

REQUEST FOR PROPOSAL

VOLUME I

PROJECT INFORMATION MEMORANDUM

DEVELOPMENT OF COMMUNITY MARKET & RESIDENTIAL CUM/OR COMMERCIAL FACILITIES AT GHATIKIA ON PPP MODE

MARCH 2025 (CALL -2)

RFP No. 5965/BDA, 25.03.2025



**Bhubaneswar Development Authority
Akash Shova Building, Sachivalaya Marg
Bhubaneswar, Odisha 751 001**

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1. Disclaimer

Though adequate care has been taken in the preparation of this Request for Proposal (hereinafter referred to as "RfP") document, the Bidders should satisfy themselves that the document is complete in all the respect and the information provided is correct. In case of discrepancy, if any, intimation should be given to the Officer Concerned in Bhubaneswar Development Authority (BDA) (whose contact details is mentioned in this document) immediately on or before the due date specified in the Schedule of Bidding Process. If no intimation is received by the said officer within the date as mentioned in Schedule of Bidding Process as mentioned in this Document, it shall be deemed that the bidder is satisfied that the RfP document is complete in all respects.

Neither BDA nor their employees or Project Development Advisor(s) make any representation or warranty as to the accuracy, reliability, or completeness of the information in this RfP and it is not possible for BDA to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RfP concerning the project. Certain prospective bidders may have better knowledge of the project compared to the others and BDA encourages all the prospective bidders to conduct their own due diligence, investigations & analysis and check for accuracy, reliability, and completeness of this RfP. The bidders are free to obtain independent advice from the sources appropriate to them.

Neither BDA nor their employees or Project Development Advisor will have any liability to any prospective bidder or any other person under the law of contract, tort, the principles of restitution or unjust enrichment or otherwise for any loss, expenses or damage which may arise from or to be incurred or suffered in connection with anything contained in this RfP, any matter deemed to form part of this RfP, the award of the project, the information and any other information supplied by or on behalf of BDA or their employees or their consultant or otherwise arising in any way from the selection process of this project.

BDA reserves the right to reject any or all the bids submitted in response to this RfP at any stage without assigning any reasons whatsoever and without any liability of BDA in any manner. BDA also reserves the right to hold or withdraw or cancel the process at any stage under intimation to the bidders, who submit the RfP, without assigning any reasons whatsoever.

BDA reserves the right to modify or amend or add to any or all the provisions of this RfP Document or annul the present process. Such a change would be published on the BDA website.

Neither BDA nor their employees or Project Development/Transaction Advisor will have any liability in case addition, modification, amendment, alteration, cancellation and /or of non-receipt of any correspondence from them to the bidders due to the postal delays. The Applicable law for the purpose is the laws in India.

2. Abbreviations

BDA	Bhubaneswar Development Authority
BUA	Built-up Area utilized in the Project.
PPP	Public Private Partnership
EoI	Expression of Interest
RfQ	Request for Qualification
RfP	Request for Proposal
IE	Independent Engineer
LOA	Letter of Award
SPV	Special Purpose Vehicle
MBAO	Maximum Built-up Area Offered
MLP	Maximum Land Premium
INR	Indian National Rupee(s)
DU	Dwelling Unit
ORERA	Odisha Real Estate Regulatory Authority

3. Schedule of Bidding Process

- (a) Issue of Advertisement** : **25.03.2025**
- (b) Pre-Bid Meeting** : **09.04.2025 at 4 PM**
- (c) Last date of submission of Bids** : **24.04.2025 by 4 PM**
- (d) Opening of Technical Bids** : **24.04.2025 at 5 PM**
- (d) Financial Bid Opening** : **To be intimated**

4. Project Profile

Introduction

The BDA is working towards ensuring sustainable urban growth and planned development with effective monitoring and regulations through a people-centric and innovative approach. As part of its endeavor of introducing innovative initiatives in city infrastructure aimed at an enhanced quality of life for the citizens, the City Authority is developing Community Markets in the city.

