including BDA Related Parties and Developer Related Parties) who have a legitimate need to know the Confidential Information in order to perform their duties relating to the Agreement.
- (b) This Clause 21.8 shall not apply to Confidential Information, which:

- (i) at the time of disclosure or thereafter has become part of public knowledge or literature without a breach of this Agreement;
- (ii) is already in the possession of the Party receiving such Confidential Information before it was received from any other Party and which was not obtained under any obligation of confidentiality from the party which disclosed such information;
- (iii) was obtained from a third party (other than one disclosing it on behalf of a Party) who was free to divulge the same and who was not under any obligation of confidentiality in relation to such Confidential Information to the Party, which disclosed the information;
- (iv) is disclosed by the Developer to the Lenders, any actual or *bona fide* potential shareholders, investors or bankers (and their professional advisers) of the Developers;
- (v) is required to be disclosed pursuant to any legal and mandatory requirement of any court, legislative or administrative body or any Government Authority, or the rules of any applicable stock exchange;
- (vi) is disclosed by the Developer to its Associates or the permitted assignees and transferees of the same;
- (vii) is disclosed by the Developer to any Subcontractor of the Developer;
- (viii) is disclosed to actual or prospective insurers, re-insurers and insurance brokers;
- (ix) is disclosed to any professional advisors or consultants of any persons to whom a party is entitled to disclose Confidential Information under this Clause 21.8(b);
- (x) is disclosed to any person in connection with the dispute resolution provisions hereunder;
- (xi) is independently developed by the receiving Party without reliance on the Confidential Information disclosed by the disclosing Party;
- (xii) is disclosed by BDA or the Developer to any Lender (and their professional advisors);
or
- (xiii) is disclosed to any Government Authority or any other body in any relevant jurisdiction in connection with the obtaining or renewal of any Applicable Permit required hereunder or for the AHP or the PDP.

Provided that the Party making a disclosure of Confidential Information pursuant to (iv) and (vi) to (ix) (inclusive) above shall insure that any person to whom it makes such disclosure undertakes to hold such Confidential Information subject to the same confidentiality obligations as those set out in Clause 21.8(a) above.

- (c) A Party making a disclosure of Confidential Information pursuant to Clause 21.8(a) shall,
 - (i) at the time of making such disclosure inform its representatives and Associates of their obligation of confidentiality pursuant to this Agreement and ensure their compliance; and
 - (ii) be liable for any breach of such obligations by such representatives and Associates.

- (d) In the event that a Party is required or requested to make a disclosure of Confidential Information referred to in Clause 21.8(b)(v) above, such Party shall prior to such disclosure (to the extent permissible by Applicable Law) use its best efforts to promptly notify the disclosing Party or its Associate so that appropriate protection order and/or other action can be taken if possible. In the absence of such a protection order restricting disclosure, the party required to make such disclosure may disclose only that portion of the Confidential Information which it is legally required to disclose and shall use reasonable efforts to obtain assurances that confidential treatment will be accorded to the Confidential Information.

- (e) The recipient Party agrees that it, its Associates and representatives shall, upon request by the disclosing Party promptly:
 - (i) return, and use all reasonable endeavours to procure that any third party to whom the recipient Party has disclosed the Confidential Information pursuant to this Agreement shall return, all the Confidential Information that is in tangible form (including, without limitation, Confidential Information contained on compact disks or other electronic storage media or devices) furnished, together with any copies or extracts thereof; and
 - (ii) destroy, and use all reasonable endeavours to procure that any third party to whom the recipient Party has disclosed the Confidential Information pursuant to this Agreement shall destroy, all analysis, compilations, studies or other documents which have been prepared and which reflect or refer to any Confidential Information,

provided that the recipient Party shall be entitled to retain such Confidential Information which forms part of the permanent records of the recipient Party or its Associates and which was prepared for the purposes of the review or decision-making process of the recipient Party or such Affiliate and/or which the recipient Party or its Associates is required to retain by law or the rules of any Governmental Authority if it continues keep such Confidential Information confidential in accordance with this Agreement.

21.9 **Amendments**

- (a) Any provision of this Agreement may be amended, supplemented or modified only by an agreement in writing signed by the Parties.
- (b) Either Party may at any time request the other to enter into discussions to review the operation of any part of this Agreement and, but without commitment by either Party, to determine whether it should be amended by mutual agreement provided that, unless there is such mutual agreement, the provisions of this Agreement (as then most recently, if at all, amended) shall continue to apply whatever the outcome of any such discussions or review and whether or not any such discussions or review take place.

21.10 **Waivers and Consents**

- (a) Any provision or breach of any provision of this Agreement may be waived before or after it occurs only if evidenced by an agreement in writing signed by the Parties.
- (b) Any consent under or pursuant to any provision of this Agreement must also be in writing and given prior to the event, action or omission for which it is sought.
- (c) Any such waiver or consent may be given subject to any conditions thought fit by the person(s) giving it and shall be effective only in the instance and for the purpose for which it is given.

21.11 **Severability**

- (a) If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under any law, the legality, validity or enforceability of the remaining provisions will not, in any way, be affected or impaired.
- (b) The Parties shall negotiate in good faith with a view to agreeing one or more provisions which may be substituted for any such invalid, illegal or unenforceable provision and which produce as nearly as is practicable in all the circumstances the appropriate balance of the commercial interests of the Parties.

21.12 **Assignment**

- (a) Except as expressly permitted in this Agreement, the Developer shall not be entitled to divest, transfer, assign or novate all or substantially all of its rights, interests, benefits and obligations under this Agreement, without the prior written consent of BDA.
- (b) The rights and obligations of BDA under this Agreement shall not be assigned, novated or otherwise transferred (whether by virtue of any Applicable Law or any scheme pursuant to

any Applicable Law or otherwise) to any person other than a public body or a government company or a statutory corporation that:

- (i) is a single entity;
- (ii) acquires the whole of the Agreement;
- (iii) has the legal capacity, power and authority to become a party to and to perform the obligations of BDA under this Agreement; and
- (iv) has sufficient financial standing or financial resources to perform the obligations of BDA under this Agreement.

21.13 No Agency or Partnership

Nothing contained or implied in this Agreement shall constitute or be deemed to constitute a partnership or agency between the Parties and none of the Parties shall have any authority to bind, commit or make any representations on behalf of the other Party.

21.14 Costs and Expenses

- (a) Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Agreement.
- (b) The Developer shall bear the applicable stamp duty and registration fee, if applicable, in respect of this Agreement, the Conveyance Deed(s) and the Developer Escrow Agreement. It is clarified that no stamp duty is payable in respect of the Conveyance Deed as per the provisions of the ODA Act.

21.15 Reservation of Rights

No forbearance, indulgence, relaxation or inaction by the Developer at any time to require performance of any of the provisions of this Agreement shall in any way affect, diminish or prejudice the right of BDA to require performance of that provision, and no delay in exercising or omission to exercise any right, power or remedy accruing to BDA upon any default or otherwise under this Agreement shall impair any such right, power or remedy or shall be construed to be a waiver thereof or any acquiescence in such default, nor shall the action or inaction of BDA in respect of any default or any acquiescence by it in any default, affect or impair any right, power or remedy of BDA in respect of any other default.

21.16 Third Parties

This Agreement and all rights hereunder are intended for the sole benefit of the Parties and, to the extent expressly provided, for the benefit of the BDA Related Parties, the Developer Related Parties and the Lenders, and shall not imply or create any rights on the part of, or obligations to, any other Person.

IN WITNESS WHEREOF the Parties hereto have caused these presents to be executed in the manner hereinafter appearing on this 6th day of June, 2017:

For and on behalf of BDA

Name:

Designation:

For and on behalf of the Selected Developer

Name:

Designation:

In presence of:

Witness 1:

Name:

Designation:

Witness 2:

Name:

Designation:

SCHEDULE – A

SITE OF THE PROJECT

1 The Site

- 1.1 The Site for the project comprises of a 20.21 acre contiguous land parcel. The Site covered by Development Agreement shall include the land parcels for Project as described in Annex -I of this Schedule A.

- 1.2 The Developer shall be granted access to the land parcel for the development of the AHP Assets comprising of 2,600 EWS Units and Infrastructure Facilities including social infrastructure and community facilities, structures and utilities. The specifications for development of Affordable Housing Area have been specified in Schedule B & Schedule C of this Agreement. The Developer will also develop 18 mt. wide Public Thoroughfare which will connect proposed 18 mt. Zonal Development Plan Road (on the northern part of project site below Buddha Jayanti Park) and Proposed 60 mt. wide Comprehensive Development Plan Road (along Chandaka Dampada Eco Sensitive Zone) and this road shall be considered as public road in the development and will be handed over to the BDA post its development. In addition, the Developer shall be granted access to the land parcel identified as the Developer's Area for Private Development Project of any residential and/or commercial units and other infrastructure facilities.

- 1.3 The land parcel is being granted to the Developer for the construction of AHP Assets on Affordable Housing Area and Private Development Project on Developer's Area. The Developer will have to develop a Demarcation Plan on the basis of the Site Layout Plan, Housing for All Policy, all Applicable Laws, Applicable Permits and Good Industry Practices, demarcating the areas for the AHP and the PDP, which shall be approved by BDA.

Annexure – I
(SCHEDULE-A)
SITE FOR THE PROJECT

1. THE SITE

- **Plot for Development of AHP Assets& Private Development**

The Site identified for development of AHP Assets and PDP is located in Chandrasekharpur area of Bhubaneswar. As per the assessment by Bhubaneswar Development Authority (BDA), the Site admeasures 20.21 acres. The Site is located adjacent to the local landmarks, Buddha Jayanti Park and Lumbini Convention. There is no structure or encroachments on the site. The Site is easily accessible from Nandan Kanan Road; it is less than 2 Kms from the Nandan Kanan Road. Presented below is the actual Site photograph:



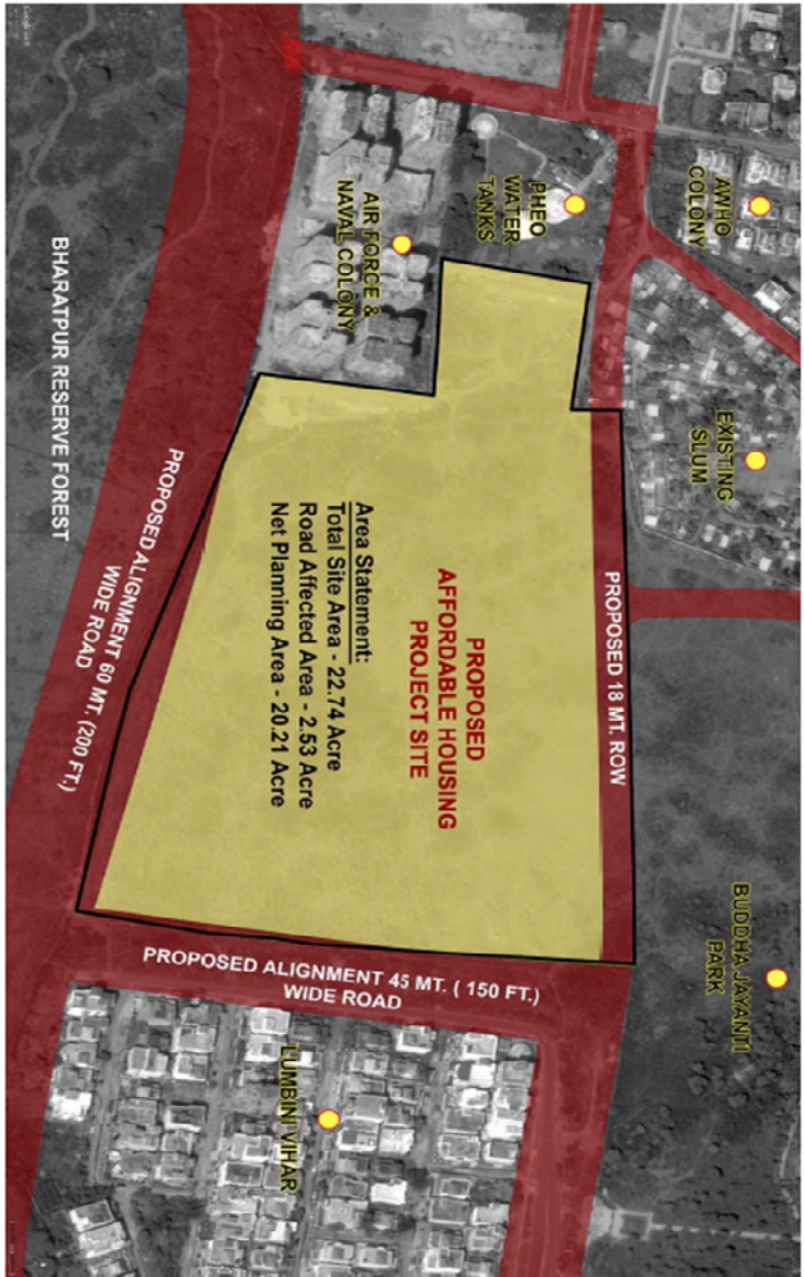
Other relevant details pertaining to the site are mentioned as follows:

- **Land Detail:** The project site admeasures 22.74 acres, of which 2.53 acres has been carved out for the proposed 60 mt. wide Comprehensive Development Plan Road (along Chandaka Dampada Eco Sensitive Zone). Approx. 20.21 acres is available for development on site, of which 13.71 acres is earmarked for AHP (2,600 EWS Units, Infrastructure Facilities and Public Thoroughfare) and the remaining 6.50 acres for PDP of any residential and / or commercial units and other infrastructure facilities as per the terms of Development Agreement.

<u>Sl.</u>	<u>Khata No.</u>	<u>Plot No.</u>	<u>Kisam</u>	<u>Area Allotted in Acres</u>
Chandrasekharpur				

1.	619	321 (p)	U.Y.Yogya	22.746
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Attached herewith is the site boundary map.



Source: BDA

SCHEDULE - B
DEVELOPMENT OF THE PROJECT

1. Development of the Affordable Housing Area

1.1 Development of the Affordable Housing Area shall involve the development of AHP assets including construction of EWS Units and Infrastructure Facilities including social infrastructure and community facilities, structures and utilities. Development of the Affordable Housing Area shall be undertaken as per the provisions of Policy for Housing for All in Urban Areas, Odisha, 2015 and in accordance with this Agreement, the Demarcation Plan, the AHP Construction Plan, the EHS Standards, Applicable Laws (including specifically, the Housing for All Policy) and Applicable Permits, norms and guidelines as stipulated by the BDA /Bhubaneshwar Municipal Corporation or relevant agency of Bhubaneshwar, GoO or GoI. The specifications for development of Affordable Housing Area have been specified in Schedule B & Schedule C of this Agreement.

2. EWS Units

2.1 The construction of the EWS Units will be as per the typical unit layout & size of a typical EWS Unit plan as provided by BDA. The typical Unit Plan for EWS Units is attached as Appendix B (i) of this Schedule B. The area details for these EWS Units and the overall configuration has been described in Table B - 1 in Annex - I of this Schedule B. The development of the EWS Units will be undertaken as per the Technical Specifications and Standards set forth in Schedule D.

2.2 The total number of EWS Units to be developed shall be 2,600. The Affordable Housing Area will be developed as a G+4 structure.

2.3 An indicative layout for each floor within each tower housing these EWS Units has been provided in Appendix B (ii) and an indicative Site Layout Plan for the Affordable Housing Area has been provided in Appendix B (iii) of this Schedule B. As per this indicative Site Layout Plan, the proposed EWS Units within the Affordable Housing Area have been provided in 65 towers, each tower housing 40 EWS Units. Each tower has 5 floors with a format comprising of Ground Floor and 4 storeys of EWS Units above. Each floor in each tower comprises a total of 8 EWS Units. In addition, circulation areas & common spaces such as lobbies, passages, fire escapes, stair cases, etc. constitutes part of the floor space within these towers. It should be noted that the floor layout and the Site Layout Plan provided as part of this document are indicative and for illustration purposes only and the Developer will be required to develop its own AHP Construction Plan for the project, subject to approval of the BDA and IE.

3. Facilities Forming Part of Affordable Housing Area

3.1 The construction of Infrastructure Facilities would include social infrastructure and community facilities, structures and utilities, as described in Schedule –C. These would be constructed in line with the provisions of the Housing For All policy, applicable guidelines and norms and Technical Specifications and Standards set forth in Schedule D.

4. Provisions with regard to charges for utilities and consumables in Affordable Housing Area

5.1 During the Construction Period of the Affordable Housing Area, the Developer shall be required to consume power, water, chemicals and other consumables for the setting up of the AHP Assets at his own cost.

5. Development of Developer's Area

6.1 Development on Developer's Area will be in accordance with this Agreement the Demarcation Plan, the PDP Construction Plan, the EHS Standards, Applicable Laws and Applicable Permits.

6. Development of Public Thoroughfare

7.1 The Developer will develop an 18 mt. wide Public Thoroughfare connecting proposed 18 mt. ZDP Road (on the northern part of project site below Buddha Jayanti Park) and proposed 60 mt. wide CDP Road (along Chandaka Dampada Eco Sensitive Zone). The Public Thoroughfare designed in the Site Layout Plan in Appendix B(iii) is indicative and Developer shall be free to develop its own Demarcation Plan and shall incorporate Public Thoroughfare in his proposed Site Layout Plan, which shall be approved by BDA.

ANNEXURE- I

(SCHEDULE-B)

Types of EWS Units to be constructed

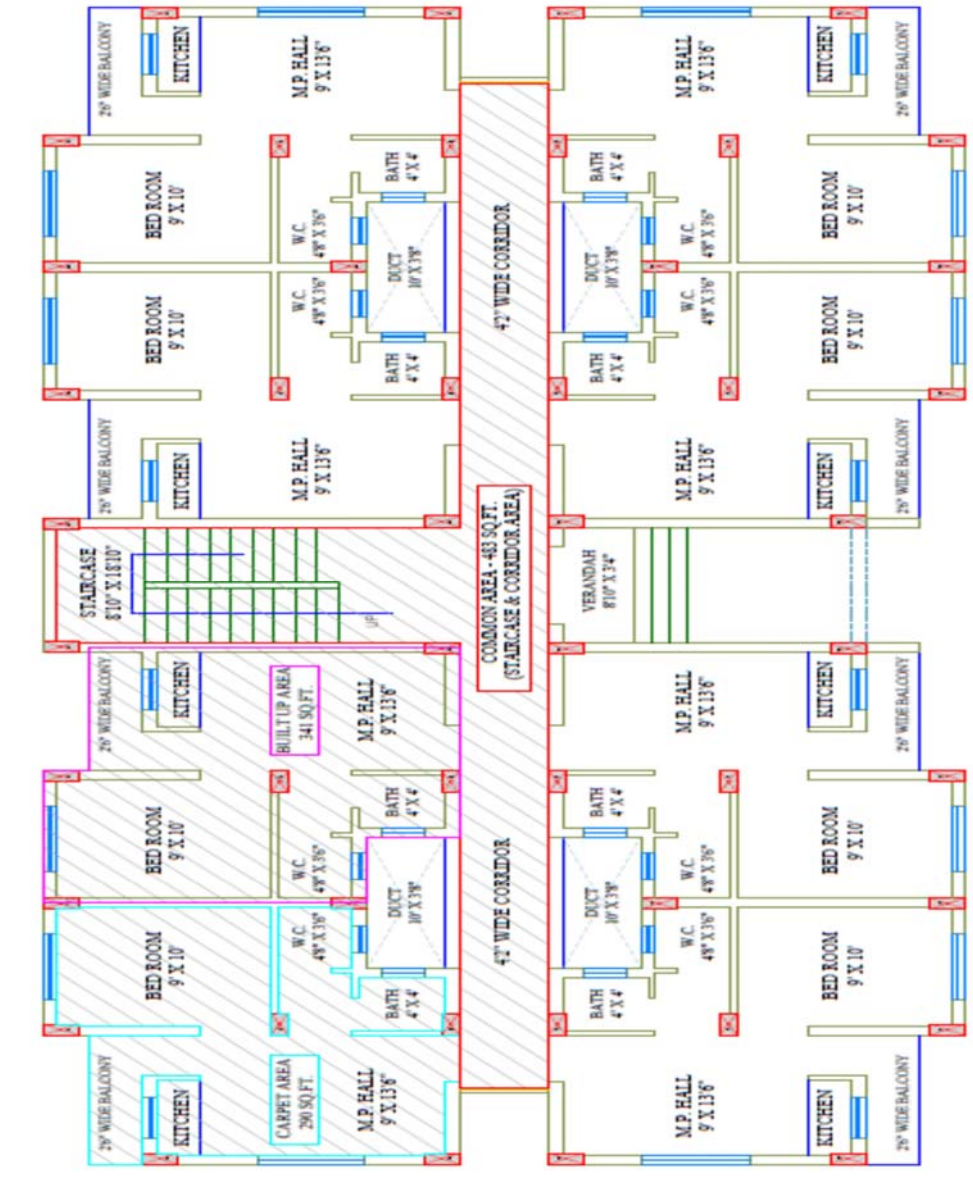
Table B – 1: Carpet & Built up Area Details for EWS Units

No	Unit	Carpet Area Per EWS Unit (In Sq. Ft.)	Built Up Area per EWS Unit (In Sq. Ft.)
(1)	(2)	(3)	(4)
1	EWS	290	341

APPENDIX B (i): Unit Layout Plan of a Typical EWS Unit



APPENDIX B – (ii): Indicative Floor Layout Plan in Affordable Housing Area



NB: The Floor layout Plan provided above is indicative and for illustration purposes only. The Developer will be required to develop its own floor design for AHP Construction Plan, which will be subject to the final approval by the BDA.

APPENDIX B – (iii): Indicative Site Layout Plan for Affordable Housing Area



**AFFORDABLE HOUSING
AREA
AC 13.71**

**DEVELOPER'S AREA
AC 6.50**

NB: The Site Layout Plan provided above is indicative and for developed for the purpose of illustrating of broad area planning only. The Developer will be required to develop its own Demarcation Plan / Layout Plan for AHP, which will be subject to the final approval by the BDA.

SCHEDULE – C
INFRASTRUCTURE FACILITIES

1. Infrastructure Facilities for Affordable Housing Area

The Developer shall provide requisite Infrastructure Facilities for the Affordable Housing Area in accordance with the provisions of this Agreement, the Demarcation Plan, the AHP Construction Plan, the EHS Standards, Applicable Laws (including specifically, the Housing for All Policy) and Applicable Permits, norms, guidelines and standards including but not limited to Planning and Building Standards Regulations, State Public Works Department (State PWD)/Central Public Works Department (CPWD) specifications for similar class of building works and standards given in the National Building Code (NBC) of India 2005, Bureau of Indian Standards (BIS) specifications for buildings, services & structures, National Electrical Code 2011 (NEC), Central Public Health and Environmental Engineering Organisation (CPHEEO), Indian Roads Congress (IRC) Codes and Standards, any provisions of the Environment (Protection) Act, 1986 and any amendments thereof, any relevant notifications from MOEF, and any other Applicable Standards and Applicable Laws of Bhubaneswar, GoO and GoI, and international best practices. For the avoidance of doubt, the Parties hereto agree that the Infrastructure Facilities as provided in this Schedule C shall be required to be developed by the Developer forming part of the AHP Area Development. In addition to the construction of the EWS Units Infrastructure Facilities in the AHP Area shall include, but would not be limited, to the following facilities:

1. Water Supply Scheme:

- a. Storage of water in the underground sumps would be based on the minimum requirement to be maintained for Building as per applicable standards.
- b. Water Supply from various sources to be connected to Fire water storage, and then overflow to be taken to raw water storage tank.
- c. Distribution of Water Supply to various fixtures in all user points will be by gravity. Domestic water to be used for all the purposes like toilets, showers, hand wash basins, Kitchens etc.
- d. From Domestic Water Storage tanks, suction line will be connected to pumps of required capacity and head, mounted on a common base frame along with control panel.
- e. Delivery from the water transfer pumps will be taken through and distribution will be carried out through suitable risers in shafts.

- f. The sizing of the entire distribution network will be based on the simultaneous use of fixture unit's demand. Individual toilets/kitchens will be provided with main control valve for isolation and maintenance of the same.
- g. Air release valve and water hammer arrester shall be provided as per requirement of the design.

2. Sewerage System:

(i) Key Design Features

- h. The drainage system shall be as per NBC Standards/ CPHEEO standards or any other applicable standard, in which the soil and waste pipes shall be distinct and separate with common vents.
- i. Treated water quality will be adequate to meet the needs of landscape system parameter.
- j. Achieve zero discharge concepts.
- k. The storm water / rainwater would be in a totally independent circuit.
- l. Deep seal P traps shall be provided for Floor drains and Urinal traps.

(ii) System Description

- a. The soil & Waste line terminating from the stack connected to soil & waste main headers respectively lines will be connected to an inspection chamber and gully trap located near to the periphery of the building.
- b. All fixtures and appliances shall be fully trapped to prevent back flow of foul gases and odour into the toilets.
- c. Finally, the soil and waste pipe network shall be discharged to Sewerage Treatment Plant (STP).
- d. All manholes will be double sealed gasketted to prevent odour nuisance.

(iii) Sewerage Design

- a. Sewers shall be designed to carry waste water along with the suspended solids as per applicable standards.

3. Sewage Treatment Plant (STP):

The sewerage treatment plant shall be designed as per CPEEHO or any other relevant standards to treat combined sewage (i.e. soil and waste water). The treatment plant shall be compact type housed below ground completely with sufficient Headroom, above maximum water level for maintenance.

4. **Internal Road Network** within the demarcated area for the Affordable Housing Area development. The Internal Road Network may be provided with cautionary, mandatory and informative road signage and road markings.
5. **Street Lighting** along the internal road network and common area lighting for all the common areas within the Affordable Housing Area.
6. **Fire-fighting facilities** for all Structures as per the provisions of the applicable standards.
7. **Green belt, parks and landscaping** of the demarcated areas, with provision for rain water harvesting as per the local norms.
8. **Landscape in the ground level**
 - a. The landscaping in the ground shall be developed as per provisions of Housing for All Policy, Planning and Building Standards Regulations and any other applicable standards and applicable law.
 - b. In ground level all landscape or hardscape part is developed on R.C.C slab so low height plants, scrubs & grass etc. is possible with 12" to 18" garden soil filling.
 - c. Indian Grass is used with design & levels
 - d. All stone is used in polish with river wash combination
 - e. Seating / benches required in garden area made from Granite stone or use readymade availed in wooden / Cast iron / S.S. material.
 - f. Children Play area /walking track
9. **Storm Water Drainage:**
 - (i) **Storm water disposal is divided into 3 Groups**
 - a. Terrace Storm water disposal.
 - b. Site Storm water disposal.
 - c. The entire storm water from the site would be disposed off through a Storm water drain system to the rain water recharge pits and excess is diverted to nearest existing external drain.
 - (ii) **System Design**
 - a. Based on the annual rainfall at Bhubaneshwar & as per the climatologically data, an average intensity of rainfall shall be considered accordingly and the sizes of storm water drains shall be decided as per Applicable Standards and norms.
10. **Social Infrastructure Facilities :**

- a. The Construction of Social Infrastructure Facilities as per provisions of Housing for All Policy and any other requirement. The Developer will also be required to construct a Primary Health Center building, a Community Center and Market Area, Parks, Walking Track, Green Patches in accordance with the provisions of this Agreement and in line with Affordable Housing Design Specifications set out in Schedule D.

11. Compound Wall: Compound Wall in Affordable Housing Area as per specification provided in Schedule D.

*** The Infrastructure Facilities not mentioned above but which may be required to be undertaken as per guidelines / Applicable Laws will need to be developed by the Developer as part of this project.

SCHEDULE D
TECHNICAL STANDARDS AND SPECIFICATIONS

1. Technical standards for Affordable Housing Area

The Developer shall construct and develop the AHP Assets in accordance with the Affordable Housing Design Specifications set forth in Schedule – D and subject to the provisions of this Agreement, the Demarcation Plan, the AHP Construction Plan, the EHS Standards, Applicable Laws (including specifically, the Housing for All Policy) and Applicable Permits, norms, guidelines and standards including but not limited to Planning and Building Standards Regulations, State Public Works Department (State PWD)/Central Public Works Department (CPWD) specifications for similar class of building works and standards given in the National Building Code (NBC) of India 2005, Bureau of Indian Standards (BIS) specifications for buildings, services & structures, National Electrical Code 2011 (NEC), Central Public Health and Environmental Engineering Organisation (CPHEEO), Indian Roads Congress (IRC) Codes and Standards, any provisions of the Environment (Protection) Act, 1986 and any amendments thereof, any relevant notifications from MOEF and any other Applicable Standards and Applicable Laws of Bhubaneswar, GoO and GoI, and international best practices.

The Codes, Standards and Technical Specifications applicable for the design of AHP project components are:

- a. Bureau of Indian Standards (BIS) specifications for buildings, services & structures.
- b. National Building Code of India 2005 (NBC)
- c. National Electrical Code 2011(NEC)
- d. Indian Roads Congress (IRC) Codes and Standards, for roads, drainage, parking etc.
- e. Central Public Health and Environmental Engineering Organisation (CPHEEO)
- f. Any other applicable standards

Latest version of the Codes, Standards, Specifications, etc., notified/published at least 30 days before the bid submission date shall be considered applicable.

The requirements stated below for the design of the AHP Assets are the minimum. The Developer will however be free to adopt alternative building material and construction technologies. The technology that the Developer proposes to use to develop the AHP Assets should take into account the climatic conditions of Bhubaneswar and the AHP Requirements and should be indicated in the AHP Construction Plan. BDA may take guidance of the Building Materials and Technology Promotion Council for assessing the same. The Specifications and techniques which are not included in the BIS/IRC specifications/State/Central PWD specifications shall be supported with authentic standards and specifications like NBO, Euro Codes, British standards and Australian Code etc.

2. Minimum specification for Affordable Housing Area

The following are the minimum specifications which the Developer shall comply with for construction and development of AHP Assets.

(IA) Minimum Specifications for EWS unit

Item	Detail for project
Foundation	As per the design requirements
Super structure	Reinforced Cement Concrete (RCC) framed construction / Pre-cast concrete structure
Doors & Windows	
Frames	
Window frames	Mild Steel (M.S.) frame with standard steel section and a Mild steel grill conforming to IS: 1038, CPWD standards and other relevant IS standards
Door frames	Mild Steel (M.S.) frame 40mm x 40mm x 5mm shall be provided according to the thickness of door shutters.
Shutters	
Window shutters	Mild Steel (M.S) openable window with glazing material conforming to IS: 1038, CPWD standards and other relevant IS standards
Main Door shutters	M.S. door of 25 mm width conforming to IS: 1038, CPWD standards and other relevant IS standards
W.C / Bath room shutter	30mm thick Polyvinyl chloride (PVC) doors conforming to CPWD specifications
Kitchen door	M.S door of 30mm width conforming to IS: 1038, CPWD standards and other relevant IS standards
Other doors	M.S door conforming to IS: 1038, CPWD standards and other relevant IS standards

Item	Detail for project
Fittings	M.S. fittings e.g. Tower bolts (IS: 204), handles (IS: 208), hinges (IS: 205/206), door stopper etc. should be provided. M.S. sliding door bolts (IS: 281) to be provided at the entrance doors. All other doors shall be provided with nickel plated M.S. pull lock bolts.
Ventilator	Pre-cast concrete ventilators in Kitchen, Bedroom and drawing room as per CPWD/State PWD standards/relevant IS codes
Flooring	
In rooms, kitchen, internal circulation area	Cement concrete flooring/kota stone flooring/ceramic tile flooring
Common circulation area, staircase	Cement concrete flooring/kota stone flooring/ceramic tile flooring
Toilets	Cement concrete flooring/kota stone flooring/ceramic tile flooring
Finishing	
Plastering on walls(internal)	12/15 mm cement plaster 1:6 (1 cement : 6 fine sand)
Internal	Colour Washing
External	1 coat of primer and two coats of Weather coat
Primer	As per CPWD specifications of wood work & steel work
Painting in woodwork and steelwork	ISI mark superior quality Synthetic Enamel paint for all wood & steel work except outer faces which shall be synthetic enamel paint ISI mark.
Water Proofing	Grading Concrete with APP Membrane
Railings	
Staircase	0.9m height M.S. railing with 12mm square bar alternate with 50mm Galvanized Iron (G.I.) pipe
Balcony	0.9m height M.S. railing with 12mm Square bar alternate with 50mm G.I. pipe
Roofing	
Roof Treatment	Tar felt treatment in conformity to IS 3067/IS 1346
Rain Water Pipes	AC rainwater pipe except the bottom length of about 2 M which shall be of S.C.I. pipe
Common area Lighting in EWS blocks	
Lighting	Sufficient lighting work should be provided in corridors and common areas in EWS blocks, level of lighting and the type of fixtures should be as per National Building Code and IS: 3646
Other specifications for Kitchen	
Shelves	Cuddapah stone Shelves in tiers not more than 400mm wide along one wall 1" thick
Kitchen sink	1 Stainless steel sink without drain board size 610 x 510 mm with bowl depth 200 mm.
Kitchen worktop	2' wide with ruby red/casts/eye brown shaded granite/jet black/cooking top laid over 40mm thick RCC cast in situ slab

Item	Detail for project
Shelves under Kitchen platform	25 mm thick shelves in Cuddapah slab
Other specifications for Water Closet (WC)/Bath	
Indian W.C. Pan with flush valve	One number white vitreous China (IS: 2556), 580 mm Odisha pattern pan with 10 lt low level PVC flushing cistern (IS: 774) of the approved brand
Wash basin	One No. White vitreous (IS: 2556), China flat back wash basin 550 x 450 with one CP brass pillar tap, ISI mark of approved brand
Fittings (Bibcock/Stopcock)	WC - 1 no Bath – 1 no Kitchen sink – 1no Balcony – 1no ISI marked bibcocks or stopcocks of approved brands
Shower C.P. Brass	1 no. ISI marked fittings of approved brand
Mirror	1 Bevelled edge mirror 600 x 450 mm of 5mm thickness.
Ventilator	M.S. Louvers

(IB) Minimum specifications for Electrical Installation in EWS Units

Description	Nos. per flat
Connected load per Flat:	
EB	1KW
Hall:	
Wall light points	2Nos
6 amp points	2Nos (Including T.V. Point)
Fan points	1Nos
6 amps twin socket	1No
Call Bell Point with switch at entrance	1No
Telephone point	1No
16 amps point	1 No
Bed Room:	
Wall light points	2Nos
6 amp point	1Nos
Fan points	1No
6 amps twin socket	1No
Kitchen	
Ceiling Fan Point	1No

Description	Nos. per flat
6/16 amps point	2Nos
Wall light point	2Nos
WC (Toilet)	
Wall light points	1Nos
Bath	
6 amp point	1No
16 amps point	1No
Wall light points	1No
Balcony	
Ceiling light point	1No

(II) Minimum specifications for Community center / Utility shops/ Primary health center/ Common areas

Description	Specification
Foundation	As per the design requirements
Super structure	RCC framed construction / Precast concrete structure
Doors & Windows	
	Frames
Window frames	Mild Steel frame with standard steel section and a Mild steel grill confirming to IS: 1038, CPWD standards and other relevant IS standards
Door frames	Mild Steel frame 40mm x 40mm x 5mm shall be provided according to the thickness of door shutters.
	Shutters
Door Shutters	Aluminum Door/Flush Door/PVC Door
Window shutters	Aluminum Sliding Window/Structural Glazing
Fittings	S. fittings or equivalent.
Fire check door	per fire safety specifications
Flooring	
Corridors, Rooms, Lavatory blocks	Cement concrete flooring/kota stone flooring/ceramic tile flooring
Common circulation area, staircase	Cement concrete flooring/kota stone flooring/ceramic tile flooring
Finishing	
Plastering on walls (internal)	12/15 mm cement plaster 1:6 (1 cement : 6 fine sand)
Internal	Distemper with Putty Finish
External	1 coat of primer and two coats of Weather coat
Primer	As per CPWD specifications of wood work & steel work
Painting in woodwork and steelwork	ISI mark superior quality Synthetic Enamel paint for all wood & steel work except outer faces which shall be synthetic enamel paint ISI mark.

Railing	0.9m height MS railing with 12mm square bar alternate with 50mm G.I. pipe
Roofing	
Roof Treatment	Tar felt treatment in conformity to IS 3067/IS 1346
Toilets	Mirrors with molded PVC frame White vitreous (IS: 2556), China flat back wash basin of approved brands 30mm thick PVC doors conforming to CPWD specifications White vitreous China (IS: 2556), 580 mm Odisha pattern pan with 10 lt. low level PVC flushing cistern (IS: 774) of the approved brand
Lighting	
Fixtures	LED lighting fixtures with sufficient level of lighting as per National Building Code 2005 and IS: 3646
Compound Wall	MS Grill Gate & Square Bar Fencing with flyash brick masonry boundary wall

(III) Minimum specifications for Public Thoroughfare, Internal Roads, Parking, Pathways & Signages

Description	Detail for projects
Sub Grade	As per the design requirements
Sub-base/Base layer	As per the design requirements
Surfacing	As per the design requirements
Kerb Stone	C.C. 1:2:4 precast Kerb stone 0.30 m long & 0.30 m x 0.15 m section complete as per CPWD specifications and confirming to IS: 5758
Toe Wall	Brick wall 1:4 (1 cement : 4 coarse sand) with brick designation 7.5
Paths	100mm Concrete Paver Block over Sub base
Information Signboard/ Guide Maps.	Made up of angle iron/ Cast Iron (C.I.) Pipe and Board and to be provided at every entry point with size 240 x 185 cms

(IV) Specification For P.H. Items of Work:

Description	Detail for projects
Internal Concealed Wiring	CPVC Pipe
External Wiring	DI Pipe/GI Pipe
Sewerage Line	UPVC SWR Pipe/RCC Hume Pipe
Internal PH Fittings	Plaza/Essco
Water Tank	Syntex Double Layer
Sunken Slab Water Proofing	APP Membrane
Water Supply	Bore well / UGR / Pump Room

Rain Water Harvesting	PVC Pipe / Inspection Chamber with filter media / Recharge Pit
Fire Fighting	Fire Water Tank/DI Pipe/Fire Hydrant

3. TECHNICAL SPECIFICATIONS

The Developer shall construct the AHP Assets as per the Technical Specifications laid down by the Central Public Works Department Specifications Vol - I & II – 2009, State PWD and including up to date amendments there to, and other applicable standards and norms as mentioned above.

All Electrical works related to the AHP Assets shall be those conforming to the Standards Code of Practice for Electrical wiring installations, National Building Code and Safety Procedures of Indian Electricity rules.

In the absence of any definite provisions on any particular issue in the aforesaid Specifications, reference may be made to the latest codes and specifications of BIS in that order. The Developer shall also make reference to Housing for All Policy, Planning and Building Standards Regulations, Central Public Health and Environmental Engineering Organisation (CPHEEO), Indian Roads Congress (IRC) Codes and Standards, and any other Applicable Standards and Applicable Laws.

Where even these are silent, the construction and completion of the AHP Assets shall conform to sound engineering practice as approved by the Independent Engineer. More specifically, the Developer shall adhere to the following Technical requirements, when constructing the AHP Assets, in addition to the requirements spelt out in the various specifications and standards specified above.

(A) Building Materials for Civil Works

(i) Bricks:

Bricks shall be of locally available best quality kiln burnt. Bricks shall be well burnt, uniform deep red, cherry or copper coloured, free from cracks and flaws, well-shaped, uniform in size, homogeneous in textures and shall omit a clear metallic sound when struck; bricks shall have a minimum crushing strength 75 Kg/Cm² and shall not absorb water more than 20% by weight. The bricks shall conform to IS: 1077-1992

(ii) Cement Mortar:

Mortar shall be well mixed to a uniform colour and consistency in the proportion conforming to IS 2250-1981

1. Cement:

Cement should conform to the following standards shown below:

Materials	BIS Code for	
	Specifications IS:	Sampling/Testing: IS
Portland Slag Cement (PSC)	455 – 1989	4031-1988 & 4032-1985
Ordinary Low heat Portland Cement (OPC)	269 – 2013	4031-1988 & 4032-1985
Masonry Cement	3466-1988	4031-1988
White Portland Cement	8042-1989	4031-1988 & 4032-1985
Standard sand for testing of cement	650-1991	

2. Sand:

Locally available best river sand (medium size)

3. Coarse Aggregates:

The aggregates shall conform to I.S. 383-1970. Porous Course aggregate shall not be used. The aggregate shall be free from clay films and other adherent coatings. Aggregates containing clay films over the stone materials shall be thoroughly washed. The aggregate shall be from approved quarry and crusher broken. Course aggregates shall be composed of particles ranging between the sizes 2.36 to the maximum size as may be specified in the relevant item of work, within the range, the aggregates shall be well graded so as to produce a dense concrete.

Materials	BIS Code for	
	Specifications IS:	Sampling/Testing: IS
Coarse and Fine Aggregates from natural sources	383-1970	2386 (Part 1-8) 1963
Sand For Plaster.	1542-1992	1727-1967, 2250-1981, 2386-1963

4. Reinforcements:

Mild steel Round Bars, cold twisted and deformed bars of steel of medium tensile strength will be used as reinforcement as per drawing and design and directions. Mild steel bars

shall confirm to I.S.: 226/1975 standard quality or IS: 432 /1982 - Grade-I. Black annealed wire (Not thinner than 24 gauges for tying the reinforcements shall be used).

(B) Water Supply, Sanitary & Plumbing Works

- **DESIGN STANDARDS:**

The CPHEEO guidelines and IS: 1172-1993 shall serve as the baseline for development of the design criteria for Water supply system. Relevant latest Indian standards should be followed for carrying out the detailed design.

- **WATER SUPPLY PIPES AND FITTINGS:**

1. Materials

All G.I. Pipes are to be of mild steel continuous welded, screwed tubes, medium quality confirming to I.S.S. and bearing ISI Marks manufactured by reputed Firms and approved brands as specified. The pipes shall confirm to IS.1239 (Part-1) -2004.

2. Laying of Pipes

The layout of the mains and service pipe set etc. will be done in accordance with the drawings.

a) Where the Pipes are laid underground, they must not be laid less than 450mm below ground level and coated with one coat of approved black bituminous paint. For laying the G.I. pipes and fittings below ground level, the width and the depth of the trenches for different dimensions for the pipes shall be as given below:

Dia of Pipe	Width of Trench	Depth of Trench
15mm to 50 mm	300 mm	600 mm
65mm to 100mm	450 mm	750 mm

The pipes shall be laid on a layer of 75mm thick sand and filled up with sand up to 75mm above pipes and the remaining portion of the trench shall then be filled up with proper ramming. The surplus earth shall be disposed.

Thrust or anchor blocks of cement concrete 1.2.4 in hard granite chips shall be constructed on all bends or branches to transmit the hydraulic pressure without impairing the ground and spreading it over a sufficient area. Pipes shall not be laid to pass through manholes, catch

pit, drain, where, it is unavoidable the pipes shall be carried in sleeve pipe of M.S. /G.I., as approved by the Independent Engineer.

b) Where Pipes run along walls, the same are to be fixed to the wall with holder bat clamps /M.S. Hooks as below:

Dia. of pipe in mm	15	20	25	32	40	50
Horizontal line	2m	2.50m	2.50m	2.50m	3m	3m
Vertical line	2.5m	3m	3m	3m	3.5m	3.5m

Where the pipes are passing through the R.C.C. / Masonry wall / Column / beam or pillars, these must pass through the appropriate higher sizes of C.I./G.I Sleeve Pipes.

In case the pipes are embedded in walls and floors it should be painted with one coat of anticorrosive paint of approved quality.

All pipes should be fixed horizontal and vertical. For taking the pipes through the walls and floors & roof slabs etc. the holes shall be made by filling with chisels or jumper and not by dismantling the brickwork or concrete. After fixing, the holes shall be made good with cement concrete 1:2:4 and properly finished with cement plaster 1:4 to match the adjacent surface.

Union Nuts are to be provided in each of the vertical riser or drop on and from G.I. Tank and near the Valve and as and where necessary. The long screw fittings of 3 mts to be used for long horizontal lines and inside the lavatory / Kitchen etc.

After laying and jointing, the pipes and fittings shall be inspected under working condition of pressure and flow. Any joint found leaking pipes should be removed and replaced. The pipes and fittings after they are laid shall be tested to hydraulic pressure of 6 Kg/Cm². The test pressure should maintain without loss of for at least half an hour.

3. Painting

On completion of the test, the exposed pipes and fittings are to be painted with two coats of synthetic enamel paint of ISI mark over a coat of priming.

4. Ball Valve

The ball valve shall be high or low pressure class as per the design and shall confirm to I.S. 1703-2000, the nominal size of ball valve shall be that corresponding to the size of Pipe for which it is used. The Ball valve shall be of brass or gun-metal and the float for low pressure polyethylene and for high pressure in copper.

Polyethylene floats shall be watertight and non-absorbent and shall not contaminate water and with do jointing adhesive jointing parts.

The minimum thickness of the copper sheet used for making copper floats shall be of 0.45 mm. The thickness of materials of the float shall be uniform throughout.

5. Ferrule

The ferrules for connection with C.I. main shall generally confirm to I.S. 2692-1989 and shall be of nominal bore as required. The ferrule shall be fitted with 3 screw and 1 plug or valve capable of complete cutting off the supply to the connected pipe as and when required. For fixing the ferrule, the C.I. main shall be drilled and tapped during non-supply hour to the connected Pipe as required. The ferrule must be so fitted, that no portion of the sunk shall be left projecting within the main on which it is fitted. After the ferrule is connected, one C.I. bell mouth cover or with bricks (as specified) shall be kept over the ferrule to cover the ferrule to protect it.

6. Non-return Valve (Check Valves)

The non-return valve shall be of Brass or Gunmetal and shall be of horizontal or vertical flow type and of the size as specified and confirm to I.S. 778-1984. The approximate weights of the valves are given below:

Dia in mm	Horizontal type (in kg)	Vertical type (in kg)
15	0.30	0.25
20	0.55	0.25
25	0.90	0.75
32	1.25	0.90
40	1.70	1.20
50	2.90	1.45
65	5.25	2.15
80	7.70	4.10
	±Tolerance 5%	

7. Foot Valve

Foot valve is generally placed at the lower end of the suction pipe of the centrifugal pump to prevent the suction pipe from emptying. On vertical non-return valve may also be fixed in place of foot-valve. The foot valve shall confirm to I.S.4038-1986.

8. Water meters (Domestic types)

Water meter up to 50mm nominal size and shall confirm to I.S: 779-1994.The meter body shall be of bronze/ Gun-metal and marked to read in litres complete with registration box and lid. The water meters shall be provided with Strainers. Strainers shall be of material, which is not susceptible to electrolyte, clean and shall be fitted on the inlet side of water meter. It shall be possible to remove and clean the strainer and not permit disturbing the registration box. The offer should include the same. The water meters shall bear ISI Mark.

9. Bibcock & Stopcock

These shall confirm to I.S781-1984 and bear ISI Mark. The bibcock is a draw off tap with a horizontal inlet and free outlet and stopcock is a valve with a suitable means of connection for Insertion in a pipeline for controlling or stopping the flow. This shall be of screw down type. The cock shall open in anti-clockwise direction. The stopcocks should be of C.P open type/concealed type/angle valves type as specified in tender schedule. Bibcock should be also C.P Brass bibcock.

10. Full way Valve (Brass)

Full way valve is a valve with suitable means of connection for insertion in a pipeline for controlling or stepping the flow. The valve shall be of brass fitted with a cast-iron wheel and shall be of gate valve type confirming to I.S. 14846-2000, opening full way and of the size as specified.

Dia in mm	Flanged End Valves in kg	Screwed End Valve in kg
15	1.021	0.567
20	1.503	0.680
25	2.498	1.077
32	5.232	1.559
40	6.082	2.268
50	6.691	3.232
65	10.149	6.840
80	13.281	8.845

11. Gun Metal Full way Valve

This shall be of the Gun-Metal fitted with wheel and shall be of Gate-Valve type opening full way. This shall confirm to I.S. 778-1984. Class I. The Valves should bear ISI Mark.

(a) P.V.C (S.W.R.) & P.V.C. (Rigid) Pipes & Fittings

1. The P.V.C. (S.W.R.) and P.V.C. (Rigid), soil Waste & Vent Pipes (Spigot & Socket, & couples joints), shall be of make & brand as specified (Under List of materials of approved brands and manufacturers) confirming to I.S.S., B.S.S. & DIN are to be used.

The main specification of P.V.C. Soil & Waste pipes and fitting are as below.