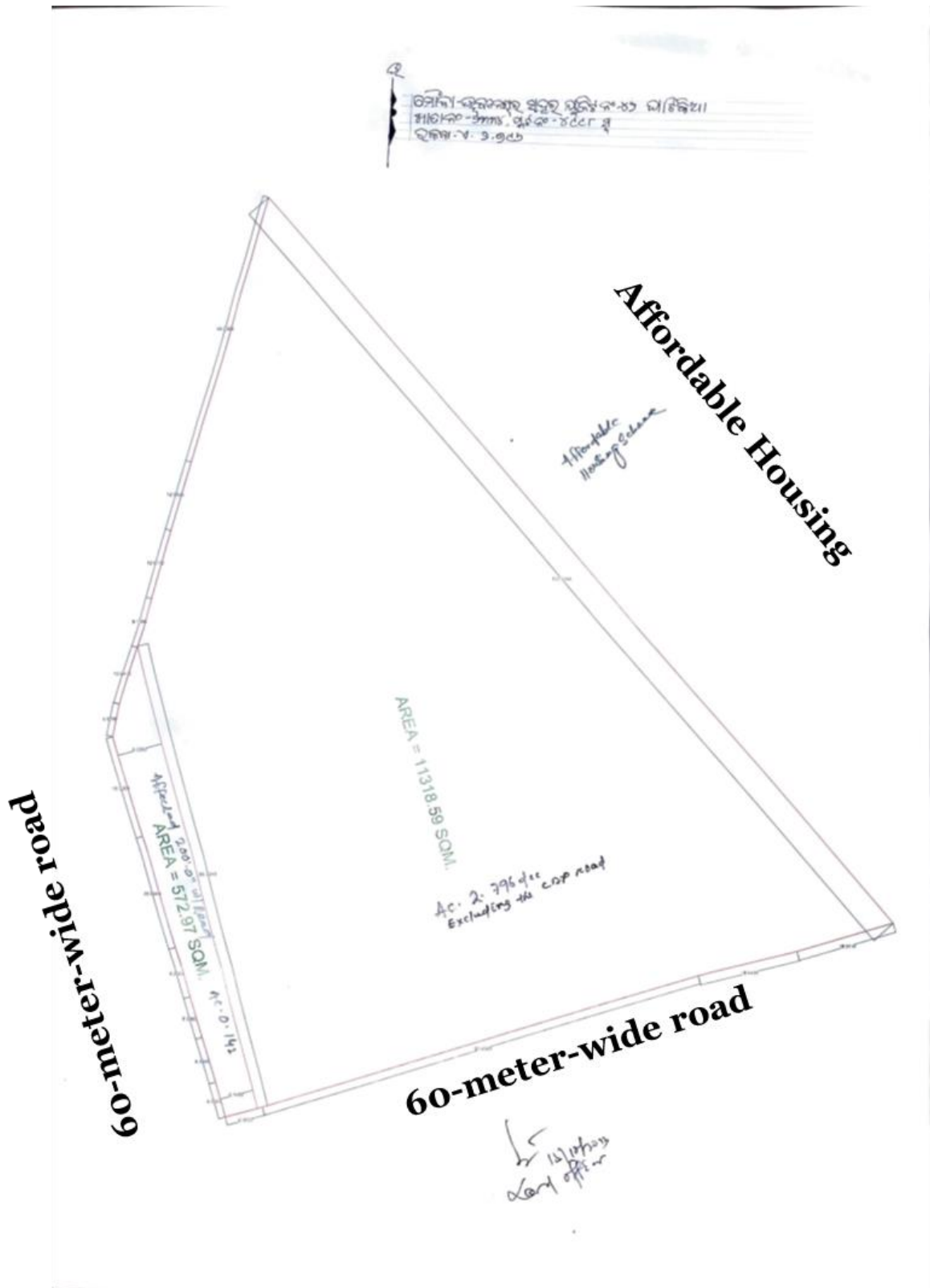
Additionally, in order to unlock the value of land at such prime locations, the projects will be developed in PPP mode, with opportunity for residential and/or commercial development on the surplus built-up space available after developing the Community Market within a composite structure.

One such initiative is the Community Market at Ghatikia over a prime unencumbered contiguous land of 2.796 Acres.

Location

The BDA is in possession of 2.796 Acres of freehold land at Mouza – Ghatikia, Khata No. 2334, Plot No. 4998 at the intersection of 60-meter Ghatikia Main Road (CDP Road) and 60-meter Sum Hospital Road, near K7 Kalyan Mandap Square and opposite to Vrindavan Gurukul developed by Pandit Hariprasad Chaurasia.

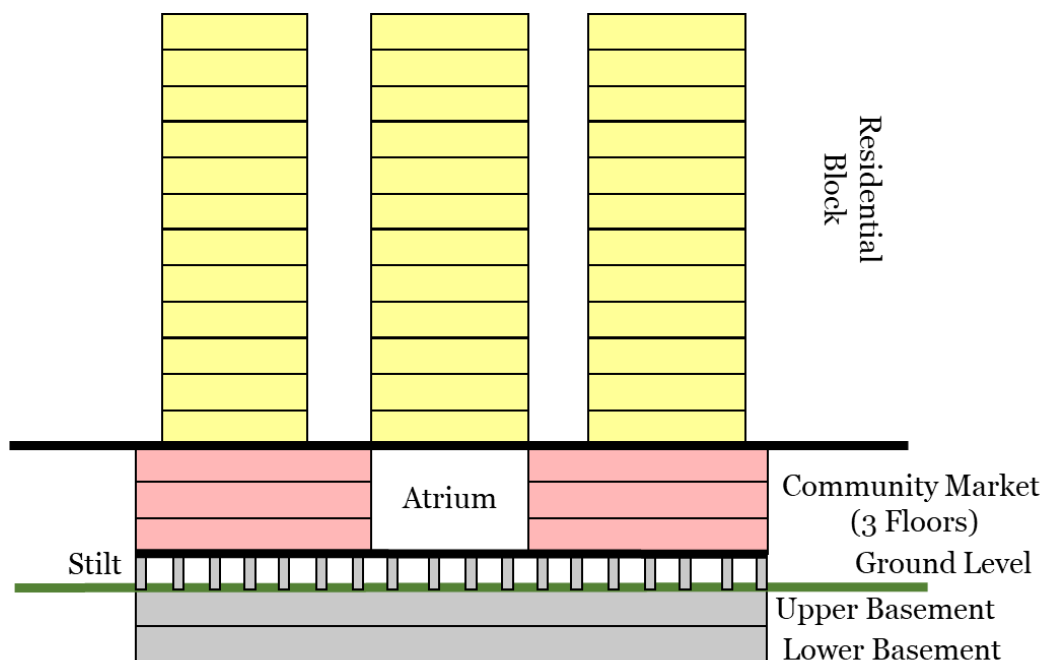
The prime site is adjacent to an Affordable Housing Project being developed by the BDA and has a total of 928 dwelling units. The access to the two roads can enable the Project to have two dedicated entry/exit to the Site. On the micro market, the site is at the center of Kalinga Nagar (K1, K2, K3B, K7, K8) and surrounded by mostly residential area with high population density.





5. Development Guidelines

The composite project will have the 'Community Market' across the site with G+2 structure and Residential cum/or Commercial facilities above the Community Market to utilize the maximum FAR available for the site. There may be 2 levels of envelope parking in the basement across the Site. The Bidder will be required to submit a 'Conceptual Design' of the Community Market along with the Technical Bid.



Fixed Parameters of the Community Market

- i. The Community Market will be air-conditioned, spread across G+2 floors with an atrium at the centre.
- ii. There must be at least 220 numbers of shops measuring 150 sq. ft internal area.
- iii. Common area of at least 40% inside the 'Community Market' excluding area covered by shops for: circulation, passage, staircase, storage, toilet, and others.
- iv. Separate zoning for Vegetarian and Non-vegetarian items, washing areas and toilet facilities.
- v. Ceiling height must be suitable to ensure natural light.
- vi. Space for Store and industrial refrigerators in the common area.
- vii. Dedicated and separate entrance for the Community Market and Residential cum/or Commercial facilities. The Entrance/Exit should be designed in a manner that there is no conflict in the two facilities i.e. Community Market and Residential cum/or Commercial facilities.
- viii. Dedicated parking area of at least 60% of total built-up area of Community Market (including circulation) for the customers visiting the Community Market, nearest to the market and preferably on the first (1st) basement.

- ix. The indicative specifications of the Community Market are available in Annexure 1.
- x. All statutory approval is the responsibility of the bidder.
- xi. The FAR available for the site and charges beyond base FAR will be guided by the Odisha Development Authorities (Planning and Building Standards) Rules, 2020.