<u>Item</u>	<u>Specification</u>
Materials	Un-plasticized Poly Vinyl-Chloride (uPVC)
Colour	Grey
Dimensions (Diameter)	
Fittings	75mm/110mm/63mm
Pipes	75mm, 110mm, on lengths of 3or 6 mt.
Wall thickness	
Fittings	Minimum 3.2mm at any port.
Pipes	As per application
For Rainwater	75mm - 1.8 to 2.2 mm, 110mm - 2.5 to 3mm
Waste & Soil	75mm -1.8 to 2.2mm, 110mm -2.5 to 3 mm, 63mm
Underground drainage with light/NIL Traffic	110mm - 2.5 to 3mm
Underground drainage with Heavy traffic	110mm - 3.7 to 4.3mm
Standards that the attribute have to confirm to (Standard No.)	
Fittings & Wall thickness	B.S. 4514, DIN 10531, DIN 19534 I.S.7834 - PVC (Rigid)

Pipe Wall thickness	IS 4905
Rubber ring	IS 5382
Fitting dimensions	DIN 19531 - P.V.C., DIN 19534-S.W.R, IS - 7834 V.C. (Rigid)
Pipe Dimensions	IS 4985

12. Laying instructions & Jointing Procedure

a) Jointing of P.V.C. (S.W.R.) Pipes & Fittings

Clean the outside of the pipes spigot and the inside of the sealing groove of the fitting. Apply the rubber lubricant, to the spigot end, sealing ring and pass the spigot end into the socket, containing sealing ring, until fully homed. Mark and position of the Socket edge with pencil on the pipe, then withdraw the pipe from the socket by approx. 10mm towards thermal expansion gap.

b) Fixing of the Pipes and fittings on wall surface.

P.V.C. pipes both (S.W.R.) & (Rigid), fixed on wall surface, are to be supported by P.V.C. pipe clips, specially made for these pipes, with horizontal runs, the pipe clips should be spaced at intervals of more than 10 times the outside diameter of the pipes. In vertical lines the clips are to be spaced at intervals of one meter to a maximum of two meters according to pipe diameter.

c) Jointing of P.V.C. (Right) Pipe Fittings

Clean the Outside of the pipes and inside of the socket of a fitting /of the inside of the couplers (where 2 plain ended pipes are jointed). Apply solvent cement solution, evenly and smoothly on the outer surface of the pipe end and inside surface of either the coupler of the socket and pass the pipe end into the socket of the fittings up to full depth of socket. In case of jointing 2 plain-ended pipes first push the coupler up to half depth on the end of one pipe and the outer half of the coupler should be pushed to the end of other pipe and thus, both pipes are jointed.

d) Fixing of P.V.C. pipes and Fittings through holes of Walls or Chajja of roofs etc.

The Wall/concrete slots should allow for a stress free installation. Pipes and fittings to be inserted into the slots, without a cement base, have to be applied first with a thin coat of P.V.C. solvent cement, followed by sprinkling of dry sand (medium size). It should be allowed to dry. This process gives a sound base for cement concrete fixation, around the pipes/fittings while mending the damages.

e) Anti-syphonage Pipes

All the anti-syphonage pipes and fittings to be used are of 63mm. If these are not available 63mm pipes and fittings, manufactured under P.V.C. (rigid) materials can be used, since the raw materials for both is same.

f) T

All traps should have a minimum water seal of 50mm as per I.S. 5329 and IS 2556 (Part XIII). Where anti-syphonage connection is required, the traps to be supplied and used should have a 50mm anti-syphonage geyser horn on the outlet side. All the Traps used with the closets, should be of the size 125mm x 110mm i.e. Inlet (Socket end) of 125mm & outlet (spirit end) of 110mm only.

g) Installation of Water Closet

Determine the correct Location of the P/S Trap & set on a firm base, relative to the floor finish by pouring concrete on a slab. Bedding can be carried out by pouring concrete around the trap, ensuring that the trap's outlet is left clear of concrete. Place the W.C. Connector ring to the socketed end of 125/110mm P/S trap. Apply rubber lubricant on W.C. Connector ring as well as outer side of water closet (connection point) and now complete the joint by pushing the W.C. to home of 125mm socket of the trap.

h) P.V.C. (Rigid) Pipes and Fittings

63mm (Outer diameter) P.V.C. Pipes to be used for these work either in anti-syphonage system or elsewhere, should be of "Quick Fit" Pipes Class 2 (4kg. F/Cm²), having one end

socketed. The P.V.C. (Rigid) fittings, such as 63mm elbow, 63mm equal Tees, 110mm x 63mm reducer etc. used in the work, should be of injection-molded fittings.

Before fixing and painting, the pipe shall be tested hydraulically to pressure 0.4Kg/Cm² for pipes under I.S.-1729/2002 and at a pressure 0.7 Kg/Cm² for pipes under I.S. 3989-1984 without showing any sign of leakage, sweating or defect of any kind. The pressure should be applied internally and shall be maintained for not less than 15 seconds.

(C) Water Supply Arrangement

1. Scope of Work:

The water supply arrangement of the Affordable Housing Area consists of the following items including installation, testing and commissioning of all equipment.

- a) Providing underground tank of the capacity calculated in accordance to guidelines of Odisha Water Supply & Sewerage Board and as per other applicable standards and applicable laws.
- b) Providing booster pump house of suitable size including booster pumping sets along with provision of 100% standby arrangement with all allied accessories and items such as sluice valve, C.I. flanged type pipe, flanged type bend, taper and puddle pipe wherever required.
- c) Providing cubicle type L.T. Panel Board suitable for operation of booster pump sets and D.G. set.
- d) Providing water level indicator (electronic type)
- e) Earthing
- f) Fire Extinguishers, rubber mat and exhaust fan

2. Specifications

- a) The booster pump set shall be designed as per the technical data available, i.e. discharge and head calculated on the basis of actual water requirement. The model and make of the pump and motor shall be based on the performance curve and duties of the pump of the individual manufacturer.
- b) C.I. pipe, bend, tee, puddle pipe etc. shall be of double flanged type.
- c) All sizes of sluice valve, C.I. / G.I. Pipe, bend, Tee, taper, and puddle pipe required at site shall be as per BIS specifications.

3. Pump Sets

- a) **Pumps:** The centrifugal pump shall be of cast iron body consisting of steel shaft and dynamically balanced C.I. impeller. The pump shall be capable of developing the required total head of rated capacity.
- b) Pumps shall run smooth without undue noise and vibration.
- c) Pumps shall be furnished complete with flexible coupling along with coupling guard bolted to the base plate.
- d) Base plate for pump and motor shall be common. Suitable holes shall be provided for grouting.
- e) The foundation bolt shall be completed with nuts and washers.

4. Induction Motor

- a) **Design requirement:** The motor shall generally conform to I.S: 325-1996. Additionally, the specific requirements mentioned in the following clauses shall also be met.
- b) The guaranteed performance of the motor shall be met with tolerance specified as admissible and its minimum efficiency shall be 85% . .
- c) The motor shall be wound with Class 'B' insulation and shall be of continuous rating.
- d) The motor shall be capable of giving rated output without reduction in the expected life-span even when operated continuously vide the following supply conditions:
 - a. Variation in supply voltage + 10%
 - b. Variation in supply frequency + 5%
 - c. Combined Voltage and frequency variation + 10%
- e) The motor construction shall be suitable for easy disassembling and reassembling and greasing shall be possible without any dismantling operation.

5. Diesel Generating Set (With acoustic enclosure):

The generating set of required capacity as such to generate 415/440 volts at 0.8 PF (lag) suitable for 50 HZ, three-phase four wire system. Engine shall be water cooled, vertical cylinder, electric start, compression-ignition, 4 stroke multi-cylinder designed to run continuous at 1500 RPM. .

- 6. **Alternator:** Self excited, self-regulated, three-phase, 50 C/S, 1500 RPM, screen protected drip proof conforming to IS: 4712.

- 7. **Earthing :** As per I.S.: 732-1989 and I.S.: 3043-1987

(D) Sewerage Works

1. Stoneware Pipes (Materials)

The Stone ware (S.W.) pipes & fitting should be of Grade 'A' conforming to I.S 651-2007. The pipes shall be sound, free from visible defects such as fire crack or hair crack and flow or blister. The pipes shall give a sharp clear line when struck with a light hammer and should be perfectly salt glazed.

2. Excavation of Trench for laying Sewer Pipes

The trenches for the pipes shall be excavated to the lines & level as directed. The bed of the trench shall have to be evenly dressed throughout from one change of grade to the next. The depth of the trench shall not be less than one meter, measured from top of the pipe to the surface of the ground under roads and not less than 0.75m elsewhere. The width of the trench shall be the anominal diameter of the pipe plus 350m. The bed of the trench if in soft or made up earth, shall be well watered and rammed before laying the pipes and the depressions, if any shall be properly filled with sand and consolidated in 200mm layers. Depending on soil condition, piling may even be necessary if so desired by Independent Engineer. If rock is met with, it shall be removed 150 mm below the level of the pipe and the trench will be refilled with sand and consolidated.

The excavated materials shall not be placed within 1 meter or half of the depth of the trench whichever is greater from the edge of the trench.

The trench shall be kept free from water. Shoring and shuttering shall be provided wherever required. Excavation below water level shall be done after dewatering the trenches.

After the excavation of the trench is completed, foundation of cement concrete 1:4:8 in hard granite aggregate (size 40mm) shall be laid with proper level all along under the length of the pipe.

3. Laying, Jointing, hunching of the Pipes and fittings.

Drain Pipes (S.W. pipe & other pipes used for drain and Sewer) shall be laid in straight lines and to the even gradients as per the layout drawings.

Adequate care shall be exercised in setting out and determining the level of the pipes. Suitable instruments, templates, sight rails, boning rods and other equipment necessary for the purpose should be used. In the case of pipes with joints to be made with loose collars, the collars shall be slipped on before the next pipe is laid. In those joints, a tight ring of twisted tarred jute soaked in cement mortar filling to ensure proper alignment and prevent cement entering the pipes, Cement compound joints are to be finished with proportion 1.1 with 45 bevelling. The joints are to be kept wet with wet bag until the same are properly set with. The cement mortar joints shall be cured at least for 7 (Seven) days.

In the case of S.W. Pipe joints (socket & spigot), they should be caulked first with tarred jute (Spun) of required diameter, almost quarter depth of the socket, after which cement mortar 1:1 is pushed in with wooden chisel and finishing bevelled at outside at 45 degree. Instead of jute of hump rubber gasket of proper size may also be used. The whole joint must be cured for not less than three days. In case of pipes less than 250mm dia., joints should be made at ground level with three pipes at a time and for larger ones two pipes at a time and after curing they should be soiled in foundation with the help of the ropes. All pipes should be properly launched with C.C. 1.3.6 with washed gravel where the pipes are crossing the drain or all round concrete 1.3.6 with washed gravel is to be done to 150 mm thick over the barrel of the pipe.

The whole of the drain work shall be tested when laid, and at the completion of the construction, to the satisfaction of the Independent Engineer and shall be retested if necessary until found satisfactory. The test shall be made by means of water under pressure at the highest point of the Section under test and providing an air pipe at the lower end of the line. Maximum head of 1.5m must be maintained.

4. Excavation and refilling.

Excavation for drain and pipe trenches shall be straight and to correct depth and gradient. The trench bottom shall be of required width as per specification to allow working space for pipe jointing.

Excavated materials shall be dumped away from the site. Suitable precautions are to be taken to prevent in flow of water into the excavated area, during construction.

The pipeline shall not be refilled and covered, until the line therein has been passed and tested.

5. Buried Services

All pipes, cable mains and other services exposed by the excavations shall be effectively supported by timbering. The Developer shall be responsible for any damage occurring to buried services and make good the same to the satisfaction of the Independent Engineer.

6. Trench condition:

Where a trench is excavated and refilled after laying the pipe, settlement of the earth in the refilled trench shall take place. The filling above the top of pipe, settles relatively, more than the sides of the trench, thereby developing frictional resistance. The Developer is required to take special precaution against this, while refilling the trenches. Procedure for backfilling as stipulated by State PWD and CPWD to be followed

7. Inspection Chambers/Manholes

At every change of alignment, gradient or diameter of a drain there shall be a manhole or Inspection Chamber. The maximum distance between manhole chambers shall be 30 meters for the line laid straight. The design of the manhole shall be done in accordance with I.S.: 4111 (Part 1) – 1986.

The Manhole and Inspection Chambers shall be covered with R.C.C. cover slab of thickness 100mm to 150mm according to the requirement at site. One C.I. Manhole cover of diameter and weight as conforming to I.S. 1726/1974 shall be fixed on the cover slab. Heavy duty covers etc., under heavy vehicular traffic condition and capable of bearing wheel loads up to 11.25 tons are to be used and medium duty under light type wheel traffic loads and light duty for domestic premises are to be used. Covers and Frames shall be clearly cast, double water seal type and they shall be free from all and sand holes. The cover shall be gas tight and water tight with proper water-seal. The C.I. Cover and frame shall be coated with two coats of black bituminous paint. The frame of Manhole cover shall be fixed on the slab while the slab is cast.

8. Gully Trap Chamber

The size of chamber for 100mm HCl yard gully shall be of 300mm X 300mm (Inside). Foundation with 100mm thick cement concrete 1.3.6 with hard granite metal of size 40mm from outer surface of wall and Brick work in cement mortar 1.4, 125mm thick, depth up to 600mm maximum. The finishing of masonry wall both inside and outside should be done in cement mortar 1.4.

(E) Internal Electrification Works

1. Internal wiring

All internal wiring shall be done in conformity to the latest Indian standard specification/Rules, code of practice adopted by CPWD and other standard practices prevalent in the part of the country. For the purpose of the specification the terminology used shall be as defined in IS: 732-1989 and IS: 1356-1972 of the definition of points wiring. The installation shall be carried out in conformity to all requirements of IE Act, 1910 and IE Rules 1956.

- a) Ceiling rose in (in case of ceiling fan).
- b) Ceiling rose or connector (in case of pendants except stiff pendant points)
- c) Bank plate (in case of stiff pendant).
- d) Socket outlet (in case of socket outlet points)
- e) Lamps holder (in case of wall Bracket, batten holder bulk head fitting and similar other fittings)
- f) Call bell / buzzer (in case words 'via' the switch shall be read 'via' the ceiling rose / socket outlet for bell push, where no ceiling rose / socket outlet is provided)

The following shall be deemed to be included in the point wiring

- a) Switch and ceiling rose are required
- b) In case of wall brackets, bulk head fittings, cables as required up to the lamp holders
- c) Bushed conduit for porcelain tubing where cables pass through walls.
- d) All wood or metal blocks, boards and boxes, R.J. Boxes sunks or surface type including those required for fan regulator but excluding those under the distribution board and main control switch.
- e) Earth wire from 3 pin socket point to the common earth including connection to the earth dolly.
- f) Earth wire with insulated single core 1/18th SWG.

- g) All fixing accessories such as clips, nails, screw, plug, raw plug, wooden plug, round blocks etc. as required
- h) Connections to ceiling rose or connection socket outlet, lamp holders, switch, fan regulators etc.

The point wiring in case of fan and light points shall mean the distance between the control switch and ceiling rose, connect or back plate, socket outlet or lamp holder depending upon the fittings measured along the runs of wiring irrespective of the number of wires in run. In the case of socket outlet points, the length shall mean the distance between the socket outlet and the tapping point of live wire on the nearest switchboard or junction box, as the case may be.

In the case of exclusive socket outlet circuits wired on 'Joint Box' system of wiring, any junction provided for extending the wiring beyond the point referred to, shall be treated as the nearest tapping point. In case of call bell / buzzer points, the length shall mean the distance between the call bell and the ceiling rose / socket outlet or the bell push (when the ceiling rose / socket outlet is not used).

Sub main shall include the earth wire of adequate size main distribution Board up to sub distribution board .For the internal lighting, either surface conduct wiring system or recessed conduit or batten wiring system shall be provided.

2. Main and Sub distribution Boards

The scope of this specification includes installation of the panel boards and distribution boards and making necessary connections. The installation of the boards shall be done strictly in accordance with the details supplied with the specifications; the instructions supplied by the switchgear manufacturer, Indian standard specifications and I.E. Rules.

When the switchboards are wall / column mounted top, they shall, be mounted on a suitable angle iron framework. All the metal supports etc. shall be protected against corrosion. The mounting height for such switchboards shall be such that it can be conveniently operated.

3. Earthing

Earthing shall generally be carried out in accordance with the requirements of Indian Electricity Rules and the relevant rules and regulations of electrical supply authorities. The complete earthing work for the installation covered by these specifications shall also be provided taking into account Indian Standard Specification No.IS:732-1989 and IS: 3043-1987. The earthing system adopted shall also have adequate mechanical strength.

The work shall include earthing of noncurrent carrying metallic parts of all the equipment, light fittings, conduit pipes, cable and cable supports and earth strips (based on the approved design).

4. Installation, testing and commissioning

The Developer shall be responsible for the installation testing and commissioning of all the equipment and materials installed by him. This shall also include the provision of miscellaneous wiring and supports and earthing in compliance with Indian Electricity rules and to the full satisfaction of the government representative.

The Developer shall get all the installation approved from the Government Electrical Inspector prior to the energisation and supply necessary drawings, test certificates and both for tests carried out at the factory and site as well as the tests which the inspector may demand. In case any addition of alternations is required, to be made in the installation or in the equipment as per the directive of the Government Electrical Inspector / Local Authorities, the same will have to be carried out by the Developer.

5. Testing

Manufacture's standard tests in accordance with Indian Standard and other standards, adopted shall be carried out on all the equipment and accessories covered by this specification so as to ensure efficient and satisfactory performances of all the components and also the equipment as a whole under working conditions at site. All equipment shall be tested at site before the commissioning in accordance with the adopted standard and Indian Electricity Rules. Voltage test shall be carried out on each circuit on completion of wiring and cabling.

6. PVC insulated Cables and Wires:

For 415V Distribution system, cables of voltage grade not less than 1000V shall be used. These cables shall be heavy-duty class, PVC insulated and aluminium/copper conductors. The wires used in the lighting installation shall be PVC insulated and copper wire/aluminium wire in case of conduits wiring and of 660V grade. Wires of different colours shall be made use of for quick identification of phase wire / neutral wire etc. All cable of wires shall comply with the requirements regarding the manufacture and testing etc., as specified in India Standard Specification IS: 1554 and IS: 694.

Fuse switch / switch fuse shall be metal clad dust and vermin proof suitable for use under climatic conditions prevailing at site. Switch fuse / fuse switch units shall comply in general to IS: 1567/4064 with regard to design and constructional / features.

The 'ON' and 'OFF' position of the switch handles shall be distinctly indicated and interlocks shall be provided to ensure that the switch cover cannot be opened unless the switch is in the 'OFF' position. Means shall, however, be provided for releasing the interlock to permit closing of switch with cover open for testing purposes. Designs with normal conventional position of switch handles, i.e. with switch handle up in the 'ON' position and down the 'OFF' position shall be preferred. All live parts inside the switch shall be properly surrounded and inter phase barrier shall be provided.

Switch fuse / fuse switch units, distribution boards shall be provided with necessary metal frame work so that they can be mounted on wall / columns structure etc. as desired. Necessary supporting metal frame of approved design shall be provided for all panel boards

The arrangements of work boards shall be such that the operational handle of the top mounted switches are within the convenience of operators (about 1.2 M from the finished floor level) and proper space shall be provided for the termination of the cable in the switches provided below the bus-bars.

The bus-bars within the bus-bar chamber shall be liberally spaced for taking the riser connection. The bus bars with aluminium conductors shall be provided and PVC sleeves of different colour shall be mounted on them for easy identification, Clamped joints for taking the riser connections, instead of bolted type shall be preferred.

Two bolted type earthing terminals shall be provided on the switch boards. All individual switches shall be connected with suitable size earth wire to the main earthing terminals of the switchboard.

Hanger Board and shock treatment / charts shall be supplied wherever required.

At the incoming side of each pen phase, 3-neon type indicating lamps should be provided at the main board.

7. Switches and Plug Sockets

Switches provided for control of light points shall be rated for 6A/16A 250V

8. Fluorescent Fittings:

All fluorescent fittings supplied shall conform in general to IS: 1913-1978 and shall be complete with all standard accessories like choke, starter and capacitor etc.

The materials of construction for fittings used for outdoor installations and for use in the work anodes shall be such that they shall withstand the atmospheric condition in that area.

Lamp holders used shall be fully shock proof, spring-loaded rotary type to ensure positive lamp locking. It should also be not possible to touch live parts of the lamp holder both after the lamp has been taken out and during the insertion or removal of the lamp. The starters shall be designed to give designed starting characteristics that shall promote full lamp life. Starter shall have high mechanical strength and topic proof construction. It should be incorporated with radio suppression capacitor of adequate rating and capacity. Power factor improvement capacitors are provided with hermetically sealed housing to ensure long and trouble free service. Terminal soldering tango shall be provided for easy electrical connections. The capacitors in general shall confirm to IS: 1569-1976 and P.F improvement up to 0.95 for twin fluorescent light fittings and 0.9 for single fluorescent light fittings is to be maintained.

The ballast provided in the fluorescent fittings shall generally be in accordance to IS: 1534-1977. The ballast should incorporate the following design features.

- a) Low working temperature
- b) Correct pre heating current for the electrodes
- c) Proper wave foam
- d) Small in dimensions
- e) Correct power supply to the lamp
- f) No hum.
- g) Easy connection leads.

All the metal construction of the fittings shall be such that they shall:

- a) Withstand the atmospheric condition prevailing in the area
- b) Provide maximum mechanical protection to the tubes and fittings accessories.
- c) Assists in maximum and uniform light distribution.

All fittings shall be provided complete with florescent lamps. All lamps shall confirm to IS: 2418 -1977

(F) External Electrification Works

The Developer shall get the complete external electrification including the peripheral electrification work executed from the concerned DISCOM. The payments demanded by DISCOM towards the same shall have to be borne by the Developer.

The electrification work shall include the following:

- a) The sites of electric sub-station as required by the concerned DISCOM will have to be provided within the site.

- b) Construction of required No. of sub-station buildings.
- c) Providing sub-station equipment I/C transformers
- d) Providing High tension (H.T.) Feed (from the nearest available DISCOM source and from sub-station to sub-station building).
- e) Providing High tension (H.T.) & Low tension (L.T.) network with required number of feeder pillar/service pillars.
- f) Providing service cables up to each meter board from feeder pillar.
- g) Providing street lighting work / path lighting, street lighting in parking area as and where required, level of lighting should be as per National Building Code 2005 and IS : 10322-1987
- h) The make of material used at site/sub-station equipment shall be as per the approval of DISCOM.

The design for all the components shall be as per relevant BIS codes and conform to State Public Works Department (State PWD)/Central Public Works Department (CPWD) specifications for similar class of building works and standards given in the National Building Code (NBC).

(G) Landscaping And Tree Plantation

1. General

The Developer shall plant trees and shrubs of required number and type at the appropriate locations within the project campus and in the land as per the applicable laws and policy. The guidelines given in this Section shall be followed in plantation of trees and shrubs.

2. Design Considerations in various locations

a) Set-back Distance of Trees and Other Plantation

Trees on the roadside shall be sufficiently away from the roadway so that they are not a hazard to traffic or restrict the visibility. Most vulnerable locations in this regard are the inside of curves, junction corners and cut slopes. Preferably, the first row of trees shall consist of species with thick shade and other rows of vertical growth type providing thin shade.

b) Spacing of Avenue Trees

The spacing of avenue trees will depend on the type and growth characteristics of trees, requirement of maintenance, penetration of distant views, etc. A range of 3-5 m would meet the requirement for most varieties.

c) Choice of Trees

The following guidelines shall be kept in view while selecting the species of trees to be planted:

- i. Trees shall be selected with due regard to soil, rainfall, temperature and water level.
- ii. The species must be capable of developing a straight and clean bole up to a height of 2.5 to 3.5 m from the ground level.
- iii. The selected trees shall, preferably, be fast growing and wind-firm. These shall not be thorny or drop too many leaves.
- iv. The trees shall be deep rooted as shallow roots injure pavements.
- v. The species selected shall be of less spreading type, so that these do not interfere with overhead services, clear view of signs and efficiency of roadway lighting.

(H) LIST OF REFERENCE CODES AND STANDARDS

In addition to the IS codes referred to in the previous sections, the following IS codes shall be taken as reference.

A. Other reference codes for execution of Civil & Structural works

Description	IS Code
Concrete	I.S 456
Brick masonry	I.S 2212
Cement plastering	I.S 9103
Mortar	I.S 2250
White and colour washing	I.S 6278
CC in foundation	I.S 2571
Anti-Termite Treatment	I.S 6313 (Part – I & Part – II)
Painting to all surfaces	I.S 2395 (Part – I & Part – II)
DPC	I.S 3067
Steel painting	I.S 1477 (Part – I & Part – II)
Hand Book on RCC Detailing	(SP 34 BIS)
Architectural and Building drawings	IS 962
Handbook on Concrete mixes	(SP 23 BIS)
Earthquake design of buildings	IS 4326 and SP 22 BIS
Code of Practice for structural safety of buildings: loading standards	(IS 875)
ISI handbook for structural engineers	(SP 6(2))
Code of Practice for natural ventilation of Buildings	(IS 3362)

B. Other reference codes for Electrical works.

Description	IS Code
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Low Tension Circuit Breakers:	IS 2516
Switchgear Bus Bars	IS 375
HRC fuse links	IS 2208
Distribution fuse boards	IS 2675
Enclosure for Low Voltage switchgear	IS 2147
Wall Glass flame-proof Electric light fittings	IS 2206 (Part 1)
Water Tight Electric Light Fittings	IS 3553
Steel Boxes for Enclosure of Electrical Accessories	IS 5133
Fittings for Rigid Steel conduit	IS 2667
Rigid steel circuits for electrical wiring	IS 3837
Accessories for Rigid Steel Conduits for Electrical Wiring	IS 3837
Switch Socket Outlets	IS 3837
PVC Wiring	IS 694
Switches for domestic and similar purpose	IS 3854
Call Bell and Buzzers	IS 2268
Straight through joint boxes and leads sleeves or Paper insulated cables-	EID-0032
Switchgear	IS 3072 (Part I)
Lighting protection	IS 2309
Low Tension switch use units	IS 4064
Guide for Safety procedure in Electric work	IS 5216
Rubber Mats for Electric works	IS 5424

C. Other reference codes for construction of Roads, Drains, Pits & Culverts

Description	IS Code
Paving Bitumen	IS 73
Road Tar	IS 215
Cutback Bitumen	IS 217
Specification for coarse and fine aggregate from natural sources for concrete.	IS 383
Test sieves	IS 460
Common burnt clay building bricks.	IS 107
Method of test for water absorption of natural building stones.	IS 112
Sand for masonry mortars.	IS 211
Classification of burnt clay bricks.	IS 310
Method of sampling and testing of clay building bricks.	IS 349
Sealing compounds, hot applied, for joints in concrete.	IS 184
Tentative specifications for Priming of Base Course with Bituminous Primers.	IRC 1
Tentative specification for single Coat Bituminous Surface Dressing.	IRC 1

Standard specifications and Code of Practice for Water Bound Macadam	IRC 1
Tentative specification for Asphaltic Concrete Surface Course	IRC 29
Tentative specification for Bituminous Surface Dressing using Pre-coated Aggregates.	IRC 48
Specification for Road & Bridge works.	Ministry of Shipping & Transport (Roads Wing)

(I) **LIST OF MATERIALS OF APPROVED BRAND AND MANUFACTURERS**

The suggested brands have been detailed in table below but the Developer has the flexibility to use other equivalent brands subject to approval by IE. The brands proposed to be used should be mentioned in the AHP Construction Plan submitted for approval.

A. Civil works:

<u>Item</u>	<u>Brand</u>
Cement Ordinary Portland cement/Portland Slag Cement of 43 grade	A.C.C., L&T, Konark conforming to relevant IS Codes
Steel Mild steel & medium tensile steel bars of grade-I	TATA TISCON / SAIL / VIZAG bars conforming to IS 432-1982
Water proofing compound	Pidilite, Sika, Snowcem (Ompears)
Paints & distempers	Asian Paints, Dulux, Berger,
Red oxide (zinc chromate)	Shalimar, Asian Paints
Cement paint & weather coat	Snowcem, Durocem, Berger
BITUMEN (60 – 70 grade)	Shalimar Tar, Lioud Insulation, Bitumen Product (India), Indian Oil
Anti-termite treatment	Bayer (Premise)
Hardware fittings	All hardware fittings are of brass of ISI mark
I) Ferrous	Equivalent to ISI approved manufacturers
II) Non-ferrous	Equivalent to ISI approved manufacturers
Aggregates (fine and coarse)	As per the source approved by the Independent Engineer
Water proof adhesives for slab fixing	Construction Chemical, Pidilite Industries Ltd. or any approved manufacturers

B. Sanitary / Plumbing works

<u>Item</u>	<u>Brand/specification</u>
Ferrules	Leader, Joswar, Shakti
Water meter	Capstain / Dasmass
G.I. pipes	Tata, Jindal with ISI mark
G.I. pipe fittings	K.brand / CR brand,
Foot valves, Check valves	Leader, Atom, Shakti
Gate valve, Globe valves, Fullway valve	Leader, Atom, Shakti
Ball cocks	Kingston, Ark, Luster
Polythene float	Leader / Himson
CP cock, Stop cock, Angle stop cock, Pillar cock, Conceal stop cock	Jaquar / Marc / Crab tree
C.P. Waste	Jaquar / Crab tree /Marc
Vitrous sanitary ware like wash basin, urinals, W.C. pans	Parry ware make with ISI mark / Nycer / Hindware
PVC cistern	Parryware / Slimline / Commandar
Mirrors	Golden fish, Swan, Modiguard
Polythene overflow pipes	Emco, Peacock
C.I. pipe (rain water & soil)	EXCC, Silc, Sushila, GIW, BIC
PVC SWR pipe & fittings	Oriplast, Supreme, Finolex
Water proofing compound	Impermu (2% by wt. by cement), M/s Snowcem India Ltd., Sika, Fosroc, Pidilite

C. Electrical works

<u>Item</u>	<u>Brand/Specification</u>
Single core multi strand copper conductor	Finolex / Havells / HR
6 amp flush type switch, socket	Havells/Anchor/Cona/ Legrand
Ceiling rose	Anchor / Cona
MCB / Main switch	L&T / Havells /IndoAsian / Legrand
BDB with MCB	Havells / MDS / Legrand
Bulk head fitting	Bajaj / Crompton / Philips

Angle holder	Anchor / Cona
16 amp switch and socket	Havells / MDS / Anchor.

N.B: -

- *Any other material/item for which specifications are not mentioned above shall be used in Conformance with the standards of State PWD, CPWD for EWS housing as per I.S. Specifications or of best quality when not covered by I.S. Specifications. This shall be utilized only upon prior permission/ approval of Independent Engineer.*

**SCHEDULE E
APPLICABLE PERMITS**

1. Applicable Permits

1.1 The Developer shall obtain Applicable Permits for the Affordable Housing Area, as required under the Applicable Laws, including but not limited to the following, wherever applicable:

- a) Permission of the local Panchayat / municipality / corporation for construction of the Affordable Housing Area as per the applicable building rules,
- b) Permission of the Chief Electrical Inspector/ concerned government representative or CESU,
- c) 'Consent to establish' and 'consent to operate' of State Pollution Control Board,
- d) Permission of the Fire and Safety Directorate,
- e) Permission from the Public Health Engineering Department
- f) Permission of the State Forest Department,
- g) Clearance for employing labour from Labour Commissioner

- h) Permission of the Archaeological Survey of India (ASI) (if applicable),
- i) Environmental Clearance
- j) Any applicable clearance from airports Authority of India (AAI)
- k) Any other permits or clearances required under Applicable Laws.

SCHEDULE F
PAYMENT SCHEDULE

BDA shall pay to the Developer Grant as per the following schedules, upon completion of construction milestones set out in Schedule I. The Grant would be released upon certification of completion of such construction works by the Independent Engineer:

Instalment	Schedule
1 st Instalment of 25%	On completion of 1 st AHP Construction Milestone as set out in Schedule I
2 nd Instalment of 25%	On completion of 2 nd AHP Construction Milestone as set out in Schedule I
3 rd Instalment of 25%	On completion of 3 rd AHP Construction Milestone as set out in Schedule I
4 th Instalment of 25%	On completion of 4 th AHP Construction Milestone as set out in Schedule I

SCHEDULE – G
FORMAT FOR AHP MILESTONE COMPLETION CERTIFICATE TO BE ISSUED BY
INDEPENDENT ENGINEER

I/We, **** (Name of the Independent Engineer), acting as the Independent Engineer, under and in accordance with the Development Agreement dated *** (the “Agreement”), for development of the Affordable Housing Project over 13.71 Acres of land at Chandrashekharapur (Bhubaneswar) on PPP basis, through **** (Name of Developer), hereby certify that necessary inspection has been successfully undertaken to determine compliance of the AHP Assets with the provisions of the Development Agreement, and I am satisfied that the [***]¹ AHP Construction Milestone has been met.

[I/We also certify that, in terms of the Development Agreement, all works forming part of construction of [Phase I/Phase II] AHP Assets have been completed, and the [Phase I/Phase II] AHP Assets are hereby declared fit to be allotted on this the *** day of *** 20**.]²

SIGNED, SEALED AND DELIVERED

For and on behalf of
the INDEPENDENT ENGINEER by:

(Signature)
(Name)
(Designation)
(Address)

¹ Insert the number of the relevant AHP Construction Milestone for which the certificate is being issued.

² To be deleted if the AHP Milestone Completion Certificate is being issued for the 1st AHP Construction Milestone or the 3rd AHP Construction Milestone.

SCHEDULE – H SAFETY REQUIREMENTS

1 Guiding principles

- 1.1 Safety Requirements aim at reduction in injuries, loss of life and damage to property resulting from accidents on the Affordable Housing Area, irrespective of the person(s) at fault.
- 1.2 Users of the AHP Assets include all persons authorized by the BDA or any agency claiming through it to use the AHP Assets and general public therein.
- 1.3 Safety Requirements apply to all stages of construction with emphasis on identification of factors associated with accidents, consideration of the same, and implementation of appropriate remedial measures.

2 Obligations of the Developer

The Developer shall abide by the following insofar as they relate to safety of the potential Users and/or the Developer's Employees:

- (a) Applicable Laws and Applicable Permits;
- (b) Relevant Standards/Guidelines of BIS relating to safety;
- (c) IFC Performance Standards
- (d) Provisions of this Agreement; and
- (e) Good Industry Practice.

3 Safety Audit by Independent Engineer

The safety audit of the AHP Assets under and in accordance with this Schedule- H shall be carried out by the Independent Engineer. The Independent Engineer shall employ a team comprising, without limitation, one structural engineer and one Environmental, Social, Labour, Health and Safety (EHS) Specialist to undertake safety audit of the AHP Assets.

4 Safety measures during Pre- Development Period

- 4.1 The Independent Engineer shall carry out safety audit at the design stage of the Project. The

Independent Engineer shall collect data on rainfall, general environment conditions, all natural calamities such as floods, earthquakes, etc. and any other eventuality which occurred at the Site in the preceding two years.

- 4.2 The Developer shall provide to the Independent Engineer, in four copies, the relevant drawings containing the design details that have a bearing on safety of potential Users (the “**Safety Drawings**”). Such design details shall include, without limitation, layout plan, structural drawings, utility drawings including fire safety and any other drawings as may be required by the Independent Engineer. The Independent Engineer shall review the design details and forward three copies of the Safety Drawings with its recommendations, if any, to the Authority and the Developer.
- 4.3 The data and the design details shall be compiled, analyzed and used by the Independent Engineer for evolving a package of recommendations consisting of safety related measures for the AHP Assets. The safety audit shall be completed in a period of three months and a report thereof (the “**Safety Report**”) shall be submitted to the Authority, in five copies. One copy each of the Safety Report shall be forwarded by the Authority to the Developer and the Independent Engineer forthwith.
- 4.4 The Developer shall endeavor to incorporate the recommendations of the Safety Report in the design of the AHP Assets, as may reasonably be required in accordance with Applicable Laws, Applicable Permits, Manuals and Guidelines of CPWD & BIS, the Affordable Housing Requirements, Specifications and Standards, and Good Industry Practice. If the Developer does not agree with any or all of such recommendations, it shall state the reasons thereof and convey them to the Authority forthwith. In the event that any or all of the works and services recommended in the Safety Report fall beyond the scope of Schedule-B, Schedule-C or Schedule-D, the Developer shall make a report thereon and seek the instructions of the Authority for funding such works.
- 4.5 Without prejudice to the provisions of Paragraph 4.4, the Developer and the Independent Engineer shall, within 15 (fifteen) days of receiving the Safety Report, send their respective comments thereon to the Authority, and not later than 15 (fifteen) days of receiving such comments, the Authority shall review the same along with the Safety Report and by notice direct the Developer to carry out any or all of the recommendations contained therein with such modifications as the Authority may specify.

5 Safety measures during Construction Period

- 5.1 The Independent Engineer shall carry out safety audit of the completed construction works of the Affordable Housing Area.
- 5.2 The Independent Engineer shall collect and analyze the data for the preceding two years in the manner specified in Paragraph 4.1 of this Schedule-H. It shall study the Safety Report for the Pre- Development Period and inspect the AHP Assets to assess the adequacy of safety measures. The Independent Engineer shall complete the safety audit within a period of 45 (forty five) days and submit a Safety Report recommending a package of additional safety measures, if any, that are considered essential for reducing hazards on the Affordable Housing Area. Such recommendations shall be processed, mutatis mutandis, and acted upon in the manner set forth in Paragraphs 4.3, 4.4 and 4.5 of this Schedule-H.
- 5.3 The Developer shall make adequate arrangements during the Construction Period for the safety of workers and Users in accordance with the guidelines of CPWD and/or BIS for safety in construction zones read with measures as specified in Annex – I of this Schedule H, and notify the Authority and the Independent Engineer about such arrangements.

**Annex – I
(Schedule – H)**

The Developer shall take all necessary precaution for the safety of the construction workers and preserving their health while working in the construction. The following are some of the requirements listed, though not exhaustive.

Notwithstanding the requirements stated in this Annex – I of the Schedule – H, the Developer shall also comply with the directions issued by the Independent Engineer in this behalf from time to time and at all times.

1. Storing and handling of Explosives:

The Developer shall at his own expense construct and maintain proper magazines, if such are required for the storage of explosives for use in connection with the construction work and such magazines, being situated, constructed and maintained in accordance with the Applicable Rules of the Explosives Directorate in this behalf. The Developer shall at his own expense obtain such license or licenses as may be necessary for storing and using explosives. Notwithstanding that the location, storage or use of explosive etc. are approved by the Independent Engineer, the Authority shall not bear any responsibility whatsoever in connection with the storage and use of explosives at the Site or any accident or occurrence whatsoever in connection therewith. All operations of the Developer in or for which explosive are employed being at the risk of the Developer and shall be upon his sole responsibility.

2. Compliance with labour regulations

The Developer shall comply with all the applicable rules, regulations and bye-laws pertaining to the welfare of the constructions workers deployed for the construction and shall, himself, pay all charges, which are leviable on him.

3. Safety Equipment

- i) Providing protective foot-wear to workers in situations like mixing and placing of mortar or concrete, in quarries and places where the work is to be done under wet condition as also for movements over surfaces infected with algae growth.
- ii) Providing protective head-wear to workers on construction Site to protect them against accidental fall of materials from above.

- iii) Taking such normal precaution like providing handrails to the edges of the floating platform, not allowing nails or metal parts or useless timber to spread around, etc.,
- iv) Supporting workmen with proper belts, ropes, etc., when working on any mast, cranes, grabs, hoists, dredgers, etc.,
- v) Taking necessary steps for imparting safety training the workers concern with the use of machinery before they are allowed to handle it independently and taking all necessary precautions in and around the areas where machines, hoists and similar units are working.
- vi) Avoiding bare live- wires, etc., as they would electrocute workers.
- vii) Making all platforms, staging and temporary structures sufficiently strong and not causing the workers and supervisory staff to take undue risks.
- viii) Providing sufficient first aid trained staff and equipments to be available quickly at the work site to render immediate first-aid treatment in case of accidents due to suffocation, drowning and other injuries.
- ix) Providing full length gum boots, leather hand gloves, leather jackets with fire proof aprons to cover the chest and back reaching up to knees, plain goggles for the eyes of the labourers working with hot asphalt, handling vibrators in cement concrete and also where use of any or all items is essential in the interest of health and well-being of the labourers.

4. Housing, Medical and Sanitary facilities for construction workers

- i) The Developer shall provide an adequate supply of pure and wholesome water for the use of labourers at the work site and in the labour camps.
- ii) The Developer shall construct trench or semi-permanent latrines for the use of the labourers. Separate latrines shall be provided for men and women.
- iii) The Developer shall build sufficient temporary accommodation for its labours as per the following requirements:
 - (a) Construction of labour camp shed with fire resistant materials.
 - (b) A good site not liable to submergence shall be selected for establishing the camp. Camps shall

not be established close to large cutting of earth work.

- (c) The lines of the camp houses shall have open space at least 10mts between rows.
- (d) There shall be no overcrowding. Floor space at the rate of 3.0 sqm per head shall be provided. Care shall be taken to see that the camp houses are kept clean and in good order.
- (e) The Developer shall construct sufficient number of bathing places. Washing places shall also be provided for the purpose of washing clothes.
- (f) The Developer shall engage a medical officer for a camp containing 500 or more persons, if there is no Government or private dispensary situated within 8 kms from the camp. In case of emergency the Developer shall arrange at his cost transport for providing quick medical assistance to help his sick labourers.
- (g) The Developer shall provide necessary staff for effecting satisfactory conservancy and cleanliness of the camp to the satisfaction of the Independent Engineer. At least one sweeper per 200 persons shall be engaged.
- (h) Developer shall ensure that mosquito genic conditions are not created so as to keep vector population to minimum level.
- (i) The Developer shall make sufficient arrangement for draining away the surface and sullage water as well as water coming from bathing and washing places and shall dispose of this waste water in such a way as not to cause any nuisance.
- (j) In addition to above all provisions of the relevant labour act pertaining to basic amenities to be provided to the labourers shall be applicable, which shall be arranged by the Developer.

5. General Safety Practices at work place

- a) First aid appliances including adequate supply of sterilized dressings and cotton wool shall be kept in a readily accessible place.
- b) An injured person shall be taken to a public hospital without loss of time, in cases where the injury necessitates hospitalization.
- c) Suitable and strong scaffolds should be provided for workmen for all works that cannot safely be done from ground.
- d) No portable single ladder shall be over 8 meters in length. The width between the side rails shall not be less than 30 cm. (clear) and the distance between two adjacent rungs shall not be more than 30 cm. When a ladder is used an extra laborers shall be engaged for holding the

ladder.

- e) The excavated material shall not be placed within 1.5 meters of the edge of the trench or half of the depths of trench whichever is more. All trenches and excavations shall be provided with necessary fencing and lighting.
- f) Every opening in the floor of a building or in a working platform is provided with suitable means to prevent the fall of persons or materials by providing suitable fencing or railing whose minimum height shall be one meter.
- g) No floor, roof or other part of the structure shall be so overloaded with debris or materials as to render it unsafe.
- h) Workers employed on mixing and handling material such as asphalt, cement mortar or concrete and lime mortar shall be provided with protective footwear and rubber hand-gloves.
- i) Those engaged in welding works shall be provided with welder's protective eye-shields and gloves.
- j) No paint containing lead or lead products shall be used except in the form of paste or readymade paint.
- k) Suitable facemasks should be supplied for use by the workers when the paint is applied in the form of spray or surface having lead paint is dry rubbed and scrapped.
- l) Overalls shall be supplied to the painters and adequate facilities shall be provided to enable the working painters to wash during the periods of cessation of work.

6. Safety requirements for scaffolding & staging

The Developer shall provide suitable scaffolding, working platforms, gangways and stairways and shall comply with the following requirements in connection therewith -

- a) Suitable scaffolds shall be provided for workmen for all works that cannot be safely done from a ladder or by other means.
- b) A scaffold shall not be constructed, taken down or substantially altered except
 - i) Under the supervision of a competent and responsible person;
 - ii) As far as possible by competent workers possessing adequate experience in this kind of works.
- c) All scaffolds and appliances connected there with and ladders shall: -

- i) Be of sound material.
 - ii) be of adequate strength having regard to the loads and strains to which they will be subjected
 - iii) Be maintained in proper condition.
- d) Scaffolds shall be so constructed that no part thereof can be displaced in consequence of normal use.
- e) Scaffolds shall not be over-loaded- and so far as practicable the load shall be evenly distributed.
- f) Before installing lifting gear on scaffolds special precautions shall be taken to ensure the strength and stability of the scaffold.
- g) Scaffold shall be periodically inspected by the competent person.
- h) Before allowing a scaffold to be used by his workmen the Developer shall, whether the scaffold has been erected by his workmen or not, take steps to ensure that it complies fully with the regulations here in specified.
- i) Working platform, gangways stairways shall -
- i) Be so constructed that no part thereof can sag unduly or unequally.
 - ii) be so constructed and maintained having regard to the prevailing conditions as to reduce as far as practicable risks of persons tripping or slipping, and
 - iii) Be kept free from any unnecessary obstruction.
- j) In the case of working platform, gangways, working places and stairways at the height exceeding 3 meters.
- i) Every working platform and every gangway shall be closely boarded unless other adequate measures are taken to ensure safety.
 - ii) Every working platform and gangway shall have adequate width
 - iii) Every working platform, gangway, working place and stairway shall be suitably fenced.
- k) Every opening in the floor of a building or in a working platform shall except for the time and to the extent required to allow the access of persons or the transport or shifting of materials be provided with suitable means to prevent the fall of persons or materials.

- l) When persons are employed on roof where there is a danger of falling from a height exceeding 3 meters, suitable precautions shall be taken to prevent the fall of persons or materials.
- m) Suitable precautions shall be taken to prevent persons being struck by articles, which might fall from scaffold or other working places.
- n) Safe means of access shall be provided to all working platforms and other working places.
- o) The Developer will have to make payments to the laborers as per minimum Wages Act.

7. Safety Requirements for Hoisting Equipment

The Developer shall comply with the following regulations as regards the Hoisting Appliances to be used by him: -

- a. Hoisting machine and tackle, including their attachments, anchorages and support shall -
 - i) be of good mechanical construction, sound material and adequate strength and free from patent defect,
 - ii) Be kept in good repair and in good working order.
- b) Every rope used in hoisting or lowering materials or as a means of suspension shall be of suitable quality and adequate strength and free from patent defect.
- c) Hoisting machine and tackle shall be examined and adequately tested after erection on a site and before use and be re-examined in position at intervals to be prescribed by the Appropriate Statutory Agencies.
- d) Every chain, ring, hook, shackle swivel and pulley block used in hoisting or lowering materials or as a means of suspensions shall be periodically examined.
- e) Every crane driver or hoisting appliance operator shall be properly qualified.
- f) No person who is below the age of 21 years shall be in control of any hoisting machine, including any scaffold which, or give signals to the operator.
- g) In the case of every hoisting machine and of every chain, ring hook, shackle, swivel pulley block used in hoisting or lowering or as means of suspension, the safe working load shall be ascertained by adequate means.
- h) Every hoisting machine and all gear referred to in preceding regulation shall be plainly marked with the safe working load.

- i) In case of hoisting machine having a variable safe working load, each safe working load and the conditions under which it is applicable shall be clearly indicated.
- j) No part of any hoisting machine or of any gear referred to in regulation (g) above shall be loaded beyond the safe working load except for the purpose of testing.
- k) Motors, gearing transmissions, electric wiring and other dangerous parts or hoisting appliances shall be provided with efficient safeguards.
- l) Hoisting appliances shall be provided with such means as will reduce to minimum the risk of the accidental descent of the load.
- m) Adequate precaution shall be taken to reduce to a minimum the risk of any part of a suspended load becoming accidentally displaced.

SCHEDULE I
AHP CONSTRUCTION MILESTONE

AHP Construction Milestone	Targeted Physical Completion
1 st AHP Construction Milestone	Completion of roof casting of higher of (a) 800 EWS units or (b) 75% of the Phase I Committed EWS Units
2 nd AHP Construction Milestone	Completion of construction of the Phase I AHP Assets
3 rd AHP Construction Milestone	Completion of roof casting of 75% of the Phase II Balance EWS Units
4 th AHP Construction Milestone	Completion of construction of the Phase II AHP Assets

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SCHEDULE J
SELECTION OF INDEPENDENT ENGINEER

1 Selection of Independent Engineer

- 1.1 The provisions of Part II of the Standard Bidding Documents for Consultancy Assignments: Time Based (Volume V) issued by the Ministry of Finance, GOI in July, 1997 shall apply, mutatis mutandis, for invitation of bids and evaluation thereof save as otherwise provided herein.
- 1.2 BDA shall invite expressions of interest from consulting engineering firms or bodies corporate to undertake and perform the duties and functions of the Independent Engineer as contemplated under the Development Agreement and thereupon shortlist 3 (three) to 5 (five) qualified firms in accordance with the pre-determined criteria as decided BDA and the Developer. BDA shall convey the aforesaid list of firms to the Developer for scrutiny and comments, if any. The Developer shall be entitled to scrutinise the relevant records of BDA to ascertain whether the selection of firms has been undertaken in accordance with the prescribed procedure and it shall send its comments, if any, to BDA within 15 (fifteen) days of receiving the aforesaid list of firms.
- 1.3 BDA shall invite the aforesaid qualified firms to submit their respective technical and financial offers, each in a separate sealed cover. All the technical bids so received shall be opened and pursuant to the evaluation thereof, and BDA shall shortlist eligible firms on the basis of their technical scores. The financial bids in respect of such eligible firm shall be opened and the order of priority as among these firms shall be determined on the basis of a weighted evaluation where technical and financial scores shall be assigned respective weights of 80:20.
- 1.4 In the event BDA follows the selection process specified in the State/Central Government guidelines, the selection process shall be deemed to be substituted by the provisions of the said guidelines and the Developer shall be entitled to scrutinise the relevant records forming part of such selection process.

2 Fee and expenses

All fees, costs, charges and expenses payable to the Independent Engineer shall be paid by BDA and the Developer in the ratio of 50:50. However, in determining the nature and quantum of duties and services to be performed by the Independent Engineer during the Conditions Precedent Period and the AHP Construction Period, BDA and the Developer shall endeavour that payments to the Independent Engineer on account of fee and expenses do not exceed 2% (two per cent) of the AHP Capital Cost.

3 Appointment of government entity as Independent Engineer

Notwithstanding anything to the contrary contained in this Schedule, BDA may, in its discretion, appoint a government-owned entity as the Independent Engineer; provided that such entity shall be a body corporate having as one of its primary function, the provision of consulting, advisory and supervisory services for housing/real estate projects; provided that a government-owned entity which is owned or controlled by BDA shall not be eligible for appointment as the Independent Engineer for the Project.

TERMS OF REFERENCE FOR THE INDEPENDENT ENGINEER

1 Scope

- 1.1 These Terms of Reference for the Independent Engineer (the “**TOR**”) are being specified pursuant to the Development Agreement dated *** (the “**Agreement**”), which has been entered into between BDA and **** (the “**Developer**”) to undertake the development of the Project over 20.21 Acres at Chandrashekharpur (Bhubaneswar) under Model III of the Housing for All Policy of the Government of Odisha and a copy of which is annexed hereto and marked as Annex-A to form part of this TOR.
- 1.2 This TOR shall apply to the rights and obligations of the Independent Engineer for the AHP Assets, to be performed from the date of its appointment until the expiry of the AHP Construction Period, unless the appointment is revoked or the Development Agreement is terminated earlier..

2 Definitions and interpretation

- 2.1 The words and expressions beginning with or in capital letters used in this TOR and not defined herein but defined in the Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Agreement.
- 2.2 References to Articles, Clauses and Schedules in this TOR shall, except where the context otherwise requires, be deemed to be references to the Articles, Clauses and Schedules of the Agreement, and references to Paragraphs shall be deemed to be references to Paragraphs of this TOR.
- 2.3 The rules of interpretation of the Development Agreement shall apply, mutatis mutandis, to this TOR.

3 Role and functions of the Independent Engineer

- 3.1 The role and functions of the Independent Engineer shall include the following:
 - i. review of or assist BDA in the review of, as the case may be, any documents submitted by the Developer to ensure compliance with the Agreement, Applicable Laws, Applicable Permits, AHP Requirements, the AHP Construction Plan, the AHP Construction Schedule, the EHS Plan, the Demarcation Plan, the EHS Standards and Good Industry Practices;
 - ii. review, inspection and monitoring of construction of the AHP Assets as per the Development Agreement;

- iii. identify defects and/or deficiencies in the construction of AHP Assets and provide its comments / suggestions to the Developer for the rectification of the same;
- iv. conducting inspection of the AHP Assets as per provision of the Development Agreement on completion of an AHP Construction Milestone and issuing AHP Milestone Completion Certificate as per the format provided in the Development Agreement;
- v. determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;
- vi. assessing the cost of any Variation to the Agreement;
- vii. determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;
- viii. carrying out the safety audit;
- ix. assisting the Parties in resolution of disputes;
- x. reviewing monthly progress reports submitted by the Developer; and undertaking all other duties and functions in accordance with the Development Agreement.

3.2 The Independent Engineer shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practices.

4 Conditions Precedent Period

4.1 During the Conditions Precedent period, the Independent Engineer shall undertake a review of the documents required by BDA or as prescribed in the Development Agreement to ensure compliance with the AHP Requirements and other provisions of the Development Agreement. The Independent Engineer shall complete such review and send its comments/observations to BDA and the Developer as per timelines stipulated by BDA.

4.2 Upon reference by BDA, the Independent Engineer shall review and comment on the Subcontracts, if any, with relation to construction of the AHP Assets.

5 Construction Period

5.1 In respect of the drawings and documents received by the Independent Engineer for its review and comments during the AHP Construction Period, the provisions of Paragraph 4 shall apply, mutatis mutandis.

5.2 The Independent Engineer shall review the monthly progress report furnished by the Developer and send its comments thereon to BDA and the Developer.

5.3 The Independent Engineer shall inspect the construction of AHP Assets once in every fortnight and make out a report of such inspection (the “**Inspection Report**”) setting forth an overview of

the status, progress, quality and safety of construction, including the work methodology adopted, the materials used and their sources, and conformity of construction works with the AHP Requirements and other provisions of the Development Agreement. In a separate section of the Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the construction of the AHP Assets and provide its suggestions and comments for the rectification of the same. The Independent Engineer shall send a copy of its Inspection Report to BDA and the Developer within 7 (seven) days of the inspection.

- 5.4 The Independent Engineer may inspect the AHP Assets more than once in a fortnight if any lapses, defects or deficiencies require such inspections.
- 5.5 For determining that the construction works conform to the Agreement, Applicable Laws, Applicable Permits, AHP Requirements, the AHP Construction Plan, the AHP Construction Schedule, the EHS Plan, the Demarcation Plan, the EHS Standards and Good Industry Practices, the Independent Engineer shall require the Developer to carry out, or cause to be carried out, necessary inspection, to be specified by the Independent Engineer in accordance with Good Industry Practice for quality assurance. The Independent Engineer shall issue necessary directions to the Developer for ensuring that the inspection is conducted in a fair and efficient manner, and shall monitor and review the results thereof.
- 5.6 The criteria for acceptance/ rejection of inspection results shall be determined by the Independent Engineer. The inspection shall be undertaken on a random sample basis and shall be in addition to, and independent of, the tests that may be carried out by the Developer for its own quality assurance in accordance with Good Industry Practice.
- 5.7 In the event that the Developer carries out any remedial works for removal or rectification of any defects or deficiencies, the Independent Engineer shall require the Developer to carry out, or cause to be carried out, necessary inspection to determine that such remedial works have brought the construction works into conformity with the Agreement, Applicable Laws, Applicable Permits, AHP Requirements, the AHP Construction Plan, the AHP Construction Schedule, the EHS Plan, the Demarcation Plan, the EHS Standards and Good Industry Practices, and the provisions of this Paragraph 5 shall apply to such inspection.
- 5.8 In the event that the Developer fails to achieve any of the AHP Construction Milestones, the Independent Engineer shall undertake a review of the progress of construction and identify potential delays, if any. If the Independent Engineer shall determine that completion of the construction of AHP Assets is not feasible within the time specified in the Agreement, it shall require the Developer to indicate the steps proposed to be taken to expedite progress, and the

period within which the Scheduled Phase I AHP Completion Date and/or the Scheduled AHP Completion Date shall be achieved. Upon receipt of a report from the Developer, the Independent Engineer shall review the same and send its comments to BDA and the Developer forthwith.

- 5.9 The Independent engineer will carry out the necessary Safety Audit as per provisions of the Development Agreement, EHS Plan, Safety Requirements, AHP Construction Plan and Applicable Laws and Applicable Permits, to ensure that the AHP Assets are safe and fit for purpose;
- 5.10 The Independent engineer shall be required to conduct inspection of the AHP Assets at every AHP Construction Milestone as per provision of the Development Agreement, identify any defects or deficiencies and provide suggestion and comments for their rectification until the same have been resolved, and upon their resolution, issue a AHP Milestone Completion Certificate as per the format provided in the Development Agreement;
- 5.11 If at any time during the AHP Construction Period, the Independent Engineer determines that the Developer has not made adequate arrangements for the safety of workers and others concerned in the zone of construction or that any work is being carried out in a manner that threatens the safety of the workers and the others concerned, it shall make a recommendation to BDA forthwith, identifying the whole or part of the construction works that should be suspended for ensuring safety in respect thereof.

6 Determination of costs and time

- 6.1 The Independent Engineer shall determine the costs, and/or their reasonableness, that are required to be determined by it under the Agreement.
- 6.2 The Independent Engineer shall determine the period, or any extension thereof, that is required to be determined by it under the Agreement.

7 Assistance in Dispute resolution

- 7.1 When called upon by either Party in the event of any Dispute, the Independent Engineer shall mediate and assist the Parties in arriving at an amicable settlement.
- 7.2 In the event of any disagreement between the Parties regarding the meaning, scope and nature of Good Industry Practice, as set forth in any provision of the Agreement, the Independent Engineer shall specify such meaning, scope and nature by issuing a reasoned written statement relying on good industry practice and authentic literature. The Independent engineer will also undertake an assessment of cost of construction of AHP Assets constructed till such time, in case

of Termination events.

8 Other duties and functions

The Independent Engineer shall perform all other duties and functions specified in the Agreement.

9 Miscellaneous

- 9.1 The Independent Engineer shall notify its programme of inspection to BDA and to the Developer, who may, in their discretion, depute their respective representatives to be present during the inspection.
- 9.2 A copy of all communications, comments, instructions, documents sent by the Independent Engineer to the Developer pursuant to this TOR, and a copy of all the inspection results with comments of the Independent Engineer thereon shall be furnished by the Independent Engineer to BDA forthwith.
- 9.3 The Independent Engineer shall obtain, and the Developer shall furnish in two copies thereof, all communications and reports required to be submitted, under this Agreement, by the Developer to the Independent Engineer, whereupon the Independent Engineer shall send one of the copies to BDA along with its comments thereon.
- 9.4 The Independent Engineer shall retain at least one copy each of all documents received by it and keep them in its safe custody.
- 9.5 Upon completion of its assignment hereunder, the Independent Engineer shall duly classify and list all documents, results of inspection and other relevant records, and hand them over to BDA or such other person as BDA may specify, and obtain written receipt thereof. Two copies of the said documents shall also be furnished in USB drive form or in such other medium as may be acceptable to BDA.

SCHEDULE K EXTERNAL DEVELOPMENT WORKS

The Developer shall have access to the required external development works available at to the battery limit of site including the Water Supply, Sewerage, Solid Waste Management, Drainage, Road and peripheral electrification work executed from the concerned DISCOM. The responsibility to connect to external development works shall lie with the Developer, who will also bear the cost of the same.

I. Water Supply

- a) Water to the Site shall be provided by state Public Health Engineering Department (PHEO) / Water Corporation of Odisha (WATCO) as applicable.
- b) The developer shall follow the available state PHEO code/ Central Public Health and Environmental Engineering Organisation (CPHEEO) manual and other applicable standards for designing the water demand for EWS Units.

II. Sewerage

- a) Adjoining to the Site sewer line has been laid which will be sufficient to carry the sewage load generated by the proposed development.
- b) However, the Developer shall consider the invert level of the present sewerage system there and plan the waste water disposal of the Site accordingly.

III. Electricity

- a) Central Electricity Supply Unit of Odisha (CESU) is the relevant department for ensuring electricity up to the Site.
- b) The total electricity demand for the EWS Units (2600 no.s) shall be 1250 KW (@1KW per unit and 50 KW for the non-residential areas for which distribution transformer as per requirement shall be provided by the Developer along with provision of LT line and internal wiring.

IV. Solid Waste Management

- a) BMC shall provide all necessary support for the collection of solid waste from the Site.

V. Drainage

- a) The Drainage facility is available up to battery limit of the site and the Developer shall construct requisite drainage system facilities for the disposal of storm water from the Site to the nearest discharge point.

VI. Roads

- a) Currently, a 30 feet wide road is existing and provides approach to the project site. It is proposed to be widened to 150' and the same road shall act as the main approach road to the Site.
- b) In addition, 200 fit wide CDP Road (along Chandaka Dampada Eco Sensitive Zone) and 18 mt. ZDP Road (on the northern part of project site below Buddha Jayanti Park) is proposed.

SCHEDULE L EHS STANDARDS

Environmental, social, labour, health and safety performance requirements (EHS standards) along with the website links from where these can be accessed are provided below. In case of any difficulty in accessing these documents, the Bidder is expected to reach out to the BDA.

- Performance Standards on Environmental and Social Sustainability:
http://www.ifc.org/wps/wcm/connect/115482804a0255db96fbfd1a5d13d27/PS_English_2012_Full-Document.pdf?MOD=AJPERES
- Environmental, Health, and Safety General Guidelines:
<http://www.ifc.org/wps/wcm/connect/554e8d80488658e4b76af76a6515bb18/Final%2B-%2BGeneral%2BEHS%2BGuidelines.pdf?MOD=AJPERES>
- Environmental and Social Management System Implementation Handbook: Construction.
<http://www.ifc.org/wps/wcm/connect/21c6e0804528f9de802c8cc66d9c728b/ESMS+Handbook+Construction-v7.pdf?MOD=AJPERES>
- Workers' accommodation: processes and standards:
http://www.ifc.org/wps/wcm/connect/9839db00488557d1bdfcff6a6515bb18/workers_accommodation.pdf?MOD=AJPERES&CACHEID=9839db00488557d1bdfcff6a6515bb18
- Good Practice Note: Addressing Child Labor In the Workplace and Supply Chain:
<http://www.ifc.org/wps/wcm/connect/0c566200488555cbb834fa6a6515bb18/ChildLabor.pdf?MOD=AJPERES&CACHEID=0c566200488555cbb834fa6a6515bb18>
- Investing in People: Sustaining Communities through Improved Business Practice.
<http://www.ifc.org/wps/wcm/connect/1dc2e10048865811b3fef36a6515bb18/CommunityGuide.pdf?MOD=AJPERES&CACHEID=1dc2e10048865811b3fef36a6515bb18>
- National Building Code 2005 (as amended)

Requirements determined by the various regulatory /statutory agencies as relevant to the project (non-exhaustive list below)

- <http://envfor.nic.in/major-initiatives/environmental-clearances>
- <http://forestclearance.nic.in/>
- <http://www.cpcb.nic.in/#>
- <http://www.orissapcb.nic.in/>
- <http://labour.gov.in/content/>
- <http://cgwb.gov.in/SER/index.html>

SCHEDULE M
FORMAT OF PARENT COMPANY GUARANTEE

[Note: If the Selected Bidder is a single entity, then the Parent Company Guarantee is required to be executed by such single entity. If the Selected Bidder is a Consortium, then the Lead Member of the Consortium will be required to execute the Parent Company Guarantee.]

[ON APPROPRIATE STAMP PAPER]

THIS DEED OF GUARANTEE (the **Guarantee**) is executed on this *[insert day]* day of *[insert month and year]* at *[insert place]* by *[insert name of Parent Guarantor]* with its head/registered office at *[insert address]*, (hereinafter referred to as the **Guarantor**, which expression shall unless it is repugnant to the subject or context thereof include successors and assigns)

IN FAVOUR OF

BHUBANESWAR DEVELOPMENT AUTHORITY, a statutory body constituted under the Orissa Development Authorities Act, 1982 by notification no. 37627-HUD/31.8.1983, with its registered office at Ashok Shova Building, Pandit Jawaharlal Nehru Marg, Bhubaneswar – 751 001, Odisha (India) (hereinafter referred to as **BDA**, which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns);

WHEREAS

- A. For the purpose of undertaking the Chandrashekharpur Affordable Housing Project, the GoO has transferred 20.21 Acres of land, at Chandrasekharpur to BDA. With a view to develop affordable housing units for EWS households in the Bhubaneswar Development Area, BDA has decided to undertake an affordable housing project on the Site under Model III of the Housing for All Policy.
- B. For this purpose, BDA intended to engage a developer who will: (i) design, develop, finance, construct, complete and hand over AHP Assets to BDA free of cost; and (ii) have the right to design, finance, construct, market, allot, complete and transfer PDP Units on the Developer's Area, in accordance with the Development Agreement (collectively the **Project**).
- C. On *[insert date of RFP]*, BDA commenced a competitive Bid Process for the Project by issuing a request for proposal (the **RFP**), inviting interested parties to submit their technical proposals and financial proposals to BDA for undertaking the Project.

- D. Pursuant to the terms of the RFP, BDA received proposals from various bidders, including a proposal submitted by the Selected Bidder on [*insert date*].
- E. Following a process of evaluation of technical proposals and financial proposals submitted by the bidders (including the Selected Bidder), BDA has on [insert date] accepted the proposal submitted by the Selected Bidder for the development of the Project. Subsequently, BDA has issued the letter of award dated [Insert date] to the Selected Bidder (the **LOA**).
- F. The Selected Bidder accepted the LOA [and incorporated a special purpose vehicle to act as the Developer, to implement the Project and for this purpose,] [and] the [Developer/Selected Bidder] and BDA executed the Development Agreement on [insert date] to undertake the Project (**Development Agreement**).
- G. As on the date hereof, the Guarantor [and [*insert names of other Consortium members*]] hold(s) the legal and beneficial ownership of the equity and voting rights of the Developer in the following proportion:
[*Insert details*]
- H. In terms of Clause 5.4 of the Development Agreement, the [Selected Bidder/the Lead Member] is required to furnish the Parent Company Guarantee in favour of BDA to secure the due performance of all the Developer's obligations until the expiry of the Defects Warranty Period under and in accordance with the Development Agreement.
- I. The Guarantor represents warrants and acknowledges that the execution of the Development Agreement is and will be of material benefit to it. Therefore, at the request of the Developer and for sufficient consideration, the Guarantor has agreed to provide an unconditional, irrevocable and on-demand parent company guarantee, for the due and punctual performance or discharge by the Developer of its obligations and liabilities until the expiry of the Defects Warranty Period under the Development Agreement.

NOW IT IS HEREBY UNDERTAKEN AND AGREED AS FOLLOWS:

1. In consideration of BDA entering into the Development Agreement with the Developer, the Guarantor irrevocably and unconditionally guarantees to BDA as a primary obligation and not as a surety, due and full performance by the Developer of all of its obligations and discharge of all its liabilities under and in accordance with the Development Agreement. Provided that nothing herein shall be construed as imposing greater obligations or liabilities on the Guarantor than are imposed on the Developer under the Development Agreement.
2. The Guarantor guarantees, in the event of the Developer failing to perform or observe the

terms and provisions of the Development Agreement and its obligations and discharge of all its liabilities until the expiry of the Defects Warranty Period under and in accordance with the Development Agreement, that the Guarantor will perform or take such steps as are necessary to achieve performance or observance of such terms and provisions of the Development Agreement, including specifically the Developer's obligation to rectify defects in the AHP Assets (other than the Public Thoroughfare).

3. The obligations of the Guarantor herein are absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of the Development Agreement or the insolvency, bankruptcy, reorganization, dissolution or liquidation of the Developer or any change in ownership of the Developer or any purported assignment by the Developer or any other circumstance whatsoever which might otherwise constitute a discharge or defence of a guarantor or a surety.

Further, this Guarantee is in no way conditional upon any requirement that BDA first attempt to procure the performance or payment from or give notice of any demand under this Guarantee to the Developer or resort to any other means of obtaining performance or payment under the Development Agreement.

4. In order to give effect to this Guarantee, BDA shall be entitled to treat the Guarantor as the principal debtor and not merely as a surety. The obligations of the Guarantor under this Guarantee shall not be affected by any act, omission, matter or thing which, but for this provision, would reduce, release or prejudice the Guarantor from any of the obligations or liabilities under this Guarantee or prejudice or diminish the obligations or liabilities of the Guarantor under this Guarantee, either in whole or in part, including (whether or not known to it, or BDA).
5. So long as any obligations or liabilities of the Developer until the expiry of the Defects Warranty Period under the Development Agreement remains un-performed or un-discharged, the Guarantor shall not exercise any right of subrogation or any other rights of a guarantor or enforce any guarantee or other right or claim against the Developer or claim in the insolvency or liquidation of the Developer or any such other Person in competition with BDA.
6. The obligations of the Guarantor under this Guarantee shall remain in full force and effect until the expiry of the Defects Warranty Period under the Development Agreement.

7. This Guarantee is a continuing guarantee and accordingly shall cover all of the obligations and liabilities of the Developer until the expiry of the Defects Warranty Period under the Development Agreement. This Guarantee is in addition to any other security which BDA may at any time hold and may be enforced without first having recourse to any such security or taking any steps or proceedings against the Developer.
8. All payments made hereunder shall be made free, without set-off, and clear of, and without deduction for or on account of any present or future stamp or other taxes, levies, imposts, duties, charges, fees, deductions or withholdings of any nature now or hereafter applicable by payment to the account of BDA, or as BDA may direct.
9. The execution, delivery and performance of this Guarantee by the Guarantor does not and will not contravene the certificate of incorporation or by-laws of the Guarantor and all permits and other authorizations, approvals, orders or consents required under the laws governing the Guarantor in connection with the execution, delivery and performance of this parent company guarantee by the Guarantor have been obtained.
10. If any one or more of the provisions contained in this Guarantee are or become invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, and the Guarantor shall enter into good faith negotiations with BDA to replace the invalid, illegal or unenforceable provision.
11. The Guarantor hereby agrees to execute and deliver all such instruments and take all such actions as may be necessary to make effective fully the purposes of this Guarantee.
12. BDA shall be entitled to assign the benefit of this Guarantee to any third party at any time without the consent of the Guarantor or the Developer being required. The Guarantor shall not assign or transfer any of its rights or obligations under this Guarantee.
13. All documents arising out of or in connection with this Guarantee shall be served:
 - (a) upon BDA, at [*insert address*] marked for the attention of [*insert name*]; and
 - (b) upon the Guarantor, at [*insert address*], marked for the attention of [*insert name*].
14. This Guarantee shall be governed by and construed according to the laws for the time being in force in India and the Guarantor agrees to submit to the exclusive jurisdiction of the courts at Bhubaneswar.

15. This Guarantee may be executed in one or more duplicate counterparts, and when executed and delivered by the Guarantor and BDA shall constitute a single binding agreement.
16. Capitalised terms used herein but not defined shall have the meaning ascribed to them in the Development Agreement.

IN WITNESS WHEREOF the Guarantor has set its hands hereunto on the day, month and year first hereinabove written.

Signed and delivered by [], having its address at [*insert address*]

SCHEDULE N
FORMAT OF SECOND PERFORMANCE SECURITY

[ON APPROPRIATE STAMP PAPER]

Bank Guarantee No. [●]

THIS DEED OF GUARANTEE is executed on this [*insert day*] day of [*insert month and year*] at [*insert place*] by [*insert name of bank*] with its registered office at [*insert address*], (hereinafter referred to as the **Guarantor**, which expression shall unless it is repugnant to the subject or context thereof include successors and assigns),

IN FAVOUR OF:

BHUBANESWAR DEVELOPMENT AUTHORITY, a statutory body constituted under the Orissa Development Authorities Act, 1982 by notification no. 37627-HUD/31.8.1983, with its registered office at Ashok Shova Building, Pandit Jawaharlal Nehru Marg, Bhubaneswar – 751 001, Odisha (India) (hereinafter referred to as **BDA**, which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns.

WHEREAS

- A. For the purpose of undertaking the Chandrashekapur Affordable Housing Project, the GoO has transferred 20.21 Acres of land, at Chandrasekharapur to BDA. With a view to develop affordable housing for EWS households in the Bhubaneswar Development Area, BDA has decided to undertake an affordable housing project on the Site under Model III of the Housing for All Policy.
- B. For this purpose, BDA intended to engage a developer who will: (i) design, develop, finance, construct, complete and hand over AHP Assets to BDA free of cost; and, (ii) have the right to design, finance, construct, market, allot, complete and transfer PDP Units on the Developer's Area in accordance with this Agreement (collectively the **Project**).
- C. On [*insert date of RFP*], BDA commenced a competitive Bid Process for the Project by issuing a request for proposal (the **RFP**), inviting interested parties to submit their technical proposals and financial proposals to BDA for undertaking the Project.
- D. Pursuant to the terms of the RFP, BDA received proposals from various bidders, including a proposal submitted by the Selected Bidder on [*insert date*].
- E. Following a process of evaluation of technical proposals and financial proposals submitted by the bidders (including the Selected Bidder), BDA has on [*insert date*] accepted the

- proposal submitted by the Selected Bidder for the development of the Project. Subsequently, BDA has issued the letter of award dated [Insert date] to the Selected Bidder (the **LOA**).
- F. The Selected Bidder accepted the LOA [and the [Developer/Selected Bidder] and BDA executed the Development Agreement on [*insert date*] to undertake the Project (**Development Agreement**).
- G. In terms of Clause 5.1 of the Development Agreement, the Developer is required to furnish to BDA, an unconditional, irrevocable, on demand bank guarantee as security for due and punctual performance or discharge of the Developer's obligations and liabilities under the Development Agreement, as a condition precedent to effectiveness of the Development Agreement. The value and validity of the bank guarantee is to be subsequently revised in accordance with Clause 5.1 of the Development Agreement.
- H. At the request of the Developer and for sufficient consideration, the Guarantor has agreed to provide an unconditional, irrevocable and on-demand bank guarantee, for the due and punctual performance or discharge by the Developer of its obligations and liabilities under the Development Agreement.

NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS:

1. Capitalised terms used herein but not defined shall have the meaning ascribed to them in the Development Agreement.
2. The Guarantor hereby irrevocably and unconditionally guarantees and secures (as primary obligor and not merely as guarantor or surety) to BDA the payment in full of all amounts at any time that may be due, owing or payable to BDA from the Developer for the failure of the Developer to duly and punctually perform all of its obligations or discharge all of its liabilities under the Development Agreement (the **Guarantee**), without any demur, reservation, protest or recourse, immediately on receipt of a demand from BDA.
3. The Guarantor agrees that the value of the Guarantee shall be maintained at the following amounts:
 - (a) from the date of issuance of the Guarantee until the PDP Commencement Date:
INR 10,00,00,000 (Rupees ten crores)

- (b) from the PDP Commencement Date until the issuance of the AHP Milestone Completion Certificate for the 2nd (second) construction milestone as per the AHP Construction Schedule: INR 15,00,00,000 (Rupees fifteen crores);
- (c) from the date of issuance of the AHP Milestone Completion Certificate for the 2nd (second) construction milestone until the date of issuance of the AHP Milestone Completion Certificate for the 3rd (third) AHP Construction Milestone: INR 10,00,00,000 (Rupees ten crores); and
- (d) from the date of issuance of the AHP Milestone Completion Certificate for the 3rd (third) construction milestone until the AHP Completion Date: INR 7,00,00,000 (Rupees seven crores);
- (e) Upon issuance of the AHP Completion Certificate and hand over of the Phase II AHP Assets to BDA, the Developer shall reduce the value of the Second Performance Security to INR 5,00,00,000 (Rupees five crores) and increase the validity of the Second Performance Security until the expiry of 5 (five) years from the AHP Completion Date.

The amount set out in (a)-(e) above shall be the **Guaranteed Amount**, for the relevant time period.

- 4. The Guarantor agrees that the Guarantee will initially be valid for 36 (thirty six) months from the Effective Date, and from such 36 (thirty six) months from the Effective Date or the AHP Completion Date, whichever is earlier, the Guarantee will be valid for 5 (five) years from the AHP Completion Date.
- 5. The Guarantor further agrees that this Guarantee does not limit the number of claims that may be made by BDA against the Guarantor. Upon a payment being made under this Guarantee, the amount of the Guarantee shall automatically be replenished to the full Guaranteed Amount.
- 6. Any payment made hereunder shall be made free and clear of and without deduction for, or on account of, any present or future taxes, deductions or withholdings of any nature whatsoever and by whomsoever imposed, and where any withholding on a payment is required by any Applicable Law, the Guarantor shall comply with such withholding obligations and shall pay such additional amount in respect of such payment such that BDA receives the full amount due hereunder as if no such withholding had occurred.

7. The Guarantor shall, pay to BDA sums not exceeding the Guaranteed Amount, within 5 (five) Business Days of receipt of a written demand from BDA stating that the Developer has failed to observe or perform any of the terms, conditions or provisions of the Development Agreement or to discharge any of its liabilities under the Development Agreement, including where the Developer fails to replace this Guarantee in accordance with Clause 5.1(k) of the Development Agreement.

The Guarantor shall not go into the veracity of any breach or failure on the part of the Developer or validity of demand so made by BDA and shall pay the amount specified in the demand notwithstanding any direction to the contrary given or any Dispute whatsoever raised by the Developer 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 of this Guarantee.

8. The obligations of the Guarantor herein are absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of the Development Agreement or the insolvency, bankruptcy, reorganization, dissolution or liquidation of the Developer or any change in ownership of the Developer or any purported assignment by the Developer or any other circumstance whatsoever which might otherwise constitute a discharge or defence of a guarantor or a surety.

Further, this Guarantee is in no way conditional upon any requirement that BDA first attempt to procure the Guaranteed Amount from or give notice of such demand to the Developer, or any other Person, or resort to any other means of obtaining payment of the Guaranteed Amount.

9. In order to give effect to this Guarantee, BDA shall be entitled to treat the Guarantor as the principal debtor and not merely as a surety. The obligations of the Guarantor under this Guarantee shall not be affected by any act, omission, matter or thing which, but for this provision, would reduce, release or prejudice the Guarantor from any of the Guaranteed Amount or prejudice or diminish the Guaranteed Amount in whole or in part, including (whether or not known to it, or BDA):

- (a) any time or waiver granted to, or composition with, the Developer or any other Person;
- (b) any incapacity or lack of powers, authority or legal personality of or dissolutions or change in the status of the Developer or any other Person;

- (c) any variation to or amendment of the Development Agreement (references to the Development Agreement in this Guarantee shall include each variation or amendment);
- (d) any unenforceability, illegality or invalidity of any obligation of any Person under the Development Agreement or any unenforceability, illegality or invalidity of the obligations of the Guarantor under this Guarantee or the unenforceability, illegality or invalidity of the obligations of any Person under any other document or guarantee, to the extent that each obligation under this Guarantee shall remain in full force as a separate, continuing and primary obligation, and its obligations be construed accordingly, as if there were no unenforceability, illegality or invalidity;
- (e) the partial or entire release of any Guarantor or other Person primarily or secondarily liable or responsible for the performance, payment or observance of any of the Developer's obligations; or by any extension, waiver, or amendment whatsoever which may release a guarantor or Guarantor (other than performance or infeasible payment of a Guaranteed Amount); or
- (f) any part performance of the Development Agreement by the Developer or by any failure by BDA to timely pay or perform any of its obligations under the Development Agreement.

10. If, and to the extent that, for any reason the Developer enters or threatens to enter into any proceedings in bankruptcy or reorganization or otherwise, or if, for any other reason whatsoever, the performance or payment by the Developer of the Guaranteed Amount becomes or may reasonably be expected to become impossible, then the Guaranteed Amount shall be promptly paid by the Guarantor to BDA on demand.

11. So long as any sum remains owing by the Developer to BDA until the expiry of the Defects Warranty Period, the Guarantor shall not exercise any right of subrogation or any other rights of a guarantor or enforce any guarantee or other right or claim against the Developer (whether in respect of its liability under this Guarantee or otherwise) or claim in the insolvency or liquidation of the Developer or any such other Person in competition with BDA. If the Guarantor receives any payment or benefit in breach of this clause 7, it shall hold the same upon trust for BDA.

12. This Guarantee shall remain in full force and effect from the date hereof until the expiry of the Defects Warranty Period.

Notwithstanding the foregoing, this Guarantee shall continue in effect until the sums payable under this Guarantee have been indefeasibly paid in full and the Guarantor receives written notice thereof from BDA (such notice to be issued promptly upon such occurrence).

13. The Guarantor represents and warrants to BDA that:

- (a) it has the power to execute, deliver and perform the terms and provisions of this Guarantee and has taken all necessary action to authorize the execution, delivery and performance by it of this Guarantee;
- (b) the Guarantor has duly executed and delivered this Guarantee, and this Guarantee constitutes its legal, valid and binding obligation enforceable in accordance with its terms except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, moratorium or other similar laws affecting the enforcement of creditors' rights generally and by general equitable principles;
- (c) neither the execution, delivery or performance by the Guarantor of this Guarantee, nor compliance by it with the terms and provisions hereof will: (i) contravene any material provision of any Applicable Law; (ii) conflict or be inconsistent with or result in any breach of any of the material terms, covenants, conditions or provisions of, or constitute a default under any agreement, contract or instrument to which the Guarantor is a party of by which it or any of its property or assets is bound; or (iii) violate any provision of the Guarantor's constituent documents;
- (d) no order, consent, approval, license, authorization or validation of, or filing, recording or registration with (except as have been obtained or made prior to the date hereof), or exemption by, any governmental or public body or authority, or any subdivision thereof, is required to authorize, or is required in connection with: (i) the execution, delivery and performance of this Guarantee; or (ii) the legality, validity, binding effect or enforceability of this Guarantee;
- (e) the Guarantor is not suffering from any act of insolvency; and
- (f) the Guarantor is a Scheduled Bank and this Guarantee will be enforceable when presented for payment to a Scheduled Bank in Bhubaneswar.

14. This Guarantee is a continuing one and all liabilities to which it applies or may apply under the terms hereof shall be conclusively presumed to have been created in reliance hereon. No failure or delay on the part of BDA in exercising any right, power or privilege hereunder and no course of dealing between BDA and the Guarantor, or the Developer, shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege

hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

15. The rights, powers and remedies expressly provided in this Guarantee are cumulative and not exclusive of any rights, powers or remedies which BDA would otherwise have. No notice to or demand on the Guarantor in any case shall entitle the Guarantor to any other further notice or demand in similar or other circumstances or constitute a waiver of the rights of BDA to any other or further action in any circumstances without notice or demand.
16. If any one or more of the provisions contained in this Guarantee are or become invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, and the Guarantor shall enter into good faith negotiations with BDA to replace the invalid, illegal or unenforceable provision
17. The Guarantor hereby agrees that its liability under this Guarantee shall not be discharged by virtue of any agreement between the Developer and BDA, whether with or without the Guarantor's knowledge, or by reason of BDA showing any indulgence or forbearance to the Developer.
18. The Guarantor hereby agrees to execute and deliver all such instruments and take all such actions as may be necessary to make effective fully the purposes of this Guarantee.
15. This Guarantee may be executed in one or more duplicate counterparts, and when executed and delivered by the Guarantor and BDA shall constitute a single binding agreement.
16. Any notice, request or other communication to be given or made under this Guarantee shall be in writing addressed to the Guarantor at the location set opposite its signature hereto and in the manner as set out in respect of notices under the Development Agreement.
17. This Guarantee shall be governed by, and construed in accordance with, the laws of India. The Guarantor irrevocably agrees that any legal action, suit or proceeding arising out of or relating to this Guarantee may be brought in the courts in Bhubaneswar.

18. BDA may assign or transfer all or any part of its interest herein to any other person with prior notification to the Guarantor. The Guarantor shall not assign or transfer any of its rights or obligations under this Guarantee.

IN WITNESS WHEREOF the Guarantor has set its hands hereunto on the day, month and year first hereinabove written.

Signed and delivered by [*insert name of Bank*] Bank, by [*insert name of branch*] Branch, having its address at [*insert address*]

Of [*insert name of signatory*]

Its [*insert designation*] and duly authorized representative

Authorized by [Power of Attorney dated [*insert date*]] OR [Board resolution dated [*insert date*]].

SCHEDULE O
DEVELOPER ESCROW AGREEMENT

This DEVELOPER ESCROW AGREEMENT is made on the.....day of..... (*insert date, year*)
at _____ within the State of Odisha.

BY AND AMONG

1. M/s _____, a company incorporated under the Companies Act, 2013, and having its registered office at _____ [*insert registered office address*], (hereinafter referred to as the "**Developer**", which expression shall, unless it be repugnant to the subject or context thereof, include its successors, liquidators and permitted assigns);

AND

2. **BHUBANESWAR DEVELOPMENT AUTHORITY**, a statutory body constituted under the Orissa Development Authorities Act, 1982 by notification no. 37627-HUD/31.8.1983, with its registered office at Ashok Shova Building, Pandit Jawaharlal Nehru Marg, Bhubaneswar – 751 001, Odisha (India) (hereinafter referred to as "**BDA**", which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns);

AND

3. _____ (*Insert name of the Bank*), a body corporate constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and having its registered office at _____, and branch office at _____, in its capacity as the Developer Escrow Agent (hereinafter referred to as the "**Developer Escrow Agent**", which expression shall, unless it be repugnant to the subject or context thereof, include its successors in office, nominees and assigns).

AND

4. _____ (*Insert name and particulars of the Lenders' representatives*), and having its registered office at _____, nominated by the Lenders as their representative in terms of the Financing Documents, and acting for and

on behalf of the Lenders as their duly authorized agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the "**Lenders' Representative**", which expression shall, unless it be repugnant to the subject or context thereof, include its successors in office, nominees and assigns).

WHEREAS:

BDA, the Developer, the Lenders' Representative and the Developer Escrow Agent shall collectively be referred to as the **Parties** and individually as a **Party**.

WHEREAS:

- A. For the purpose of undertaking the Chandrashekharpur Affordable Housing Project, the GoO has transferred 20.21 Acres of land, at Chandrasekharpur to BDA. With a view to develop affordable housing units for EWS households in the Bhubaneswar Development Area, BDA has decided to undertake an affordable housing project on the Site under Model III of the Housing for All Policy.
- B. For this purpose, BDA intended to engage a developer who will: (i) design, develop, finance, construct, complete and hand over AHP Assets to BDA free of cost; and (ii) have the right to design, finance, construct, market, allot, complete and transfer PDP Units on the Developer's Area, in accordance with the Development Agreement (collectively the **Project**).
- C. On [*insert date of RFP*], BDA commenced a competitive Bid Process for the Project by issuing a request for proposal (the **RFP**), inviting interested parties to submit their technical proposals and financial proposals to BDA for undertaking the Project.
- D. Pursuant to the terms of the RFP, BDA received proposals from various bidders, including a proposal submitted by the Selected Bidder on [*insert date*].
- E. Following a process of evaluation of technical proposals and financial proposals submitted by the bidders (including the Selected Bidder), BDA has on [insert date] accepted the proposal submitted by the Selected Bidder for the development of the Project. Subsequently, BDA has issued the letter of award dated [Insert date] to the Selected Bidder (the **LOA**).

- F. The Selected Bidder accepted the LOA [and incorporated a special purpose vehicle to act as the Developer, to implement the Project and for this purpose,] [and] the [Developer/Selected Bidder] and BDA executed the Development Agreement on [insert date] to undertake the Project (**Development Agreement**). The Development Agreement is annexed to this Agreement.
- G. The Lenders have agreed to finance the Project in accordance with the terms of the Financing Documents.
- H. As per its obligations set out under the Development Agreement, the Developer is required to establish the Developer Escrow Account with the Developer Escrow Agent in accordance with this Agreement, and all moneys received by the Developer for the construction of AHP Assets and the PDP Units shall be routed through the Developer Escrow Account in accordance with this Agreement.

NOW IN CONSIDERATION OF THE PREMISES IT IS AGREED BY THE PARTIES AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

- 1.1. In addition to the capitalised terms defined in this Agreement, the defined terms set out in the Development Agreement shall be incorporated in this Agreement by reference.
- 1.2. The rules of interpretation set out in clause 1.2 of the Development Agreement shall be incorporated in this Agreement by reference.
- 1.3. References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.
- 1.4. The following terms shall, except where the context otherwise requires, have the meaning as hereunder:

- (a) "Accounting Year" means each twelve-month period commencing on 1 April and ending on 31 March of every year.
- (b) "Agreement" means this Developer Escrow Agreement, including recitals and annexures hereto as may be amended, supplemented or modified in accordance with the provisions hereof.
- (c) "Business Day" means a day on which banks are generally open in _____ (place of Bank) or Bhubaneswar for domestic business.
- (d) "Developer Escrow Account" means the bank account established with the Developer Escrow Agent into and out of which the inflows and outflows of cash pursuant to the Project shall be credited and debited, as the case may be, in accordance with the provisions of this Agreement and shall include the sub-accounts of such account.
- (e) "Developer Escrow Allottee Sub-Account" means the sub-account of the Developer Escrow Account into which at least 70% of all amounts received by the Developer from any allottees in connection with the Project shall be deposited in accordance with the RERA.
- (f) "Developer Escrow BDA Grant Sub-Account" means the sub-account of the Developer Escrow Account into which the Grant shall be deposited in accordance with the provisions of the Development Agreement and this Agreement.
- (g) "Developer Event of Default" means a Developer Event of Default as defined and detailed in the Development Agreement.

2. THE ACCOUNT

2.1. Acceptance of appointment of the Developer Escrow Agent

- (a) The Developer, BDA and the Lenders' Representative do hereby appoint _____ *[Insert name of the bank and branch]* as the Developer Escrow Agent and the _____ *[Insert name of the bank and branch]* hereby agrees to act as such Developer Escrow Agent and to accept all

payments and other amounts to be delivered to or held by the Developer Escrow Agent pursuant to the terms of this Agreement.

The Developer hereby settles in trust (for the benefit of the the BDA and the Lenders' Representative (on behalf of the Lenders)) with the Developer Escrow Agent a sum of INR 1,000 (Rupees one thousand). The Developer Escrow Agent has accepted the above amount of INR 1,000 (Rupees one thousand) in trust declared and, subject to the terms and conditions in this Agreement, agreed to act as trustee for the benefit of the BDA, the Lenders' Representative and the Developer.

- (b) The Developer Escrow Agent shall hold and safeguard the Developer Escrow Account and any monies held therein, during the term of this Agreement and shall treat the amount in the Developer Escrow Account as monies deposited by the Developer with the Developer Escrow Agent (acting as agent for the benefit of BDA and the Lenders' Representative (on behalf of the Lenders)) in trust in accordance with the provisions of this Agreement. In performing its functions and duties under this Agreement, the Developer Escrow Agent shall act as an agent of BDA, the Lenders' Representative and the Developer.
- (c) The Developer, BDA and the Lenders' Representative also authorize the Developer Escrow Agent to exercise such rights, powers, authorities and discretion as are delegated to the Developer Escrow Agent by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Developer Escrow Agent accepts such appointment pursuant to the terms hereof.
- (d) The Developer hereby also declares that all right, title and interest in and to the Developer Escrow Account shall be vested in the Developer Escrow Agent and held in trust for and on behalf of BDA and the Lenders' Representative (on behalf of the Lenders), in accordance with the terms of this Agreement. Amounts deposited in the Developer Escrow Account from time to time shall be held by the Developer Escrow Agent in trust and received and applied as provided in and in accordance with this Agreement and Applicable Laws. No Person other than BDA, the Developer and the Lenders' Representative shall have any rights hereunder as the beneficiaries of or as third party beneficiaries under this Agreement.

- (e) The rights of the Developer, BDA and the Lenders' Representative in the monies held in the Developer Escrow Account are set forth in their entirety in this Agreement and the Development Agreement, and the Developer, BDA and the Lenders' Representatives shall have no other rights against or to the monies in the Developer Escrow Account.

2.2. Establishment of the Developer Escrow Account

- (a) The Developer shall establish the Developer Escrow Account along with the following sub-accounts: (i) Developer Escrow Allottee Sub-Account; and (ii) Developer Escrow BDA Grant Sub-Account, with the Developer Escrow Agent within 30 (thirty) days of the date of execution of the Development Agreement, and in any case prior to the CP Long-Stop Date.
- (b) Once the Developer Escrow Account is established, the Developer Escrow Agent shall inform BDA and the Lenders' Representative of the same.
- (c) The Developer Escrow Account shall be denominated in INR.

2.3. Maintenance of the Developer Escrow Account

The Developer Escrow Agent shall maintain the Developer Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations. Interest shall be payable on the amounts in the Developer Escrow Account and shall be deposited into the Developer Escrow Account.

2.4. Operating Procedures

The Developer Escrow Agent and the Developer, after consultation with BDA and the Lenders' Representative, shall agree on the detailed mandates, terms and conditions and operating procedures for the Developer Escrow Account but in the event of any inconsistency between this Agreement and such mandates, terms and conditions or procedures in this Agreement shall prevail.

3. DEPOSITS

3.1. Deposits by the Developer

(a) The Developer irrevocably and unconditionally agrees and undertakes that it shall promptly, upon receipt, deposit into and/or credit the Developer Escrow Account with all monies collected, paid to or received by it in connection with the Project, including without limitation, the following:

- (i) all Financial Assistance received by the Developer from the Lenders for the AHP and / or the PDP;
- (ii) all share capital contributions and shareholder loans received from the Selected Bidder or other shareholders of the Developer;
- (iii) all insurance claim proceeds received in connection with the AHP or, as the case may be PDP, provided that the Developer shall apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Documents;
- (iv) all damages, claims etc. received from Subcontractors;
- (v) termination compensation; and
- (vi) funds to make up the shortfall in the amount in the Developer Escrow Account as against the cash flow requirement for the Project.

(b) Deposits into Sub-Accounts

- (i) Deposits into the Developer Escrow Allottee Sub-Account

Notwithstanding anything to the contrary contained in sub-clause (a) above, the Developer shall ensure that at least 70% of all amounts received by it from any allottee in connection with the Project shall be

deposited into the Developer Escrow Allottee Sub-Account immediately upon receipt by the Developer.

For the avoidance of doubt, it is clarified that the balance amount received from the allottees shall be deposited into the Developer Escrow Account.

(ii) Deposits into the Developer Escrow BDA Grant Sub-Account

Notwithstanding anything to the contrary contained in sub-clause (a) above, The Developer shall ensure that all amounts received by it as Grant from the BDA shall be deposited into the Developer Escrow BDA Grant Sub-Account immediately upon receipt by the Developer.

(c) Maintenance of Minimum Developer Escrow Balance

Deleted.

3.2. Deposits by the Lenders

The Developer agrees and undertakes that all amounts received by it from the Lenders in relation to the Financial Assistance availed of by the Developer for the Project along with all disbursements made by them, shall be deposited directly into and/or credited to the Developer Escrow Account. The Lenders' Representative agrees and confirms that the all amounts in relation to the Financial Assistance shall be deposited by the Lenders into the Developer Escrow Account.

4. WITHDRAWAL

4.1 Withdrawals from the Developer Escrow Account and its sub-accounts

(a) Withdrawal from the Developer Escrow Account

Subject to Clause 4.2 and any terms and conditions stipulated by the Lenders, the Developer shall be entitled to withdraw amounts from the Developer Escrow

Account for such purposes as may be permitted under Applicable Laws including for meeting the costs of the Project.

(b) Withdrawal from the Developer Escrow Allottee Sub-Account

Subject to Clause 4.2 below, the Developer shall be entitled to withdraw amounts from the Developer Escrow Allottee Sub-Account for such purposes as may be permitted under Applicable Laws including for meeting the costs of the Project.

(c) Withdrawal from the Developer Escrow BDA Grant Sub-Account

(i) Subject to Clause 4.2 below, the Developer shall be entitled to withdraw amounts from the Developer Escrow BDA Grant Sub-Account only for the AHP.

(ii) Upon the AHP Completion Date, the Developer shall be entitled to transfer all funds lying in the Developer Escrow BDA Grant Sub-Account to the Developer Escrow Account.

(d) The Developer and the Lenders' Representative shall, at the time of opening the Developer Escrow Account, give irrevocable instructions to the Developer Escrow Agent instructing that deposits in the Developer Escrow Account shall be appropriated during the AHP Construction Period in the manner set out in this Clause 4.

4.2 Withdrawals upon Events of Default

Notwithstanding anything to the contrary contained in this Agreement:

(a) If BDA notifies the Developer Escrow Agent, that a Developer Event of Default (including an Escrow Default) has occurred and is continuing, then until such time as the BDA has notified the Developer Escrow Agent that the Developer Event of Default has been cured or waived, the Developer Escrow Agent shall only allow withdrawal from the Developer Escrow Account and the Developer Escrow Allottee Sub-Account and the Developer Escrow BDA Grant Sub-Account with the prior written approval of the BDA.

- (b) all amounts standing to the credit of the Developer Escrow Account and the Developer Escrow Allottee Sub-Account and the Developer Escrow BDA Grant Sub-Account shall, upon termination of the Development Agreement for a Developer Event of Default, be appropriated in accordance with Applicable Laws, including the RERA.