6. Bidding Structure

1.	NAME	Development of 'Community Market and Residential cum/or Commercial Facilities' at Ghatikia, Bhubaneswar on PPP mode
2.	NODAL AGENCY	Bhubaneswar Development Authority (BDA)
3.	IMPLEMENTATION FORMAT	<ul style="list-style-type: none"> ▪ Formation of a Project Specific Special Purpose Vehicle (SPV) under the Companies Act 2013, within 30 days of receipt of Letter of Award (LOA) which will act as the Developer of the Project, and subsequently execute Development Agreement & Conveyance Deed with BDA. ▪ Development Agreement will be executed with BDA for 2.796 Acres of land for a period of 60 months.
4.	PROJECT FINANCING	<ul style="list-style-type: none"> ▪ The BDA will consider executing a Tripartite Agreement with the Lender & Developer (Refer Annex 2), if requested by the Developer, after execution of the Development Agreement. ▪ Subject to consent from BDA, the Developer can enter into 'Agreement to Sale' (ATS) with allottees/ end-users of the Commercial cum/or Residential portion of the Composite Project, after registration of the project under ORERA, as per 'Annexure – A' of the ORERA Rules 2017. ▪ The proceeds of advances received from end-users through the ATS must be deposited in the designated escrow account created for the project.
5.	OPERATION & MANAGEMENT	<ul style="list-style-type: none"> ▪ The Shops/Shop Spaces in the Community Market will be allotted to beneficiaries/ shopkeepers by the Authority. ▪ There will be two separate Association of Allottees to be

		<p>formed by the Developer (for the Residential cum/or Commercial Facilities) and BDA (for the Community Market) after submission of separate application to the Competent Authority.</p> <ul style="list-style-type: none"> ▪ The proportionate Common Area owned by the two Associations will be demarcated in the application forms for formation of the Association of Allottees.
6.	FIXED PARAMETERS OF THE BID	<ul style="list-style-type: none"> ▪ Private Developer will have to achieve Completion Certificate from the Competent Authority for the Project within the period of 60 months from execution the Development Agreement. ▪ Handover the 'Community Market' to BDA, completed in all respect to the satisfaction of BDA, and obtain receipt of the same. ▪ Construction Specifications of the 'Community Market' (indicative specifications provided in Annexure 1) will have to be pre-approved by BDA.
7.	CONVEYANCE DEED	<ul style="list-style-type: none"> ▪ On completion of the Project, handover of the Community Market and dedicated parking to BDA and obtaining the Occupancy Certificate from the Competent Authority, the Developer will execute the Conveyance Deed with the BDA on freehold status for the Residential cum/or Commercial area, parking and proportionate share of common area. ▪ Consequently, the developer can execute transfer deeds with the end-users, based on the 'Agreement to Sale' for the project assets excluding the Community Market, dedicated parking, and share of common area proportionate to the area occupied by Community Market.
8.	CONSTRUCTION PERIOD	<ul style="list-style-type: none"> ▪ Complete all approval and clearance processes within 12 months from execution of Development Agreement. ▪ Complete the Project within 60 months from execution of the Development Agreement.
9.	BID PARAMETER	Maximum Land Premium (MLP) offered by the Bidder to BDA

10.	PAYMENT OF MAXIMUM LAND PREMIUM (MLP)	<ul style="list-style-type: none"> ▪ 1st Instalment (10%) – before Execution of Development Agreement. ▪ 2nd Instalment (20%) – withing 90 days from Execution of Development Agreement. ▪ 3rd Instalment (70%) – within 240 days from Execution of Development Agreement.
11.	PROJECT DEVELOPMENT FEES	INR 1,00,00,000/- (Indian Rupees One Crore only) plus applicable GST to be paid to ' Bhubaneswar Development Authority ' in the form of a Demand Draft, by the preferred bidder, before execution of the Development Agreement, and in the manner specified in the Letter of Award (LoA), as non-refundable reimbursement of Project Development Expenses.
12.	FEES TO BE DEPOSITED BY THE DEVELOPER	<ul style="list-style-type: none"> • All statutory payments related to the development will have to be paid by the Preferred Bidder.
13.	BID SUBMISSION	<p>E-Procurement System of the Government of Odisha</p> <p><u>Note:</u></p> <ul style="list-style-type: none"> i. No hard copy to be submitted except the Original Copy of Bank Guarantee submitted as Bid Security. ii. Financial Bid to be submitted only in the BOQ available at the e-procurement portal. A deviation from this condition will lead to cancellation of the bid.
14.	PART 1	General Documentation: Duly filled up formats as specified in Annexure A-1 to Annexure A-15, Annexure B1 of Vol-II of ITB along with all the specified supporting documents.
15.	PART 2	Price Bid: Maximum Land Premium (MLP) offered by the bidder to BDA in the specified format.
16.	ELIGIBILITY CRITERIA	<ul style="list-style-type: none"> • The Bidder must a Single entity (“Bidding Company”) or a Consortium of maximum two (2) entities, identified for implementation the project subject to compliance with applicable laws, policies, and guidelines of Government of India. The term Bidder used hereinafter would therefore apply to the Legal Entity applying for the