5. DEVELOPER ESCROW AGENT PROVISIONS

5.1. Communications and notices

The Developer Escrow Agent:

- (a) shall not be liable to any person or entity for any loss, liability, claim, action, damages or expenses arising out of or in connection with its performance of any of its obligations under this Agreement save as are caused by its own bad faith, fraud, wilful default or gross negligence;
- (b) may, in the absence of bad faith, fraud, wilful default or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of BDA upon a certificate signed by or on behalf of BDA;
- (c) may, in the absence of bad faith, fraud, wilful default or gross negligence on its part, rely upon the authenticity of any communication or documents believed by it to be authentic;
- (d) shall, within 5 (five) Business Days after receipt, deliver a copy to BDA of any notice or document received by the Developer Escrow Agent in its capacity as the Developer Escrow Agent from the Developer or any other Person hereunder or in connection herewith;
- (e) shall, within 5 (five) Business Days after receipt, deliver a copy to the Developer of any notice or document received by the Developer Escrow Agent from BDA in connection herewith;
- (f) shall maintain a register in its office setting forth all receipts into the Developer Escrow Account and its sub-accounts from all sources and all withdrawals from the Developer Escrow Account and its sub-accounts including the Developer Escrow Sub-Account and shall ensure that records of inflows and outflows from

this account, are furnished to BDA for each (half year/quarter) by the 7th of the following month; and

- (g) shall have only those duties, obligations and responsibilities expressly referred to in this Agreement and no duties, obligations or responsibilities whatsoever shall be inferred or implied against the Developer Escrow Agent.

5.2. **Segregation of Funds**

Monies received by the Developer Escrow Agent under this Agreement shall, until used or applied in accordance with this Agreement, be held by the Developer Escrow Agent in trust for the purpose for which they were received, and shall be segregated from other funds and property of the Developer Escrow Agent.

5.3. **No set off**

The Developer Escrow Agent agrees to not claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the Developer Escrow Account. For the avoidance of doubt, it is hereby acknowledged and agreed by the Developer Escrow Agent that the monies held by the Developer Escrow Agent in the Developer Escrow Account shall not be considered as part of the assets of the Developer Escrow Agent and being trust property, shall, in the case of bankruptcy or liquidation of the Developer Escrow Agent, be wholly excluded from the assets of the Developer Escrow Agent in such bankruptcy or litigation.

5.4. **Termination**

- (a) Notwithstanding anything to the contrary contained in this Agreement, this Agreement shall remain in full force and effect until the later of: (i) expiry of the Term of the Development Agreement; or (ii) requirement under Applicable Law.
- (b) The Developer may, by not less than 45 (forty five) days prior notice to the Developer Escrow Agent, BDA and the Lenders' Representative, terminate this Agreement and appoint a new escrow agent, provided that the new escrow agent is acceptable to BDA and arrangements are made satisfactory to the GoO and BDA for transfer of amounts deposited in the Developer Escrow Account to a new escrow account established with the successor escrow agent. Provided that, until the new escrow agent is appointed, the Developer Escrow Agent shall

continue to perform its duties under this Agreement even if the 45 (forty five) day notice period has expired.

5.5. **Fees**

The Developer shall pay the Developer Escrow Agent fees, incidental charges and actual out-of-pocket expenses as may be agreed between the Developer Escrow Agent and the Developer.

5.6 **Capacity**

In accepting the trust created and extended under this Agreement, the Developer Escrow Agent acts solely in its capacity as the Developer Escrow Agent for the Developer Escrow Account and not in its individual capacity and all persons having any claim against the Developer Escrow Agent by reason of the transactions contemplated by the Development Agreement shall look only to the Developer for payment or satisfaction thereof, save and except as provided in this Agreement.

6. **DEVELOPER ESCROW AGREEMENT DEFAULTS**

6.1. The following events shall constitute an event of default by the Developer (an "**Escrow Default**"), unless such event of default has occurred as a result of Force Majeure or any act or omission of BDA or the Lenders' Representative:

- (a) In case the Developer commit breach of this Agreement by failing to deposit funds received by the Developer in the Developer Escrow Account within 5 (five) Business Days of receipt of such funds;
- (b) In the case of any other breach, by failing to remedy the breach within 5 (five) Business Days to the satisfaction of BDA;
- (c) In case the Developer diverts funds drawn from the Developer Escrow Account for a project/activity/usage other than the Project, and fails to cure such breach by not depositing an equal amount in the Developer Escrow Account within 5 (five) Business Days; or

(d) In case the Developer utilises or diverts funds received as Grant from the BDA from the Developer Escrow Sub-Account for any purpose other than the construction of the AHP.

6.2. The Parties agree that an Escrow Default in terms of this Agreement shall be treated as a Developer Event of Default under the Development Agreement, and the consequences of an Escrow Default shall be dealt with in accordance with this Agreement and the Development Agreement.

6.3. Upon the occurrence of a Developer Event of Default, the Developer agrees and undertakes that BDA shall have the right to appropriate such amounts from the Developer Escrow Account as may be due to BDA, in accordance with this Agreement and Clause 17.2(b) of the Development Agreement.

7. DEVELOPER'S OBLIGATIONS AND COVENANTS

- 7.1. Any marketing brochures or advertisements with respect to the PDP Units must specify the details of the Developer Escrow Allottee Sub-Account and that all upfront deposits, booking amounts, construction linked payment and any other payments from the PDP Allottees for the PDP Units are required to be deposited in such Developer Escrow Allottee Sub-Account.
- 7.2. Any letter of allotment or conveyance deed agreeing to sell a PDP Unit to a PDP Allottee must include the details of the Developer Escrow Allottee Sub-Account, and that all upfront deposits, booking amounts, construction linked payment and any other payments from the PDP Allottees for the PDP Units are required to be deposited in such Developer Escrow Allottee Sub-Account. Any such letter of allotment or conveyance deed must also specify that the Developer shall accept payment of the booking and other advance amounts, consideration amounts, premium, rents, security deposits, monies etc. from the PDP Allottees only by way of account payee cheques/drafts drawn on the Developer Escrow Allottee Sub-Account.
- 7.3. The Developer shall be responsible for monitoring all deposits made into and the payments/transfers from the Developer Escrow Account. In the event of a shortage of funds in the Developer Escrow Account , the Developer shall promptly and in any case within 3 (three) Business Days of the occurrence or knowledge thereof fund such shortfall or likely shortfall in the Developer Escrow Account out of its own sources and also advise the Developer Escrow Agent of any incident which is likely to have a bearing on the Developer Escrow Account and its operation and in no case the shall the Developer Escrow Account have a debit balance.
- 7.4. The Developer shall not commit or attempt to commit any act or omission which would prejudice the arrangements contemplated hereunder or adversely affect the arrangements in connection with the amounts received in connection with the Project or

the ability of the Parties to fulfil their respective obligations under this Agreement or the Development Agreement in any manner whatsoever.

8. REPRESENTATIONS AND WARRANTIES

8.1 The Developer makes the representations and warranties contained in this Clause to the Developer Escrow Agent, BDA and the Lenders' Representative.

- (a) It is a limited liability company, duly incorporated and validly existing under the laws of India.
- (b) It has the power to enter into and validly perform, and has taken all necessary action to authorise the entry into and valid performance of, this Agreement and the transactions contemplated by this Agreement.
- (c) This Agreement is duly executed and delivered by it and constitutes its legally valid, binding and enforceable obligation.
- (d) The entry into and performance by it of, and the transactions contemplated by, this Agreement do not and will not conflict with:
 - (i) any law or regulation applicable to it;
 - (ii) its constitutional documents; or
 - (iii) any document or agreement which is binding upon it or any of its assets.
- (e) All Applicable Permits required by it in connection with the entry into, performance, validity and enforceability of, and the transactions contemplated by, this Agreement have been obtained or effected (as appropriate) and are in full force and effect.
- (f) No litigation, arbitration or administrative investigation or proceedings of any nature whatsoever have commenced, are pending or are, to the best of its knowledge after due inquiry, threatened against it with respect to this Agreement or the Project; or (ii) which, if determined adversely against it, could have an

adverse effect on the Project or its ability to perform its obligations under this Agreement.

- (g) The Developer is not subject to any liquidation, insolvency or similar proceedings of any kind that may restrict its creditors' rights, or prevent the execution or performance of this Agreement.
- (h) No Event of Default is continuing or might reasonably be expected to result from the entering of this Agreement.

8.2 The Developer Escrow Agent represents and warrants that to and for the benefit of the Developer, the BDA and the Lenders' Representative:

- (a) it shall hold all funds in the Developer Escrow Account in trust and in accordance with the provisions of this Agreement;
- (b) it is duly incorporated and validly existing in good standing under the laws of India and has the corporate power and authority to enter into and perform its obligations under this Agreement, and has full right, power and authority to enter into, exercise its rights and perform its obligations as the Developer Escrow Agent hereunder;
- (c) this Agreement has been duly authorised, executed and delivered by it and constitutes its valid and legally binding obligation, enforceable in accordance with its terms; and
- (d) the execution, delivery and performance of this Agreement does not conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default or require any consent under any agreement or other instrument or arrangement to which it is a party or by which it is bound, or violate any of the terms or provisions of its articles of incorporation, by-laws or other governing documents, or any judgment, decree or order or any law, statute, rule or regulation applicable to it.

9. DISPUTE RESOLUTION

9.1. In the event of any dispute, controversy or difference between the Parties arising out of or relating to this Agreement (including a dispute relating to the validity or existence of this Agreement and any non-contractual obligations arising out of or in connection with this Agreement), the representatives of the Parties shall, within 15 (fifteen) days of service of a written notice from any Party to the other Parties hold a meeting in an effort

to resolve the dispute in good faith. In the absence of agreement to the contrary, the dispute meeting shall be held at the office of BDA in Bhubaneswar.

- 9.2. If a dispute is not resolved within 30 (thirty) days after the service of a dispute notice, whether or not a dispute meeting has been held, any party to the dispute shall be entitled to refer the dispute to arbitration to be finally resolved in the manner set out in this clause 9 by issuing a notice of arbitration to the other Parties. This Agreement and the rights and obligations of the Parties shall remain in full force and effect pending the award in such arbitration proceeding.
- 9.3. If a dispute is referred to arbitration by any Party, such dispute shall be resolved by a sole arbitrator to be appointed by mutual agreement of the Parties. If the Parties fail to appoint an arbitrator within 30 (thirty) days after service of the notice of arbitration, such arbitrator shall be appointed in accordance with the Arbitration Act.
- 9.4. The venue of the arbitration shall be Bhubaneswar and the language of the arbitration shall be English. The arbitration shall be conducted in accordance with the Arbitration Act.
- 9.5. The arbitration award of the arbitrator(s) shall be final and binding on the Parties and shall be enforceable in accordance with its terms. The arbitrator(s) shall state reasons for its findings in writing.
- 9.6. The costs of arbitration and the manner of bearing such costs shall be determined by the arbitrator(s).
- 9.7. The arbitration shall be governed by the laws of India and the seat of arbitration shall be Bhubaneswar.

10. MISCELLANEOUS

10.1. Successors and Assignors

This Agreement shall be binding on and shall ensure to the benefit of the Parties and their successors and permitted assigns.

10.2. **Notices**

- (a) All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier, registered or certified mail or facsimile. The address for service of each Party and its facsimile number is set out under its name on the signing pages hereto.
- (b) Any party may, by notice to the other Parties, change the addresses to which notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

10.3. **Waivers and Consents**

- (a) Any provision or breach of any provision of this Agreement may be waived before or after it occurs only if evidenced by an agreement in writing signed by the Parties.
- (b) Any consent under or pursuant to any provision of this Agreement must also be in writing and given prior to the event, action or omission for which it is sought.
- (c) Any such waiver or consent may be given subject to any conditions thought fit by the person(s) giving it and shall be effective only in the instance and for the purpose for which it is given.
- (d) Failure by any Party at any time to enforce any provision of this Agreement or to require performance by other Parties of any provision of this Agreement shall not be construed as a waiver of such provision and shall not affect the validity of this Agreement or any part of it or right of the relevant Party to enforce any provision in accordance with its terms.

10.4. **Non-exhaustive remedies**

- (a) Save and except as provided in this Agreement, the remedies available to the Parties under this Agreement are not exhaustive and each Party shall be entitled

to all other rights and remedies and to take all actions in law and in equity in addition to the remedies provided for herein.

- (b) Save and except as provided in this Agreement, the exercise of any rights by any Party under this Agreement shall not preclude such Party from availing of any other rights or remedies that may be available to it under this Agreement or any other agreement in relation to the Project.
- (c) All remedies available to the Parties under this Agreement, the Applicable Laws or otherwise, shall be cumulative; may be enforced successively or concurrently and the exercise or failure to exercise one or more remedies by any Party shall not limit or preclude the exercise of or constitute a waiver of any other remedies by such Party.

10.5. **Severability**

- (a) If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under any law, the legality, validity or enforceability of the remaining provisions will not, in any way, be affected or impaired.
- (b) The Parties shall negotiate in good faith with a view to agreeing one or more provisions which may be substituted for any such invalid, illegal or unenforceable provision and which produce as nearly as is practicable in all the circumstances the appropriate balance of the commercial interests of the Parties.

10.6. **Amendments**

No amendment to this Agreement shall be binding unless made in writing and signed by the duly authorized representatives of the Parties.

10.7. **Governing Law**

This Agreement shall be governed by and construed in accordance with Indian law. The courts of Bhubaneswar shall have jurisdiction over all matters arising out of or relating to this Agreement.

10.8. **Regulatory Approvals**

The Developer Escrow Agent shall procure, maintain and comply with all Applicable Permits (including regulatory approvals prescribed by the Reserve Bank of India and the Ministry of Finance, GoI) required for it to establish and operate the Developer Escrow Account. The Developer Escrow Agent represents and warrants that it is not aware of any reason why any such Applicable Permits will not ordinarily be granted to the Developer Escrow Agent.

10.9. **Indemnification**

- (a) Each Party (the “**Indemnifying Party**”) hereby agrees to indemnify and hold harmless the other Parties (the “**Indemnified Party(s)**”) from and against all claims, losses, liabilities, damages, costs, charges and expenses arising out of or resulting from any breach by such Indemnified Party of any provision of this Agreement or of any Applicable Laws (including without limitation, enforcement of this Agreement).
- (b) BDA shall indemnify and agree to keep indemnified the Developer from and against all claims, losses, liabilities, damages, costs, charges and expenses arising out of or resulting from this Agreement (including without limitation, enforcement of this Agreement).
- (c) The Developer Escrow Agent shall indemnify and agree to keep indemnified the Developer from and against all claims, losses, liabilities, damages, costs, charges and expenses arising out of or resulting from this Agreement (including without limitation, enforcement of this Agreement).

10.10. **Assignment**

- (a) Except as expressly permitted in the Development Agreement, the Developer shall not be entitled to divest, transfer, assign or novate all or substantially all of its rights, interests, benefits and obligations under this Agreement, without the prior written consent of BDA.

(b) The rights and obligations of BDA under this Agreement shall not be assigned, novated or otherwise transferred (whether by virtue of any Applicable Law or any scheme pursuant to any Applicable Law or otherwise) to any person other than a public body or a government company or a statutory corporation that:

- (i) is a single entity;
- (ii) acquires the whole of the Agreement;
- (iii) has the legal capacity, power and authority to become a party to and to perform the obligations of BDA under this Agreement; and
- (iv) has sufficient financial standing or financial resources to perform the obligations of BDA under this Agreement.

10.11. **Language**

All notices and communications between the Parties under this Agreement shall be in English.

10.12. **Cost and expenses**

- (a) Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Agreement.
- (b) The Developer shall bear the applicable stamp duty and registration fee (if applicable) in respect of this Agreement and any document incidental to it.

10.13. **Third Parties**

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

10.14. **Survival**

- (a) Any cause or action which may have occurred in favour of any Party or any right which is vested in any Party under any of the provisions of this Agreement as a result of any act, omission, deed, matter or thing done or omitted to be done by any Party before the expiry of the term of the Agreement by efflux of time or

otherwise in accordance with this Agreement, shall survive the expiry of the Agreement.

- (b) The provisions of this Agreement including the Indemnity provided to BDA pursuant to Clause 10.9, to the fullest extent necessary to give effect thereto, survive the term of the Agreement or the termination of this Agreement and the obligations of Parties to be performed or discharged following the termination of this Agreement, shall accordingly be performed or discharged by the Parties.

10.15. Priority of agreements

In the event of any conflict between the provisions of this Agreement and the Development Agreement, the relevant provisions of the Development Agreement shall prevail.

10.16. Counterparts

This Agreement may be executed in two counterparts, each of which, when executed and delivered, will be an original, and both counterparts together shall constitute one and the same instrument.

10.17 Termination of BDA's rights and obligations

This Agreement shall terminate vis a vis the rights and obligations of BDA after the AHP Completion Date. It is clarified that the Developer's obligation to indemnify BDA for any losses, liabilities, damages, costs, charges and expenses arising out of or resulting from this Agreement shall continue after the AHP Completion Date.

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 Developer by:

[THE COMMON SEAL OF.....

HAS pursuant to the Resolution

Of its Board of Directors passed in

That behalf on theday of_____

Hereunto been affixed in the presence of

.....and.....

Directors who have signed these

Presents in token thereof and

Secretary/Authorised

Person who has countersigned the

Same in token thereof]³

(Signature)

(Name)

(Designation)

Address:

Fax:

Attn:

SIGNED, SEALED AND DELIVERED

For and on behalf of the Lenders' Representative by:

(Signature)

(Name)

³ Common seal provision to be confirmed as per the Articles of Association of the Developer.

(Designation)

Address:

Fax:

Attn:

SIGNED SEALED AND DELIVERED

For and on behalf of Governor of the State of Odisha by:

(Signature)

(Name)

(Designation)Secretary, BDA

Address:

Fax:

Attn:

SIGNED, SEALED AND DELIVERED by

.....Within named Developer Escrow Agent

By the hand of

An authorised official of the Account Trustee

(Signature)

(Name)

(Designation)

Address:

Fax Number:

Attention:

In the presence of: [Two witnesses for each signatory]

(1)

(2)

ANNEXURE- B1

**DEVELOPMENT AGREEMENT (DA) OF SHANTI NAGAR AWAS YOJNA- AN
INSITU SLUM REDEVELOPMENT PROJECT ON PPP MODE**



DEVELOPMENT AGREEMENT

SHANTI NAGAR AWAS YOJANA AN IN-SITU SLUM REDEVELOPMENT PROJECT ON PPP MODEL

BHUBANESWAR DEVELOPMENT AUTHORITY
Akash Shova Building, Pandit Jawaharlal Nehru Marg
Bhubaneswar - 751001, Odisha

DEVELOPMENT AGREEMENT

This Development Agreement (**Agreement**) is executed on this 06th day of June Two Thousand and Seventeen at Bhubaneswar:

BETWEEN

- (1) **BHUBANESWAR DEVELOPMENT AUTHORITY**, a statutory body constituted under the Orissa Development Authorities Act, 1982 by notification no. 37627-HUD/31.8.1983, with its registered office at Ashok Shova Building, Pandit Jawaharlal Nehru Marg, Bhubaneswar – 751 001, Odisha (India) (hereinafter referred to as **BDA**, which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns);

AND

- (2) PARAMITRA SMARTINFRA SNA PRIVATE LIMITED, a company organized, incorporated, registered and existing under the Companies Act, with its registered office at 154, Golf Links, Ground Floor, New Delhi – 110003 acting through Mr. Alok Bajpai, Adviser- Civil Works, duly authorized vide resolution dated 01 June, 2017 passed by the board of directors of the company in their meeting held on 01 June, 2017 (hereinafter referred to as the **Developer**, which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns);

AND

- (3) M/s SHYAM INDUS POWER SOLUTION PRIVATE LIMITED, a company organized, incorporated, registered and existing under the Companies Act, with its registered office at 129, Transport Centre, Rohtak Road, Punjabi Bagh, New Delhi - 110035 acting through Mr. Rahul Choudhary, Sr. Executive-Project, duly authorized vide resolution **dated** _____ **[insert date of the Board Resolution]** passed by the board of directors of the company in their meeting held on _____ **[insert date of the board meeting]** (hereinafter referred to as the **Confirming Party**, which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns).

BDA and the Developer shall collectively be referred to as the **Parties** and individually as a **Party**.

WHEREAS:

- A. Rapid urbanisation and increase in Odisha's population has resulted in a proliferation of slums due to a shortage of housing units for EWS households and low income group households in urban areas and the existing housing schemes are not adequate to meet the housing needs of such households. With a view to address the supply and demand gaps in affordable housing in urban areas and to promote slum re-development projects in Odisha, the GoO has introduced the Housing for All Policy. Through the Housing for All Policy, the GoO seeks to create an appropriate policy and implementation framework, which would facilitate creation of adequate affordable housing stock through partnership between public agencies and private developers.
- B. For the purpose of undertaking Shanti Nagar Awas Yojana – an in-situ slum redevelopment project on PPP model, the GoO has transferred 10 (ten) Acres of land, at Satya Nagar to BDA, on which the slums are located. The details of the Site are provided in **Schedule A** and the Site Layout Plan is set out in **Schedule B**.
- C. With a view to redevelop and rehabilitate the existing slums in the Bhubaneswar development area, BDA has decided to undertake in-situ slum re-development of the existing slum on the Site on PPP basis under Model IV of the Housing for All Policy.
- D. For this purpose, BDA intends to engage a developer who will: **(i)** design, develop, finance, construct, complete and hand over SRP Assets to BDA free of cost on the Rehabilitation Area in accordance with the terms of this Agreement; and **(ii)** design, finance, construct, market, allot, complete and transfer PDP Units on the Developer's Area in accordance with this Agreement (collectively the **Project**).
- E. On 21 December, 2016, BDA commenced a competitive Bid Process for the Project by issuing a request for proposal as amended from time to time, including corrigendum dated 17 January, 2017 (the **RFP**), inviting interested parties to submit their technical proposals and financial proposals to BDA for undertaking the Project.
- F. Pursuant to the terms of the RFP, BDA received proposals from various bidders, including a proposal submitted by the Selected Bidder on 07 February, 2017.
- G. Following a process of evaluation of technical proposals and financial proposals

submitted by the bidders (including the Selected Bidder), BDA has on 03 April, 2017 accepted the proposal submitted by the Selected Bidder for the development of the Project. Subsequently, BDA has issued the letter of award dated 27 April, 2017 to the Selected Bidder (the **LOA**).

- H. The Selected Bidder has accepted the LOA and has agreed to undertake the Project in accordance with the terms of this Agreement.
- I. The Selected Bidder has incorporated a special purpose vehicle to act as the Developer, to implement the Project and perform the obligations and exercise the rights of the Developer, including the obligation to enter into this Agreement.
- J. BDA has agreed to enter into this Agreement with the Developer for implementation of the Project, subject to and on the terms and conditions set out in this Agreement.

IT IS AGREED as follows:

1. **DEFINITIONS AND INTERPRETATION**

1.1. **Definitions**

In this Agreement, unless the context otherwise requires, the following terms have the following meaning:

Abandonment means, with respect to the SRP, the cessation of all or substantially all the obligations of the Developer under this Agreement for a continuous period of 90 (ninety) days, other than as a result of a BDA Event of Default, Force Majeure Event, a Qualifying Change in Law, a Fundamental Change in Law or a suspension in accordance with this Agreement, which is not attributable to the Developer.

Acres means a unit of land area equal to 4,840 square yards (0.405 hectare).

Agreement or Development Agreement means this Agreement together with the Schedules and Annexures to this Agreement, as may be amended, supplemented or modified in accordance with its terms.

Annexure

means an annexure to this Agreement.

Applicable Laws

means the Constitution of India and all and any laws, enacted or brought into force and effect by the GoI, any State Government (including the GoO), any Government Authority or any local government having jurisdiction over the Parties, Site, the SRP or the PDP, including rules, regulations and notifications made thereunder, and judgments, decrees, injunctions, writs and orders of any court of record, as may be applicable to the execution of this Agreement and the performance of the respective rights and obligations of the Parties, as may be in force and effect during the subsistence of this Agreement. For the avoidance of doubt, and without in any way limiting the generality of the foregoing, Applicable Laws shall include the Housing for All Policy, the ODA Act, the Planning and Building Standards Regulations and the National Building Code of India, 2005.

Applicable Permits

means any permissions, clearances, concessions, authorizations, consents, licenses, permits, rulings, exemptions, no objections, resolutions, filings, orders, notarizations, registrations or approvals of whatsoever nature that are required to be obtained from time to time in connection with the Project, and for generally performing the obligations contemplated by this Agreement in accordance with the Applicable Laws.

Appointed Date

means the date of signing of this Agreement.

Arbitration Act

means the Arbitration and Conciliation Act, 1996, as amended from time to time.

Article

means an article of this Agreement.

Associate means, in relation to the Selected Bidder or the Developer, a Person who Controls, or is Controlled by, or is under the common Control of the Selected Bidder.

BDA Event of Default has the meaning ascribed to it in Clause 16.3.

BDA Related Parties means any of the following:

(a) an officer, servant, employee or agent of BDA, acting in that capacity;

(b) any contractor or sub-contractor of BDA and their directors, officers, servants, employees or agents, acting in that capacity;

(c) the EWS Allottees or any other Person lawfully occupying or using the SRP Assets; or

(d) any Person acting on behalf of BDA.

For the avoidance a doubt, 'BDA Related Parties' does not include the Developer.

BDA's Representative means Estate Member of BDA or any other officer nominated or appointed by BDA, from time to time, to act on its behalf and liaise with the Developer for the purposes of this Agreement and notified as such in writing to the Developer.

Bid Process means the single-stage bidding process adopted by BDA to award the Project to the Selected Bidder on the terms and conditions set out in the RFP, which commenced with the issuance of the RFP and ends on the Appointed Date.

Bid Security means the bid security submitted by the Selected Bidder pursuant to the provisions of the RFP.

BMC means Bhubaneswar Municipal Corporation.

Business Day

means a day on which banks are open for domestic business in Bhubaneswar.

Capital

means, the total capital of the Developer compulsorily raised by the issuance of equity shares, preference shares, convertible instruments or through shareholder loans.

Change in Law

means the occurrence of any of the following events subsequent to the Bid Due Date:

- (a) the modification, amendment, variation, alteration or repeal of any existing Applicable Law;
- (b) the enactment of any new Applicable Law or the imposition, adoption or issuance of any new Applicable Law by any Government Authority;
- (c) changes in the interpretation, application or enforcement of any Applicable Law or judgement by any court/Government Authority;
- (d) the introduction of a requirement for the Developer to obtain any new Applicable Permit or the unlawful revocation of an Applicable Permit; or
- (e) the introduction of any new Tax or a change in the rate of an existing Tax.

It is clarified that Change in Law shall not include:

- (i) any change in the (Indian) Income Tax Act, 1961 with regard to the taxes on the income of the Developer;
- (ii) any statute that has been published in draft form or as a bill that has been placed before the legislature or that has been passed by the relevant legislature as a bill but has not come into effect prior to the Bid Due Date (including specifically the Constitution (122nd Amendment) (GST) Bill, 2014); or
- (iii) a draft statutory instrument or delegated legislation that has been published prior to the Bid Due Date, which is under the active consideration or contemplation of any Government Authority.

Clause	means a clause of this Agreement.
Companies Act	means the (Indian) Companies Act, 1956 and the (Indian) Companies Act, 2013, as amended from time to time, as the context may require.
Concession Fee	means, the Premium quoted by the Selected Bidder in its proposal for undertaking the Project.
Conditions Precedent	means collectively, the obligations of the Developer that are set out at Clause 3.2 and the obligations of BDA that are set out at Clause 3.3, and ' Condition Precedent ' means any one of them.
Confidential Information	means any part of this Agreement, or any information contained therein or any material provided to either Party pursuant to this Agreement, all of which information shall be deemed to be confidential, except to the extent that this Agreement otherwise requires.
Control	with respect to a Person, means: <ul style="list-style-type: none"> (a) the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such Person; or (b) the power, directly or indirectly, to direct or influence the management and policies of such Person by operation of law, contract or otherwise, <p>and the term "Controlled" shall be construed accordingly.</p>
Cost	means all documented expenditure reasonably incurred by the Developer, whether on or off the Site, including overhead and similar charges, but does not include profit.
CP Long-stop Date	has the meaning ascribed to it in Clause 3.4 (a).
Defects Warranty	has the meaning ascribed to it in Clause 7.6.

Defects Warranty Period	has the meaning ascribed to it in Clause 7.6.
Delay Liquidated Damages	has the meaning ascribed to it in Clause 6.9(a).
Derived Price of the Developer's Area	<p>means the value assigned to the Developer's Area for the purposes of this Agreement, which shall be calculated as follows:</p> <p style="text-align: center;">Derived Price of the Developer's Area shall be equal to: SRP Capital Cost + Project Development Fees + Project Development Expenses + Premium</p>
Developer Escrow Account	means the interest bearing no-lien bank account opened by the Developer with the Developer Escrow Agent in accordance with the Developer Escrow Agreement, which shall be operational until the expiry of the SRP Construction Period.
Developer Escrow Agent	means the Scheduled Bank with which the Developer opens the Developer Escrow Account, pursuant to the Developer Escrow Agreement.
Developer Escrow Agreement	means the agreement to be executed between the BDA, the Developer and the Developer Escrow Agent in relation to the opening and operations of the Developer Escrow Account in the form set out at Annexure B.
Developer Event of Default	has the meaning ascribed to it in Clause 16.1.
Developer Related Parties	<p>means any of the following:</p> <ul style="list-style-type: none"> (a) the Selected Bidders or affiliates of the Developer; or (b) an officer, servant, employee or agent of the Developer acting in that capacity; or (c) any Subcontractor engaged by the Developer and

their directors, officers, servants, employees or agents acting in that capacity; or
(d) any Person acting on behalf of the Developer.

Developer's Area means the land admeasuring 3.5 (three point five) acres, mouza Satya Nagar, situated in Bhubaneswar, which forms part of the Site and has been earmarked for the PDP, as described in greater detail in the Site Layout Plan.

Developer's Representative means the Person nominated or appointed by the Developer to act on its behalf and liaise with BDA for the purposes of this Agreement and notified as such in writing to BDA.

Direct Political Force Majeure Events has the meaning ascribed to it in Clause 14.1(b)(iii).

Dispute has the meaning ascribed to it in Clause 19.1.

Dispute Notice has the meaning ascribed to it in Clause 19.1.

Dispute Meeting has the meaning ascribed to it in Clause 19.1.

Effective Date means the date on which all the Conditions Precedent have either been satisfied or waived by BDA or the Developer, as the case may be, in each case, in accordance with this Agreement.

Emergency means a condition or situation that endangers, or which in the reasonable opinion of BDA or the Developer, may endanger the lives or security of people at or around the Site or that poses an imminent threat of material damage to any property at or around the Site, including the SRP Assets and/or the PDP assets.

Encumbrance(s) means mortgage, charge, pledge, lien (statutory or otherwise), assignment by way of security, hypothecation, right of set-off, trust, priority, retention of title or ownership or

other security interest and any other agreement or arrangement having substantially the same effect.

Event of Default

means a BDA Event of Default or a Developer Event of Default, as the context may require.

EWS

means the economically weaker section, as per the Housing for All Policy.

EWS Allottee

means an EWS household, who has been selected by BDA and issued an allotment letter for allotment of an EWS Unit by the BDA and the term “**EWS Allottees**” shall be construed accordingly. For the avoidance of doubt, EWS Allottee shall include an existing slum dweller having entitlement certificate issued by the competent authority and who is eligible to allotment of a standard size EWS unit at rates specified by the GoO.

EWS Unit

means a housing unit to be constructed by the Developer on the Rehabilitation Area in accordance with the SRP Requirements and other conditions set out in this Agreement for allotment by BDA to an EWS Allottee and the term “**EWS Units**” shall be construed to mean 1300 EWS Units to be constructed by the Developer.

FAR

means floor area ratio.

Financial Assistance

means all funded and non-funded financial assistance, including loans, advances and guarantees or any re-financing that the Developer may avail of for the Project from the Lenders.

Financial Capacity

means the financial capacity and strength of the Selected Bidder determined in accordance with the RFP.

Financial Close

means, the date on which the Financing Documents become effective, the conditions precedent under the Financing

Documents for disbursements are fulfilled and the Developer has access to the Financial Assistance.

Financial Year

means, the 12 (twelve) month period commencing from (and including) 1 April of any year and concluding on (and including) 31 March of the immediately succeeding year.

Financing Documents

means, collectively, the documents entered into or to be entered into by the Developer with the Lenders, in respect of the Financial Assistance and includes any document providing Security for the Financial Assistance and the Lenders' Direct Agreement.

First Instalment

has the meaning ascribed to it in Clause 8.2(a)(i).

Performance Security

means, the unconditional, irrevocable bank guarantee for INR 7,000,0000/- (Rupees Seven Crores only), to be furnished by the Developer to BDA on or before the Appointed Date to secure the obligations of the Developer under this Agreement, including during the SRP Construction Period.

FM Notice

has the meaning ascribed to it in Clause 14.2.

Force Majeure Event

means a Non-Political Force Majeure Event, an Indirect Political Force Majeure Event or a Direct Political Force Majeure Event, as the case may be.

Fourth Instalment

has the meaning ascribed to it in Clause 8.2(a)(iv).

Fundamental Change in Law

means any Change in Law that:

- (a) renders unenforceable, illegal, invalid or void any material right or material obligation of the Developer under this Agreement; or
- (b) renders a material part of this Agreement invalid, illegal or unenforceable; or
- (c) results in the Developer being deprived of the whole

or a substantial part of the benefit of this Agreement.

GoI means the Government of India.

GoO means the Government of Odisha.

GoO Land Allotment Notification means the Notification no. 23261 dated 4th November 2016, issued by the General Administration Department, GoO for transfer of 19.395 (Nineteen acres and three hundred ninety five decimals) to the BDA, of which the Site forms a part.

Good Industry Practices means the exercise of such degree of skill, diligence and prudence, and those practices, methods, specifications and standards of equipment, safety and performance, as may change from time to time and which would reasonably and ordinarily be expected to be used by a skilled and experienced developer engaged in construction, management, and maintenance of housing projects in India of the type and size similar to the Project.

Government Authority means the GoI, any state government (including the GoO), any local government or any other ministry, governmental department, commission, board, body, bureau, agency, authority, instrumentality, inspectorate, statutory corporation or body corporate over which the GoI or the GoO exercises control, court or other judicial or administrative body or official or person, having jurisdiction over the Developer, the Site, the Project, or any portion thereof and the performance of obligations and exercise of rights of the Parties in accordance with the terms of the Agreement.

Grace Period has the meaning ascribed to it in Clause 6.9(d).

Grievance Redressal Forum means the joint forum constituted by the Developer and BDA for addressing grievances of the EWS Allottees with respect to the SRP Assets, in accordance with Clause 7.4.

Housing for All Policy means the “**Policy for Housing for All in Urban Areas, Odisha, 2015**”, issued by the Housing and Urban Development Department, GoO.

HSE Plan means the Health, Safety and Environment plan prepared by the Developer and approved by BDA in accordance with Clause 6.6.

Independent Engineer means the engineering firm appointed by BDA, from time to time, as the independent engineer for the Project, pursuant to the provisions of Clause 6.2.

Indirect Political Force Majeure Events has the meaning ascribed to it in Clause 14.1(b)(ii).

Infrastructure Facilities means:

A. Social Infrastructure Facilities: Neighbourhood shopping including community facilities equivalent to 5% (five per cent) of the built-up area developed as EWS units (out of which 3% (three per cent) of the built-up area will be exclusively for neighbourhood shopping) on the Rehabilitation Area in accordance with the design and construction requirements of BDA; and,

B. Basic Services Infrastructure Facilities: comprising of all common infrastructure facilities, including internal roads, sewage treatment plant, drainage etc. within the site boundaries,

to be financed, constructed and completed by the Developer as a part of the SRP Assets, in accordance with the SRP Requirements and other provisions set out in this Agreement, as described in greater detail in Schedule C.

It is clarified that the interconnection between the Infrastructure Facilities and the external facilities (as per the requirements for infrastructure facilities and utilities set out in Schedule G) shall be the responsibility of the Developer.

JLL means Jones Lang Lasalle Property Consultants (I) Private Limited.

Lenders includes banks, financial institutions, funds and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide Financial Assistance to the Developer under the Financing Documents but does not include any shareholder or associates of the Developer who have provided any shareholder loan to the Developer.

Lenders' Direct Agreement means an agreement that may be required to be executed by BDA and the Developer in favour of the Lenders, in accordance with Clause 10.1(b).

Additional License Fee has the meaning ascribed to it in Clause 9.2(i).

Material Adverse Effect means the effect of any act or event, which materially and adversely affects the ability of either Party to exercise its rights or perform any of its obligations under and in accordance with this Agreement and which act or event causes a material financial burden or loss to either Party.

Maximum PDP Built-up Area means the maximum built-up area of 10,50,304 sq.ft., which can be developed on the Developer's Area.

Minimum Developer Escrow Balance has the meaning ascribed to it in Clause 8.3 (c).

Non-Political Force Majeure Event	has the meaning ascribed to it in Clause 14.1(b)(i).
Occupancy Certificate	means, in respect of a PDP Unit, a certificate issued by BDA / BMC certifying that the PDP Unit is safe and fit for habitation.
ODA Act	means the Orissa Development Authorities Act, 1982, as amended from time to time.
Payment Certificate	has the meaning ascribed to it in Clause 8.2(f).
Payment Schedule	means the schedule for payment of the Concession Fee to the Developer, as set out in Schedule E .
Person	means any individual, company, corporation, partnership, joint venture, trust, society, sole proprietor, limited liability partnership, co-operative society, government company, unincorporated organization or any other legal entity.
Planning and Building Standards Regulations	means the BDA (Planning and Building Standards) Regulations, 2008 and amendment made in 2013, as amended from time to time.
PPP	means public-private partnership.
Premium	means the amount quoted by the Selected Bidder in its Bid, being INR 4,12,00,000/- (Rupees Four crores Twelve Lakhs only), which it is required to pay BDA to undertake the Project, in accordance with the terms of this Agreement.
PDP Allottee	means a Person who has been allotted a PDP Unit by the Developer.
PDP Construction Plan	means the detailed construction plan for the PDP to be prepared and submitted by the Developer on the basis of the

Site Layout Plan, all Applicable Laws and Applicable Permits.

Private Development Project or PDP means the design, finance, construction, marketing, allotment, completion and transfer of residential and/or commercial units and other infrastructure facilities by the Developer on the Developer's Area in accordance with this Agreement, the Site Layout Plan, the PDP Construction Plan, Applicable Laws and Applicable Permits.

PDP Commencement Date means the date from which the Developer commences construction of the PDP Units on the Developer's Area, as certified by the Independent Engineer, which should be no earlier than the date on which each of the conditions set out in Clause 4.1(b) are satisfied or waived by the BDA in its sole discretion.

PDP Units means the residential and/or commercial units developed by the Developer on the Developer's Area in accordance with this Agreement, the PDP Construction Plan, the Site Layout Plan, Applicable Laws and Applicable Permits.

Project Development Expenses has the meaning ascribed to it in Clause 5.3.

Project Development Fee has the meaning ascribed to it in Clause 5.2.

Qualifying Change in Law means any Change in Law, which:

- (a) is directly applicable to the Project;
- (b) impacts the cost of undertaking the SRP and/or the SRP Construction Schedule; and
- (c) Which was not reasonably foreseeable by the Developer as on the Bid Due Date.

Replacement Contractor EPC means a third party contractor that may be appointed by BDA in its sole discretion, which in BDA's opinion has the requisite

skill, expertise and capability to complete the construction of the SRP Assets, in case of a Developer Event of Default after the PDP Commencement Date, in accordance with this Agreement.

Rupee or INR

means Indian Rupees, the lawful currency of India.

Rehabilitation Area

means the land admeasuring **6.5** (six point five) Acres, situated at Satya Nagar, Bhubaneswar, which forms part of the Site and which has been earmarked for the SRP, as described in greater detail in the Site Layout Plan.

Site Layout Plan

means the layout of the Site, broadly indicating the areas demarcated for the SRP and the PDP, as set out in **Schedule B**.

SRP Assets

means, collectively, the EWS Units and the Infrastructure Facilities, on the Rehabilitation Area in each case in whatever shape of development on construction.

SRP Capital Cost

means the capital expenditure to be incurred by the Developer in constructing and completing the 1300 EWS Units and the Infrastructure Facilities, which for the purpose of this Agreement shall be deemed to be the lesser of (i) the actual cost of the SRP, as certified by the Independent Engineer; or (ii) INR 90.22 Crores (Rupees Ninety Crores and Twenty-two lakhs).

SRP Completion Certificate

means the certificate issued by BDA to the Developer to certify completion of construction of the SRP Assets and the satisfaction of all other conditions required to be fulfilled by the Developer prior to the handover of possession of all the EWS Units by the Developer to BDA, in accordance with Clause 6.10(d).

SRP Completion date	means the date on which the SRP Completion Certificate is issued for all the SRP Assets to the Developer in accordance with this Agreement.
SRP Construction Milestones	means the milestones for achieving completion of the SRP, as set out in the SRP Construction Schedule and the term “ SRP Construction Milestone ” shall mean any one of them as the context may require.
SRP Construction Period	has the meaning ascribed to it in Clause 6.1.
SRP Construction Plan	means the detailed construction plan for the SRP Assets to be prepared by the Developer on the basis of the SRP Requirements, the Site Layout Plan, all Applicable Laws, Applicable Permits and Good Industry Practices, which shall be approved by BDA in accordance with Clause 6.3.
SRP Construction Schedule	means the schedule of dates for the construction and completion of the SRP Assets, as set out in Schedule D .
SRP Delay Event	has the meaning ascribed to it in Clause 6.8 (c).
SRP	means the design, development, finance, construction, completion, and hand over of the SRP Assets on the Rehabilitation Area in accordance with this Agreement and the SRP Requirements.
SRP Milestone Completion Certificate	means, in respect of any SRP Construction Milestone, a certificate issued by the Independent Engineer in accordance with Clause 6.10, to certify the completion of such SRP Construction Milestone in accordance with the requirements of this Agreement.
SRP Requirements	means, collectively, (a) the broad specifications, plans, designs and drawings, setting-out dimensions, and other details provided by BDA in Schedule C for each EWS Unit and to the extent relevant, each Infrastructure

Facility, on the basis of which, the Developer and/or its Subcontractors are required to design and construct the SRP Assets;

- (b) the technical requirements for the SRP Assets prescribed by BDA, which the Developer and/or its Subcontractors must comply with during the construction and completion of the SRP Assets, as set out in Schedule C; and

Schedule means a schedule of this Agreement.

Scheduled SRP Completion Date means the date falling **24 (twenty-four)** months from the Effective Date, which date may be extended in accordance with this Agreement.

Scheduled Bank means a bank as defined under section 2(e) of the Reserve Bank of India Act, 1934.

Scheduled Construction Milestone Date means, in respect of any SRP Construction Milestone, the date for completion of such SRP Construction Milestone, as stipulated in the SRP Construction Schedule and the term “**Scheduled Construction Milestone Dates**” shall be construed accordingly.

Second Instalment has the meaning ascribed to it in Clause 8.2(a)(ii).

Security means and includes any mortgage, pledge, lien, Encumbrance, security interest, right of set-off, hypothecation, assignment, by way of retention of title or ownership or any other charge or encumbrance and any other agreement or arrangement having substantially the same economic effect.

Selected Bidder means M/s Shyam Indus Power Solutions Private Limited.

Site means, collectively, the Rehabilitation Area and the Developer’s Areas described in the **Site Layout Plan**.

Sq. ft.	means square feet.
Subcontract	means a contract entered into by the Developer to procure any goods, materials, labour or services for the Project or otherwise in connection with the performance of its obligations in relation to the Project.
Subcontractor	means the Developer's counterparty under any Subcontract.
Taxes	means all taxes, levies, imposts, cesses, duties and other forms of taxation, including (but without limitation) income tax, sales tax, value added tax, service tax, octroi, entry tax, corporation profits tax, advance corporation tax, capital gains tax, residential and property tax, customs and other import and export duties, excise duties, stamp duty or capital duty, and any interest, surcharge, penalty or fine in connection therewith which may be payable by the Developer or the Subcontractors and the term " Tax " shall be construed accordingly.
Technical Capacity	means the technical capacity and experience of the Selected Bidder determined in accordance with the RFP.
Term	has the meaning ascribed to it in Clause 3.6.
Termination Compensation	means the compensation payable to the Developer or BDA, as the case may be, upon the termination of the SRP and/or this Agreement, in accordance with Clause 18.
Third Instalment	has the meaning ascribed to it in Clause 8.2(a)(iii).
Threshold Limit	has the meaning ascribed to it in Clause 12.2(d)(i).
Transit Accommodation	means the interim accommodation required to be arranged by BDA for the relocation of the slum dwellers from the Site in accordance with Clause 5.4.

Unutilized Developer's Area means the parcels of land comprised within the Developer's Area, in respect of which a Conveyance Deed has not been executed as on the date of issuance of the Notice of Intent to Terminate. It is clarified that the Unutilized Developer's Area shall not include the parcels of land comprised within the Developer's Area for which the Developer has applied for an Occupancy Certificate, but BDA has not issued the Occupancy Certificate as on the date of issuance of the Notice of Intent to Terminate, for reasons not attributable to the Developer.

Variation means any alteration in the number of EWS Units as instructed by BDA as a variation in accordance with Clause 6.11.

Variation Order has the meaning ascribed to it in Clause 6.11(b)(i).

Wilful Misconduct means an intentional or reckless breach or disregard by a Party of any of its obligations under this Agreement; but not a breach or disregard of an obligation or failure to remedy a breach resulting from an error of judgment or mistake arising in good faith.

1.2. **Rules of Interpretation**

In this Agreement, unless the context otherwise requires:

- (a) Any reference to a statutory provision shall include such provision as modified or re-enacted or consolidated from time to time.
- (b) The words importing the singular shall mean the plural and vice-versa; and words importing the masculine shall include the feminine and neuter and vice-versa.
- (c) Headings in this Agreement are for convenience of reference only.
- (d) The references to the word 'include' or 'including' or to the phrase 'in particular', shall be construed without limitation.
- (e) References to any date or time of day are to Indian Standard Time; any reference to day shall mean a reference to a calendar day; and any reference to a month shall mean a reference to a calendar month.

- (f) The references to any agreement or deed or other instrument shall be construed as a reference to such agreement, deed, or other instrument as may be amended, varied, supplemented or novated, from time to time.
- (g) Unless otherwise provided, any late payment charges to be calculated and payable under this Agreement shall accrue *pro rata* on a monthly basis and from the respective due dates as provided for in this Agreement.
- (h) A requirement that a payment be made on a day which is not a Business Day shall be construed as a requirement that the payment be made on the next Business Day.
- (i) Whenever provision is made for the giving or issuing of any notice, endorsement, consent, approval, permission, certificate or determination by any person, such notice, etc., shall be reasonably given, shall not be unreasonably withheld or delayed and shall be in writing and the words 'notify', 'endorse', 'approve', 'permit', 'certify' or 'determine' shall be construed accordingly. Where any notice, consent or approval is to be given by either of the Parties, the notice, consent or approval shall be given on their behalf only by any authorized persons.
- (j) The words written and in writing include a facsimile transmission and any means of reproducing works in a tangible and permanently visible form.
- (k) The provisions of the Clauses and the Schedules and Annexures of this Agreement shall be interpreted in such a manner that will ensure that there is no inconsistency in interpretation between the intent expressed in the Clauses and the Schedules or Annexures.
- (l) In the event of any ambiguities or discrepancies within this Agreement the following shall apply:
 - (i) between two Clauses of this Agreement, the provisions of the specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
 - (ii) between the requirements of two or more Schedules or Annexures of this Agreement, the provisions of the specific Schedule or Annexure relevant to the issue under consideration shall prevail over the more general; and
 - (iii) between the Clauses and the Schedules and Annexures, unless specified otherwise, the Clauses shall prevail over the Schedules and Annexures.
- (m) Subject to the provisions of this Agreement, the Developer shall be responsible to and indemnify, BDA for the acts and omissions of the Developer Related Parties as if they were the acts and omissions of the Developer and BDA shall be responsible to the Developer for the acts and omissions of the BDA Related Parties as if they were the acts and omissions of BDA.

- (n) Neither the giving of any approval or consent, the review, knowledge or acknowledgement of the terms of any document by or on behalf of BDA, nor the failure to do so, shall, unless expressly stated in this Agreement, relieve the Developer of any of its obligations under this Agreement or of any duty which it may have under this Agreement to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, review, knowledge or acknowledgement.
- (o) The rule of construction, if any, that an agreement should be interpreted against the Party responsible for the drafting and preparation thereof shall not apply to this Agreement.
- (p) The Parties acknowledge that damages for specific defaults prescribed under this Agreement (including the Delay Liquidated Damages) are a genuine pre-estimation of and reasonable compensation for the loss and damage that shall be suffered by either Party, due to failure by the defaulting Party to perform its obligations in accordance with this Agreement, and are not in the nature of a penalty.

1.3. **Units of Measurement**

- (a) All measurements and calculations shall be in the metric system and calculations done to 4 (four) decimal places, with the 5th (fifth) digit of 5 (five) or above being rounded up and below being rounded down.
- (b) For the purpose of calculation of an area of land pursuant to this Agreement, 1 (one) acre shall be equal to 43,560 (forty three thousand five hundred and sixty) sq. ft.

2. **SCOPE OF THE PROJECT AND GRANT OF DEVELOPMENT RIGHTS**

2.1. **Scope of the Project**

The scope of the Project shall include:

- (a) designing, developing, financing, constructing, completing and handing over the SRP Assets to BDA free of cost, in accordance with this Agreement, Applicable Laws, Applicable Permits, SRP Requirements, the SRP Construction Plan, the HSE Plan, the Site Layout Plan and Good Industry Practices by the Scheduled SRP Completion Date;
- (b) rectification of defects and deficiencies in the SRP Assets in accordance with this Agreement, Applicable Laws, Applicable Permits, Defect Warranty Requirements and Good Industry Practices during the Defects Warranty Period;
- (c) designing, financing, developing, constructing, and completing the PDP in accordance with this Agreement, Applicable Laws, Applicable Permits, the Site Layout Plan, the HSE Plan, the PDP Construction Plan and Good Industry Practices; and

- (d) market, allot and transfer by way of sale, lease or license the PDP Units to the PDP Allottees on terms and conditions that are consistent with this Agreement and the Conveyance Deed.

2.2. **Development of the Project**

(a) ***Development Rights for the SRP***

Subject to and in accordance with the terms of this Agreement, the GoO Land Allotment Notification, Applicable Laws and Applicable Permits, BDA grants and the Developer accepts and agrees to:

- (i) on and from the Effective Date, design, develop, finance, construct, develop and complete the SRP Assets on the Rehabilitation Area during the SRP Construction Period; and
- (ii) on completion of construction of the SRP Assets, to hand over the SRP Assets to the BDA and remedy any structural defect or deficiency in the SRP Assets during the Defects Warranty Period.

(b) ***Development Rights for the PDP***

Subject to and in accordance with the terms of this Agreement, the GoO Land Allotment Notification, Applicable Laws and Applicable Permits, BDA grants and the Developer accepts and agrees to, on and from the PDP Commencement Date, the exclusive right (but not the obligation) to design, finance, develop, market, allot (and issue allotment letters), construct and complete the PDP Units and any related infrastructure facilities on the Developer's Area, in accordance with this Agreement.

- (c) In addition to the rights, incentives and benefits set out in this Agreement, the Developer shall also have all other rights and be entitled to all other incentives, exemptions or benefits in relation to the Site, the SRP and/or the PDP, which may otherwise be available under the Housing for All Policy, the Planning and Building Standards Regulations and any other Applicable Laws.

2.3. **Subcontracting**

Without prejudice to Clause 21.12, the Developer shall be entitled to enter into Subcontracts for the purposes of performing its obligations or in exercise of its rights under this Agreement, provided that:

- (a) the Subcontractors appointed by the Developer possess the requisite skill, expertise and capability to perform the relevant obligations of the Developer under this Agreement;
- (b) the Subcontracts are on terms consistent with this Agreement;
- (c) the Developer shall ensure that each Subcontract executed by the Developer in connection with the Project shall contain provisions that provide, at BDA's option, for the subcontract to be novated or assigned to the BDA or its nominee without any further consent or the approval from the Developer or the Subcontractor or entitle BDA or its nominee to step into such Subcontract, in substitution of the Developer, if this Agreement is liable to be terminated due to a Developer Event of Default. However, the step-in rights of BDA shall be subject to the rights of the Lenders' under the Lenders' Direct Agreement, if any;
- (d) the Developer is responsible for the supervision, monitoring and control of the Project, rectification of defects in the SRP Assets during the Defects Warranty Period and the performance of any work or services by the Subcontractors, necessary for compliance with the terms of this Agreement;
- (e) within 7 (seven) days of the execution of a Subcontract or an amendment to or replacement of a Subcontract in connection with the SRP, the Developer shall submit a true copy of such Subcontract or amendment or replaced Subcontract to BDA for its records; and
- (f) the Developer shall be and remain liable under this Agreement for all work and services subcontracted under this Agreement and for all acts, omissions or defaults of any Subcontractor. No default under any Subcontract shall excuse the Developer from its obligations or liabilities under this Agreement. All references in this Agreement to any act, default, omission, breach or negligence of the Developer shall be construed accordingly to include any such act, default, omission, breach or negligence of the Subcontractors.

3. CONDITIONS PRECEDENT, EFFECTIVENESS AND TERM

3.1. Effectiveness

- (a) The day on which all of the Conditions Precedent have been satisfied or waived in accordance with this Article 3 shall be the Effective Date.
- (b) This Article 3 and Article 2 (*Scope of the Project*), Clause 5.1 (*Performance Security*), Clause 5.2 (*Project Development Fee*), Clause 5.3 (*Project Development Expenses*), Clause 6.2 (*Independent Engineer*), Article 10 (*Financing Arrangements and Security*), Clause 11.1 (*Indemnity*), Article 12 (*Change in Law*), Article 13 (*Change in Ownership*), Article 14 (*Force Majeure*), Article 19 (*Dispute Resolution*), Article 20 (*Representations and Warranties*) and Article 21 (*Miscellaneous*) and the related Schedules or Annexures

(if any), shall come into full force and effect and be binding on the Parties on and from the Appointed Date and continue until such time as this Agreement expires or is terminated in accordance with its terms. The other provisions of this Agreement shall come into full force and effect and be binding on the Parties on and from the Effective Date and continue until such time as this Agreement expires or is terminated in accordance with its terms.

3.2. **Conditions Precedent to be satisfied by the Developer**

Unless waived in writing by the BDA (in its sole discretion), the Developer shall satisfy the following Conditions Precedent (if not already fulfilled on the date of execution of this Agreement):

- (a) prepare, submit the SRP Construction Plan and obtain all the Applicable Permits from BDA and other Government Authorities for the SRP Construction Plan in accordance with clause 6.3;
- (b) obtain all Applicable Permits that are required for achieving Financial Close and for commencement of construction of the SRP Assets (including any necessary environmental consents or permits and building permission(s) under the Planning and Building Standards Regulations) at its own cost and expense and if such Applicable Permits are subject to any conditions, then, to the extent relevant, complying with all such conditions, such that the Applicable Permits are and shall be kept in full force and effect for the entire SRP Construction Period, or such longer period as may be required under Applicable Laws;
- (c) submit to BDA certified true copies of all resolutions adopted by the board of directors of the Developer authorising execution, delivery and performance of this Agreement, the Conveyance Deed(s), the shareholder's agreement and the Developer Escrow Agreement by the Developer;
- (d) achieve Financial Close as certified by the Lenders and submit a copy of the Financing Documents to BDA, duly certified by a director of the Developer;
- (e) execute a shareholder's agreement amongst the shareholders of the Developer, and deliver to BDA a certified true copy thereof (attested by a director of the Developer);
- (f) execute the Developer Escrow Agreement with BDA and the Developer Escrow Agent in the agreed form set out at **Annexure B** and open the Developer Escrow Account with the Developer Escrow Agent, within 30 (thirty) days of the Appointed Date;
- (g) submit to BDA certified true copies of the constitutional documents of the Developer;
- (h) submit to BDA a legal opinion stating that: (i) this Agreement, the shareholders agreement and the Developer Escrow Agreement have been duly executed and are legal, valid, binding and enforceable in accordance with their terms against the Developer; and (ii) all actions, conditions and things required by Applicable Laws to be taken, fulfilled and done

(including the obtaining of any necessary Applicable Permits and resolutions of the board of directors) in order for the Developer to enter into and comply with its obligations under this Agreement, the shareholders agreement and the Developer Escrow Agreement have been taken, fulfilled or done;

- (i) if the Selected Bidder has submitted unaudited annual accounts along with the Proposal, the Developer shall be required to submit to BDA within 60 (sixty) days of the date of this Agreement: (A) a duly certified copy of the Selected Bidder's duly audited balance sheet, annual report and profit and loss account for the latest Financial Year occurring prior to 07 February, 2017; and (B) also submit a certificate duly certified by the statutory auditor stating that the Selected Bidder continues to meet the requirements for demonstrating Financial Capacity;
- (j) submit to BDA a certificate, duly attested by a director, certifying the shareholding pattern of the Developer;
- (k) pay the First Instalment of the Premium to BDA;

3.3. Conditions Precedent to be satisfied by BDA

Unless waived in writing by the Developer (in its sole discretion) BDA shall satisfy the following Conditions Precedent (if not already fulfilled on the date of this Agreement):

- (a) obtain all necessary rights of way to the Site and hand over 80% (eighty per cent) of the Site on an "as is where is" basis to the Developer;
- (b) obtain all necessary third party consents, rights of way and easement rights over land adjacent to the Site for the purposes of implementing the Project on the Site and for the performance of the Developer's obligations and exercise of the Developer's rights under this Agreement;
- (c) obtain all approvals and consents that may be required for BDA to enter into this Agreement and undertake the Project, including any approvals required under the Housing for All Policy, the Planning and Building Standards Regulations and the Orissa PPP Policy, 2007, required to perform its obligations;
- (d) appoint the Independent Engineer in accordance with Clause 6.2;
- (e) approve the draft SRP Construction Plan in accordance with Clause 6.3;
- (f) subject to the Developer having executed the Developer Escrow Agreement, execute the Developer Escrow Agreement with the Developer and the Developer Escrow Agent in the agreed forms set out at Annexure B; and
- (g) complete relocation of the slum dwellers on 80% (eighty per cent) of the Site to the Transit Accommodation.

3.4. Satisfaction of Conditions Precedent

- (a) Unless otherwise specified, each Party shall satisfy or procure the satisfaction or the waiver of the Conditions Precedent that it is responsible for, within 240 (two hundred and forty) days from the date of execution of this Agreement or such other extended date as may be agreed between the Parties, not exceeding 360 (three hundred and sixty) days from the date of execution of this Agreement (the **CP Long-stop Date**).
- (b) If either party fails to satisfy any Condition Precedent that it is required to fulfil by the CP Long-stop Date due to:
 - (i) a Force Majeure Event;
 - (ii) a Change in Law;
 - (iii) in case of the Developer, delay by BDA in approving the draft SRP Construction Plan within the timelines prescribed in Clause 6.3;
 - (iv) in case of the Developer, undue delay by the relevant Government Authority in granting any Applicable Permit, despite the Developer having applied for such Applicable Permit within the prescribed time lines and having complied with the requirements of Applicable Laws in making such application; or
 - (v) delay by the other Party in fulfilling any Condition Precedent required to be satisfied by it or in performing any other obligation under this Agreement, which impacts its ability to satisfy its Conditions Precedent,

then the CP Long-stop Date shall be extended on a day-for-day basis for the period of such delay.

- (c) Each Party shall cooperate and use its reasonable efforts to assist the other Party in satisfying the Conditions Precedent.

3.5. **Consequences of failure to satisfy Conditions Precedent**

- (a) Subject to this Clause 3.5:
 - (i) If either Party fails to satisfy any of the Conditions Precedent that it is required to fulfil by the CP Long-stop Date, as may be extended in accordance with Clause 3.4(b) (unless waived by mutual consent of the Parties), the other Party shall be entitled to terminate this Agreement forthwith by issuing a notice to the defaulting Party.
 - (ii) No Condition Precedent shall be waived absolutely and a waiver shall be effective only if given in writing, with the extension of time for satisfaction of such Condition Precedent being specified in the waiver notice. The Party responsible for fulfilling

such Condition Precedent shall be obliged to fulfil the Condition Precedent within the time allowed under the waiver notice.

- (iii) If either Party fails to satisfy a Condition Precedent within the extended period stated in a waiver notice, the other Party shall be entitled to terminate this Agreement forthwith by issuing a notice to the defaulting Party.
- (b) If the Developer has failed to satisfy any of the Conditions Precedent required to be satisfied by it and this Agreement is terminated in accordance with this Clause 3.5, then:
- (i) BDA shall be entitled to forfeit performance security submitted by the Developer as a genuine pre-estimate of and reasonable compensation for loss and damage caused to BDA as a result of the Developer's failure to satisfy any of the Conditions Precedent and the consequent termination of this Agreement;
 - (ii) the Developer shall not be entitled to receive any payment or compensation from BDA for the costs and expenses incurred by the Developer in performing any of its obligations under this Agreement prior to the termination of this Agreement;
 - (iii) the Developer shall hand over to BDA all documents, designs, plans, data and any Confidential Information provided by BDA to the Developer prior to termination of this Agreement;
 - (iv) if the possession of the Site has been handed over to the Developer prior to termination of this Agreement, then upon termination of this Agreement, the Developer shall clear the Site and remove all debris, hazardous materials, construction materials, equipment, temporary works, work sheds, labour camps and all other temporary installations on the Site, and thereafter, the Site will be deemed to automatically vest with BDA, free from all Encumbrances.
- (c) If BDA has failed to satisfy any of the Conditions Precedent required to be satisfied by it and this Agreement is terminated in accordance with this Clause 3.5 or this Agreement is terminated prior to the Effective Date due to a prolonged Force Majeure Event, then BDA shall:
- (i) reimburse to the Developer, the amount of the Project Development Expenses;
 - (ii) reimburse to the Developer, the amount of the Project Development Fee;
 - (iii) return the Performance Security submitted by the Developer; and
 - (v) if the possession of the Site has been handed over to the Developer prior to termination of this Agreement, then upon termination of this Agreement, the Developer shall clear the Site and remove all debris, hazardous materials, surplus construction materials, equipment, temporary works, work sheds, labour camps and all other temporary

installations on the Site, and thereafter, the Site will be deemed to automatically vest with BDA, free from all Encumbrances.

- (d) Upon termination of this Agreement pursuant to this Clause 3.5, other than to the extent specified in this Clause 3.5, neither Party shall have any liability to the other Party in connection with this Agreement.

3.6. **Term**

Subject to early termination in accordance with Article 14 or Article 16, this Agreement shall come into full force and effect in accordance with Clause 3.1(b) and remain in full force and effect until the date of execution of the Conveyance Deed(s) for the entire Developer's Area, unless extended in accordance with the terms of this Agreement (**Term**).

4. **RIGHT, TITLE AND INTEREST OVER THE SITE**

4.1. **Grant of License and Freehold Rights over the Site**

(a) ***Rehabilitation Area***

On and from the Effective Date and subject to the provisions of this Agreement, Applicable Laws and Applicable Permits, BDA shall grant the Developer a license over the Rehabilitation Area to enter upon and access the Rehabilitation Area, including the exclusive right and authority, to undertake the SRP at the Rehabilitation Area, in accordance with this Agreement.

(b) ***Developer's Area***

Subject to the following conditions being met prior to the PDP Commencement Date and other provisions of this Agreement, Applicable Laws and Applicable Permits, BDA shall grant to the Developer, on and from the PDP Commencement Date, a license over the Developer's Area to enter upon and access the Developer's Area, including the exclusive right to undertake the PDP on the Developer's Area if:

- (i) the Developer has completed the roof casting for at least 325 (three hundred and twenty five) EWS Units in accordance with the SRP Construction Plan to the satisfaction of BDA;
- (ii) the Developer has submitted the draft PDP Construction Plan to BDA and BDA has approved the PDP Construction Plan in accordance with Clause 9.1;

- (iii) the Developer has obtained all Applicable Permits necessary for commencement of construction of the PDP (including any necessary environmental consents or permits and building permission under the Planning and Building Standards Regulations) and all such Applicable Permits are in full force and effect. If such Applicable Permits are subject to any conditions, then the Developer has complied with or is complying with all conditions then applicable;
 - (iv) no Developer Event of Default has occurred and is subsisting; and
 - (v) the Developer is not in breach of any Applicable Law and/or Applicable Permit.
- (c) On completion of construction of the SRP Assets and handover of possession of the SRP Assets to the BDA, the Developer shall have the right to acquire freehold rights over the Developer's Area; and transfer (by way of sale, lease or license) the PDP Units to the PDP Allottees. For the purpose of acquiring freehold rights over the Developer's Area, the Developer and the BDA shall execute Conveyance Deed(s) in the format set out in **Annexure B** of this Agreement, setting out the terms and conditions of such transfer of the Developer's Area or part thereof, within 60 (sixty) days of handing over the entire SRP Assets to BDA .
- (d) The Developer shall not have any rights, interest or title to the Site, other than to the extent expressly specified in this Agreement and the Conveyance Deed(s). For the avoidance of doubt, it is clarified that until the execution of the Conveyance Deed for the Developer's Area or part thereof, the full ownership and title to the Site shall, at all times, vest with the BDA. Upon execution of a Conveyance Deed, the ownership and title to the Developer's Area covered under such Conveyance Deed shall be transferred to the Developer.
- (e) The Parties agree that the license over the Site granted under this Agreement shall automatically terminate, without the need for BDA to take any further action, upon the termination of this Agreement for any reason whatsoever.

4.2. **Site Data and Verification**

- (a) BDA has made available to the Developer the Site Layout Plan and all other relevant data, studies and reports in BDA's possession in connection with the Site.
- (b) The Developer shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the implementation of the Project at the Site.
- (c) The Developer shall also be deemed to have inspected and examined the Site and its

surroundings, analysed and verified the accuracy and reliability of the studies, reports and data provided by BDA and any other information available with respect to the Site and to have satisfied itself as to all the relevant matters including:

- (i) the nature of the Site, including the subsurface, hydrological, climatic and general physical conditions of the Site;
- (ii) the suitability of the Site for undertaking the SRP and the PDP;
- (iii) the condition of the existing slums, facilities and utilities on the Site (including existing connections for water and electricity, sewage treatment facilities, and internal roads);
- (iv) market demand and commercial viability of undertaking the PDP over the Developer's Area;
- (v) the extent, nature and availability of labour, material, transport, accommodation, storage facilities and other facilities and resources necessary for undertaking the SRP and the PDP;
- (vi) the nature of work necessary for demolishing the existing slums on the Rehabilitation Area;
- (vii) the nature of design and construction work necessary for the performance of its obligations under this Agreement;
- (viii) Applicable Laws and Applicable Permits required to be obtained and maintained for undertaking the SRP and the PDP;
- (ix) the risk of injury or damage to property adjacent to the Site and to the occupiers of such property or any other risk;
- (x) the suitability and adequacy of any access roads to the Site and other utilities and facilities to be provided by the relevant Government Authority;
- (xi) the suitability of any utilities (including water, sewage and electricity connections) and internal roads on the Rehabilitation Area; and
- (xii) all other matters that may affect the performance of its obligations under this Agreement.

The Developer acknowledges and agrees that if any error or discrepancy is subsequently discovered in the Site data made available by BDA, then, such error or discrepancy shall not entitle the Developer to any extension of the SRP Completion Date and/or compensation for additional costs incurred. Further, any misinterpretation of the Site data, studies and reports provided by BDA shall not relieve the Developer from the performance of its obligations under this Agreement on the ground that it did not or could not reasonably be expected to have foreseen any of the matters listed in paragraphs (i) to (xi) above, which affect or may affect the SRP and/or PDP or the performance of any of its other obligations under this Agreement.

The Developer also acknowledges that the Site will be provided by BDA to it on an “as is where is” basis and that the Developer will be solely responsible for demolition of the existing buildings, structures and other fixtures or obstructions of any kind on the Site as may be required for the Project, and any time taken by it for demolition of slums shall not entitle the Developer to any extension of the SRP Completion Date or the term of this Agreement and/or compensation for additional costs incurred.

4.3. **Unforeseen Site Conditions**

Without prejudice to Clause 4.2 above, if during the execution of the SRP or the PDP, the Developer encounters any adverse physical conditions, which, in its opinion, is not covered under Clause 4.2 and which could not have been reasonably foreseen by acting in accordance with Good Industry Practices, the Developer shall give written notice of such adverse physical conditions to BDA’s Representative/the Independent Engineer. Upon receipt of such written notice from the Developer, if, in the opinion and sole discretion of BDA’s Representative/the Independent Engineer, such conditions could not have been reasonably foreseen by a prudent developer acting in accordance with Good Industry Practices, then BDA shall grant reasonable extension of the Scheduled SRP Completion Date in accordance with Clause 6.8 (c). Provided that, the Developer shall implement appropriate measures, including any measures suggested by BDA/the Independent Engineer to mitigate the delay caused by any such unforeseen Site conditions. Further, it is clarified that any decision of BDA’s Representative/the Independent Engineer regarding the existence of any unforeseen Site conditions and the corresponding extension of time to be allowed to the Developer shall be final and binding.

4.4. **Site Related Covenants**

The Developer agrees and undertakes that:

- (a) the Developer shall not transfer, alienate, dispose of, sub-lease or create any Security over any part of the Site or its rights and interest in the Site, other than as specifically permitted under this Agreement and the Conveyance Deed(s);
- (b) the Developer shall not allow any encroachment on, or unauthorised occupation of any part of the Site and in the event of any encroachment or unauthorised occupation, the Developer shall immediately cause such encroachment or any unauthorized occupants to be removed from the Site. The Developer shall not be entitled to any extension of time

- or compensation for costs incurred in removal of any encroachment or any unauthorized occupants from the Site;
- (c) the grant of any license rights to a Subcontractor or any other third party shall not interfere with or hinder the performance of the Developer's obligations under this Agreement;
 - (d) the Developer shall be wholly responsible for safety at and security of the Site, the SRP and the PDP;
 - (e) the Developer shall take all necessary measures to confine its operations, personnel and equipment to the Site and not encroach on any adjacent land;
 - (f) all minerals, fossils, articles of value or antiquity, structures and other remains or things of geological or archaeological interest and other objects with historic, antique or monetary value discovered at, on or under the Site shall be dealt with in accordance with Applicable Laws and the Developer shall take all necessary precautions to prevent its or its Subcontractor's personnel from removing or damaging any such article or thing. Further, immediately upon the discovery of any such article or thing of value, the Developer shall inform BDA's Representative of such discovery and carry out the instructions of BDA's Representative in this regard;
 - (g) the Developer shall ensure execution of the SRP and the PDP in a manner so as to prevent any avoidable destruction, scarring or defacing of natural surroundings in the vicinity of the Site; and
 - (h) the Developer has made an independent evaluation of the Site as a whole and has determined the nature and extent of the difficulties, risks, costs and hazards that are likely to arise in the course of performance of its obligations under this Agreement. Subject to Clause 4.3, if the Site is subsequently found to be deficient in any manner, except any deficiency in BDA's rights and interests in the Site, the Developer shall remedy such deficiency at its own cost and risk and BDA shall not be liable in any manner whatsoever to the Developer for such deficiency.

4.5. Access to BDA Related Parties and Government Authorities

The Developer shall ensure egress and ingress to BDA Related Parties and Government Authorities without any additional cost to BDA and the license over the Site granted to the Developer under this Agreement shall always be subject to:

- (a) the rights of BDA, BDA's Representative, the Independent Engineer and other BDA Related Parties to enter upon and access the Site to inspect and monitor the SRP and/or the PDP, and for the exercise of their rights and the performance of their obligations under this Agreement; and,

- (b) the rights of Government Authorities or other utility providers to enter upon and access the Site for laying or installing telegraph lines, electric lines or for any other public purpose.

5. PERFORMANCE SECURITY, PROJECT DEVELOPMENT FEE, PROJECT DEVELOPMENT EXPENSES

5.1. Performance Security

- (a) The Selected Bidder/Developer has submitted to BDA an unconditional and irrevocable bank guarantee of INR 7,00,00,000/- (Rupees Seven Crores) and in the form set out at Schedule H towards the Performance Security, prior to the Effective Date, which shall be released to the Developer upon hand over of the SRP Assets to BDA after receipt of the occupancy certificate for the same.
- (b) The cost of procuring the Performance Security shall be borne solely by the Developer.
- (c) The Developer shall maintain the Performance Security in full force and effect, from the date on which it was issued until the expiry of the SRP Construction Period.
- (d) If the Performance Security is scheduled to expire before the expiry of the SRP Construction Period, then the Developer shall arrange for an extension of the Performance Security at least 30 (thirty) days prior to such expiration. If the Developer fails to procure such extension or replacement, BDA shall be entitled to drawdown the total amount available under the Performance Security and retain such amount as cash security until such time that the Developer submits an extension or replacement of the Performance Security.

BDA shall be entitled to utilize such retained amount in the same manner as it would utilize the Performance Security. Upon receipt of an extension or replacement Performance Security or on expiration of the SRP Construction Period, BDA shall return the unutilized cash security amount to the Developer.

The interest earned on any retained amounts or cash security shall be the property of BDA and BDA shall not be required to account to the Developer for any such interest.

- (e) BDA shall have the right to draw on the Performance Security and claim up to the amount guaranteed upon the Developer's failure to honour any of its obligations, responsibilities or commitments under this Agreement or any amount due and payable by the Developer to BDA (including any Additional License Fees if any that the Developer is liable to pay).
- (f) BDA shall not be required to give any prior notice to the Developer of its intention to make a demand under the Performance Security. However, BDA shall provide the Developer with a copy of any demand notice issued by BDA under the Performance Security, promptly after the issuance of the demand notice to the Scheduled Bank that has issued

the Performance Security.

- (g) If BDA makes a demand under the Performance Security, in part or in full, the Developer shall immediately and in no event later than 7 (seven) days of such demand, restore the value of the Performance Security to the amount stated in Clause 5.1(a).
- (h) Upon the expiry of the SRP Construction Period or the termination of this Agreement, the Performance Security or, as the case may be, the amount retained by BDA as cash security under Clause 5.1(d), shall be released to the Developer after the expiry of 30 (thirty) Business Days from the date of expiry of the SRP Construction Period or termination of this Agreement, subject to BDA's right to receive any amounts from the Developer before or upon such expiry of the SRP Construction Period or termination of this Agreement.

5.2. **Project Development Fee**

The Selected Bidder/Developer has made a payment of INR 25,93,825 (Indian Rupees Twenty five lakhs ninty three thousand eight hundred twenty five) (equivalent to 0.25% of the Total Project Cost of the SRP Asset plus applicable Service Tax) to JLL as the project development fee (the **Project Development Fee**), prior to the Appointed Date.

5.3. **Project Development Expenses**

The Selected Bidder/Developer has made a payment of INR 25,93,825 (Indian Rupees Twenty five lakhs ninty three thousand eight hundred twenty five) (equivalent to 0.25% of the Total Project Cost of the SRP Asset plus applicable Service Tax) to BDA as the project development expenses (the **Project Development Expenses**), prior to the Appointed Date.

6. **THE SRP CONSTRUCTION PERIOD**

6.1. **Commencement and Duration**

The construction period for the SRP Assets shall commence on and from the Effective Date, and shall continue until the SRP Completion Date (the **SRP Construction Period**).

Notwithstanding anything to the contrary in the foregoing paragraph, but without prejudice to the provisions contained in Clause 4.2, the Developer shall be entitled to commence:

- (a) Soil or geophysical investigation or testing at the Site (both for the Rehabilitation Area and the Developer's Area); and

- (b) Appointment of Subcontractors in preparation for commencement of construction works over the Rehabilitation Area and the Developer's Area,

prior to the Effective Date.

6.2. **Independent Engineer**

- (a) As a Condition Precedent, BDA shall appoint an independent engineer (a firm) with requisite technical expertise, knowledge and experience in the design, engineering and construction of housing projects as the independent engineer for the Project (the **Independent Engineer**). The detailed scope of works of the Independent Engineer are set out in Schedule F (*Terms of reference for the Independent Engineer*).
- (b) All fees, costs, charges and expenses payable to the Independent Engineer shall be paid by BDA and the Developer in the ratio of 50:50.
- (c) BDA may replace the Independent Engineer in any of the following circumstances:
 - (i) if they have reason to believe that the Independent Engineer has not discharged its duties in accordance with this Clause 6.2 or the terms set out at **Schedule F** (*Terms of Reference for the Independent Engineer*); or
 - (ii) if the Independent Engineer tenders its resignation in accordance with the terms of its appointment.
- (d) In appointing any replacement of the Independent Engineer, BDA shall comply with this Clause 6.2 and **Schedule F** (*Terms of Reference for the Independent Engineer*).
- (e) The Independent Engineer shall be required to act independently, reasonably, fairly and expeditiously to facilitate the timely completion of the SRP on or before the Scheduled SRP Completion Date.
- (f) Except as specifically provided in this Agreement, the Independent Engineer shall have no authority, whether express or implied, to amend, vary or curtail any of the rights or obligations of the Parties.
- (g) The Independent Engineer shall at all times during the SRP Construction Period and the Defects Warranty Period, have the right to enter upon and access the Site. The Developer shall have the right to accompany the Independent Engineer during its/his inspection of the SRP Assets.
- (h) The Independent Engineer shall at all times during the SRP Construction Period and the Defects Warranty Period, have the right to attend any meetings held by the Developer to review the progress of the SRP, and to provide its/his comments/suggestions regarding the progress as well as the manner in which the construction works are undertaken for

the SRP Assets. Neither any comments/suggestions provided by the Independent Engineer on the construction works nor any failure to provide comments/suggestions shall be deemed to be an acceptance of the construction works or a waiver of the Developer's obligations to execute the SRP, in accordance with this Agreement, the SRP Requirements, the SRP Construction Plan, the HSE Plan, and all Applicable Laws and Applicable Permits.

- (i) The Developer agrees that notwithstanding any review or approval by the Independent Engineer of any or all of the EWS Units or the Infrastructure Facilities, the Developer shall bear all risk, responsibility and liability for the quality, adequacy and suitability of the SRP Assets.

6.3. **SRP Construction Plan**

(a) The Developer shall prepare the SRP Construction Plan, setting out its detailed plan for executing the SRP in accordance with the terms of this Agreement, SRP Construction Schedule, the SRP Requirements and other Applicable Laws, and Applicable Permits and Good Industry Practise. The SRP Construction Plan shall at least include the following:

- (i) the detailed designs and drawings, plans, dimensions, setting-out details, patterns and models for the SRP Assets, prepared in accordance with the SRP Requirements;
- (ii) the order in which the Developer proposes to execute the construction of the SRP Assets to ensure that the SRP Assets are completed on or before the Scheduled SRP Completion Date; and
- (iii) the specific activities to be completed for each SRP Construction Milestone and the timelines and scheduled completion dates for each such activity.

(b) Within 60 (sixty) days from the Appointed Date, the Developer shall submit four copies of the draft SRP Construction Plan to BDA for its review and approval.

(c) BDA shall review and provide comments, if any, on the draft SRP Construction Plan to the Developer or notify the Developer of its approval of the draft SRP Construction Plan within 30 (thirty) days of the Developer submitting the draft SRP Construction Plan.

(d) The Developer shall undertake the construction of the SRP Assets on the basis of the SRP Construction Plan approved by BDA in accordance with Clause 6.3(c). The Developer shall not deviate from or make any subsequent modification or amendment to the approved SRP Construction Plan without the prior written approval of BDA.

(e) Notwithstanding any review or approval of the SRP Construction Plan by BDA, the Developer shall bear all risk, responsibility and liability for the timely completion of the SRP Assets.

6.4. **Developer's Construction Obligations for the SRP Assets**

The Developer shall construct, finance and complete 1300 (One thousand three hundred) EWS Units and Infrastructure Facilities, in accordance with this Agreement, Applicable Laws, Applicable Permits, the Site Layout Plan, the SRP Construction Plan and the SRP Requirements and Good Industry Practise.

For this purpose, during the SRP Construction Period, the Developer at its own cost, expense and risk:

- (a) shall complete each SRP Construction Milestone by the relevant Scheduled Construction Milestone Date and the entire SRP Assets by the Scheduled SRP Completion Date, at its own cost and risk in a manner that:
 - (i) is in compliance with the SRP Requirements, the SRP Construction Plan, the HSE Plan, Applicable Laws, Applicable Permits and Good Industry Practices. For the avoidance of doubt, if there arises any ambiguity or conflict between the SRP Requirements and any Applicable Laws, then the one setting out the more stringent requirements or specifications shall prevail;
 - (ii) is in accordance with the SRP Construction Schedule;
 - (iii) ensures that the EWS Units are safe and fit for habitation and the Infrastructure Facilities are safe, reliable and fit for purpose; and
 - (iv) the SRP Assets are free from all defects in design and workmanship.
- (b) shall maintain and comply with the conditions of all Applicable Permits in undertaking the construction of the SRP Assets;
- (c) shall, within 30 (thirty) days of the Effective Date, and in any event, prior to the commencement of any construction for the SRP Assets, appoint a Person with sufficient skill and expertise to act as the Developer's Representative. The Developer's Representative shall monitor, coordinate, and supervise the completion of the SRP Assets and liaise with BDA and the Independent Engineer during the SRP Construction Period and the Defects Warranty Period;
- (d) shall provide all necessary assistance to the Independent Engineer in undertaking inspection of the construction for the SRP Assets, and while performing its other obligations and duties under this Agreement;
- (e) shall reasonably consider and act upon the comments/suggestions made by the Independent Engineer during any meetings of the Developer with its Subcontractors;
- (f) shall rectify any defects and/or deficiencies in the SRP Assets, including any discovered

- by the Independent Engineer;
- (g) shall take all necessary measures to maintain the safety and security of personnel, material and property at the Site and the construction works for the SRP Assets, in accordance with the approved HSE Manual and all Applicable Laws;
 - (h) shall ensure that all excavated materials, earthworks, waste materials and hazardous substances are stored and/or disposed of in accordance with the HSE Plan, Applicable Laws and Applicable Permits;
 - (i) shall submit monthly reports to the Independent Engineer (with a copy to BDA), no later than 10 (ten) days after the end of each month, of the construction works undertaken during such month for the SRP Assets, which should set out the following:
 - (i) extent of progress of construction activities performed by the Developer for the SRP Assets;
 - (ii) status of completion of the SRP Construction Milestones;
 - (iii) comparison of actual progress against the planned progress of construction works (as per the SRP Construction Plan), reasons for delay, if any and steps taken by the Developer to mitigate the delay;
 - (iv) details of any accident or hazardous incident at the Site and the steps taken by the Developer to mitigate the consequences of such accident or hazardous incident; and
 - (v) rectification of defects and/or deficiencies discovered by the Independent Engineer.
 - (j) shall ensure that an adequate number of suitably skilled and experienced contractors, architects, workmen and other personnel are engaged for undertaking the SRP. The Developer shall be solely responsible and accountable for the work performed by any staff and labour engaged by it for executing the SRP. The Developer shall and shall ensure that its Subcontractors provide all necessary amenities and welfare facilities for the staff and labour engaged by them at the Site and comply with all applicable labour laws. The Developer shall indemnify and hold harmless BDA from and against all claims, liabilities, expenses, costs and losses suffered or incurred by BDA due to the Developer's or any Subcontractor's failure to comply with all Applicable Laws (including labour welfare legislations);
 - (k) shall arrange for all equipment, machinery, tools and other resources required to undertake the SRP and be solely responsible for such equipment, machinery, tools and resources;
 - (l) shall take all reasonable measures to ensure that the transportation of any of the Developer's or the Subcontractors' personnel or equipment, to or from the Site, does not

- interfere with local traffic in the vicinity of the Site;
- (m) shall maintain accurate and systematic accounts and records of goods and material utilised and other costs and expenses incurred in connection with the construction works for the SRP Assets, including all invoices, receipts, challans, vouchers, quotations and other records and documents with respect to the SRP Assets in accordance with Applicable Laws;
 - (n) shall obtain and maintain adequate Insurances; and
 - (o) shall prepare and keep up-to-date, “as-built” records of the execution of the construction work for the SRP Assets, showing the exact as-built locations, sizes and details of the works as executed in accordance with Applicable Laws. The “as-built” records shall be kept on the Site and be made available to the Independent Engineer for review and verification. The Developer shall provide 2 (two) copies of the complete set of “as-built” drawings for the SRP Assets to BDA prior to the final inspection of the completed EWS Units and Infrastructure Facilities and issuance of the SRP Completion Certificate.

6.5. **BDA’s Rights and Obligations**

During the SRP Construction Period, BDA shall:

- (a) comply with all its obligations under the GoO Land Allotment Notification;
- (b) make reasonable endeavours to assist the Developer in obtaining the Applicable Permits from the relevant Government Authorities, provided that the Developer has complied with all the requirements as per Applicable Laws for applying for such Applicable Permits;
- (c) review the SRP Construction Plan, HSE Plan and all other plans and documents submitted by the Developer in an expeditious manner, in accordance with this Agreement;
- (d) cause the Independent Engineer to carry out timely inspection of the EWS Units and the Infrastructure Facilities and perform its other obligations and duties under this Agreement;
- (e) [make timely payment of each tranche of the Grant, against an Invoice raised by the Developer on satisfaction of the relevant SRP Construction Milestone, in accordance with Clause 8.2;]¹
- (f) BDA shall provide or shall cause the relevant Government Authority to provide all necessary assistance in facilitating the provision of infrastructure facilities and utilities to the Developer as set out in Schedule G; and
- (g) upon completion of construction of the SRP Assets in accordance with the SRP Requirements and this Agreement, as certified by the Independent Engineer, issue the SRP Completion Certificate to the Developer.

¹ To be deleted if the Selected Bidder has quoted a Premium.

6.6. **Health Safety and Environment (HSE) Plan**

- (a) Within 60 (sixty) days from the Effective Date, the Developer shall prepare and submit to BDA a detailed and comprehensive HSE Plan. The HSE Plan shall set out the health, safety and environment policies, guidelines and procedures to be followed by the Developer in undertaking the SRP and the PDP and shall include a comprehensive Site safety assurance plan, developed in accordance with Applicable Laws, Applicable Permits, the SRP Requirements and Good Industry Practices.
- (b) BDA shall review and provide comments, if any, on the draft HSE Plan to the Developer or notify the Developer of its approval of the draft HSE Plan within 21 (twenty one) days from the date of receipt of the draft HSE Plan from the Developer. BDA shall have the power to require the Developer to amend or modify the draft HSE Plan if BDA identifies any deficiencies or shortcomings in the draft HSE Plan. If the Developer receives any comments, suggestions or instructions to modify the draft HSE Plan from BDA, then the Developer shall incorporate the suggestions made by BDA and modify the draft HSE Plan to correct any shortcomings or deficiencies identified by BDA. Thereafter, the Developer shall submit the revised HSE Plan to BDA for its approval. This process shall continue until the HSE Plan is approved by BDA in accordance with this Clause 6.6(b).
- (c) The Developer shall and shall ensure that its Subcontractors comply with and conform in all aspects to the HSE Plan, approved in accordance with this Clause 6.6, in executing the Project. Any failure of the Developer or the Subcontractors to comply with the HSE Plan shall constitute a Developer Event of Default. The Developer shall indemnify BDA against all costs, expenses, penalties and liabilities incurred/suffered by BDA due to the Developer's or any Subcontractor's failure to comply with the HSE Plan in the course of execution of the Project. The Developer shall not deviate from or make any subsequent modification or amendment to the approved HSE Plan without the prior written approval of BDA.
- (d) Neither any review nor approval of the HSE Plan by BDA, nor any failure to review and provide comments on the HSE Plan shall excuse any failure by the Developer to adopt proper and recognized safety and environment friendly practices during the execution of the Project. The Developer shall bear all risk, responsibility and liability for the accuracy and adequacy of the final HSE Plan in ensuring compliance with all Applicable Laws, Applicable Permits and Good Industry Practices in the execution of the Project. The Developer shall not be entitled to any extension of time and/or compensation for the costs incurred in preparation of the HSE Plan and complying with the requirements of this Clause 6.6.

6.7. **Utilities**

- (a) BDA shall provide or shall cause the relevant Government Authority to provide all necessary assistance in facilitating the provision utilities to the Developer as set out in **Schedule G**;
- (b) The Developer shall furnish, install and maintain at its cost, the power lines, junction boxes and any other electrical receptacles, apparatus or equipment for the distribution of power to its work area, warehouse, welding and fabrication sheds, store rooms and lodging area for workmen. Further, the Developer shall make arrangements, at its cost, for distribution of water to its work area, including the warehouse, store rooms and lodging area for labour.
- (c) Except to the extent specified in Clause 6.7(a) above, the Developer shall be responsible for procuring all other utilities, including telephone connections, internet connections, sewerage etc., as required in connection with the SRP and the PDP.

6.8. **Construction Timelines**

- (a) The Developer shall comply with the SRP Construction Schedule and the SRP Construction Plan and complete each SRP Construction Milestone on or prior to the relevant Scheduled Construction Milestone Date and the entire SRP Assets on or before the Scheduled SRP Completion Date.
- (b) Subject to Clause 6.8(c) below, if the Developer is unable to meet any SRP Construction Milestone, it shall alter the SRP Construction Plan after taking due approval from BDA, with the purpose of making good the delay in achieving such Scheduled Construction Milestone Date and fulfilling its obligation to achieve the SRP Completion Date by the Scheduled SRP Completion Date. The Developer shall, as soon as reasonably practicable, provide BDA and the Independent Engineer with a copy of the varied SRP Construction Plan. Such varied SRP Construction Plan will then form a part of this Agreement. It is clarified that any approval by the BDA of the amended SRP Construction Plan does not imply and shall not be construed as an approval for any extension of the Scheduled SRP Completion Date.
- (c) Subject to Clause 6.8(d) below, the Developer shall be entitled to a day-for-day extension of a Scheduled Construction Milestone Date or, as the case may be, the Scheduled SRP Completion Date, if the completion of the relevant SRP Construction Milestone or, as the case may be, the SRP Assets is delayed due to any of the following reasons (each such event, an **SRP Delay Event**):
 - (i) occurrence of a Force Majeure Event, provided that the requirements of Article 14 have been complied with;
 - (ii) a Qualifying Change in Law;

- (iii) undue delay by the relevant Government Authority in renewing any Applicable Permit, despite the Developer having applied for such renewal expeditiously and having complied with the requirements of Applicable Laws in making such application;
 - (iv) any delay attributable to unforeseen site conditions in accordance with Clause 4.3; or
 - (v) delay by the Independent Engineer in issuance of an SRP Milestone Completion Certificate in accordance with Clause 6.10(c);
 - (vi) delay by BDA in issuance of the SRP Completion Certificate in accordance with Clause 6.10(d);
 - (vii) any BDA proposed variation in the number of EWS Units in accordance with Clause 6.11;
 - (viii) delay caused in complying with any instructions of BDA or the Independent Engineer, which instructions are not attributable to any default or failure of the Developer.
- (d) The Developer shall promptly provide BDA (with a copy to the Independent Engineer) with:
- (i) a notice upon becoming aware of any SRP Delay Event listed at Clause 6.8 (c) above; and
 - (ii) a notice of its claim for extension of a Scheduled Construction Milestone Date and/or the Scheduled SRP Completion Date, with such notice specifying the nature of the SRP Delay Event, the extent of delay suffered or likely to be suffered by the Developer and mitigation measures being taken by the Developer.

The issuance of such notice within [7 (seven)] days from the date the Developer became aware of the SRP Delay Event shall be a condition precedent to the Developer's entitlement to an extension under Clause 6.8 (c).

- (e) Without prejudice to the Developer's obligations to notify BDA regarding the occurrence of an SRP Delay Event above, the Developer shall: (i) keep and maintain records as reasonably necessary to substantiate and establish claims for extensions under Clause 6.8 (c) and (ii) give BDA access to such records and documents or provide BDA with copies, if so requested.
- (f) If the Developer claims an extension of time in accordance with Clause 6.8 (c) and BDA is of the opinion that such delay was caused or materially contributed to by any concurrent or interacting cause or causes of delay not listed in Clause 6.8 (c), then the Developer shall not be entitled to any extension of time for the concurrent period of delay.

- (g) If two or more of the SRP Delay Events listed in Clause 6.8 (c) occur concurrently, then such concurrent period shall not be counted twice in determining an extension under Clause 6.8 (c).
- (h) Except as provided in Clause 6.8 (c), the Developer shall not be entitled to any extension of time for any reason whatsoever, including due to:
 - (i) delay caused in complying with any instructions of BDA or the Independent Engineer which are attributable to any act or omission of the Developer;
 - (ii) failure of any Subcontractor to commence or carry out any work within the prescribed timelines;
 - (iii) unavailability or shortage of equipment, materials, or any other resources (including any utilities); or
 - (iv) any delay in approving the SRP Construction Plan, HSE Plan or any other document submitted by the Contractor due to any deficiencies or shortcomings in such SRP Construction Plan, HSE Plan or other documents, as the case may be.
- (j) Any Dispute between the Parties with respect to the occurrence, length of subsistence or consequence of any of the SRP Delay Event shall be settled in a final and binding manner in accordance with Clause 19.

6.9. **Delay Liquidated Damages**

- (a) Subject to Clause 6.8(c), if the Developer fails to construct the entire SRP Assets by the Scheduled SRP Completion Date, then BDA shall be entitled to liquidated damages for each day of delay beyond the Scheduled SRP Completion Date at the rate of INR 50,000 (Rupees Fifty thousand) for each day of delay for the first 3 (three) months from the Scheduled SRP Completion Date, and at the rate of INR 1,00,000 (Rupees One Lakh) for each day of delay from (and including) the 4th month to (and including) 6th month from the Scheduled SRP Completion Date, until the SRP Assets are completed, as certified by the Independent Engineer in accordance with Clause 6.10, (the **Delay Liquidated Damages**).
- (b) BDA shall be entitled to call upon the Developer to pay the Delay Liquidated Damages; deduct the Delay Liquidated Damages from any amounts due, or to become due from the Developer; and to invoke the Performance Security to the extent of the Delay Liquidated Damages.
- (c) If, for any reason, the foregoing paragraphs relating to the payment of Delay Liquidated Damages are void, invalid or otherwise inoperative so as to disentitle BDA from claiming Delay Liquidated Damages, then BDA will be entitled to claim against the Developer for

general damages for delay in completing the SRP Assets in accordance with the SRP Construction Schedule.

- (d) If the Developer fails to complete the SRP Assets within 6 (six) months from the Scheduled SRP Completion Date, other than on account of any SRP Delay Event (**Grace Period**), then such failure shall be deemed to be a Developer Event of Default in accordance with Clause 16.1.

6.10. Completion of Construction and Transfer of Possession

- (a) Upon completion of each SRP Construction Milestone, as specified in the SRP Construction Schedule, the Developer shall issue a notice to the Independent Engineer, with a copy to BDA, requiring the Independent Engineer to inspect the completed construction works covered by the relevant SRP Construction Milestone. The purpose of such inspection shall be to determine whether the relevant SRP Construction Milestone has been completed in accordance with the requirements of Clause 6.4.
- (b) If the Independent Engineer is satisfied that the relevant SRP Construction Milestone has been completed in accordance with the requirements of Clause 6.4, the Independent Engineer shall issue an SRP Milestone Completion Certificate to the Developer for such completed SRP Construction Milestone, with a copy to BDA, within 7 (seven) days from the date of inspection of the construction works covered by such SRP Construction Milestone.

If the Independent Engineer is of the view that the relevant SRP Construction Milestone does not satisfy the requirements of Clause 6.4, then the Independent Engineer shall have the right to provide any comments, suggestions and/or instruct the Developer to carry out necessary modifications, to ensure that the relevant SRP Construction Milestone complies with the requirements of Clause 6.4. Upon receipt of such comments, suggestions or instructions from the Independent Engineer, the Developer shall make necessary modifications to the construction works to remedy any defects or deficiencies and re-issue a notice to the Independent Engineer. The Developer shall bear all costs of remedying the defects and deficiencies in the construction works and shall not be entitled to any extension of time for remedying such defects or deficiencies. This process shall be repeated until the Independent Engineer is satisfied that the relevant SRP Construction Milestone has been completed in accordance with the requirements of Clause 6.4 and issues a SRP Milestone Completion Certificate in accordance with this Clause 6.10(b).

- (c) If the Independent Engineer fails to:

- (i) inspect the completed portion of the construction works covered by the relevant SRP Construction Milestone, within 7 (seven) days from the date of receipt of a notice from the Developer under Clause 6.10(a); or
- (ii) provide any comments or suggestions or notify the Developer of any defects or deficiencies in the completed portion of the construction works covered by the relevant SRP Construction Milestone, within 7 (seven) days from the date of inspection of such completed portion of the construction works; or
- (iii) issue the SRP Milestone Completion Certificate, within 7 (seven) days from the date of inspection of the completed portion of the construction works covered by the relevant SRP Construction Milestone,

then, such delay shall be treated as an SRP Delay Event, which will entitle the Developer to a day for day extension in the Scheduled SRP Construction Milestone Date and the Scheduled SRP Completion Date beyond the 7 (seven) day period.