		<p>Bid.</p> <p>An eligible entity is one which satisfies the following:</p> <ul style="list-style-type: none"> • The entity is a Company under the Companies Act, 1956/ 2013. <p style="text-align: center;">OR</p> <ul style="list-style-type: none"> • The Entity is a Trust under the Indian Trusts Act, 1882 <p style="text-align: center;">OR</p> <ul style="list-style-type: none"> • The Entity is a Statutory Board/ Authority/ Corporation created in India under a separate Law/ Act of India/ any State Govt. <p style="text-align: center;">OR</p> <ul style="list-style-type: none"> • A partnership firm registered under the Partnership Act 1932. <p style="text-align: center;">OR</p> <ul style="list-style-type: none"> • A limited liability partnership registered under the Limited Liability Partnership Act 2008. <p>Bidder to demonstrate the capability (<i>aggregate in case of Consortium</i>) of:</p> <p>a. Minimum Development/ Construction capability of:</p> <ul style="list-style-type: none"> • at least 63,000 sq. mtrs, Residential/Commercial/ Institutional built-up space in the last 5 years (ending 31 March 2024), in a Single Project; or • at least two numbers of Residential/Commercial/Institutional projects with a built-up space of 40,000 sq. mtrs each, in the last 5 years (ending 31 March 2024). <p>a. Minimum Annual Average Turnover (<i>aggregate in case of Consortium</i>): Rs.75 Crores (Rupees Seventy-Five Crores only) over the last 3 Financial Years (i.e. FY 2020-21; FY 2021-22; FY 2022-23).</p>
17.	BID EVALUATION	Part 1: General Documentation & Eligibility Criteria (Eligible/ Not Eligible)

		Part 2: Financial Bid – Maximum Land Premium offered to BDA
18.	BID PROCESSING FEE	INR 11,800/- (non-refundable and including GST) payable at the E-Procurement Portal in favor of “ Bhubaneswar Development Authority ”
19.	BID VALIDITY	180 days from the last date of submission of bid
20.	BID SECURITY	INR 2.5 Cr (Indian Rupees Two Crores and Fifty Lakhs only) along with Technical Bid in the form of an unconditional and irrevocable Bank Guarantee.
21.	PERFORMANCE SECURITY	INR 30 Cr (Indian Rupees Thirty Crores only) in the form of an unconditional and irrevocable Bank Guarantee before execution of Development Agreement.
22.	RELEASE OF PERFORMANCE SECURITY	<ul style="list-style-type: none"> 95% of the Performance Security will be released on project completion (i.e. Completion/Occupancy Certificate from Competent Authority) and receipt of Community Market and allied Parking, complete in all respect as per sanctioned plan and specifications to the satisfaction of BDA. 5% of the Performance Security will be released on completion of the Defect Liability Period of the Community Market for 5 years.
23.	VALIDITY OF PERFORMANCE SECURITY	60 months or any extension thereof.
24.	DEVELOPER'S EVENT OF DEFAULT – BEFORE SIGNING OF CONVEYANCE DEED	<ul style="list-style-type: none"> In case, the Project completion is not achieved as per time schedule i.e. up to 60 months, an additional curing period of 12 months will be provided with a penalty of INR 30,00,000/- (Indian Rupees Thirty Lakhs Only) per month of delay or part thereof, to be paid to BDA at the beginning of each month. In case, the Project is not completed within the additional curing period, then, following action shall be undertaken:

		<ul style="list-style-type: none"> . Termination of Development Agreement. . Forfeiture of Performance Security. . Forfeiture of all immovable assets created on the land by the developer or lender. . Substitution of the Developer to achieve project completion by Lender as per Tripartite Agreement (<i>referred earlier</i>).
25.	ASSUMPTIONS	<p>1 acre=4046.85 Sq.m</p> <p>1 Sq.m=10.763 Sq.ft</p>

7. Exception

In case the Single Bidder is a Trust, Statutory Body, Authority, Corporation created under separate law and/or any entity of the State Government, and formation of SPV is not allowed under their Byelaws and Memorandum, only in such cases the BDA may consider an exception after evaluating the specific situation. However, for Consortium bidders, formation of SPV is mandatory and non-negotiable.