- (d) Within 7 (seven) days from the date of issuance of the SRP Milestone Completion Certificate for the last SRP Construction Milestone, BDA shall issue the SRP Completion Certificate to the Developer, subject to the following conditions having been fulfilled by the Developer:
 - (i) the submission of 2 (two) complete sets of the “as-built” drawings of the EWS Units and the Infrastructure Facilities, duly verified by the Independent Engineer;
 - (ii) the handover of 2 (two) sets of keys to each EWS Unit to BDA; and
 - (iv) the Developer having cleared the Rehabilitation Area and removed all debris, hazardous materials, surplus construction materials, equipment, temporary works, work sheds, labour camps and all other temporary installations on the Rehabilitation Area.

If BDA fails to issue the SRP Completion Certificate to the Developer within 7 (seven) days from the date of issuance of the SRP Milestone Completion Certificate for the last SRP Construction Milestone and satisfaction of the conditions set out in sub-clauses (i) to (iv) above, then, such delay shall be treated as an SRP Delay Event, which will entitle the Developer to a day for day extension in the Scheduled SRP Completion Date, until such time that BDA issues the SRP Completion Certificate to the Developer.

- (e) Upon issuance of the SRP Completion Certificate in accordance with Clause 6.10(d), the possession of the EWS Units and the Infrastructure Facilities shall be deemed to have been handed over to BDA. Provided that, such deemed handover of possession of the EWS Units and the Infrastructure Facilities to BDA shall not excuse the Developer from performing its obligations during the Defects Warranty Period, including the obligation to

rectify any defect or deficiency subsequently discovered in any EWS Unit or Infrastructure Facility.

6.11. Variation

- (a) BDA may, at any time during the SRP Construction Period, propose a Variation in the number of EWS Units, and any corresponding variation in the SRP Construction Plan and/or the SRP Construction Schedule.

- (b) ***BDA Proposed Variation***
 - (i) BDA may, at any time during the SRP Construction Period, instruct the Developer, by issuing a written notice, to carry out a Variation in the number of EWS Units (a **Variation Order**). Provided that, BDA shall not propose a Variation, which results in a variation of the nature of EWS Units or Infrastructure Facilities to be constructed by the Developer, the SRP Requirements or a variation which is not technically feasible.
 - (ii) Within 15 (fifteen) days of receipt of a Variation Order, the Developer shall submit a proposal setting out in sufficient detail the implications of the proposed Variation, including any implications on the SRP Construction Schedule and the SRP Construction Plan, and the costs incurred in undertaking the Variation.
 - (iii) Based on its review of the proposal submitted by the Developer, BDA may: (A) accept the proposal and the corresponding adjustment to the SRP Construction Schedule, the SRP Construction Plan and the proposed costs for undertaking the Variation; (B) provide its comments on the proposal seeking amendments and/or justification for the implications put forth by the Developer; or (C) reject the proposal submitted by the Developer and withdraw the Variation Order, within 15 (fifteen) days from the date of receipt of the Developer's proposal under Clause 6.11(b)(ii).
 - (iv) To the extent BDA seeks amendments and/or justification in the proposal submitted by the Developer, the Developer shall incorporate or address, in writing, BDA's comments and submit a revised proposal. On approval of the revised proposal in accordance with Clause 6.11(b)(iii), the Developer shall proceed with the Variation.
 - (v) On implementation of a Variation Order, the Developer shall be entitled to the agreed adjustment to the SRP Construction Schedule, the SRP Construction Plan and payment of amounts agreed pursuant to the proposal submitted by the Developer for carrying out the Variation.

- (c) Notwithstanding anything to the contrary in Clause 6.11(b), the Developer shall be bound to implement any Variation that is necessitated by a Change in Law and any consequent adjustment in the SRP Construction Schedule, the SRP Construction Plan and/or the Concession Fee, on account of such Variation, shall be determined in accordance with Article 12.
- (d) Notwithstanding the above, a Variation made necessary due to any act, omission or default of the Developer or any Subcontractor in the performance of the Developer's obligations under this Agreement shall not entitle the Developer to any adjustment to the SRP Construction Schedule and the SRP Construction Plan or any other compensation or relief.
- (e) No Variation shall invalidate this Agreement.
- (f) In relation to any proposed Variation, the adjustment to the SRP Construction Schedule and the SRP Construction Plan shall be reasonably determined by making reference to the time required for similar analogous construction work, availability of the required material and equipment or such other factors as may be relevant.

6.12. **Right, Title and Interest in the SRP Assets**

- (a) The full ownership, rights, interest and title to the **EWS** Units, Social Infrastructure and other Infrastructure Facilities constructed or installed by the Developer on the **Rehabilitation Area** pursuant to this Agreement shall, at all times, vest with BDA.
- (b) The Developer shall not sell, transfer or otherwise dispose of or create any Security over these SRP Assets or any part thereof.

7. **MAINTENANCE AND DEFECTS WARRANTY PERIOD FOR SRP ASSETS**

7.1. **Maintenance of SRP Assets**

- (a) Upon the expiry of the SRP Construction Period and formation of Slum Level Registered Society, the performance of the Maintenance Services will be assumed by the Slum Level Registered Society (**SLRS**).
- (b) In case the Slum Level Registered Society could not be formed before the SRP Construction period due to delay in the formation of society, BDA shall maintain the SRP asset till the formation of Slum Level Registered Society.
- (c) At least 30 (thirty) days prior to the expiry of the SRP Construction Period, the Developer shall facilitate and help SLRS/BDA in starting the Maintenance Services as applicable, by:

- (i) liaising with the SLRS/BDA and providing reasonable assistance and advice regarding the Maintenance Services and their transfer to the SLRS/BDA;
- (ii) providing access to any agency authorised by BDA, to inspect the SRP Assets and responding to queries and clarifications, if any, sought by such agency prior to transfer of the Maintenance Services to SLRS/BDA; and

For the avoidance of doubt, it is clarified that during the transition period specified in this Clause 7.1(c), the Developer shall continue to perform all services as per this agreement, rectify defects if any, in the SRP Assets.

- (d) Within 1 (one) month prior to the completion of the SRP Construction Period, the Developer will be required to deposit an amount of INR 1,80,44,000/- (Rupees one crore eighty lakhs forty four thousands only) i.e., 2% (two percent) of the SRP Capital Cost in the bank account designated for the SLRS (**Corpus Fund**). If, for any reason, a bank account has not been opened by the SLRS within the prescribed time period in accordance with Clause 7.1(d), then, the Developer shall be required to deposit the Corpus Fund in the bank account designated by BDA in this regard.

It is clarified that the Developer will not be permitted to withdraw the Corpus Fund, or utilise, in any way, the amounts comprising the Corpus Fund for providing the Maintenance Services.

7.2. **Defects Warranty**

- (a) Notwithstanding the obligation set out in Clause 7.1, the Developer shall, at its own cost, expense and risk, remedy any structural defect or deficiency in the SRP Assets (the "**Defects Warranty**") appearing within a period of 12 (twelve) months from the date of handing over the SRP Assets to BDA (the "**Defects Warranty Period**"), which is discovered by the Independent Engineer, BDA or any EWS Allottee and reported by the Slum Level registered Society.
- (b) If the Developer fails to remedy any defect or deficiency in the SRP Assets within the time period prescribed as per this Agreement, then BDA may (at its sole discretion) carry out the repair work itself or through others, at the risk and cost of the Developer. Without prejudice to any other rights under this Agreement or otherwise in law, BDA shall be entitled to recover the amounts expended by it in remedying any defects in the SRP Assets from Developer, including any amounts for the full replacement cost of items/materials which had to be replaced for rectification of the defects.
- (c) The Defects Warranty is subject to the following exclusions:

- (i) any modification or rectification by BDA, or on its behalf in any way without prior notice to and consent of the Developer;
- (ii) defect or deficiency attributable to an EWS Allottee or BDA Related Party; and
- (iii) normal wear and tear.

Any dispute regarding the nature of any defect or deficiency in the SRP Assets (i.e., whether the defect or deficiency can be attributable to the Developer or the relevant EWS Allottee) and the Developer's liability to rectify any defect or deficiency in the SRP Assets shall be determined in accordance with Article 19.

8. CONCESSION FEE AND PAYMENT SECURITY

8.1. Premium

- (a) In consideration for the Developer undertaking the Project, the Developer shall pay to BDA, the Concession Fee quoted by the Developer in its Bid, in accordance with this Article 8.
- (b) Deleted

8.2. Payment of Concession Fee

- (a)

In case of Premium

- (a) The Concession Fee shall be paid by the Developer to BDA, in 4 (four) equal instalments of INR 1,03,00,000/- (Rupees one crore three lakhs only) each, payable as follows:
 - (i) the first instalment of the Concession Fee will be payable by the Developer on or before the Effective Date (**First Instalment**);
 - (ii) the second instalment of the Concession Fee will be payable by the Developer within 6 (six) months from the Effective Date (**Second Instalment**);
 - (iii) the third instalment of the Concession Fee will be payable by the Developer within 12 (twelve) months from the Effective Date (**Third Instalment**); and
 - (iv) the fourth instalment of the Concession Fee will be payable by the Developer within 18 (eighteen) months from the Effective Date (**Fourth Instalment**).
- (b) The Developer will be required to deposit the Instalments within the specified time periods in immediately available funds, without any deductions whatsoever for Taxes, charges or

other withholdings (all of which shall be borne by the Developer) into the designated bank account of BDA.

- (c) If the Developer fails to pay any Instalment within the prescribed timelines, then the Developer will be liable to pay default interest on the outstanding amounts in accordance with Clause 8.5 from the due date of such Instalment until the date of payment of such Instalment.
- (d) If the Developer fails to pay any Instalment within 30 (thirty) days from the due date of such Instalment, then such event shall be treated as a Developer Event of Default in accordance with Clause 16.1.
- (e) The Developer shall have no obligation to pay the Concession Fee or any Instalment thereof to the BDA if there is a subsisting BDA Event of Default.

8.3. **Developer Escrow Account**

- (a) Within 30 (thirty)] days from the date of this Agreement and, in any event, prior to the CP Long-stop Date, the Developer, BDA, and the Developer Escrow Agent shall enter into the Developer Escrow Agreement and the Developer shall open the Developer Escrow Account with the Developer Escrow Agent in accordance with the Developer Escrow Agreement, which shall be operational until the expiry of the SRP Construction Period. The Developer Escrow Agreement shall set out the terms of appointment of the Developer Escrow Agent, the obligation of the Developer to ensure deposit of amounts in accordance with this agreement with the Developer Escrow Agent and the procedure for withdrawal of amounts from the Developer Escrow Account.
- (b) The Developer shall ensure all amounts received by the Developer in connection with the Project are deposited into the Developer Escrow Account in accordance with the Developer Escrow Agreement. Such amounts shall include:
 - (i) all Financial Assistance received by the Developer from the Lenders for the SRP and the PDP;
 - (ii) all share capital contributions and shareholder loans received from the Selected Bidder or other shareholders of the Developer;
 - (iii) all upfront deposits and booking amounts received from the PDP Allottees for the PDP Units;
 - (iv) all construction linked and any other payments received from the PDP Allottees for the PDP Units; and
 - (v) funds to make up the shortfall in the amount in the Developer Escrow Account as against the cash flow requirement during the SRP Construction Period.

- (c) From the Effective Date and until the issuance of the SRP Completion Certificate, the Developer shall ensure that the Developer Escrow Account is funded with an amount equivalent to the next Instalment of the Concession Fee liable to be paid to the BDA in accordance with Clause 8.2 (**Minimum Developer Escrow Balance**).

Within 30 (thirty) Business Days of transfer of an Instalment of the Concession Fee to BDA, the Developer shall fund the Developer Escrow Account with an amount equivalent to the next Instalment of the Concession Fee payable to BDA in accordance with Clause 8.2, to ensure that the balance in the Developer Escrow Account is not less than the Minimum Developer Escrow Balance.

- (d) The Developer shall be entitled to drawdown amounts from the Developer Escrow Account to meet the costs of the SRP and the PDP strictly in accordance with the procedure for withdrawal of amounts set out below:

(i) Withdrawals during the SRP Construction Period: The Developer shall, at the time of opening the Developer Escrow Account, give irrevocable instructions, pursuant to the Developer Escrow Agreement, to the Developer Escrow Bank instructing, *inter alia*, that deposits in the Developer Escrow Account shall be appropriated during the SRP Construction Period in the following order every month, or at shorter intervals as necessary, and if not due in a month then retained in the Developer Escrow Account and paid out therefrom in the month when due:

- (A) all taxes due and payable by the Developer for and in respect of the Project;
- (B) all payments and damages certified by BDA as due and payable by Developer to BDA in accordance with this Agreement;
- (C) other costs and expenses incurred by BDA on behalf of the Developer in accordance with this Agreement, and certified by BDA as being due and payable to it;
- (D) all payments relating to construction and financing of the SRP Assets, subject to and in accordance with the conditions, if any, set forth in the Financing Documents;
- (E) on and from the PDP Commencement Date, all payment relating to construction and financing of the PDP Units;
- (F) any reserve requirements set forth in the Financing Documents;
- (G) monthly proportionate provision of debt service payments due in an Accounting Year in respect of subordinated debt; and

- (H) balance, if any, in accordance with the instructions of the Developer.
- (ii) Withdrawals upon termination: Notwithstanding anything to the contrary contained in this Agreement, all amounts standing to the credit of the Developer Escrow Account shall, upon termination prior to expiry of the SRP Construction Period, be appropriated in the following order:
- (A) all taxes due and payable by the Developer for and in respect of the Project;
 - (B) all payments and damages certified by BDA as due and payable by Developer to BDA (including Termination Compensation);
 - (C) Lenders' dues as per the provisions of this Agreement;
 - (D) amount corresponding to the Corpus Fund;
 - (E) outstanding debt service in accordance with the Financing Documents;
 - (F) outstanding subordinated debt;
 - (G) any other payments required to be made in accordance with this Agreement; and
 - (H) balance, if any, in accordance with the instructions of the Developer.

The Developer shall not in any manner modify the order of payment specified in Clause 8.3(d), except with the prior written approval of BDA. The provisions of this Clause 8.3(d) and the instructions contained in the Developer Escrow Agreement shall remain in full force and effect until early termination of this Agreement in accordance with Article 14 or Article 16 or 30 (thirty) days after the expiry of the SRP Construction Period, whichever is later.

- (e) Notwithstanding the order of payment specified in Clause 8.2(d) above, the Developer and the Developer Escrow Agent shall ensure that the amounts set out in Clause 8.2(d), as may be deposited by BDA from time to time, can only be utilised by the Developer, upon the Developer furnishing the Payment Certificate for the SRP Construction Milestone for which such amounts were deposited by BDA.

8.4. **Taxes**

- (a) DELETED
- (b) The Developer shall be responsible for all procedural compliances related to the payment of Taxes under this Agreement and shall be solely responsible for any proceedings initiated by any relevant authority, in respect of any non-payment, short-payment, non-

compliance, penalty, interest or other such issue, and for all liabilities and expenses related to such proceedings. The Developer shall be responsible for obtaining at its own cost, all permits, licenses and approvals, required by the relevant Government Authorities, arising from undertaking the Project.

- (c) If any proceedings are initiated against BDA by any relevant Government Authority for failure of the Developer to comply with this Clause 8.4, then the Developer shall fully indemnify and compensate BDA for any cost, liability, penalty, interest and legal fees that are incurred or payable as a result of such proceedings.

8.5. Default Interest

Upon any party's failure to make a payment due and payable by it on the due date for such payment, the defaulting Party shall be liable to pay default interest on all such outstanding amounts at 9% (nine percent) per annum or part thereof. This is without prejudice to any Party's right to terminate this Agreement in accordance with Article 16 or any other right or remedy available to it under this Agreement or Applicable Laws.

8.6. Right of Set-Off

The Developer shall not be entitled to retain or set off any amount due to BDA by it, but BDA may retain or set off any amount owed to it by the Developer under this Agreement, which has fallen due and payable against any amount due to the Developer under this Agreement. BDA shall intimate the Developer at the time it exercises its right to set-off and shall provide the Developer its reasons for exercising such right to set-off.

9. PRIVATE DEVELOPMENT PROJECT

9.1. PDP Construction Plan

- (a) The Developer shall prepare and submit to BDA the PDP Construction Plan, setting out its detailed plan for executing the PDP. The PDP Construction Plan shall at least include the following:
- (i) the layout, built-up area, product mix, types, number and location of the residential units, commercial units and related internal infrastructure comprising the PDP, provided that the built-up area of the PDP Units must not exceed the Maximum

PDP Built-up Area and must at all times be consistent with all Applicable Laws, Applicable Permits, and the Site Layout Plan;

- (ii) the phases, if any, in which the Developer proposes to execute the PDP to ensure that the entire PDP is complete on or before the Scheduled PDP Completion Date; and
- (b) In preparing the draft PDP Construction Plan and undertaking the PDP in accordance with this Agreement, the Developer shall be permitted to make use of the unutilised FAR from the Rehabilitation Area onto the Developer's Area, subject to any conditions set out in Applicable Laws, including specifically the Planning and Building Standards Regulations.
- (c) Within 6 (six) months from the Effective Date, the Developer shall submit the draft PDP Construction Plan to BDA for its review and approval.
- (d) BDA shall review and notify the Developer of its approval of the draft PDP Construction Plan within 30 (thirty) days of the Developer submitting the draft PDP Construction Plan.
- (e) At any time after commencing the construction of the PDP in accordance with the PDP Construction Plan approved as per Clause 9.1(d), the Developer shall have the right to revise the PDP Construction Plan to take into account the market demand and commercial viability of undertaking the PDP over the Developer's Area or for any other reason that the Developer deems fit. Any such revision of the PDP Construction Plan shall require the prior approval of BDA in accordance with Clause 9.1(d) and the Developer shall be required to submit the revised PDP Construction Plan to BDA for its approval in accordance with Clause 9.1(d). Notwithstanding any revision to the PDP Construction Plan in accordance with this Clause 9.1(d), the Developer shall not be entitled to an extension of time to the Scheduled PDP Completion Date, other than as specified in Clause 9.2(b).
- (f) The Developer shall undertake the PDP on the basis of the PDP Construction Plan approved by BDA in accordance with Clause 9.1(d), as may be revised in accordance with Clause 9.1(e).
- (g) Notwithstanding any review or approval of the PDP Construction Plan by BDA, the Developer shall bear all risk, responsibility and liability for the timely completion of the PDP Assets.

9.2. **Construction and Maintenance**

- (a) On and from the PDP Commencement Date, the Developer shall have the exclusive right to develop the PDP Units and any related infrastructure facilities on the Developer's Area, in accordance with this Agreement, the PDP Construction Plan, the Site Layout Plan, the HSE Plan, Applicable Laws and Applicable Permits, at its own cost and expense.
- (b) The Developer shall undertake the PDP in a manner such that:
 - (i) the Project continues to comply with the requirements of Applicable Laws (including specifically Model IV of the Housing for All Policy);
 - (ii) BDA or the EWS Allottees are not deprived of any benefit obtained under any Gol or GoO scheme for the SRP; or
 - (iii) the PDP does not have a Material Adverse Effect on the SRP or the enjoyment thereof.
- (c) The Developer shall obtain, maintain and comply with all necessary Applicable Permits and Applicable Laws for construction and maintenance of any PDP Units.
- (d) The Developer may undertake the PDP itself or through subcontractors. In either case, the Developer shall be solely responsible for compliance with this Agreement, the PDP Construction Plan and all Applicable Laws and Applicable Permits.
- (e) Subject to Clause 18.2, the Developer shall not be entitled to receive any payment or any other compensation from BDA for the PDP. BDA shall have no liability whatsoever to the Developer for the PDP, including for any PDP Unit that the Developer is unable to allot in accordance with Clause 9.2.
- (f) The Developer shall be solely responsible for the timely construction and completion of the PDP Units. BDA shall not be liable, in any manner whatsoever, to the PDP Allottee for any delay in the completion and handover of the PDP Unit, any defect or deficiency in the quality of construction of the PDP Unit or any other breach by the Developer of its obligations and representations under the letter of allotment and the PDP Allottee shall have no recourse to BDA for any losses and damages suffered by him on account of such breach.
- (g) The Developer shall be required to maintain a management information system (**MIS**), for all bookings done, payments received, allotment letters issued in the PDP Units, in accordance with this Agreement and the Conveyance Deed(s), at least until the expiry of the SRP Construction Period. The MIS shall also include the following details:
 - (i) the physical progress of the construction of the PDP Units;
 - (ii) list and values of allotments of the PDP Units;

- (iii) booking amounts or upfront payments received from the PDP Allottees in respect of the allotted PDP Units;
- (iv) status of construction linked any other payments made by the PDP Allottees for the PDP Units; and
- (v) if relevant, defaults in payments by any PDP Allottee.

If requested by BDA, the Developer shall submit a quarterly report covering all the above information to BDA.

- (h) Notwithstanding anything contained in this Agreement, the Developer shall bear all risk, responsibility and liability for the timely completion of the PDP in accordance with the PDP Construction Plan, Applicable Laws and Applicable Permits.

9.3. **Marketing, Branding and Allotment of PDP Units**

- (a) On and from the PDP Commencement Date, the Developer shall be entitled to market, commence bookings of and allot the PDP Units to the PDP Allottees on such terms and conditions (including price) as the Developer deems fit.
- (b) Any marketing brochures or advertisements with respect to the PDP Units must specify the details of the Developer Escrow Account and that all upfront deposits, booking amounts, construction linked payment and any other payments from the PDP Allottees for the PDP Units are required to be deposited in such Developer Escrow Account until the expiry of the SRP Construction Period. After the expiry of the SRP Construction Period, the Developer shall be free to require all amounts from the PDP Allottees to be deposited in the bank account designated by it in this behalf.
- (c) Any letter of allotment or conveyance deed agreeing to sell a PDP Unit to a PDP Allottee must include the following terms:
 - (i) details of the Developer Escrow Account, and that all upfront deposits, booking amounts, construction linked payment and any other payments from the PDP Allottees for the PDP Units are required to be deposited in such Developer Escrow Account until the expiry of the SRP Construction Period. After the expiry of the SRP Construction Period, the Developer shall be free to require all amounts from the PDP Allottees to be deposited in the bank account designated by it in this behalf;
 - (ii) the Developer shall be solely responsible for the timely construction and completion of the PDP Unit. BDA shall not be liable, in any manner whatsoever, to the PDP Allottee for any delay in the completion and handover of the PDP Unit, any defect or deficiency in the quality of construction of the PDP Unit or any other breach by the Developer of its obligations and representations under the letter of allotment

and the PDP Allottee shall have no recourse to BDA for any losses and damages suffered by him on account of such breach;

- (iii) until such time as the Conveyance Deed is executed, neither the Developer nor the PDP Allottees shall have any title on the Developer's Area or any part thereof; and
- (iv) the letter of allotment shall not confer any title to or ownership or leasehold rights over the PDP Unit in favour of the PDP Allottee, until the execution of the Conveyance Deed which the Developer shall have a right to execute on satisfaction of the conditions set out in Clause 9.4.

- (d) The Developer shall not under any circumstances market the PDP or any unit or facility forming part of the PDP, as development being undertaken by BDA or in association with BDA or under the patronage of BDA.

9.4. **Right, Title and Interest in the PDP Units**

- (a) Subject to early termination in accordance with Article 14 or Article 16, the full ownership, rights and title to the PDP Units and other infrastructure facilities forming part of PDP that are constructed or installed by the Developer on the Developer' Area (but not on the Developer's Area itself until a Conveyance Deed is executed in respect of such area) pursuant to this Agreement shall vest with the Developer.
- (b) On and from the SRP Completion Date, the Developer shall have the right to transfer the PDP Units to the PDP Allottees by way of sale, lease or license on satisfaction of the following conditions and in accordance with this Agreement and Applicable Laws, provided that the Developer has transferred the SRP Assets to BDA free of cost (including fulfilment of the conditions set out in Clause 6.10(d));
- (c) On satisfaction of the conditions set out in (b) above, the Developer and the BDA shall execute Conveyance Deed(s) in the format set out in Annexure B of this Agreement, setting out the terms and conditions of such transfer of the Developer's Area or part thereof, within 60 (sixty) days of handing over the entire SRP Assets to BDA. It is clarified that the Developer shall not execute any Conveyance Deed for transfer of the PDP Unit(s) or transfer possession of any PDP Unit until the Developer has obtained the freehold rights over Developer's Area.
- (d) On and from the PDP Commencement Date, the Developer shall have the exclusive right to receive and appropriate payments in respect of any PDP Units that are transferred by the Developer to the PDP Allottees.

- (e) Any transfer of ownership or leasehold rights over or possession of a PDP Unit to a PDP Allottee in contravention of this Clause 9.4 shall be deemed to be void and be liable to be set aside.

10. FINANCING ARRANGEMENTS AND SECURITY

10.1 Financing and Bankability Support

- (a) BDA and the Developer acknowledge that for the purposes of implementing the Project, the Developer may require Financial Assistance from the Lenders. To this end, BDA shall co-operate with the Developer to achieve Financial Close, including by signing any relevant documents and providing such consents and waivers as may be reasonably required by the Lenders.
- (b) Upon the Developer making a request in writing, BDA shall enter into an agreement with the Lenders and the Developer (**Lenders' Direct Agreement**), whereby:
 - (i) BDA shall consent to the assignment of the rights and benefits of the Developer under this Agreement as Security for the grant of Financial Assistance by the Lenders;
 - (ii) BDA shall grant the Lenders certain rights to remedy any default by the Developer by consultation or step-in by the Lenders or substitution of the Developer;
 - (iii) BDA shall agree that upon the occurrence of any Developer Event of Default, it will suspend its right to step-in, suspend, terminate this Agreement or take any actions for the winding-up of the Developer or the appointment of a receiver or administrator in respect of the Developer's business and assets, until the time period available to the Lenders to exercise their step-in or substitution rights has expired; and
 - (iv) BDA agrees that upon the occurrence of any Developer Event of Default, if the Lenders exercise their substitution rights and identify a suitable substitute for the Developer, BDA shall execute all necessary documents and provide all consents required to novate this Agreement in favour of the substitute developer.

10.2 Security Creation

- (a) The Developer shall be entitled to create Security over all of its right, title and interests in and to the Developer's Area, the Development Agreement and the Developer Escrow Agreement in favour of the Lenders for the purpose of obtaining Financial Assistance for the Project, provided that the creation of such Security will not result in any financial liability to BDA.

- (b) The Developer shall be entitled to include the Lenders as co-insured and/or additional loss payees in any of the insurances taken by the Developer in accordance with Clause 11.2 and/or grant Security over the proceeds of such insurance.
- (c) Except for any Security created by operation of law and any Security created pursuant to this Clause 10.2, the Developer shall not be entitled to create any other Security over the Developer's Area, the Development Agreement, the Developer Escrow Agreement or insurance policies taken by it in favour of any third Persons, without the prior written consent of BDA, which consent the BDA may deny in its sole discretion.
- (d) The Developer shall not be entitled to create any Security over the Rehabilitation Area, or any of the SRP Assets, whether in favour of the Lenders or any third Persons.

11. INDEMNITY AND INSURANCE

11.1 Indemnity

- (a) Subject to Clause 11.1(b) below, the Developer shall be responsible for, release, hold harmless and indemnify BDA and the BDA Related Parties on demand from and against, all suits, actions, claims, demands, losses, damages, costs or expenses (including costs of legal fees) or liability for:
 - (i) death or personal injury of any person;
 - (ii) loss of or damage to property;
 - (iii) non-compliance with Applicable Laws or Applicable Permits; and
 - (iv) any third party losses or claims (including any losses or claims from the PDP Allottees),

which may arise out of, or in consequence of the performance or non-performance of the Developer's obligations under this Agreement.

- (b) The Developer shall not be responsible or be obliged to indemnify BDA for any injury, loss, damage, cost and expense caused by the negligence or Wilful Misconduct of BDA or BDA Related Parties or by the breach by BDA of its obligations under this Agreement.
- (c) BDA shall have the right, but not the obligation, to contest, defend, and litigate any claim, action, suit or proceeding by any third party alleged or asserted against it in respect of, resulting from, related to or arising out of any matter for which it is entitled to be

indemnified under this Agreement, and the reasonable costs and expenses (including legal fees) thereof shall be subject to the indemnification obligations of the Developer.

If, however, the Developer acknowledges in writing its obligations to indemnify BDA in respect of loss to the full extent provided by this Agreement, the Developer shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding at its expense and through a counsel of its choice if it gives prompt notice of its intention to do so to BDA and reimburses BDA for the costs and expenses incurred by BDA prior to the assumption by the Developer of such defence. Neither Party shall settle or compromise any such claim, action, suit or proceeding without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, BDA shall have the right to employ its own counsel and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of BDA, as and when incurred.

11.2 Insurance

- (a) The Developer shall, obtain and maintain the policies of insurance set out in (c) below in the minimum coverage amounts and during the periods mentioned therein. In addition, the Developer shall obtain any additional coverage required by Applicable Laws and/or deemed necessary by the Developer or BDA in accordance with this Clause 11.2.
- (b) The Developer shall, obtain and maintain at its own cost, during the SRP Construction Period and the construction period for the PDP Units, insurance for such sums as may be prescribed under the Financing Documents and Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practices. The Developer shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on BDA as a consequence of any act or omission of the Developer during the SRP Construction Period and the construction period for the PDP Units. The Developer shall ensure that each insurance policy requires the insurer to pay the proceeds of insurance into the Developer Escrow Account. The level of insurance to be maintained by the Developer after repayment of Lenders' dues in full shall be determined on the same principles as applicable for determining the level of insurance prior to such repayment of Lenders' dues, in accordance with the Financing Documents.
- (c) The Developer shall, within 30 (thirty) days of the Effective Date, provide a notice to BDA, setting out information in respect of the insurances that it proposes to

effect and maintain. Within 15 (fifteen) days of receipt of such notice, BDA may require the Developer to effect and maintain such other insurances as it may deem necessary, and in the event of any difference or disagreement relating to any such insurance, the provisions of Article 19 shall apply.

(d) The Developer shall purchase insurance from reputable Indian and/or international companies licensed to operate in India, at competitive terms, and shall maintain the insurances on terms consistent with Good Industry Practices. Within 15 (fifteen) days of obtaining any insurance cover, the Developer shall furnish to BDA, notarised true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance.

(e) Each insurance policy shall contain the following endorsements:

- (i) BDA shall be additional insured under all policies maintained by the Developer in relation to the Site and the Project, against loss or damage;
- (ii) the insurers shall waive all rights of subrogation against BDA; and
- (iii) the insurance policy may not be cancelled or materially changed by the insurer without giving 45 (forty five) days prior written notice, except in the case of non-payment, in which case it will be 10 (ten) days prior written notice to BDA.

Each policy will state that BDA shall not be responsible for payment of any insurance premium.

(iv) Any changes in the insurances which impact the Site, the SRP and/or the PDP will need the prior written consent of BDA, which consent shall not be unreasonably withheld.

(f) The proceeds from all insurance claims, except life and injury, shall be deposited in the Developer Escrow Account and the Developer shall apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Documents.

(g) If the Developer fails to procure or maintain any insurance required pursuant to this Clause 11.2 which is required to be obtained for the Site, the SRP and/or the PRP, BDA shall have the right to procure and maintain such insurance in accordance with the requirements of this Clause 11.2 and charge the full cost thereof to the Developer.

12. CHANGE IN LAW

12.1 Change in Law

The Developer may claim the benefit of and/or relief for a Change in Law event subject to and in

accordance with this Clause 12.

12.2 Consequences of Change in Law

- (a) The Developer shall not be allowed any relief and / or compensation for any Change in Law which is not a: (i) Qualifying Change in Law; or (ii) Fundamental Change in Law.
- (b) If a Qualifying Change in Law occurs, then the Developer shall notify BDA of such Qualifying Change in Law along with details of:
 - (i) any necessary change in the SRP Construction Schedule, the SRP Construction Plan or the SRP Requirements on the basis of which construction works are required to be undertaken for the SRP Assets;
 - (ii) any changes are required to the terms of this Agreement to deal with such Qualifying Change in Law;
 - (iii) any extension of the Scheduled SRP Completion Date, to account for the delay, if any, resulting from the Qualifying Change in Law; and/or
 - (iv) any increase in Costs (other than any additional capital expenditure) that will result from the Qualifying Change in Law.
- (c) As soon as practicable after receipt of any notice from the Developer under Clause 12.2(b) above, the Parties shall discuss and agree on the consequences of the Qualifying Change in Law, as specified in the notice, and any way in which the Developer can mitigate the effect of the Qualifying Change in Law, including:
 - (i) providing evidence that the Developer has used reasonable endeavours (including, where practicable, the use of competitive quotes) to minimise any increase in costs or oblige the Subcontractors to minimise any increase in Costs;
 - (ii) providing evidence as to how the Qualifying Change in Law has affected prices of materials used for and construction cost of residential and/or commercial projects which are similar to the Project; and
 - (iii) demonstrating to BDA that the Qualifying Change in Law is the direct cause of the increase in Costs or delay and the estimated increase in Costs, or extension of the SRP Construction Schedule could not reasonably be expected to be mitigated or recovered by the Developer.

- (d) If the Developer has complied with Clause 12.2 (c) above and the Parties mutually agree or it is determined in accordance with Article 19 that the Developer is required to incur additional capital expenditure or Costs due to a Qualifying Change in Law, then:
- (i) the Developer shall be required to bear all additional capital expenditure and Costs resulting from the Qualifying Change in Law up to INR [●] (Rupees [●]) (**Threshold Limit**); and
 - (ii) for any additional capital expenditure and costs resulting from the Qualifying Change in Law, which is in excess of the Threshold Limit, the Developer shall be entitled to be compensated for such additional capital expenditure and Costs, in excess of the Threshold Limit, by way of,
 - A. an appropriate adjustment in the Concession Fee and the Payment Schedule, if required; or
 - B. a lump-sum payment of an amount equivalent to the additional capital expenditure and Costs incurred by the Developer, over and above the Threshold Limit.
- (e) If the Parties have complied with Clause 12.2(c) above and the Parties mutually agree or it is determined in accordance with Article 19 that the Developer will suffer any delay as a result of the occurrence of a Qualifying Change in Law, then the Developer shall be entitled to an extension of time in accordance with Clause 6.8(c).
- (f) The quantum of relief (whether extension of time or compensation) that the Developer shall be entitled to under this Clause 12.2 shall be as agreed by the Parties or as determined in accordance with Article 19, provided always that:
- (i) the Developer shall bear any increased cost or capital expenditure to the extent of the Threshold Limit; and
 - (ii) the Developer shall only be entitled to relief that is reasonable for such Qualifying Change in Law.
- (g) Notwithstanding anything to the contrary in this Agreement, the Developer shall not be entitled to any schedule relief and/or compensation or adjustment in the Concession Fee due to a Qualifying Change in Law, if such Qualifying Change in Law becomes applicable as a result of a delay in the execution of the SRP for reasons other than a SRP Delay Event.
- (h) If a Fundamental Change in Law occurs, then either Party may notify the other giving details of its opinion on:

- (i) the effects of such Fundamental Change in Law on the validity and enforceability of this Agreement or on the rights and benefits accruing to the Developer; and
- (ii) the ability of the Parties to re-negotiate the terms of this Agreement to mitigate the effects of such Fundamental Change in Law, while adhering to the original commercial and financial position of the Parties.

If the Parties are unable to agree on necessary amendments to the terms of this Agreement or the Fundamental Change in Law event is such that it cannot be mitigated with amendments to the terms of this Agreement, the Fundamental Change in Law event shall be treated as a Direct Political Force Majeure Event in accordance with Article 14.

13. CHANGE IN OWNERSHIP

13.1 Ownership Information

The Selected Bidder shall inform BDA that it has caused the Developer to be incorporated as a special purpose company to implement, operate the Project and undertake other obligations of the Developer under and in accordance with this Agreement. The shareholding pattern of the Developer is as follows:

S. No.	Name of the shareholder	No. of shares held	Nature of the shares [Equity/Preference]	Value of the shares held [in Rs.]	Shareholding [in %]
1	M/s Shyam Indus Power Solutions Private Limited	9999	Equity	99,990/-	99.99%
2.	Satya Pal Sindhu	1	Equity	10/-	0.01%
Total		10,000	Equity	1,00,000/-	100%

The Developer represents and warrants to BDA that at the date of execution of the Agreement, the legal and beneficial ownership of the Developer is as represented above and that no arrangements are in place that have resulted or may result in any sale, transfer or disposal of any legal, beneficial, equitable or other interest in any or all of the shares of the Developer.

13.2 Change in Ownership Restrictions

- (a) The Selected Bidder represents and warrants that it shall hold at least 51% (fifty one per cent) of the total Capital and voting rights of the Developer from the date of execution of this Agreement until the expiry of the SRP Construction Period.
 - (i)
- (b) After the expiry of the periods specified in Clause 13.2(a) above, the Selected Bidder shall be entitled to dilute its/their share in the total Capital of the Developer below the levels stated in Clause 13.2(a) above, without the consent of BDA, provided that, the Developer shall inform BDA of any such change in the shareholding at the earliest.
- (c) If, at any time after the execution of this Agreement:
 - (i) the Developer is likely to breach or breaches its representations and undertaking Article 13; or
 - (ii) if, any Associate, whose credentials were taken into consideration for determining Technical Capacity, ceases or will cease to be an Associate of the Selected Bidder,

then, the Developer shall give BDA notice of such occurrence forthwith along with all relevant particulars of such occurrence and shall seek the approval of BDA for such occurrence. While BDA shall not unreasonably withhold or delay such approval, the decision of BDA will be final in this regard. If BDA is of the view that such occurrence is likely to affect the Technical Capacity or Financial Capacity of the Developer to undertake the Project, then BDA may treat such occurrence as a Developer Event of Default, in which case the consequences set out in Clause 16.4 shall follow.

14. FORCE MAJEURE

14.1. Force Majeure Events

- (a) A **Force Majeure Event** means any act, event or circumstance or a combination of acts, events or circumstances or the consequence(s) thereof occurring after the date of this Agreement, which is/are:
 - (i) beyond the reasonable control of either Party (the **Affected Party**);
 - (ii) such that the Affected Party has been unable to overcome or prevent despite exercise of due care and diligence;

- (iii) which do not result from the negligence of such Party or the failure of such Party to perform its obligations hereunder; and
 - (iv) such that it/they has/have a Material Adverse Effect.
- (b) A Force Majeure Event means the following events and circumstances to the extent that they satisfy the conditions set out in Clause 14.1(a):
- (i) Non-Political Force Majeure Events
 - (A) acts of God including storm, tempest, cyclone, hurricane, tsunami, flood, whirlwind, lightning, earthquake, washout, landslide, soil erosion, volcanic eruption, or extreme adverse weather or environmental conditions or actions of the elements;
 - (B) fire or explosion caused by reasons not attributable to the Developer or any Developer Related Parties;
 - (C) chemical or radioactive contamination or ionising radiation;
 - (D) epidemic, plague or quarantine;
 - (E) accidents of navigation, air crash, shipwreck, train wreck or other similar failures of transportation of equipment and/or material necessary for construction of the SRP Assets or the PDP Units.

Non-Political Force Majeure Event shall not include the following conditions, except to the extent resulting from a Non-Political Force Majeure Event:

- (A) unavailability, late delivery or changes in cost of plant, machinery, equipment, materials or spare parts required for undertaking the Project;
 - (B) a delay in the performance of any Subcontractor;
 - (C) non-performance resulting from normal wear and tear; or
 - (D) non-performance caused by the non-performing Party's (I) negligent or intentional acts, errors or omissions, (II) failure to comply with the Applicable Laws or Applicable Permits, or (III) breach of, or default under, this Agreement, as the case may be; or
 - (E) delay in demolition of the existing slums on the Rehabilitation Area on account of removal or relocation of existing utilities (including water, sewage and electricity connections) and internal roads on the Rehabilitation Area.
- (ii) Indirect Political Force Majeure Events

- (A) hostilities (whether declared as war or not), riot, civil disturbance, revolution, rebellion, insurrection, act of terrorism, in each case involving the GoI or the GoO or occurring in Odisha;
- (B) invasion, armed conflict, coup d'etat, act of foreign enemy, blockade, embargo, revolution, insurgency, nuclear blast/explosion, politically motivated sabotage, religious strife or civil commotion, in each case involving the GoI or the GoO or occurring in Odisha;
- (C) strikes, lockout, boycotts or other industrial disputes which are not directly attributable to the actions of the Affected Party;
- (D) any orders issued by the relevant Government Authority, which require the Developer to suspend the construction or maintenance of the Project in compliance with Applicable Laws, provided that, such orders are not attributable to the Developer's breach or violation of any Applicable Laws or Applicable Permits; and
- (E) delay or failure by the relevant Government Authorities in renewing or granting any Applicable Permit, despite the Developer having applied for such Applicable Permit expeditiously and complied with the requirements of Applicable Laws in making such application or the unlawful revocation of any Applicable Permit.

(iii) Direct Political Force Majeure Events

- (A) occurrence of a Fundamental Change in Law in accordance with Clause 12.2(h); and
- (B) compulsory acquisition in national interest or expropriation of the Site (in accordance with the GoO Land Allotment Notification or otherwise).

(c) Without prejudice to the provisions of Clauses 14.1(a) or 14.1(b) above,

- (i) any act, event or circumstance which primarily affects any of the Developer Related Parties associated with the Project or the Subcontractors shall constitute a Force Majeure Event hereunder if and to the extent that it is of a kind or character that, if it had directly affected the Developer, it would have come within the definition of Force Majeure Event under this Clause 14.1; and
- (ii) any act, event or circumstance which primarily affects any of the BDA Related Parties shall constitute a Force Majeure Event hereunder if and to the extent that it is of a kind or character that, if

it had directly affected BDA, it would have come within the definition of Force Majeure Event under this Clause 14.1.

- (d) If the Parties are unable to agree in good faith on the occurrence or existence of a Force Majeure Event, such dispute shall be finally settled in accordance with the dispute resolution procedure set out in Article 19, provided however that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Affected Party.

14.2. **Notice of Force Majeure Events**

- (a) The Affected Party shall give notice to the other Party in writing of the occurrence of any Force Majeure Event (the **FM Notice**), as soon as the same arises or as soon as reasonably practicable and in any event within 10 (ten) days after the Affected Party knew of its occurrence, the adverse effect it has or is likely to have on the performance of its obligations under this Agreement, the actions being taken and an estimate of the time period required to overcome the Force Majeure Event and/or its nature and effects (if it is possible to estimate the same).
- (b) If, following the issue of the FM Notice, the Affected Party receives or becomes aware of any further information relating to the Force Majeure Event, it shall submit such further information to the other Party as soon as reasonably practicable.
- (c) Any party claiming to have been affected by a Force Majeure Event shall not be entitled to any relief unless it has complied with all the provisions of this Clause 14.2.

14.3. **Excuse of Performance**

The Affected Party, to the extent rendered unable to perform its obligations or part of the obligation thereof under this Agreement as a consequence of the Force Majeure Event, shall be excused from performance of the affected obligations, provided that the period shall not exceed 120 (one hundred and twenty) days for a Non-Political Force Majeure Event and 90 (ninety) days for an Indirect Political Force Majeure Event from the date of issuance of the FM Notice.

The Parties may mutually agree to extend the period of excuse from performance due to a Force Majeure Event.

Provided that:

- (a) the excuse from performance shall be of no greater scope and of no longer duration than is reasonably warranted by the Force Majeure Event; and

(b) nothing contained herein shall absolve the Affected Party from any payment obligations accrued prior to the occurrence of the underlying Force Majeure Event.

14.4. **No Liability for Other Losses**

Save and except as expressly provided in this Agreement, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss relating to or arising out of the occurrence or existence of any Force Majeure Event or the exercise by it of any right pursuant to this Article 14.

14.5. **Resumption of Performance**

The Affected Party shall in consultation with the other Party, make all reasonable efforts to limit or mitigate the effects of a Force Majeure Event on the performance of its obligations under this Agreement. The Affected Party shall also make efforts to resume performance of its obligations under this Agreement as soon as possible and upon resumption, shall notify the other Party of the same in writing. The other Party shall afford all reasonable assistance to the Affected Party in this regard.

14.6. **Termination due to Force Majeure Event**

(a) **Termination due to a Non-Political Force Majeure Event**

- (i) Either Party shall, after the expiry of the period of 120 (one hundred and twenty) days after the notification of a Non-Political Force Majeure Event or any other mutually extended period, be entitled to forthwith terminate this Agreement in its sole discretion by issuing a notice to that effect.
- (ii) In the event of a termination of this Agreement as a result of a Non-Political Force Majeure Event in accordance with this Clause 14.6(a), the Parties agree that:

- (A) the Developer shall not be entitled to any payment including any Termination Compensation, provided however that the Developer shall be entitled to retain all proceeds received under any insurance policies maintained by it in relation to the Site, the SRP and PDP (subject to the Lenders' rights in respect of such insurance proceeds); and

- (B) the entire Site will revert to BDA, including any semi-constructed SRP Assets and PDP Units on the Site on an “as is where is” basis.

(b) Termination due to an Indirect Political Force Majeure Event

- (i) If, prior to the completion of the 90 (ninety) days period commencing from the date of issuance of the FM Notice, the Developer is of the reasonable view that the Indirect Political Force Majeure Event is likely to continue beyond such 90 (ninety) days period or any extended period agreed in pursuance of Clause 14.3, then the Developer may elect to terminate this Agreement by issuing a notice to that effect.
- (ii) Without prejudice to the provisions of Clause 14.6(b)(i) above, the Developer shall, after the expiry of the period of 90 (ninety) days from the date of the FM Notice or any other mutually extended period, be entitled to forthwith terminate this Agreement by issuing a notice to that effect.
- (iii) Upon notice of termination being issued by the Developer under Clause 14.6(b)(i) or Clause 14.6(b)(ii) above:

- (A) BDA shall pay the Termination Compensation to the Developer in accordance with Clause 18.4(b) below; and
- (B) the entire Site will revert to the BDA, including any semi-constructed SRP Assets and PDP Units on the Site on an “as is where is” basis.

(c) Termination due to a Direct Political Force Majeure Event

- (i) Upon occurrence of a Direct Political Force Majeure Event which has continued for a period of 60 days, the Parties shall have the right to terminate this Agreement forthwith, by issuing a notice of termination along with the issuance of the FM Notice.
- (ii) Upon notice of termination being issued by the Developer under Clause 14.6(c)(i) above:
 - (A) BDA shall pay the Termination Compensation to the Developer in accordance with Clause 18.4(c) below; and
 - (B) the entire Site will revert to the BDA or, as the case may be, GoO, including any semi-constructed SRP Assets and PDP Units on the Site on an “as is where is” basis.

All the other consequences of termination that are set out at Article 17 shall apply in case of termination of this Agreement due to a Force Majeure Event.

15. SUSPENSION OF CONSTRUCTION OF THE PROJECT

15.1. Suspension by the Developer

(a) *Suspension of construction of SRP Assets*

- (i) At any time during the SRP Construction Period, the Developer may suspend, whether partially or wholly, the construction of the EWS Units and Infrastructure Facilities, as the case may be, in any of the following events or circumstances:
 - (A) if after assessment, the Developer believes that the construction of the SRP Assets whether on account of the designs, use of construction materials or otherwise is or is likely to be unsafe and/or unfit for habitation, and that suspension is necessary and appropriate in the interest of health, safety and environment; or
 - (B) a Force Majeure Event (provided that the requirements of Article 14 have been complied with) has occurred in respect of the SRP.
- (ii) The Developer acknowledges that suspension of the construction of the SRP Assets during the SRP Construction Period on account of the event listed at Clause 15.1(a)(i)(A) shall not entitle the Developer to an extension of the SRP Construction Schedule.
- (iii) Upon the occurrence of any of the foregoing events or circumstances set out in Clause 15.1(a), the Developer shall as soon as reasonably possible, and in no event later than [3 (three)] days after such occurrence, notify the Independent Engineer and BDA of such occurrence.
- (iv) If, upon notification, the Independent Engineer and/or BDA does not concur with the Developer on the nature of such occurrence, then the Developer shall be required to immediately re-commence the construction of the SRP Assets. Upon re-commencement of the construction activities, the Developer may initiate a Dispute regarding its claim for the occurrence of such an event or circumstance, and such Dispute shall be finally settled in accordance with the dispute resolution

procedure set forth in Article 19, provided however that the burden of proof as to the occurrence or existence of such an event shall be upon the Developer.

(b) ***Mitigation, Resumption and Termination***

- (i) The Developer shall make best endeavours to:
 - (A) mitigate the effects of any of the events or circumstances listed at Clause 15.1(a)(i) above;
 - (B) mitigate the effects and costs of suspension of construction of the SRP Assets; and
 - (C) resume the construction of the SRP Assets within 24 (twenty four) hours of the ceasing of any of the events or circumstances listed at Clause 15.1(a)(i).

- (ii) Without prejudice to Clause 15.1(b)(i):
 - (A) if suspension of the construction of the SRP Assets continues on account of the events or circumstances specified at Clause 15.1(a)(i)(A) for a continuous period of [60 (sixty)] days, then such suspension shall amount to a Developer Event of Default in accordance with Clause 16.1; and
 - (B) in respect of events set out Clause 15.1(a)(i)(B), the consequences set out in Clause 14.3 shall apply.

(c) ***Costs of Suspension and Resumption***

- (i) Where the suspension of construction of the SRP Assets is caused due to an event set out in Clause 15.1(a)(i)(A), the Developer shall bear its own costs for suspending and resuming the construction of the SRP Assets.
- (ii) Where the suspension of construction of the SRP is caused due to an Indirect Political Force Majeure Event or a Direct Political Force Majeure Event, the reasonable and proper Costs incurred by the Developer in suspending and resuming the construction of the SRP Assets shall be borne entirely by BDA. However, such payment will be made by BDA only after the relevant Indirect Political Force Majeure Event or Direct Political Force Majeure Event ceases to exist and the Developer has resumed construction of the SRP Assets, as the case may be. It is clarified that if the relevant Indirect Political Force Majeure Event or Direct Political Force Majeure Event continues beyond the time period specified in

Clause 14.6, and results in a termination of this Agreement, then the Developer shall only be entitled to payment of the Termination Compensation specified in Clause 18.4(b) or Clause 18.4(c), as the case may be.

It is clarified that the Developer will not be entitled to any payment under this Clause 15.1(c) (ii) in respect of any Non-Political Force Majeure Event or in respect of any PDP Units.

15.2. Suspension by BDA

- (a) At any time during the SRP Construction Period, BDA may suspend, whether partially or wholly, the construction of the SRP Assets, in any of the following events or circumstances:
- (i) upon the occurrence of an Emergency; or
 - (ii) the Developer fails to comply with Applicable Laws, Applicable Permits, the SRP Construction Plan, the HSE Manual or otherwise fails to perform its obligations in accordance with this Agreement and the SRP Requirements.

In case of any suspension by BDA upon the occurrence of an Emergency, the Developer shall as soon as reasonably possible, and in no event later than 3 (three) days after such occurrence, notify the Independent Engineer and BDA of such occurrence and the Developer shall make best endeavours to mitigate the effects of the Emergency (including costs on suspension of construction of the SRP Assets). Notwithstanding anything to the contrary contained in this Agreement, if BDA, in its sole assessment, is not satisfied with the steps being taken by the Developer to mitigate the effects of the Emergency on the SRP Assets, BDA shall have the right to step-in to this Agreement and undertake necessary measures to mitigate the effect of the Emergency at the cost and risk of the Developer.

- (b) In case of suspension of the construction of the SRP Assets pursuant to Clause 15.2(a), all costs and expenses in connection with suspension and resumption of construction of the SRP Assets shall be borne by the Developer. If such suspension of the SRP Assets continues for a period exceeding [60 (sixty)] days, then such suspension shall constitute a Developer Event of Default in accordance with Clause 16.1.

16. EVENTS OF DEFAULT AND TERMINATION

16.1. Developer's Events of Default

A “**Developer Event of Default**” means any of the following events arising out of any acts or omissions of the Developer and which have not occurred solely as a consequence of a BDA Event of Default, a Qualifying Change in Law, a Fundamental Change in Law or any other Force Majeure Event, and where the Developer has failed to remedy the defects within any specified time period (to the extent any time period is provided):

- (a) any Abandonment by the Developer of the SRP;
- (b) failure of the Developer to complete the construction of the SRP Assets within the Scheduled SRP Completion Date, including any relevant Grace Period;
- (c) failure of the Developer to pay any Instalment within the time period set out in Clause 8.2(d)
- (d) suspension of construction of the SRP Assets pursuant to Clause 15.1(a)(i)(A), Clause 15.2(a) for a continuous period exceeding 60 (sixty) days;
- (e) a breach by the Developer of its obligations under this Agreement which has a Material Adverse Effect on the ability of the Developer to construct the SRP Assets and such breach, if capable of being remedied, is not remedied within 30 (thirty) days of issuance of written notice from BDA specifying such breach and requiring the Developer to remedy the same;
- (f) any representation made or warranties given by the Developer under this Agreement being found to be false or misleading in any material respect;
- (g) failure of the Developer to submit and maintain a valid Performance Security in accordance with the terms of this Agreement;
- (h) breach by the Developer of its obligations under Clause 6 (*Right, Title and Interest in the SRP Assets*), 10.2 (*Security Creation*) or 20.12 (*Assignment*);
- (i) breach of the Developer's obligations under Article 13 (*Change in Ownership*);
- (j) failure of the Developer to obtain, renew and maintain any Applicable Permit;
- (k) failure of the Developer to comply with any Applicable Law (including specifically the Housing for All Policy);
- (l) failure of the Developer to obtain and maintain insurance cover in accordance with Clause 11.2;
- (m) failure of the Developer or the Subcontractors to comply with the HSE Plan in accordance with Clause 6.6;
- (n) failure of the Developer to comply with the requirements of Clause 9.1 in undertaking any

PDP;

- (o) the Developer entering into liquidation or similar state or if any order is made for the compulsory winding up or dissolution of the Developer or if the Developer becomes unable to pay its debts or the appointment of a receiver or administrator in respect of the Developer, its business and assets or any re-structuring, re-organisation, amalgamation, arrangement or compromise affecting the Developer's ability to fulfil its obligations under this Agreement or that otherwise has or may have a Material Adverse Effect; or
- (p) the breach of the Developer's obligations under or the occurrence of an 'event of default' or analogous event under the Financing Documents or the Developer Escrow Agreement, or termination of the Financing Documents, or the Developer Escrow Agreement (for reasons attributable to the Developer).

16.2. **Notice of Intent to Terminate upon occurrence of a Developer Event of Default**

- (a) Without prejudice to the other provisions of this Agreement, upon the occurrence of a Developer Event of Default, BDA may initiate termination by delivering a notice to the Developer stating its intention to terminate this Agreement (**Notice of Intent to Terminate**). The Notice of Intent to Terminate shall specify with reasonable detail the grounds on which termination is sought. BDA shall also send a copy of the Notice of Intent to Terminate to the Lenders, if any, to enable the Lenders to exercise their step-in and/or substitution rights, if any, under the Lenders' Direct Agreement.
- (b) If, within 30 (thirty) days from the date of the Notice of Intent to Terminate:
 - (i) the Developer rectifies or remedies the Event of Default to the satisfaction of BDA or BDA is satisfied with the steps taken or proposed to be taken by the Developer or the Event of Default has ceased to exist; or
 - (ii) the Lenders have exercised their rights to step-in and notified their intent to remedy the Developer Event of Default or substitute the defaulting Developer in accordance with the Lenders' Direct Agreement,

then, BDA shall withdraw the Notice of Intent to Terminate, in writing, with a copy to the Lenders.

- (c) If, within 30 (thirty) days from the date of the Notice of Intent to Terminate:
 - (i) the breach has not been remedied or the Developer has not taken steps or proposed to take steps to remedy the Event of Default to the satisfaction of BDA; and
 - (ii) the Lenders have neither exercised their rights to step-in nor notified BDA of their

intent to remedy the Developer Event of Default or substitute the defaulting Developer in accordance with the Lenders' Direct Agreement,

then, the consequences set out at Article 17 shall apply.

- (d) Notwithstanding anything contained in this Clause 16.2, during the subsistence of a Developer Event of Default, the Parties shall continue to perform such of their respective obligations under this Agreement, which are capable of being performed with the object, as far as possible, for ensuring timely construction of the Project in accordance with this Agreement.

16.3. **BDA's Events of Default**

A "**BDA Event of Default**" means any of the following events, unless such an event has occurred as a consequence of a Developer Event of Default or a Force Majeure Event and where BDA has failed to remedy the defects within any specified time period (to the extent any time period is provided):

- (a) Deleted;
- (b) a breach by BDA of Clause 21.12(b) (*Assignment*); or
- (c) any representation made or warranties given by BDA under this Agreement being found to be false or misleading in any material respect.

16.4. **Notice of Intent to Terminate upon occurrence of a BDA Event of Default**

- (a) Without prejudice to the other provisions of this Agreement, upon the occurrence of a BDA Event of Default, the Developer may initiate termination of this Agreement by delivering a Notice of Intent to Terminate, which shall specify with reasonable detail the grounds on which termination is sought.
- (b) If, within 30 (thirty) days from the date of the Notice of Intent to Terminate, BDA rectifies or remedies the BDA Event of Default to the satisfaction of the Developer or the Developer is satisfied with steps taken or proposed to be taken by BDA or the BDA Event of Default has ceased to exist, the Developer shall withdraw the Notice of Intent to Terminate.
- (c) If, within 30 (thirty) days from the date of the Notice of Intent to Terminate, the BDA Event of Default has not been remedied or BDA has not taken steps or proposed to take steps to remedy the BDA Event of Default to the satisfaction of the Developer, then:
 - (i) if such BDA Event of Default has occurred prior to the PDP Commencement

Date, the consequences set out in Clause 17.1 shall apply;

- (ii) if such BDA Event of Default has occurred after the PDP Commencement Date, the consequences set out in Clause 17.2 shall apply and the Developer may terminate the SRP by issuing a notice to BDA. It is clarified that a termination of the SRP pursuant to this Clause 16.4(c)(ii) shall not affect the rights of the Developer to undertake the PDP.

- (d) Notwithstanding anything contained in this Clause 16.4, during the subsistence of a BDA Event of Default, the Parties shall continue to perform such of their respective obligations under this Agreement, which are capable of being performed with the object, as far as possible, for ensuring timely construction of the SRP Assets in accordance with this Agreement.

17. CONSEQUENCES OF TERMINATION

17.1 Consequences of termination of the Agreement prior to PDP Commencement Date

In case of termination of the Agreement prior to the PDP Commencement Date:

- (a) the Developer shall not commence any PDP and refund all funds (if any) taken from PDP Allottees;
- (b) the Developer shall cease all work in relation to construction of the SRP Assets;
- (c) the Developer shall take all necessary steps to safeguard and protect the SRP Assets (in whatever stage of completion) and all other equipment, materials and goods on the Rehabilitation Area;
- (d) BDA shall (or shall require the Independent Engineer to) assess the cost of the construction undertaken by the Developer in relation to the SRP Assets as on the date of the Notice of Intent to Terminate and based on such assessment, pay the Termination Compensation in accordance with Clause 18.1(a), Clause 18.1(b) or Clause 18.4, as the case may be. Alternatively, BDA shall have the right (but no obligation) to appoint an independent valuer/auditor to determine such costs;
- (e) in case of termination of this Agreement due to a Developer Event of Default, BDA shall have the right to forfeit the Performance Security as a genuine pre-estimate of the losses and damages likely to be suffered by BDA as a result of termination of the Agreement due to a Developer Event of Default;
- (f) in case of termination of this Agreement due to a BDA Event of Default, Indirect Political Force Majeure Event or a Direct Political Force Majeure Event, BDA shall be required to return the Performance Security, the Project Development Fee and the Project Development Expenses within 90 (ninety) days from the date of the Notice of Intent to

- Terminate;
- (g) in case of termination of this Agreement due to a Non-Political Force Majeure Event, BDA shall be required to return the Performance Security to the Developer within 90 (ninety) days from the date of the Notice of Intent to Terminate;
 - (h) the Developer shall hand over peaceful possession of the Site and the SRP Assets on an “as is where is” basis free of all Encumbrances and in a clean and safe condition, after removal of any wreckage, rubbish and debris at the Site;
 - (i) the Developer shall deliver to BDA all designs and drawings, “as-built” records and other documents prepared by the Developer in connection with the SRP;
 - (j) should BDA so require, the Developer shall transfer all workmen and other personnel engaged by the Developer or the Subcontractors at the Rehabilitation Area for executing the SRP;
 - (k) should BDA so require and to the extent legally possible, the Developer shall assign or novate to BDA any Subcontracts that BDA elects to take over;
 - (l) the Developer shall remove all of the Developer’s equipment and other movable assets from the Rehabilitation Area that are not to be transferred to BDA in accordance with this Agreement; and
 - (m) the Developer shall transfer to BDA all Applicable Permits for the SRP Assets, which BDA may require and which can be legally transferred.

17.2 **Consequences of termination of the Project after the PDP Commencement Date**

In case of termination of the Project after the PDP Commencement Date, the following consequences shall follow:

(a) ***In case of a termination due to a BDA Event of Default:***

- (i) BDA shall (or shall require the Independent Engineer to) assess the cost of the construction undertaken by the Developer in relation to the SRP Assets as on the date of the Notice of Intent to Terminate. Alternatively, BDA shall have the right to appoint an independent valuer/auditor to determine such costs;
- (ii) the Developer shall cease all work in relation to construction of the SRP Assets;
- (iii) the Developer shall take all necessary steps to safeguard and protect the SRP Assets (in whatever stage of completion) and all other equipment, materials and goods on the Rehabilitation Area;
- (iv) the Performance Security, as the case may be, shall be returned to the Developer within 30 days;
- (v) the Developer shall hand over peaceful possession of the Rehabilitation Area and the SRP Assets on an “as is where is” basis free of all Encumbrances and in a

clean and safe condition, after removal of any wreckage, rubbish and debris at the Rehabilitation Area;

- (vi) the Developer shall deliver to BDA all designs and drawings, "as-built" records and other documents prepared by the Developer in connection with the SRP;
- (vii) should BDA so require, the Developer shall transfer all workmen and other personnel engaged by the Developer or the Subcontractors at the Rehabilitation Area for executing the SRP;
- (viii) should BDA so require and to the extent legally possible, the Developer shall assign or novate to BDA any Subcontracts for the SRP that BDA elects to take over;
- (ix) the Developer shall remove all of the Developer's equipments and other movable assets from the Rehabilitation Area that are not to be transferred to BDA in accordance with this Agreement; and
- (x) the Developer shall transfer to BDA all Applicable Permits for the SRP Assets, which BDA or the replacement contractor may require and which can be legally transferred, provided that all costs incurred in this regard shall be borne by BDA; and
- (xi) BDA shall execute the Conveyance Deed for the entire Developer's Area on payment of the Termination Compensation, if any, by the Developer, as set out in Clause 18.2(a) below.

(b) ***In case of a termination due to a Developer Event of Default:***

In case of a termination due to a Developer Event of Default, BDA shall have the right to, in its sole discretion, to appoint a Replacement EPC Contractor, and communicate its decision to the Developer by a notice in writing (**Termination Notice**), within 30 (thirty) days of the issuance of the Notice of Intent to Terminate.

On receipt/issuance of the Termination Notice:

- (i) the Developer shall cease all work in relation to construction of the SRP Assets and the PDP;
- (ii) the Developer shall take all necessary steps to safeguard and protect the SRP Assets (in whatever stage of completion) and all other equipment, materials and goods on the Rehabilitation Area;
- (iii) BDA shall engage a Replacement EPC Contractor within 120 (one hundred twenty) days of the issuance of the Termination Notice to complete the construction of the SRP Assets at the cost and risk of the Developer;
- (iv) the Developer shall hand over to the Replacement EPC Contractor peaceful possession of the Rehabilitation Area;

- (v) the Developer shall hand over to the Replacement EPC Contractor all designs and drawings, “as-built” records, and all other documents, agreements, communication received or prepared by the Developer in connection with the SRP, and shall provide all other support required by the Replacement EPC Contractor;
- (vi) the Developer shall remove all workmen and other personnel engaged by it at the Rehabilitation Area, unless instructed otherwise by BDA; and
- (vii) the Developer’s rights to undertake the PDP on the Developer’s Area (including the right to market or allot the PDP Units) shall be suspended till such time that:
 - (A) the Replacement EPC Contractor completes the construction of the SRP Assets and hands over the completed SRP Assets to the BDA in a condition that meets the SRP Requirements; and
 - (B) the Developer has paid BDA the Termination Compensation set out in Clause 18.2(b) below.

Notwithstanding anything to the contrary in this Clause 17.2, in case this Agreement is terminated due to a Developer Event of Default set out at Clause 16.1(c) or Clause 16.1(d), the Unutilised Developer’s Area shall revert to BDA free of cost and on “as is where is” basis, along with any partially constructed PDP Units on the Unutilized Developer’s Area. Upon such termination, the Developer shall:

- (I) remove all workmen and other personnel engaged by the Developer from the Unutilized Developer’s Area;
- (II) remove all of the Developer’s equipment and other movable assets from the Unutilized Developer’s Area;
- (III) terminate all subsisting contracts executed by the Developer for undertaking the Project;
- (IV) cancel the allotment letters issued to the PDP Allottees in respect of the partially constructed PDP Units on the Unutilized Developer’s Area and pay compensation to the PDP Allottees; and
- (V) not be entitled to receive any Termination Compensation from BDA in respect of the Unutilized Developer’s Area.

17.3 Consequences of termination due to a Force Majeure Event:

In case of termination of the Project due to an Indirect Political Force Majeure Event or a Direct Political Force Majeure Event, the following consequences shall follow:

- (a) the Site shall revert to BDA or the GoO, as the case may be, along with all construction on the Site on an “as is where is” basis;
- (b) the Developer shall remove all equipment and other movable assets from the Site;

- (c) the Developer shall transfer all workmen and other personnel engaged by the Developer or the Subcontractors at the Site for executing the Project;
- (d) the Developer shall terminate all Subcontracts executed by it for implementing the Project;
- (e) the Developer shall cancel the allotment letters issued to the PDP Allottees in respect of the PDP Units and pay compensation to the PDP Allottees; and
- (f) in case of termination due to an Indirect Political Force Majeure Event or a Direct Political Force Majeure Event, BDA shall (or shall require the Independent Engineer to) assess the cost of the construction undertaken by the Developer in relation to the SRP Assets and if applicable, the PDP Units as on the date of the Notice of Intent to Terminate and based on such assessment, pay the Termination Compensation in accordance with Clause 18.4(b) or Clause 18.4(c), as the case may be. Alternatively, BDA shall have the right to appoint an independent valuer/auditor to determine such costs.

17.4 **Accrued Rights and Liabilities**

- (a) Notwithstanding anything to the contrary contained in this Agreement, any termination of this Agreement shall be without prejudice to accrued rights of either Party, including its right to claim and recover damages and other rights and remedies which it may have in law or contract. All accrued rights and obligations of either Party under this Agreement, including without limitation, all rights and obligations with respect to Termination Compensation, shall survive the termination of this Agreement, to the extent such survival is necessary for giving effect to such rights and obligations.
- (b) Nothing in Article 16 or this Article 17 shall prevent or restrict BDA to seek injunctive relief or a decree of specific performance or other discretionary remedies of the court.

18. **TERMINATION COMPENSATION**

18.1 **Termination Compensation for termination prior to the PDP Commencement Date**

- (a) ***For a BDA Event of Default***

If the Agreement is terminated prior to the PDP Commencement Date for a BDA Event of Default, BDA shall be liable to pay to the Developer the aggregate of:

- (i) lower of: (A) actual cost of construction of the SRP Assets as on date of the issuance of the Notice of Intent to Terminate, as certified by the Independent Engineer; and (B) the SRP Project Capital Cost;
- (ii) Project Development Expenses;
- (iii) Project Development Fee; and
- (v) Instalments paid by the Developer as on date of the issuance of the Notice of Intent to Terminate.

LESS

- (x) any amounts due and payable to BDA from the Developer under this Agreement ; and
- (y) Deleted

(b) ***For a Developer Event of Default***

If the Agreement is terminated prior to the PDP Commencement Date for a Developer Event of Default, BDA shall pay to the Developer, an amount equal to the lower of: (i) 70% (seventy per cent) of the actual cost of construction of the SRP Assets as on date of the issuance of the Notice of Intent to Terminate, as certified by the Independent Engineer; and (ii) 70% (seventy per cent) of the SRP Capital Cost.

18.2 **Termination Compensation for termination post the PDP Commencement Date**

(a) ***For a BDA Event of Default***

- (i) If the Agreement is terminated for a BDA Event of Default, and the aggregate of the actual cost of construction of the SRP Assets, the Project Development Expenses and the Project Development Fees, as on date of the issuance of the Notice of Intent to Terminate, as certified by the Independent Engineer is less than the Derived Price of the Developer' Area, then, the Developer shall pay to BDA

- (A) the Derived Price of the Developer's Area.

LESS

- (B) Project Development Expenses
- (C) Project Development Fees

(D) the actual cost of construction of the SRP Assets as on date of the issuance of the Notice of Intent to Terminate, as certified by the Independent Engineer.

(ii) If the Agreement is terminated for a BDA Event of Default, and aggregate of the actual cost of construction of the SRP Assets as on date of the issuance of the Notice of Intent to Terminate, as certified by the Independent Engineer, and Project Development Expenses and Project Development Fees, is higher than or equal to the Derived Price of the Developer's Area, the Developer will not be liable to pay any Termination Compensation to the BDA.

(b) ***For a Developer Event of Default***

If BDA appoints a Replacement EPC Contractor to undertake and complete the SRP, the Developer shall be liable to pay to the BDA, the aggregate of:

- (A) the cost quoted by the Replacement EPC Contractor for completing the construction of the SRP Assets;
- (B) 30% (thirty percent) of the cost of construction set out in (A) above, towards BDA's risk cover and administrative expenses in appointing a Replacement EPC Contractor to complete the construction of the SRP Assets;
- (C) Instalments not paid by the Developer as on date of the issuance of the Notice of Intent to Terminate; and
- (D) any other amounts due and payable by the Developer to BDA under this Agreement.

LESS

- [(X) deleted
- (Y) any other amounts due and payable by BDA to the Developer under this Agreement.

It is clarified that in case of termination post the PDP Commencement Date, BDA shall not be liable to the Developer for any losses, damages, costs and expenses suffered or incurred by the Developer or for any claims raised, proceedings initiated or actions taken against the Developer or the BDA by the PDP Allottees due to cancellation of the allotment of the PDP Units or otherwise. The Developer and/or the Selected Bidder shall be required to indemnify BDA for any such claims raised, proceedings initiated or actions taken against the BDA by the PDP Allottees on termination of this Agreement.

18.3 For all amounts payable by the Developer under this Article 18, BDA may invoke the Performance

Security to recover the amounts due from the Developer. If the Performance Security is inadequate or not valid, BDA shall have a right to recover the balance from the Developer as a debt due.

18.4 Termination Compensation for termination due to Force Majeure Events

(a) Non-Political Force Majeure Event

In the event of a termination of this Agreement as a result of a Non-Political Force Majeure Event in accordance with Clause 14.6(a), the Parties agree that the Developer shall not be entitled to the payment of any Termination Compensation, provided however that the Developer shall be entitled to retain all proceeds received under any insurance policies maintained by it in relation to the Site, the SRP Development and PDP (subject to the Lenders' rights in respect of such insurance proceeds).

(b) Indirect Political Force Majeure

- (i). If the Agreement is terminated due to an Indirect Political Force Majeure Event, prior to the SRP Completion Date, BDA shall be liable to pay to the Developer, the lower of: (i) actual cost of construction of the Rehabilitation Area Assets as on date of the issuance of the Notice of Intent to Terminate, as certified by the Independent Engineer; and (ii) the SRP Capital Cost.
- (ii). If the Agreement is terminated due to an Indirect Political Force Majeure Event, post the Completion Date, the Developer shall not be entitled to any Termination Compensation.

(c) Direct Political Force Majeure

- (iii). If the Agreement is terminated due to a Direct Political Force Majeure Event prior to the PDP Commencement Date, BDA shall be liable to pay to the Developer, the lower of: (A) actual cost of construction of the Rehabilitation Area Assets as on date of the issuance of the Notice of Intent to Terminate, as certified by the Independent Engineer; and (B) the SRP Capital Cost.
- (iv). If the Agreement is terminated due to a Direct Political Force Majeure Event post the PDP Commencement Date, BDA shall be liable to pay to the Developer, the aggregate of:
 - (A) the lower of: (1) actual cost of construction of the Rehabilitation Area Assets as on date of the issuance of the Notice of Intent to

Terminate, as certified by the Independent Engineer; and (2) the Rehabilitation Area Capital Cost; and

- (B) the actual cost of construction of the PDP Units as on date of the issuance of the Notice of Intent to Terminate, as certified by the Independent Engineer or any independent valuer/auditor appointed by BDA.

18.5 All Termination Compensation shall be deposited in the Developer Escrow Account and dealt with in accordance with the Developer Escrow Agreement.

18.6 **Full and Final Settlement**

Notwithstanding anything to the contrary elsewhere in this Agreement, any Termination Compensation determined pursuant to this Article 18 shall, once paid, be in full and final settlement of any claim, demand and/or proceedings of the Developer against BDA, in relation to any termination of this Agreement and the Developer shall be excluded from all other rights and remedies in respect of such termination.

18.7 **Accrued Rights and Liabilities**

- (a) Notwithstanding anything to the contrary contained in this Agreement, any termination of the Agreement shall be without prejudice to accrued rights of either Party, including its right to claim and recover damages and other rights and remedies which it may have in law or contract. All accrued rights and obligations of either Party under this Agreement, including without limitation, all rights and obligations with respect to Termination Compensation, shall survive the termination of this Agreement, to the extent such survival is necessary for giving effect to such rights and obligations.
- (b) Nothing in this Article 16 shall prevent or restrict BDA's to seek injunctive relief or a decree of specific performance or other discretionary remedies of the court.

19. **DISPUTE RESOLUTION**

19.1 **Amicable Settlement**

In the event of any dispute, controversy or difference between BDA and the Developer arising out of or relating to this Agreement (including a dispute relating to the validity or existence of this Agreement and any non-contractual obligations arising out of or in connection with this Agreement) (a **Dispute**), the representatives of the Parties shall, within 15 (fifteen) days of service of a written notice from either Party to the other Party (the **Dispute Notice**) hold a meeting

(the **Dispute Meeting**) in an effort to resolve the Dispute in good faith. In the absence of agreement to the contrary, the Dispute Meeting shall be held at the office of BDA in Bhubaneswar.

19.2 **Dispute Resolution by Arbitration**

(a) ***Arbitration Procedure***

If a Dispute is not resolved within 30 (thirty) days after the service of a Dispute Notice, whether or not a Dispute Meeting has been held, any party to the Dispute shall be entitled to refer the Dispute to arbitration to be finally resolved in the manner set out in this Clause 19.2 by issuing a notice to the other Party (**Notice of Arbitration**). This Agreement and the rights and obligations of the Parties shall remain in full force and effect pending the award in such arbitration proceeding.

(b) ***Appointment of Arbitrator***

If a Dispute is referred to arbitration by either Party, such Dispute shall be resolved by a sole arbitrator to be appointed by mutual agreement of the Parties. If the Parties fail to appoint an arbitrator within 30 (thirty) days after service of the Notice of Arbitration, such arbitrator shall be appointed in accordance with the Arbitration Act.

(c) ***Venue, Language and Rules of Arbitration***

The venue of the arbitration shall be Bhubaneswar and the language of the arbitration shall be English. The arbitration shall be conducted in accordance with the Arbitration Act.

(d) ***Award and Apportionment of costs***

- (i) The arbitration award of the arbitrator(s) shall be final and binding on the Parties and shall be enforceable in accordance with its terms. The arbitrator(s) shall state reasons for its findings in writing.
- (ii) The costs of arbitration and the manner of bearing such costs shall be determined by the arbitrator(s).

(e) ***Law Governing the Arbitration***

The arbitration shall be governed by the laws of India.

19.3 **Survival**

The provisions contained in this Article 19 shall survive the termination of this Agreement.

20. REPRESENTATIONS AND WARRANTIES

20.1 Mutual Representations and Warranties

Each Party represents and warrants to the other Party that:

- (a) it has full power and authority to execute, deliver and perform its obligations under this Agreement, the Conveyance Deed(s), the Developer Escrow Agreement and any other agreements required to be entered into for transferring rights in the SRP Assets and/or the PDP Units and/or the Site;
- (b) it has taken all necessary action to authorise the execution, delivery and performance of this Agreement, the Conveyance Deed(s), the Developer Escrow Agreement and any other agreements required to be entered into for transferring rights in the SRP Assets and/or the PDP Units and/or the Site; and
- (c) there are no actions, suits or proceedings pending or to its best knowledge, threatened against or affecting it before any court, administrative body or arbitral tribunal which might materially and adversely affect its ability to meet or perform any of its obligations under this Agreement.

20.2 Developer's Representations and Warranties

The Developer represents and warrants to BDA that:

- (a) it is duly organised, validly existing and of good standing under the laws of India;
- (b) it has the financial standing and capacity to design, finance, construct the SRP Assets and the PDP Units in accordance with the terms of this Agreement;
- (c) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (d) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (e) the information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;

- (f) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under any of the terms of its memorandum and articles of association/charter documents or any Applicable Laws or Applicable Permits or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (g) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of the Gol or the GoO which may result in any Material Adverse Effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- (h) it has complied with all Applicable Laws and Applicable Permits in all material respects 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 a Material Adverse Effect on its ability to perform its obligations under this Agreement; and
- (i) no representation or warranty by it contained in this Agreement or in any other document furnished by it to BDA or to the Gol or the GoO in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty.

20.3 **BDA's Representations and Warranties**

BDA represents and warrants to the Developer that:

- (a) it is duly organised, validly existing and in good standing under the laws of India;
- (b) it has the financial standing and capacity to perform its obligations under the Agreement;
- (c) this Agreement constitutes legal, valid and binding obligations enforceable against it in accordance with the terms hereof;
- (d) 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 the Gol or the GoO, which may result in any Material Adverse Effect on its ability to perform its obligations under this Agreement;
- (e) it has complied with all Applicable Laws and Applicable Permits in all material respects;
- (f) other than for the creation of any Security as may be permitted in this Agreement, the Site is not subject to any mortgage, lien, charge or any other Encumbrance;

- (g) it does not have any liability for any taxes, or any interest or penalty in respect thereof, of any nature, that may constitute a lien against the Site; and
- (h) all information provided by it in the RFP, this Agreement or the SRP Requirements in connection with the Project is, to the best of its knowledge and belief, true and accurate in all material respects.

20.4 **Acknowledgement**

- (a) The Parties acknowledge and confirm that the Parties have relied upon and have entered into this Agreement on the basis of the representations, warranties and undertakings made by the Parties hereunder.
- (b) If any occurrence or circumstance comes to the attention of a Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any obligation of a party under this Agreement.
- (c) Neither BDA nor any of its agents or employees or BDA Related Parties shall be liable to the Developer in contract, tort, including negligence or breach of statutory duty, statute or otherwise as a result of:
 - (i) any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in the information relating to the Project disclosed by BDA to the Developer; or
 - (ii) any failure to make available to the Developer any materials, documents, plans or other information relating to the Project.

21. **MISCELLANEOUS**

21.1 **Survival**

- (a) Any cause or action which may have occurred in favour of either Party or any right which is vested in either Party under any of the provisions of this Agreement as a result of any act, omission, deed, matter or thing done or omitted to be done by either Party before the expiry of the term of the Agreement by efflux of time or otherwise in accordance with this Agreement, shall survive the expiry of the Agreement.

- (b) The provisions of this Agreement, to the fullest extent necessary to give effect thereto, survive the term of the Agreement or the termination of this Agreement and the obligations of Parties to be performed or discharged following the termination of this Agreement, shall accordingly be performed or discharged by the Parties.

21.2 **Entire Agreement**

The Parties hereto acknowledge, confirm and undertake that this Agreement constitutes the entire understanding between the Parties regarding the development of the Project and supersedes all previous written or oral representations and/or arrangements regarding the Project.

21.3 **Non-exhaustive Remedies**

- (a) Save and except as provided in this Agreement, the remedies available to the Developer under this Agreement are not exhaustive and the Developer and third parties shall be entitled to all other rights and remedies and to take all actions in law and in equity in addition to the remedies provided for herein.
- (b) Save and except as provided in this Agreement, the exercise of any rights by either Party under this Agreement shall not preclude such Party from availing of any other rights or remedies that may be available to it under this Agreement or any other agreement in relation to the Project. All remedies available to the Parties shall be cumulative and the exercise or failure thereof of one or more remedies by any Party shall not limit or preclude the exercise of or constitute a waiver of any other remedies by such Party.

21.4 **Notices**

- (a) Any notice or request in reference to this Agreement shall be written in English language and shall be sent by registered airmail or facsimile and shall be directed to the other Party at the address mentioned below:

Bhubaneswar Development Authority

Attention: The Secretary

Address: Akash Shova Building, Sachivalaya Marg, Bhubaneswar- 751001 (Odisha)

Tel: 0674- 2392801, 2390842

Fax: 0674- 2390633

Email: bda@bdabbsr.in

Developer : M/s Paramitra Smartinfra SNA Private Limited

Attention: Mr. Rahul Choudhary, Sr. Executive- Project

Address: 154, Golf Links, Ground Floor, New Delhi – 110003

Tel:

Fax: [●]

Email: [●]

Confirming Party : M/s Shyam Indus Power Solutions Private Limited

Attention: Mr. Sunil Soni, GM, BD & Projects

Address: 129, Transport Centre, Punjabi Bagh, New Delhi- 110035

Tel: 011- 45764400, 011- 45764444

Fax: 011- 47634423

Email: sunil.soni@shyamindus.com

- (b) Any notice or demand served by registered airmail shall be deemed to be duly served 48 (forty eight) hours after posting and a notice or demand sent by facsimile shall be deemed to have been served at the time of its transmission and in proving service of the same it will be sufficient to prove, in the case of a letter, that such letter was sent by registered airmail, addressed and placed in the post and in the case of a facsimile transmission, that such facsimile was duly transmitted to a current facsimile number of the addressee at the address referred above.
- (c) Each Party may change the above address by prior written notice to the other Party.

21.5 **Governing Law and Jurisdiction**

This Agreement shall be governed by the laws of India and shall be subject to the exclusive jurisdiction of the courts at Bhubaneswar.

21.6 **Counterparts**

This Agreement may be executed in two counterparts, each of which, when executed and delivered, will be an original, and both counterparts together shall constitute one and the same instrument.

21.7 Language

- (a) The formal text of this Agreement and other agreements in relation to the Project shall be in the English language.
- (b) All notices and communications between BDA and the Developer, required under this Agreement, shall be in English and all arbitration proceedings undertaken pursuant to this Agreement shall be conducted in English.

21.8 Confidentiality

- (a) No recipient Party shall, without the prior written consent of the disclosing Party, at any time divulge or disclose or suffer or permit its representatives to divulge or disclose to any person or use for any purpose unconnected with the Project any Confidential Information during the Term and for a period of 5 (five) years after the expiry or termination of this Agreement, except to its representatives officers, directors, advisors, employers, agents and Associates (including BDA Related Parties and Developer Related Parties) who have a legitimate need to know the Confidential Information in order to perform their duties relating to the Agreement.
- (b) This Clause 21.8 shall not apply to Confidential Information:
 - (i) at the time of disclosure or thereafter has become part of public knowledge or literature without a breach of this Agreement;
 - (ii) is already in the possession of the Party receiving such Confidential Information before it was received from any other Party and which was not obtained under any obligation of confidentiality from the party which disclosed such information;
 - (iii) was obtained from a third party (other than one disclosing it on behalf of a Party) who was free to divulge the same and who was not under any obligation of confidentiality in relation to such Confidential Information to the Party, which disclosed the information;
 - (iv) is disclosed by the Developer to the Lenders, any actual or *bona fide* potential shareholders, investors or bankers (and their professional advisers) of the Developers;
 - (v) is required to be disclosed pursuant to any legal and mandatory requirement of

any court, legislative or administrative body or any Government Authority, or the rules of any applicable stock exchange;

- (vi) is disclosed by the Developer to its Associates or the permitted assignees and transferees of the same;
- (vii) is disclosed by the Developer to any Subcontractor of the Developer;
- (viii) is disclosed to actual or prospective insurers, re-insurers and insurance brokers;
- (ix) is disclosed to any professional advisors or consultants of any persons to whom a party is entitled to disclose Confidential Information under this Clause 21.8(b);
- (x) is disclosed to any person in connection with the dispute resolution provisions hereunder;
- (xi) is independently developed by the receiving Party without reliance on the Confidential Information disclosed by the disclosing Party;
- (xii) is disclosed by BDA or the Developer to any Rehabilitation Area Lender (and their professional advisors); or
- (xiii) is disclosed to any Government Authority or any other body in any relevant jurisdiction in connection with the obtaining or renewal of any Applicable Permit required hereunder or for the SRP or the PDP.

Provided that the Party making a disclosure of Confidential Information pursuant to (iv) and (vi) to (ix) (inclusive) above shall insure that any person to whom it makes such disclosure undertakes to hold such Confidential Information subject to the same confidentiality obligations as those set out in Clause 21.8(a) above.

- (c) A party making a disclosure of Confidential Information pursuant to Clause 21.8(a) shall,
 - (i) at the time of making such disclosure inform its representatives and Associates of their obligation of confidentiality pursuant to this Agreement and ensure their compliance; and
 - (ii) be liable for any breach of such obligations by such representatives and

Associates.

- (d) In the event that a Party is required or requested to make a disclosure of Confidential Information referred to in Clause 21.8(b)(v) above, such party shall prior to such disclosure (to the extent permissible by Applicable Law) use its best efforts to promptly notify the disclosing Party or its Associate so that appropriate protection order and/or other action can be taken if possible. In the absence of such a protection order restricting disclosure, the party required to make such disclosure may disclose only that portion of the Confidential Information which it is legally required to disclose and shall use reasonable efforts to obtain assurances that confidential treatment will be accorded to the Confidential Information.
- (e) The recipient Party agrees that it, its Associates and representatives shall, upon request by the disclosing Party promptly:
 - (i) return, and use all reasonable endeavours to procure that any third party to whom the recipient Party has disclosed the Confidential Information pursuant to this Agreement shall return, all the Confidential Information that is in tangible form (including, without limitation, Confidential Information contained on compact disks or other electronic storage media or devices) furnished, together with any copies or extracts thereof; and
 - (ii) destroy, and use all reasonable endeavours to procure that any third party to whom the recipient Party has disclosed the Confidential Information pursuant to this Agreement shall destroy, all analysis, compilations, studies or other documents which have been prepared and which reflect or refer to any Confidential Information,

provided that the recipient Party shall be entitled to retain such Confidential Information which forms part of the permanent records of the recipient Party or its Associates and which was prepared for the purposes of the review or decision-making process of the recipient Party or such Affiliate and/or which the recipient Party or its Associates is required to retain by law or the rules of any Governmental Authority if it continues keep such Confidential Information confidential in accordance with this Agreement.

21.9 Amendments

- (a) Any provision of this Agreement may be amended, supplemented or modified only by an agreement in writing signed by the Parties.
- (b) Either Party may at any time request the other to enter into discussions to review the operation of any part of this Agreement and, but without commitment by either Party, to determine whether it should be amended by mutual agreement provided that, unless there is such mutual agreement, the provisions of this Agreement (as then most recently, if at all, amended) shall continue to apply whatever the outcome of any such discussions or review and whether or not any such discussions or review take place.

21.10 **Waivers and Consents**

- (a) Any provision or breach of any provision of this Agreement may be waived before or after it occurs only if evidenced by an agreement in writing signed by the Parties.
- (b) Any consent under or pursuant to any provision of this Agreement must also be in writing and given prior to the event, action or omission for which it is sought.
- (c) Any such waiver or consent may be given subject to any conditions thought fit by the person(s) giving it and shall be effective only in the instance and for the purpose for which it is given.

21.11 **Severability**

- (a) If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under any law, the legality, validity or enforceability of the remaining provisions will not, in any way, be affected or impaired.
- (b) The Parties shall negotiate in good faith with a view to agreeing one or more provisions which may be substituted for any such invalid, illegal or unenforceable provision and which produce as nearly as is practicable in all the circumstances the appropriate balance of the commercial interests of the Parties.

21.12 **Assignment**

- (a) Except as expressly permitted in this Agreement, the Developer shall not be entitled to divest, transfer, assign or novate all or substantially all of its rights, interests, benefits and obligations under this Agreement, without the prior written consent of BDA.
- (b) The rights and obligations of BDA under this Agreement shall not be assigned, novated

or otherwise transferred (whether by virtue of any Applicable Law or any scheme pursuant to any Applicable Law or otherwise) to any person other than a public body or a government company or a statutory corporation that:

- (i) is a single entity;
- (ii) acquires the whole of the Agreement;
- (iii) has the legal capacity, power and authority to become a party to and to perform the obligations of BDA under this Agreement; and
- (iv) has sufficient financial standing or financial resources to perform the obligations of BDA under this Agreement.

21.13 No Agency or Partnership

Nothing contained or implied in this Agreement shall constitute or be deemed to constitute a partnership or agency between the Parties and none of the Parties shall have any authority to bind, commit or make any representations on behalf of the other Party.

21.14 Costs and Expenses

- (a) Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Agreement.
- (b) The Developer shall bear the applicable stamp duty and registration fee (if applicable) in respect of this Agreement and the Conveyance Deed(s).

21.15 Reservation of Rights

No forbearance, indulgence, relaxation or inaction by the Developer at any time to require performance of any of the provisions of this Agreement shall in any way affect, diminish or prejudice the right of BDA to require performance of that provision, and no delay in exercising or omission to exercise any right, power or remedy accruing to BDA upon any default or otherwise under this Agreement shall impair any such right, power or remedy or shall be construed to be a waiver thereof or any acquiescence in such default, nor shall the action or inaction of BDA in respect of any default or any acquiescence by it in any default, affect or impair any right, power or remedy of BDA in respect of any other default.

21.16 Third Parties

This Agreement and all rights hereunder are intended for the sole benefit of the Parties and, to the extent expressly provided, for the benefit of the BDA Related Parties, the Developer Related

Parties and the Lenders, and shall not imply or create any rights on the part of, or obligations to, any other Person.

IN WITNESS WHEREOF the Parties hereto have caused these presents to be executed in the manner hereinafter appearing on this 06th day of June 2017:

For and on behalf of BDA

Name: Mr. Bhabani Shankar Chayani

Designation: Secretary

For and on behalf of the Developer

Name: Mr. Alok Bajpai

Designation: Advisor Civil Works

For and on behalf of the Selected Bidder

Name: Mr. Rahul Choudhary

Designation: Sr. Executive- Project

In presence of:

Witness 1:

Name:

Designation:

Witness 2:

Name:

Designation:

SCHEDULE A**PROJECT SITE**

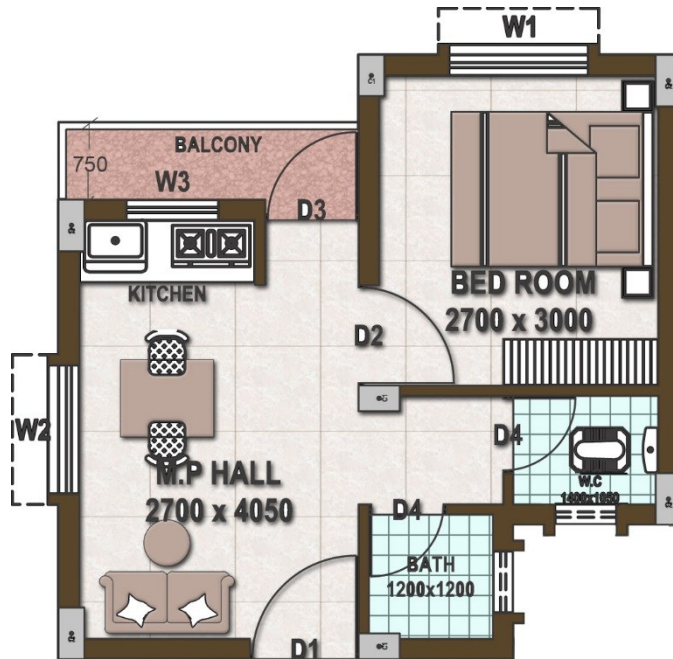
Government of Odisha has transferred to BDA 19.395 Acres of land on freehold basis through the GoO Land Notification No. 23261, GAD-CA(IV)Misc-69/2016, dated 04.11.2016, of which the Site forms a part for the purpose of implementation of the Project. The details of the land are given below:

<u>Sl.</u>	<u>Revenue Village Name</u>	<u>Khata No.</u>	<u>Plot No.</u>	<u>Kisam</u>	<u>Area Allotted in Acres</u>
1	Satya Nagar	421 (GA Dept.)	121	Gharabari -II	0.690
			125	Gharabari -II	0.019
			126	Gharabari -II	0.010
			127	Gharabari -II	0.177
			128	Gharabari -II	0.275
			129	Gharabari -II	0.290
			130	Gharabari -II	0.004
			137	Sarad-II	0.080
			138	Gharabari -II	0.390
			139	Gharabari -II	0.341
			141	Bilai-Dofasali	0.216
			143	Gharabari -II	7.586
			146	Gharabari -II	0.623
			147	Gharabari -II	2.339
			148	Gharabari -II	0.308
			149	Gharabari -II	0.384
150	Gharabari -II	0.655			
151	Gharabari -II	0.399			
152	Gharabari -II	0.134			

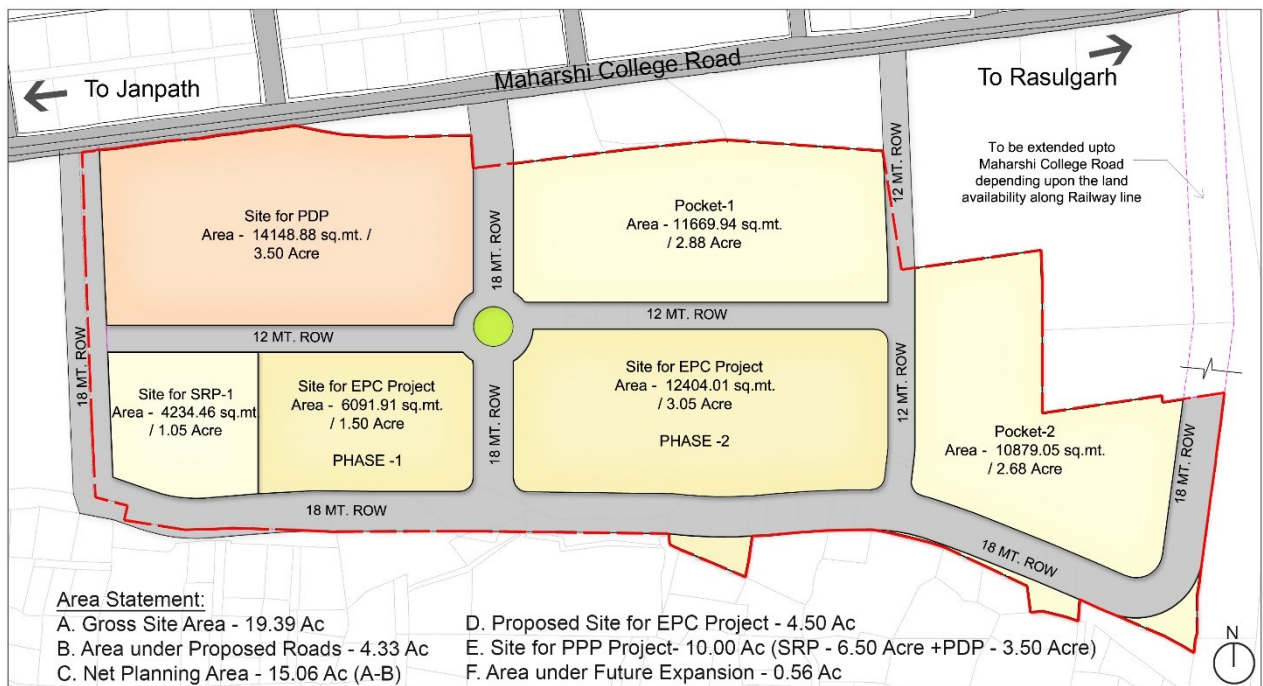
			153	Gharabari –II	0.052
			159	Gharabari –II	0.116
			160	Sarad-II	0.630
			164	Sarad-Dofasli	0.214
			165	Gharabari –II	3.193
2		194	131	Gharabari –II	0.023
3		303/7	140	Gharabari –II	0.100
4		303/5	142	Gharabari –II	0.084
5		303/104	154	Sarad-I	0.063
Total					19.395 Acres.

SCHEDULE B UNIT PLAN & SITE PLAN

1. Unit Plan:



2. Illustrative Site Layout:



* Note: Out of the total area in Pocket- 1 & 2, the developer need to provide balance 5.0 Acre of SRP Area and Rest 1.51 Acre shall be left for future expansion by BDA.

The layout plan shown here is for illustrative purpose and may change at later stage.