8. Bidding Guidelines

- i. The Project Information Memorandum (PIM) is being issued to bidders as Volume I of the Request for Proposal (RfP) and must be read in conjunction with the other volumes of the RfP as given below:

Volume – II: Instruction to Bidders

Volume – III: Draft Development Agreement and Draft Conveyance Deed

This Project Information Memorandum comprises the following:

Part 1: Site Appreciation

Part-2: Summary – Project Development & Bidding Process

- ii. BDA proposes to develop the Composite project including a 'Community Market' along with Residential cum/or Commercial facilities over 2.796 Acres of land at Bhubaneswar. BDA proposes to develop the 'Project' with the participation of a developer, who would Design, Engineer, Finance, Construct, and handover the 'Community Market' to BDA; and Design, Engineer, Finance, Construct, Operate, Maintain and Market the Residential Facility over the project site.

The Agreement in two parts (**Part A - Development Agreement; Part B- Draft Conveyance Deed**) shall form the legal basis for the Project.

- iii. The Preferred Bidder will form a Project Specific **Special Purpose Vehicle (SPV)** under the Companies Act 2013, within 30 days of receipt of Letter of Award (LOA). The SPV will subsequently act as the Developer of the Project, execute Development Agreement & Conveyance Deed with BDA, and register the Project under ORERA.
- iv. The bidder selected through a transparent and competitive Single Stage Bidding process would be given the right to recover its investment through the monetization of built-up area (including utilities, parking lots, common area etc.) within the plot for the portion for which the conveyance deed has been executed with them.
- v. The financial bid variable for selection of the Selected bidder, subject to other qualification criteria and development controls being met, would be the **Maximum Land Premium** offered by the Private Developer to BDA. Bidders are required to submit separate technical and financial bids. The financial bids of only those bidders that comply/ found eligible with the General Documentation submitted as a part of their technical submission will be opened. The detailed instructions for preparation of technical and financial bids are provided as Volume II of this RfP document.
- vi. The scheduled completion period of the Composite Project {Community Market, Community Parking, Residential cum/or Commercial facility, Residential cum/or Commercial Parking, infrastructure, and utilities} shall be a maximum of 5 (Four) years from the date of execution of the 'Development Agreement'.
- vii. The Selected Developer to pay BDA liquidated damages for delay beyond the Scheduled Completion Date of the composite project @ Rs. 30,00,000/- (Rupees Thirty Lakhs Only) per month of delay or part thereof, as liquidated damage charges until such completion is achieved within 5 years from the execution of Development Agreement. However, delay in completion of construction by more than one (1) year from the scheduled construction completion date, will be construed as a default from the part of the Developer and would lead to termination of the agreement, forfeiture of performance security, forfeiture of immovable assets created in the site and substitution of the developer.

viii. Post issue of the Letter of Award (LoA) and before execution of the Development Agreement the Preferred Bidder must establish contact with the BDA to conduct a joint survey of the land. In case there is any difference in the land area (not exceeding +/- 15%) the Land Premium will be adjusted (increased/decreased) accordingly, on mutually agreed terms and conditions.

ix. Project Contact:

Shri. Omkar Mohanty

Associate Town Planner – PPP Cell

Bhubaneswar Development Authority

E: ppp.bdabbsr@gmail.com

M: +91 9937854012

Annexure 1

Specifications of the Community Market

- The Community Market will be a frame structure building.
- The Community Market will be air-conditioned.
- Vitrified anti-skid tiles will be used.
- GRC Jali will be used for proper ventilation with transparent proflex sheet.
- Air propeller for proper ventilation for both veg and non-veg areas, as required in air-conditioned environment.
- Separate wash area for Veg and Non- Veg market.
- CCTV integrated with Control Room.
- 1 Office room.
- Security room.
- Paver tiles to be used for Parking space.
- General toilet for gents, ladies, transgenders, and differently abled people.
- Appropriate ramp structure for differently abled person for internal movement.

Annexure 2

MODEL TRIPARTITE AGREEMENT FOR PROJECT FINANCING
(Draft only, to be modified by BDA, in consultation with Lender, before execution)

THIS INDENTURE OF AGREEMENT (Agreement) made on this day of _____, 2024 (Two Thousand Twenty-Four).