SCHEDULE C

SRP REQUIREMENTS

DETAILS OF SPECIFICATION FOR EWS HOUSING

Sl. No.	ITEMS	DESCRIPTION	
HOUSING CIVIL WORKS			
1	a	Foundation	Isolated Column Foundation
	b	RCC Work	M 25 Grade
	c	Brickwork	Flyash bricks of 200mm with cement mortar (1:6)
	d	Flooring	Cement concrete flooring/kota stone flooring/ceramic tile flooring
	e	Door	MS Door
	f	Window	MS Openable Window
	g	Railing	MS Pipe with square bar
	h	Inside Painting	Colour Washing
	i	Outside Painting	Weather Proof Paint
	j	MS Door & Window	Synthetic Enamel Paint
	k	Water Proofing	Grading Concrete with APP Membrane
COMMUNITY HALL CIVIL WORKS			
2	a	Foundation	Isolated Column foundation
	b	RCC Work	M 25 Grade
	c	Brickwork	Flyash bricks of 200mm with cement moratr (1:6)
	d	Flooring	Kotastone Flooring/Ceramic Tile Flooring
	e	Door	Aluminium Door/Flush Door/PVC Door
	f	Window	Aluminium Sliding Window/Structural Glazing
	g	Railing	MS Pipe with square bar
	h	Inside Painting	Distemper with Putty Finish
	i	Outside Painting	Weather Proof Paint
	j	MS Door & Window	Synthetic Enamel Paint
	k	Water Proofing	Grading Concrete with APP Membrane
3	ROADS & PATHWAY		
	a	Approach Road	100mm Concrete Paver Block over GSB
	b	Pathway	100mm Concrete Paver Block over Sub base
4	COMPOUND WALL	MS Grill Gate & Square Bar Fencing with flyash brick masonry boundry wall	
INTERNAL & EXTERNAL PH WORKS			
5	a	Internal Concealed Wiring	CPVC Pipe
	b	External Wiring	DI Pipe/GI Pipe
	c	Sewerage Line	UPVC SWR Pipe/RCC Hume Pipe
	d	Internal PH Fittings	Plaza/Essco
	e	Water Tank	Syntex Double Layer
	f	Sunken Slab Water Proofing	APP Membrane
	g	Water Supply	Bore well / UGR / Pump Room
	h	Rain Water Harvesting	PVC Pipe / Inspection Chamber with filter media / Recharge Pit
	i	Fire Fighting	Fire Water Tank/DI Pipe/Fire Hydrant
ELECTRICAL WORKS			
6	a	Illumination	Street Lighting / Solar Lighting System
	b	External Electrification	Transformer with LA
	c	Internal Electrical works	All type of recess wiring along with panel & DB, main & sub main cabling, earthing, ceiling, exhaust fan wiring, light wiring

SCHEDULE D

SRP CONSTRUCTION SCHEDULE

BAR CHART																										
SL N O	DESCRIPTION	Months																								
		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	
1	Site Clearance, Layout and Foundation	■	■	■	■	■	■	■	■	■																
2	Plinth Filling & Casting		■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
2	Superstructure upto top level including terrace			■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
3	Brickwork in Superstructure				■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
4	Door & Window						■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
5	Flooring								■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
6	Internal Sanitary and Electrical works							■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
7	Plaster & Painting								■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
8	External Sewerage and Water supply								■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
9	Approach Road & Pathway																									
10	Boundary Wall & Gate	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■

SCHEDULE E
PAYMENT SCHEDULE

S.NO.	Work Milestones	% of the Total Project Cost of the Rehabilitation Area
1	Completion of Roof casting of 450 no.s of EWS units	25
2	Completion of Roof casting of 450 no.s of EWS units	25
3	Completion of Roof casting of 400 no.s of EWS units	25
4	Completion of construction of 1300 no.s of EWS units and the infrastructure facilities and on receipt of the SRP Completion Certificate for the SRP Assets	25
Total		100

SCHEDULE F

TERMS OF REFERENCE FOR THE INDEPENDENT ENGINEER

1. Roles and functions of the Independent Engineer:

- a. Review, inspection and monitoring of construction works and issuing SRP Milestone Completion Certificate.
- b. Determining, as required under the Agreement, the costs of any works or services and/or their reasonableness.
- c. Determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation.
- d. Assisting the parties in resolution of any disputes.
- e. Undertaking all other duties and functions in accordance with the Agreement.

2. The Independent Engineer shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.

3. SRP Construction Period

- a. During the SRP Construction Period, the Independent Engineer shall undertake a detailed review of the relevant SRP Construction Milestone and issue the SRP Milestone Completion Certificate in accordance with Clause 6.10.
- b. The Independent Engineer shall inspect the construction works at least once every month, preferably after receipt of the monthly progress report from the Developer, but before the 20th day of each month in any case, and make out a report of such inspection (the "Inspection Report") setting forth an overview of the status, progress, quality and safety of construction, including the work methodology adopted, the materials used and their sources, and conformity of construction works with the scope of the Project and the SRP Requirements. In a separate section of the Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the construction of the Project. The inspection report shall also contain a review of the maintenance of the existing lanes in conformity with the provisions of the Agreement. The Independent Engineer shall send a copy of its inspection report to BDA and the Developer within 7 days of the inspection.
- c. The Independent Engineer may inspect the project more than once in a month if any lapses, defects or deficiencies require such inspections.
- d. In the event that the Developer fails to achieve any of the SRP Construction Milestones, the Independent Engineer shall undertake a review of the progress of construction and identify potential delays, if any. If the Independent Engineer shall determine that completion of the Project is not feasible within the time specified in

the Agreement, it shall require the Developer to indicate within 15 days the steps proposed to be taken to expedite progress, and the period within which the project completion shall be achieved. Upon receipt of a report from the Developer, the Independent Engineer shall review the same and send its comments to BDA and the Developer forthwith.

- e. If suspension of works is for reasons not attributable to the Developer, the Independent Engineer shall determine the extension of dates set forth on the project completion schedule, to which the Developer is reasonably entitled, and shall notify BDA and the Developer of the same.

4. Defects Warranty Period

- a. The Independent Engineer shall inspect the handed over SRP asset once every month (before the 20th day of each month) during the defects warranty period and prepare an Inspection report setting forth an overview of the status, quality and safety requirements. In a separate section of the Inspection report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the Project. The Independent Engineer shall send a copy of its inspection report to BDA and the Developer within 7 days of the inspection.
- b. The Independent Engineer may inspect the Project more than once in a month, if any lapses, defects or deficiencies require such inspections.
- c. The Independent Engineer shall determine if any delay has occurred in completion of repair or remedial works in accordance with the Agreement, and shall also determine the damages if any payable by the Developer to BDA for such delay.
- d. The Independent Engineer shall monitor and review the rectification of defects and deficiencies by the Developer.

5. Determination of costs and time

- a. The Independent Engineer shall determine the costs, and / or their reasonableness, that are required to be determined by it under the Agreement.

6. Assistance in Dispute Resolution

- a. When called upon by either party in the event of any dispute, the Independent Engineer shall mediate and assist the parties in arriving at an amicable settlement.
- b. In the event of any disagreement between the parties regarding the meaning, scope and nature of Good Industry Practice, as set forth in any provision of the Agreement, the Independent Engineer shall specify such meaning, scope and nature by issuing a reasons written statement relying on good practice and authentic literature.

7. Other duties and functions

The Independent Engineer shall perform all other duties and functions specified in the Agreement.

8. Fees and expenses

- a. In determining the nature and quantum of duties and services to be performed by the Independent Engineer, BDA shall endeavor that payments to the Independent Engineer on account of fee and expenses do not exceed 1% of the Total Project Cost. Payments towards fees and expenses shall be borne equally by BDA and the Developer in accordance with the provisions of the Agreement.

9. Tenure of Contract

- a. The tenure of contract of the Independent Engineer shall be from the date of execution of the Agreement until the expiry of the Defect Warranty period.

SCHEDULE G

INFRASTRUCTURE FACILITIES AND UTILITIES

1. Water Supply

- a. Water to the Site shall be provided by state PHEO/WATCO as applicable. For the same, supply shall be ensured from the nearest storage tank.

- b. For the SRRH project area, it was suggested to have captive storage facility in terms of UGR and overhead tanks to ensure water supply to the end users. The responsibilities for providing required internal infrastructure for water supply shall be provided by the Developer.
- c. The developer shall follow the available state PHEO code/CPHEEO manual for designing the water demand for EWS Units.

2. Sewerage

- a. Adjoining to the Site, a main sewer line has been proposed to be developed by Orissa Water Supply & Sewerage Board (OWSSB) which will suffice to carry the sewage load generated by the proposed development.
- b. However, the Developer shall consider the invert level of the present sewerage system there and plan the waste water disposal of the Site accordingly.

3. Electricity

- a. CESU, BCDD-II is the relevant department for ensuring electricity up to the Site.
- b. The total electricity demand for the EWS Units (1300 no.s) shall be 1350 KW (@1KW per SRRH unit and 50 KW for the non-residential areas) for which three no.s of 500 KVA distribution transformer shall be provided by the selected bidder along with provision of LT line and internal wiring. For ensuring the same, the power transformer shall be upgraded from the existing capacity.

4. Solid Waste Management

- a. BMC shall provide all necessary support for the collection of solid waste from the Site.

5. Drainage

- a. The Developer shall construct requisite drainage system facilities for the disposal of storm water from the Site to the nearest discharge point.

6. Roads

- a. Currently, a 60' wide road is connecting the site from Janpath. The same road shall act as the main approach road to the Site.
- b. The development of internal roads shall be the responsibility of the Developer as per the lay out plan approved by the competent authority.

SCHEDULE H

FORMAT OF PERFORMANCE SECURITY

[ON APPROPRIATE STAMP PAPER]

Bank Guarantee No. [●]

THIS DEED OF GUARANTEE is executed on this [*insert day*] day of [*insert month and year*] at [*insert place*] by [*insert name of bank*] with its registered office at [*insert address*], (hereinafter referred to as the **Guarantor**, which expression shall unless it is repugnant to the subject or context thereof include successors and assigns),

IN FAVOUR OF:

BHUBANESWAR DEVELOPMENT AUTHORITY, a statutory body constituted under the Orissa Development Authorities Act, 1982 by notification no. 37627-HUD/31.8.1983, with its registered office at Ashok Shova Building, Pandit Jawaharlal Nehru Marg, Bhubaneswar – 751 001, Odisha (India) (hereinafter referred to as **BDA**, which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns.

WHEREAS

- A. For the purpose of undertaking Shanti Nagar Awas Yojana – an in-situ slum redevelopment project on PPP model, the GoO has transferred 10 (ten) Acres of land, at Satya Nagar to BDA, on which the slums are located. With a view to redevelop and rehabilitate the existing slums in the Bhubaneswar development area, BDA has decided to undertake in-situ slum re-development of the existing slum on the Site on PPP basis under Model IV of the Housing for All Policy.
- B. For this purpose, BDA intended to engage a developer who will: (i) design, develop, finance, construct, complete and hand over SRP Assets to BDA free of cost on the Rehabilitation Area in accordance with the terms of this Agreement and, (ii) design, finance, construct, market, allot, complete and transfer PDP Units on the Developer's Area in accordance with this Agreement (collectively the **Project**).
- C. On [*insert date of RFP*], BDA commenced a competitive Bid Process for the Project by issuing a request for proposal (the **RFP**), inviting interested parties to submit their technical proposals and financial proposals to BDA for undertaking the Project.
- D. Pursuant to the terms of the RFP, BDA received proposals from various bidders, including a proposal submitted by the Selected Bidder on [*insert date*].
- E. Following a process of evaluation of technical proposals and financial proposals submitted by the bidders (including the Selected Bidder), BDA has on [*insert date*] accepted the proposal submitted by the Selected Bidder for the development of the Project. Subsequently, BDA has issued the letter of award dated [*Insert date*] to the Selected Bidder (the **LOA**).
- F. The Selected Bidder accepted the LOA and incorporated a special purpose vehicle to act as the Developer, to implement the Project and for this purpose, the Developer and BDA executed the Development Agreement on [*insert date*] to undertake the Project (**Development Agreement**).
- G. In terms of Clause 5.1 of the Development Agreement, the Developer is required to furnish to BDA, an unconditional, irrevocable, on demand bank guarantee for an amount equal

to INR 7,00,00,000/- (Rupees Seven Crores only) as security for due and punctual performance or discharge of the Developer's obligations and liabilities under the Development Agreement, until the expiry of the SRP Construction Period, as a condition precedent to effectiveness of the Development Agreement.

- H. At the request of the Developer and for sufficient consideration, the Guarantor has agreed to provide an unconditional, irrevocable and on-demand bank guarantee, for the due and punctual performance or discharge by the Developer of its obligations and liabilities under the Development Agreement.

NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS:

1. Capitalised terms used herein but not defined shall have the meaning ascribed to them in the Development Agreement.
2. The Guarantor hereby irrevocably and unconditionally guarantees and secures (as primary obligor and not merely as guarantor or surety) to BDA the payment in full of all amounts at any time that may be due, owing or payable to BDA from the Developer for the failure of the Developer to duly and punctually perform all of its obligations or discharge all of its liabilities under the Development Agreement until the expiry of the SRP Construction Period (the **Guarantee**), without any demur, reservation, protest or recourse, immediately on receipt of a demand from BDA.

The Guarantor agrees that the value of the Guarantee shall at all times be maintained at the amount of INR 7,00,00,000/- (Rupees Seven Crores only) (the **Guaranteed Amount**). The Guarantor further agrees that this Guarantee does not limit the number of claims that may be made by BDA against the Guarantor. Upon a payment being made under this Guarantee, the amount of the Guarantee shall automatically be replenished to the full Guaranteed Amount.

Any payment made hereunder shall be made free and clear of and without deduction for, or on account of, any present or future taxes, deductions or withholdings of any nature whatsoever and by whomsoever imposed, and where any withholding on a payment is required by any Applicable Law, the Guarantor shall comply with such withholding obligations and shall pay such additional amount in respect of such payment such that BDA receives the full amount due hereunder as if no such withholding had occurred.

3. The Guarantor shall, pay to BDA sums not exceeding the Guaranteed Amount, within 5 (five) Business Days of receipt of a written demand from BDA stating that the Developer has failed to observe or perform any of the terms, conditions or provisions of the Development Agreement or to discharge any of its liabilities under the Development

Agreement, including where the Developer fails to replace this Guarantee in accordance with Clause 5.1(j) of the Development Agreement.

The Guarantor shall not go into the veracity of any breach or failure on the part of the Developer or validity of demand so made by BDA and shall pay the amount specified in the demand notwithstanding any direction to the contrary given or any Dispute whatsoever raised by the Developer 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 of this Guarantee.

4. The obligations of the Guarantor herein are absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of the Development Agreement or the insolvency, bankruptcy, reorganization, dissolution or liquidation of the Developer or any change in ownership of the Developer or any purported assignment by the Developer or any other circumstance whatsoever which might otherwise constitute a discharge or defence of a guarantor or a surety.

Further, this Guarantee is in no way conditional upon any requirement that BDA first attempt to procure the Guaranteed Amount from or give notice of such demand to the Developer, or any other Person, or resort to any other means of obtaining payment of the Guaranteed Amount.

5. In order to give effect to this Guarantee, BDA shall be entitled to treat the Guarantor as the principal debtor and not merely as a surety. The obligations of the Guarantor under this Guarantee shall not be affected by any act, omission, matter or thing which, but for this provision, would reduce, release or prejudice the Guarantor from any of the Guaranteed Amount or prejudice or diminish the Guaranteed Amount in whole or in part, including (whether or not known to it, or BDA):
 - (a) any time or waiver granted to, or composition with, the Developer or any other Person;
 - (b) any incapacity or lack of powers, authority or legal personality of or dissolutions or change in the status of the Developer or any other Person;
 - (c) any variation to or amendment of the Development Agreement (references to the Development Agreement in this Guarantee shall include each variation or amendment);

- (d) any unenforceability, illegality or invalidity of any obligation of any Person under the Development Agreement or any unenforceability, illegality or invalidity of the obligations of the Guarantor under this Guarantee or the unenforceability, illegality or invalidity of the obligations of any Person under any other document or guarantee, to the extent that each obligation under this Guarantee shall remain in full force as a separate, continuing and primary obligation, and its obligations be construed accordingly, as if there were no unenforceability, illegality or invalidity;
 - (e) the partial or entire release of any Guarantor or other Person primarily or secondarily liable or responsible for the performance, payment or observance of any of the Developer's obligations; or by any extension, waiver, or amendment whatsoever which may release a guarantor or Guarantor (other than performance or indefeasible payment of a Guaranteed Amount); or
 - (f) any part performance of the Development Agreement by the Developer or by any failure by BDA to timely pay or perform any of its obligations under the Development Agreement.
6. If, and to the extent that, for any reason the Developer enters or threatens to enter into any proceedings in bankruptcy or reorganization or otherwise, or if, for any other reason whatsoever, the performance or payment by the Developer of the Guaranteed Amount becomes or may reasonably be expected to become impossible, then the Guaranteed Amount shall be promptly paid by the Guarantor to BDA on demand.
7. So long as any sum remains owing by the Developer to BDA until the expiry of the SRP Construction Period, the Guarantor shall not exercise any right of subrogation or any other rights of a guarantor or enforce any guarantee or other right or claim against the Developer (whether in respect of its liability under this Guarantee or otherwise) or claim in the insolvency or liquidation of the Developer or any such other Person in competition with BDA. If the Guarantor receives any payment or benefit in breach of this clause 7, it shall hold the same upon trust for BDA.
8. This Guarantee shall remain in full force and effect from the date hereof until the expiry of the SRP Construction Period.

Notwithstanding the foregoing, this Guarantee shall continue in effect until the sums payable under this Guarantee have been indefeasibly paid in full and the Guarantor

receives written notice thereof from BDA (such notice to be issued promptly upon such occurrence).

9. The Guarantor represents and warrants to BDA that:

- (a) it has the power to execute, deliver and perform the terms and provisions of this Guarantee and has taken all necessary action to authorize the execution, delivery and performance by it of this Guarantee;
- (b) the Guarantor has duly executed and delivered this Guarantee, and this Guarantee constitutes its legal, valid and binding obligation enforceable in accordance with its terms except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, moratorium or other similar laws affecting the enforcement of creditors' rights generally and by general equitable principles;
- (c) neither the execution, delivery or performance by the Guarantor of this Guarantee, nor compliance by it with the terms and provisions hereof will: (i) contravene any material provision of any Applicable Law; (ii) conflict or be inconsistent with or result in any breach of any of the material terms, covenants, conditions or provisions of, or constitute a default under any agreement, contract or instrument to which the Guarantor is a party of by which it or any of its property or assets is bound; or (iii) violate any provision of the Guarantor's constituent documents;
- (d) no order, consent, approval, license, authorization or validation of, or filing, recording or registration with (except as have been obtained or made prior to the date hereof), or exemption by, any governmental or public body or authority, or any subdivision thereof, is required to authorize, or is required in connection with: (i) the execution, delivery and performance of this Guarantee; or (ii) the legality, validity, binding effect or enforceability of this Guarantee;
- (e) the Guarantor is not suffering from any act of insolvency; and
- (f) the Guarantor is a Scheduled Bank and this Guarantee will be enforceable when presented for payment to a Scheduled Bank in Bhubaneswar.

10. This Guarantee is a continuing one and all liabilities to which it applies or may apply under the terms hereof shall be conclusively presumed to have been created in reliance hereon. No failure or delay on the part of BDA in exercising any right, power or privilege hereunder and no course of dealing between BDA and the Guarantor, or the Developer, shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

11. The rights, powers and remedies expressly provided in this Guarantee are cumulative and not exclusive of any rights, powers or remedies which BDA would otherwise have. No notice to or demand on the Guarantor in any case shall entitle the Guarantor to any other further notice or demand in similar or other circumstances or constitute a waiver of the rights of BDA to any other or further action in any circumstances without notice or demand.
12. If any one or more of the provisions contained in this Guarantee are or become invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, and the Guarantor shall enter into good faith negotiations with BDA to replace the invalid, illegal or unenforceable provision
13. The Guarantor hereby agrees that its liability under this Guarantee shall not be discharged by virtue of any agreement between the Developer and BDA, whether with or without the Guarantor's knowledge, or by reason of BDA showing any indulgence or forbearance to the Developer.
14. The Guarantor hereby agrees to execute and deliver all such instruments and take all such actions as may be necessary to make effective fully the purposes of this Guarantee.
15. This Guarantee may be executed in one or more duplicate counterparts, and when executed and delivered by the Guarantor and BDA shall constitute a single binding agreement.
16. Any notice, request or other communication to be given or made under this Guarantee shall be in writing addressed to the Guarantor at the location set opposite its signature hereto and in the manner as set out in respect of notices under the Development Agreement.
17. This Guarantee shall be governed by, and construed in accordance with, the laws of India. The Guarantor irrevocably agrees that any legal action, suit or proceeding arising out of or relating to this Guarantee may be brought in the courts in Bhubaneswar.
18. BDA may assign or transfer all or any part of its interest herein to any other person with prior notification to the Guarantor. The Guarantor shall not assign or transfer any of its rights or obligations under this Guarantee.

IN WITNESS WHEREOF the Guarantor has set its hands hereunto on the day, month and year

first hereinabove written.

Signed and delivered by [*insert name of Bank*] Bank, by [*insert name of branch*] Branch, having its address at [*insert address*]

Of [*insert name of signatory*]

Its [*insert designation*] and duly authorized representative

Authorized by [Power of Attorney dated [*insert date*]] OR [Board resolution dated [*insert date*]].

ANNEXURE- B2

**SUPPLEMENTARY AGREEMENT FOR PHASE- I DEVELOPMENT OF
SHANTI NAGAR AWAS YOJNA- AN INSITU SLUM REDEVELOPMENT
PROJECT ON PPP MODE**



SUPPLEMENTARY AGREEMENT

FOR PHASE- I DEVELOPMENT OF SHANTI NAGAR AWAS YOJANA AN IN-SITU SLUM REDEVELOPMENT PROJECT ON PPP MODEL

BHUBANESWAR DEVELOPMENT AUTHORITY

AkashShova Building, Sachivalaya Marg

Bhubaneswar - 751001, Odisha

SUPPLEMENTARY AGREEMENT

This Supplementary Agreement (**Agreement**) is executed on this 8TH day of February Two Thousand and Nineteen at Bhubaneswar:

BETWEEN

- (1) **BHUBANESWAR DEVELOPMENT AUTHORITY**, a statutory body constituted under the Orissa Development Authorities Act, 1982 by notification no. 37627-HUD/31.8.1983, with its registered office at AkashShova Building, Sachivalaya Marg, Bhubaneswar – 751001, Odisha (India) (hereinafter referred to as **BDA**, which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns);

AND

- (2) **PARAMITRA SMARTINFRA SNA PRIVATE LIMITED**, a company organized, incorporated, registered and existing under the Companies Act, with its registered office at 154, Golf Links,

Ground Floor, New Delhi – 110003 acting through Mr. Rahul Choudhary- Sr. Executive Projects, duly authorized vide resolution dated 01 June, 2017 passed by the board of directors of the company in their meeting held on 01 June, 2017 (hereinafter referred to as the **Developer**, which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns);

AND

- (3) **M/s SHYAM INDUS POWER SOLUTION PRIVATE LIMITED**, a company organized, incorporated, registered and existing under the Companies Act, with its registered office at 129, Transport Centre, Rohtak Road, Punjabi Bagh, New Delhi - 110035 acting through Mr. Sunil Soni, GM- BD & Projects ,duly authorized vide power of attorney dated 23 January, 2017 and for this, resolution dated 05 January 2017, passed by the board of directors of the company in their meeting held on 05 January 2017 (hereinafter referred to as the **Confirming Party**, which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns).

BDA and the Developer shall collectively be referred to as the **Parties** and individually as a **Party**.

WHEREAS:

- A. Rapid urbanization and increase in Odisha's population has resulted in a proliferation of slums due to a shortage of housing units for EWS households and low income group households in urban areas and the existing housing schemes are not adequate to meet the housing needs of such households. With a view to address the supply and demand gaps in affordable housing in urban areas and to promote slum re-development projects in Odisha, the GoO has introduced the Housing for All Policy. Through the Housing for All Policy, the GoO seeks to create an appropriate policy and implementation framework, which would facilitate creation of adequate affordable housing stock through partnership between public agencies and private developers.
- B. For the purpose of undertaking Shanti Nagar Awas Yojana – an in-situ slum redevelopment project on PPP model, the GoO has transferred 10 (ten) Acres of land, at Satya Nagar to BDA, on which the slums are located.

- C. With a view to redevelop and rehabilitate the existing slums in the Bhubaneswar development area, BDA has decided to undertake in-situ slum re-development of the existing slum on the Site on PPP basis under Model IV of the Housing for All Policy.
- D. For this purpose, BDA intends to engage a developer who will: **(i)** design, develop, finance, construct, complete and hand over SRP Assets to BDA free of cost on the Rehabilitation Area in accordance with the terms of this Agreement; and **(ii)** design, finance, construct, market, allot, complete and transfer PDP Units on the Developer's Area in accordance with this Agreement (collectively the **Project**).
- E. On 21 December, 2016, BDA commenced a competitive Bid Process for the Project by issuing a request for proposal as amended from time to time, including corrigendum dated 17 January, 2017 (the **RFP**), inviting interested parties to submit their technical proposals and financial proposals to BDA for undertaking the Project.
- F. Pursuant to the terms of the RFP, BDA received proposals from various bidders, including a proposal submitted by the Selected Bidder on 07 February, 2017.
- G. Following a process of evaluation of technical proposals and financial proposals submitted by the bidders (including the Selected Bidder), BDA has accepted, on 20 April 2017 in its 134th Authority Meeting vide Additional Agenda Item No. 03/134, the proposal submitted by the Selected Bidder for the development of the Project. Subsequently, BDA has issued the letter of award dated 27 April, 2017 to the Selected Bidder (the **LOA**).
- H. The Selected Bidder has accepted the LOA and has agreed to undertake the Project in accordance with the terms of this Agreement.
- I. The Selected Bidder has incorporated a special purpose vehicle to act as the Developer, to implement the Project and perform the obligations and exercise the rights of the Developer, including the obligation to enter into this Agreement.
- J. BDA had agreed to enter into Agreement with the Developer for implementation of the Project, subject to and on the terms and conditions set out in the Development Agreement. And subsequently, the Development Agreement was signed amongst Bhubaneswar Development Authority, Developer and the Confirming Party on 6th day of June Two Thousand and Seventeen.
- K. With a view to redevelop and rehabilitate the existing slums in the Shantipalli slum, BDA has decided to undertake in-situ slum re-development of the existing slum on the Site in a Phased manner as per availability of Land.

- L. In the 46th meeting of ECI, it was decided to take up the project in phased manner by handing over the available land to developer as an interim measure, in order to start the project at the earliest. Accordingly, 6.246 Acres (Net) area has already been handed over to the developer for Phase- I development. For incorporating phased manner development, it was discussed to have a Supplementary Agreement by amending the required changes to the original DA. The Site Layout Plan for Phase- I development is set out in **Schedule A**. The decision upon the residue area shall await the further decision on the basis of its availability and may be divided into different phases for the purpose of convenience to develop the project on such terms and conditions fixed on mutual consent of both the parties.
- M. In view of eliminating any future misinterpretations, difficulties and litigations, this supplementary agreement is hereby mutually signed by the parties and shall be read in conjunction to the Development Agreement signed 06.06.2017.
- N. Only amended clauses which would require changes due to Phasing out of Land handing over by BDA, have been covered in this supplementary agreement and accordingly, the parties are bound by this supplementary agreement so far as it is consistent with the original agreement and in case any inconsistency between the original and supplementary agreements, the specification in the supplementary agreement as agreed upon between the parties shall prevail and override the other.

IT IS AGREED as follows:

1.1. **Definitions**

In this Agreement, unless amended, the clauses will be followed as per the Developer Agreement

Supplementary Agreement

means this Agreement the Schedules and Annexures, as has been amended, supplemented or modified in accordance with its terms and will supersede the clauses present in the original Developer Agreement for the subject project area for Phase I.

Development Agreement

the Agreement which was signed amongst Bhubaneswar Development Authority, Developer and the Confirming Party on 6th day of June Two Thousand and Eighteen for implementation of the Project.

Effective Date for Phase 1

means the date on which all the Conditions Precedent for Phase I Development have either been satisfied or waived by BDA or the Developer, as the case may be, in accordance with this Agreement.

EWS Unit

means a housing unit to be constructed by the Developer on the SRP Area (Phase I) in accordance with the SRP Requirements and other conditions set out in this supplementary Agreement and Development Agreement for allotment by BDA to an EWS Allottee and the term “**EWS Units**” shall be construed to mean **840** EWS Units (As per approved Layout Plan vide letter no. 13722/AL-IV (PPP/03-16 (Pt.-I) Dated 18-May-18) to be constructed by the Developer.

Performance Security

means, the unconditional, irrevocable bank guarantee for INR 4,52,31,000 (Four Crores Fifty-Two Lakhs Thirty One Thousand) to be furnished by the Developer to BDA on or before the Effective Date for Phase I to secure the obligations of the Developer for Phase I Development,

Premium

means the amount quoted by the Selected Bidder in its Bid, being INR 4,12,00,000 (Four Crores Twelve Lakhs), which is required to pay BDA to undertake the Project, in accordance with the terms of this Agreement and Development Agreement signed. The proportionate premium shall be INR 2,47,20,000 (Two Crores Forty Seven Lakhs Twenty Thousand Only) in case only 4.146 acres instead of 6.5 acres

for SRP is being given to the developer for the development of 840 units in the Phase- I of Development.

Developer's Area for Phase I means the land admeasuring 2.1 (two point one) acres, Mouza: Satya Nagar, situated in Bhubaneswar, which forms part of the Site and has been earmarked for the PDP, as described in greater detail in the Site Layout Plan.

Rehabilitation Area for Phase I means the land admeasuring 4.146 acres out of allocated 6.246 acres, situated at Satya Nagar, Bhubaneswar, which forms part of the Site and which has been earmarked for the SRP, as described in greater detail in the Approved Demarcation Plan.

SRP Assets for Phase I means, collectively, the EWS Units and the Infrastructure Facilities, on the Rehabilitation Area for Phase I.

SRP Capital Cost for Phase I means the capital expenditure to be incurred by the Developer in constructing and completing the **840** EWS Units and the Infrastructure Facilities, which for the purpose of this Agreement shall be deemed to be the lesser of (i) the actual cost of the SRP, as certified by the Independent Engineer; or (ii) INR 58,29,60,000 (Rupees Fifty Eight Crores Twenty-Nine Lakh Sixty Thousand Only)

SRP Completion Certificate for Phase I means the certificate issued by BDA to the Developer to certify completion of construction of the SRP Assets of Phase 1 and the satisfaction of all other conditions required to be fulfilled by the Developer prior to the handover of possession of Phase 1 EWS Units by the Developer to BDA, in accordance with Clause 6.10(d) of the original D.A .

SRP Completion date means the date on which the SRP Completion Certificate is issued for all the SRP Assets to the Developer in accordance with this Supplementary Agreement.

SRP Construction Milestones means the milestones for achieving completion of the SRP, as set out in the SRP Construction Schedule and the term “**SRP Construction Milestone**” shall mean any one of them as the context may require.

Scheduled SRP Completion Date means the date falling 30 (Thirty) months from the Effective Date of the phase concerned, which may be extended in accordance with this Agreement.

Variation means any alteration in the number of EWS Units as instructed by BDA as a variation in accordance with Clause 6.11 of Original D.A.

Variation Order has the meaning ascribed to it in Clause 6.11(b)(i) of Original D.A.

1.2. Rules of Interpretation:

In this Agreement, unless the context otherwise requires:

- (a) Any other Capitalised Terms in this Agreement not defined under clause 1.1 (Definitions) shall have the same definition as given in the Development Agreement
- (b) The Rules of Interpretation as given in the clause 1.2 of the Development Agreement shall be applicable for this agreement in toto.

2. Development of the Project

(a) ***Development Rights for the SRP***

Subject to and in accordance with the terms of this Agreement, the GoO/BDA Land Allotment Notification, Applicable Laws and Applicable Permits, BDA grants and the Developer accepts and agrees to:

- (i) on and from the Effective Date of Phase I, design, develop, finance, construct, and complete the SRP Assets for Phase I on the Rehabilitation Area for Phase I during the SRP Construction Period; and
- (ii) on completion of construction of the SRP Assets for Phase I, to hand over the SRP

Assets for Phase I to the BDA and remedy any structural defect or deficiency in the SRP Assets for Phase I during the Defects Warranty Period.

(b) ***Development Rights for the PDP***

Subject to and in accordance with the terms of this Agreement, the GoO Land Allotment Notification, Applicable Laws and Applicable Permits, BDA grants and the Developer accepts and agrees to, on and from the PDP Commencement Date, the exclusive right (but not the obligation) to design, finance, develop, market, allot (and issue allotment letters), construct and complete the PDP Units and any related infrastructure facilities on the Developer's Area for Phase I, in accordance with this Agreement as well as the Development Agreement.

3. CONDITIONS PRECEDENT, EFFECTIVENESS AND TERM

3.1. Effectiveness

- (a) The day on which all of the Conditions Precedent have been satisfied or waived in accordance with this Article 3 (refer Development Agreement) for Phase I Development shall be the Effective Date for Phase I.

3.2. Conditions Precedent to be satisfied by the Developer

Unless waived in writing by the BDA (in its sole discretion), the Developer shall satisfy the following Conditions Precedent (if not already fulfilled on the date of execution of this Agreement):

- (a) Pay the First Installment of the Premium to BDA; as per the proportionate Land handed over to the Developer for the Phase I.
- (b) All other Conditions Precedents as mentioned in the Original Development Agreement as such required to be satisfied for commencement of Phase- I development.

3.3. Satisfaction of Conditions Precedent

- (a) Unless otherwise specified, each Party shall satisfy or procure the satisfaction or the waiver of the Conditions Precedent that it is responsible for, within 240 (two hundred

and forty) days from the date of signing of Development Agreement or such other extended date as may be agreed between the Parties, not exceeding 360 (three hundred and sixty) days from the date of execution of the Development Agreement (**the CP Long-stop Date**)

4. RIGHT, TITLE AND INTEREST OVER THE SITE

4.1. Grant of License and Freehold Rights over the Site

(a) ***Rehabilitation Area for Phase I***

On and from the Effective Date of Phase I and subject to the provisions of this Agreement, Applicable Laws and Applicable Permits, BDA shall grant the Developer a license over the Rehabilitation Area for Phase I to enter upon and access the Rehabilitation Area for Phase I, including the exclusive right and authority, to undertake the SRP at the Rehabilitation Area for Phase I, in accordance with this Agreement.

(b) ***Developer's Area for Phase I***

Subject to the following condition being met prior to the PDP Commencement Date and other provisions of this Agreement and the Original Agreement, Applicable Laws and Applicable Permits, BDA shall grant to the Developer, on and from the PDP Commencement Date, a license over the Developer's Area to enter upon and access the Developer's Area, including the exclusive right to undertake the PDP on the Developer's Area if:

the Developer has completed the roof casting for at least 210 (Two hundred Ten) EWS Units in accordance with the SRP Construction Plan to the satisfaction of BDA.

(c) On completion of construction of the SRP Assets and handover of possession of the SRP Assets to the BDA, the Developer shall have the right to acquire freehold rights over the Phase-I Developer's Area; and transfer (by way of sale, lease or license) the PDP Units to the PDP Allottees. For the purpose of acquiring freehold rights over the Developer's Area, the Developer and the BDA shall execute Conveyance Deed(s) in the format set out in Development Agreement, setting out the terms and conditions of such transfer of the Developer's Area or part thereof, within 60 (sixty) days of handing over the entire SRP Assets to BDA for Phase-I.

- (d) If the Developer's Area handed over in Phase-I is lesser considering the proportionate of PDP and SRP Area as per HFA Policy, 2015, the same shall be adjusted in subsequent phases of development to meet the required PDP Area as per the Development Agreement. If the same could not be adjusted in subsequent phases of development, then the land premium quoted by the Developer for the project shall be adjusted proportionately or paid to the Developer by BDA if adjustment is not possible.

5. PERFORMANCE SECURITY, PROJECT DEVELOPMENT FEE, PROJECT DEVELOPMENT EXPENSES

5.1. Performance Security

The Selected Bidder/Developer has to submitted to BDA an unconditional and irrevocable bank guarantee of INR 4,52,31,000 (Four Crores Fifty-Two Lakhs Thirty One Thousand) for Phase I development in the form set out at Schedule H of this Agreement towards the Performance Security, prior to the Effective Date of Phase I, which shall be released to the Developer upon hand over of the SRP Assets for Phase I to BDA after receipt of the occupancy certificate for the same.

5.2. Project Development Fee

The Selected Bidder/Developer has made a payment of INR 25,93,825 (Rupees Twenty-Five Lakh Ninety Three Thousand Eight Hundred Twenty Five Only) (equivalent to 0.25% of the Total Project Cost of the SRP Asset to be developed over entire 10 acres of land plus applicable Goods & Service Tax) to JLL as the project development fee (the **Project Development Fee**), prior to the Appointed Date. The Project Development Fee for Phase I of Development is INR (equivalent to 0.25% of the Total Project Cost of the SRP Asset for Phase 1) is Rs. 17,95,725 (Rupees Seventeen Lakhs Ninety Five Thousand Seven Hundred Twenty Five Only) on pro-rata basis.

In case the entire land of 10 acres is not handed over by end of construction period of Phase I Development, the additional Project Development Fee that has already been paid shall be calculated based on the land handed over to Developer by that time and the same shall be adjusted from any payment due to BDA by the developer or refunded by BDA if adjustment

is not possible without any liability to the transaction advisor (JLL).

5.3. Project Development Expenses

The Selected Bidder/Developer has made a payment of INR 25,93,825 (Rupees Twenty-Five Lakh Ninety Three Thousand Eight Hundred Twenty Five Only) (equivalent to 0.25% of the Total Project Cost of the SRP Asset to be developed over entire 10 acres of land plus applicable Service Tax) to BDA as the project development expenses (the **Project Development Expenses**), prior to the Appointed Date. The Project Development Fee for Phase I of Development is INR (equivalent to 0.25% of the Total Project Cost of the SRP Asset for Phase I) is Rs. 17,95,725 (Rupees Seventeen Lakhs Ninety-Five Thousand Seven Hundred Twenty Five Only).

In case the entire land of 10 acres is not handed over by end of construction period of Phase- I Development, the additional Project Development Fee that has already been paid shall be calculated based on the land handed over to Developer by that time and the same shall be adjusted from any payment due to BDA by the developer or refunded by BDA if adjustment is not possible.

6. THE SRP CONSTRUCTION PERIOD

6.1. Commencement and Duration

The construction period for the SRP Assets shall commence on and from the Effective Date of Phase-I, and shall continue until the Scheduled SRP Completion Date. This period shall be known as the SRP Construction Period for Phase I and will be for a duration of 30 months from the Effective Date for Phase- I.

6.2. Developer's Construction Obligations for the SRP Assets for Phase- I

The Developer shall construct, finance and complete 840 EWS Units and Infrastructure Facilities, in accordance with this Agreement, Applicable Laws, Applicable Permits, the Site Layout Plan, the SRP Construction Plan and the SRP requirements and Good Industry Practise.

If Developer constructs any extra EWS units (beyond the units considering the density norms for this project as per HFA Policy, 2015) and the same could not be adjusted in subsequent phases of development to meet the required EWS units as per the Original Development

Agreement, then extra cost incurred towards it shall be paid to developer or adjusted in the premium developer has to pay.

7. MAINTENANCE AND DEFECTS WARRANTY PERIOD FOR SRP ASSETS FOR PHASE I

7.1. Maintenance of SRP Assets for Phase I

- (a) Within 1 (one) month prior to the completion of the SRP Construction Period, the Developer will be required to deposit an amount of INR 1,16,59,200 (Rupees One Crore sixteen lakhs Fifty-nine thousand two hundred) i.e., 2% (two percent) of the SRP Capital Cost for phase I in the bank account designated for the SLRS (**Corpus Fund**). If, for any reason, a bank account has not been opened by the SLRS within the prescribed time period, then, the Developer shall be required to deposit the Corpus Fund in the bank account designated by BDA in this regard.

It is clarified that the Developer will not be permitted to withdraw the Corpus Fund, or utilise, in any way, the amounts comprising the Corpus Fund for providing the Maintenance Services.

7.2. Payment of Concession Fee

In case of Premium: Out of a premium of Rs 4.12 Crores which was quoted by the selected bidder for 3.5 acres for PDP area, the revised premium for 2.1 acres of PDP area for Phase I works out to be INR 2.47 crores payable to BDA.

- (a) The Concession Fee shall be paid by the Developer to BDA, in 4 (four) equal installments of INR 61,80,000 (Rupees Sixty One Lakhs Eighty Thousand Only) each, payable as follows:
- (i) the first installment of the Concession Fee will be payable by the Developer on or before the Effective Date for Phase I (**First Installment**);
 - (ii) the second installment of the Concession Fee will be payable by the Developer within 6 (six) months from the Effective Date for Phase I (**Second Installment**);
 - (iii) the third installment of the Concession Fee will be payable by the Developer within 12 (twelve) months from the Effective Date for Phase I (**Third Installment**); and

- (iv) the fourth installment of the Concession Fee will be payable by the Developer within 18 (eighteen) months from the Effective Date for Phase I (**Fourth Installment**).

8. EVENTS OF DEFAULT AND TERMINATION

Third Parties

This Supplementary Agreement and all rights here under are intended for the sole benefit of the Parties and, to the extent expressly provided, for the benefit of the BDA Related Parties, the Developer Related Parties and the Lenders, and shall not imply or create any rights on the part of, or obligations to, any other Person.

9. DISPUTE RESOLUTION

The parties here into specifically agreed and accepted that they will carve out their right, interest and benefits under the supplementary agreement only and they will not proceed to claim any benefit under the Original agreement and/or to carve out remedy, claim, counter-claim, compensation etc. flowing out of original agreement either invoking arbitration, conciliation and/or any forum and in case, any such claim/ counter-claim/ compensation etc. are raised by either of the party on basis of any condition arising out of original agreement but not covered in the supplementary agreement, shall stand waived / not maintainable in view of this specific mutual understanding arrived at between the parties.

IN WITNESS WHEREOF the Parties hereto have caused these presents to be executed in the manner herein after appearing on this 8th day of February 2019:

For and on behalf of BDA

For and on behalf of the Developer

Name: Mr. Manoj Kumar Mohanty

Designation: Secretary

Name: Mr. Rahul Choudhary

Designation: Sr. Executive- Project

For and on behalf of the Selected Bidder

Name: Mr. Sunil Soni

Designation: GM- BD & Projects

In presence of:

Witness 1:

Witness 2:

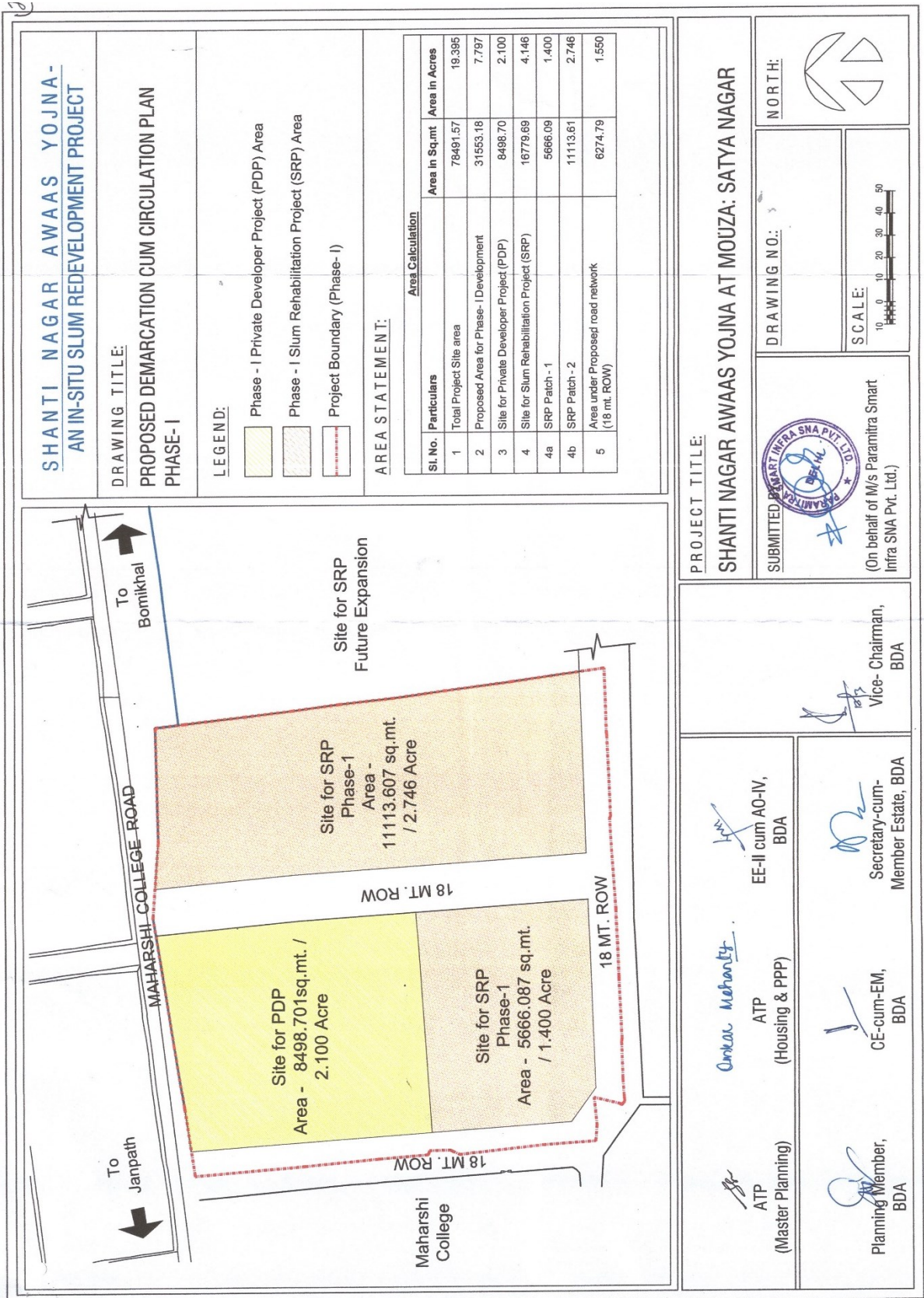
Name:

Designation:

Name:

Designation:

SCHEDULE A SITE LAYOUT PLAN



SCHEDULE H

FORMAT OF PERFORMANCE SECURITY

[ON APPROPRIATE STAMP PAPER]

- A. In terms of Clause 5.1 of the Development Agreement, the Developer is required to furnish to BDA, an unconditional, irrevocable, on demand bank guarantee for an amount equal to INR 4,52,31,000 (Four Crores Fifty-Two Lakhs Thirty One Thousand) as security for due and punctual performance or discharge of the Developer's obligations and liabilities under the Development Agreement, until the expiry of the SRP Construction Period, as a condition precedent to effectiveness of the Development Agreement.
1. The Guarantor hereby irrevocably and unconditionally guarantees and secures (as primary obligor and not merely as guarantor or surety) to BDA the payment in full of all amounts at any time that may be due, owing or payable to BDA from the Developer for the failure of the Developer to duly and punctually perform all of its obligations or discharge all of its liabilities under the Development Agreement until the expiry of the SRP Construction Period (the **Guarantee**), without any demur, reservation, protest or recourse, immediately on receipt of a demand from BDA.

The Guarantor agrees that the value of the Guarantee shall at all times be maintained at the amount of INR 4,52,31,000 (Four Crores Fifty-Two Lakhs Thirty One Thousand) (the **Guaranteed Amount**).

The Guarantor further agrees that this Guarantee does not limit the number of claims that may be made by BDA against the Guarantor. Upon a payment being made under this Guarantee, the amount of the Guarantee shall automatically be replenished to the full Guaranteed Amount.

Any payment made hereunder shall be made free and clear of and without deduction for, or on account of, any present or future taxes, deductions or withholdings of any nature whatsoever and by whomsoever imposed, and where any withholding on a payment is required by any Applicable Law, the Guarantor shall comply with such withholding obligations and shall pay such additional amount in respect of such payment such that BDA receives the full amount due hereunder as if no such withholding had occurred.

IN WITNESS WHEREOF the Guarantor has set its hands hereunto on the day, month and year first hereinabove written.

Signed and delivered by [*insert name of Bank*] Bank, by [*insert name of branch*] Branch, having its address at [*insert address*]

Of [*insert name of signatory*]

Its [*insert designation*] and duly authorized representative

Authorized by [Power of Attorney dated [*insert date*]] OR [Board resolution dated [*insert date*]].