AMONG

[Name of the SPV constituted to undertake the project], a company organized, incorporated, registered and existing under the Companies Act 2013, with its registered office at [Address], (hereinafter referred to as the “**DEVELOPER/BORROWER**” which expression shall, unless it be repugnant to the context of meaning thereof, include its successors and permitted assigns) of the **FIRST PART**.

AND

The [Name of the Bank] [Address] called as the “**FINANCIER**” (which expression unless repugnant to the context shall include its successors and assigns), of the party of the **SECOND PART**.

AND

BHUBANESWAR DEVELOPMENT AUTHORITY (BDA), a statutory body constituted under the Orissa Development Authorities Act, 1982 by notification no. 37627-HUD/31.8.1983, with its registered office at Akash 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); of the **THIRD PART**.

AND

[Name of Selected Bidder], a company organized, incorporated, registered and existing under the Companies Act, with its registered office at [Address], (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).

AND WHEREAS

The primary objective of the BDA is to offer an enhanced quality of life for the people of Bhubaneswar through various citizen centric initiatives. The development of Community Markets at prime residential areas is one of such projects and the City

Authority has identified a prime unencumbered contiguous land parcel of 2.796 Acres at Ghatikia for such purpose.

Additionally, in order to unlock the value of land at such a prime location, the project will be developed on Public Private Partnership (PPP) mode, with opportunity for residential and/or commercial development on the surplus built-up space available after developing the Community Market within a composite structure.

AND WHEREAS

For the purpose of undertaking the Community Market Project at the above-mentioned site, the General Administration Department, Government of Odisha, has agreed to change the land use of 2.796 Acres at Ghatikia, through the Communication/ Notification No. _____, from Affordable Housing to integrated Community Market and residential cum/or commercial facilities.

AND WHEREAS

For taking up the Project on PPP mode, BDA intended to engage a private developer to: (i) design, develop, finance, construct, complete and handover the Community Market and allied parking, free of cost, to BDA in accordance with the terms of the Development Agreement; and (ii) have the right to design, finance, construct, market, allot, complete and transfer the residential cum/or commercial facilities on the balance built-up area available in the composite structure in accordance with the development agreement.

AND WHEREAS

The Selected Bidder has been identified after following a transparent and competitive bidding process conducted by BDA through RFP No. _____ dated _____ and subsequently, the development agreement was executed between BDA and the Developer (the special purpose vehicle incorporated by the selected bidder to implement the project) with the selected bidder as the confirming party, on _____ to undertake the Project (the **Development Agreement**).

AND WHEREAS

The Development Agreement requires the Developer to achieve Financial Close as certified by the Lenders and submit a copy of the Financing Documents to BDA, as a condition precedent to the effectiveness of the Development Agreement. The Development Agreement also allows the developer to create security over all of its right 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, except as expressly provided in this Agreement.

AND WHEREAS

The Developer/Borrower has approached the Financier to avail a loan for the amount of INR _____ for the purpose of financing the Project and achieving Financial Close and the Financier has agreed to provide such loan.

AND WHEREAS

The Developer/Borrower as well as the Financier approached the BDA to enter into a tripartite agreement in order to facilitate the disbursement of the loan, its recover, creation and enforcement of the Security by way of equitable mortgage created over the Developer's share of built-up Area, with equivalent interest on land, in Financier's favour, within the terms of the Development Agreement.

Therefore, it is hereby agreed by between and among the parties hereto as follows:

1. Definitions and Interpretation

All capitalized terms used in this Agreement shall, if not specifically defined in this Agreement, have the meaning ascribed to them in the Development Agreement.

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

- a. **Benchmark Value** means the value of the Developer's Area of land (proportionate to the built-up area of the Residential cum/or Commercial Facility and Community Market) determined on the basis of the circle rate notified by the revenue authorities of the GoO for the land forming part of the Developer's Area, as on the date of this Agreement. It is clarified that for the purposes of calculating the Benchmark Value of the Developer's Area, the prevailing circle rate of INR [] shall be considered.
- b. **Market Value** means the market value of the Developer's Area at the time of enforcement of the Security over the Developer's Area in accordance with Clause 6 of this Agreement, which shall be mutually determined by BDA and the Financier taking into consideration the prevailing market prices and the valuation reports submitted to the

Joint Committee from the independent valuers appointed by BDA and Financiers respectively.

- c. **Debt Due** means the aggregate of the following sums expressed in Rupees outstanding as on the date of issue of a notice of intent to enforce the Security by the Financier under Clause 6a. of this Agreement (i) the principal amount of the loan provided by the Financier to the Developer to fund the Project; and (ii) all accrued interest, financing fees, expenses and charges payable under the financing Documents on, or in respect of the loan referred to in (i) above, until the date of the notice of intent to enforce the Security.

The Lender will make their own assessment of the Project Financing Proposal submitted by the Developer, including their Project Cost and Revenue stream. The Financier shall also be entitled to recover the balance dues from the Developer through enforcement of any other collateral security offered by the Developer and/or its guarantor(s) to the Financier under the Financing Documents.

However, the financial liability of BDA to this entire agreement will under no circumstances exceed the Benchmark Value of land proportionate to the Developer's share of built-up area.

- d. **Joint Committee** means the committee comprising representatives of the BDA and the Financier, which is to be formed jointly by the BDA and the Financier for the purpose of carrying out the substitution and if applicable, the auction of the Developer's Area, in accordance with Clause 5 and 6 of this Agreement, respectively.

2. Creation of Equitable Mortgage over Developer's Area

- a. BDA has handed over a site measuring 2.796 Acres to the developer for the project, in a manner that the Developer will create a composite Community Market and Residential cum/or Commercial project with a built-up area of _____ Sq. Mtrs and handover the fully operational Community Market measuring _____ Sq. Mtrs and _____ Sq. Mtrs of parking space to BDA, free of cost within the term of 60 months, as per the Development Agreement executed between the parties.
- b. Upon handover of the Community Market and Parking to BDA in a manner specified in the Development Agreement, the Developer will get the freehold rights of _____ Sq. Mtrs of Residential cum/or

Commercial facilities, with parking, common area and equivalent interest on land.

- c. For abundant clarity, on successful implementation of the project the Developer will be the freehold owner of the built-up area mentioned above.
- d. For the sole purpose of assisting the Developer in availing of the loan from the Financier, BDA shall create Security by way of an equitable mortgage over the Developer's share of built-up area in favour of the Financier, for the construction period and only till project completion, in accordance with Applicable laws to secure repayment of the Debt Due.
- e. The amount of loan to be disbursed will be decided by the lender based on the conditions of the Development Agreement. However, the liability of BDA towards the loan will be restricted to the benchmark value as defined in (c) above. For this purpose, BDA shall deposit the ownership documents, including a copy of the Land Allotment Notification from the Government of Odisha, approval received on change of land use from Affordable Housing to Community Market, and Record of Right's on the land of 2.796 Acres (if available) with the Financier for the creation of Security over the Developer's share of built-up area with equivalent interest on land.
- f. After successful completion of the project, BDA shall execute the Conveyance Deed in favour of the Developer for the Developer's share of built-up area, as per the terms and conditions of the Development Agreement and thereafter, the Developer shall be the rightful owner of such freehold built-up area for which the Conveyance Deed has been executed.
- g. Upon execution of the Conveyance Deed, BDA shall hand over the copy of executed Conveyance Deed with the Financier along with the notice for release of performance Security provided by the developer to BDA.
- h. The Financier on receiving such notice from BDA shall take all necessary action to release the equitable mortgage created over the Developer's share of built-up area. This tripartite agreement created between the Developer, Financier and BDA will cease to exist after

execution of the conveyance deed between BDA and the Developer for the developer's share of built-up area.

3. Payment Mechanism:

- a. The Developer shall repay the loan amount as per the Financing Documents executed between the Developer and the Financier.
- b. The Developer shall submit a quarterly status report with respect to such loan repayment to BDA.

4. Escrow Mechanism:

- a. As per the Development Agreement, the Developer, BDA, the Developer Escrow Agent, and the Lender's representative 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.
- b. The Financier (Second Part) shall act as the Developer Escrow Agent as required by the Development Agreement and Developer Escrow Agreement.
- c. The flow of money into the Developer Escrow Account as well as withdrawal from the account shall be as per the terms and conditions of the Developer Escrow Agreement.
- d. The funds in the Developer Escrow Account shall be hypothecated to the Financier and in case of Developer Event of Default, subject to Clause 5 and 6 below, the Financier and BDA shall have the right to appropriate the funds in the Developer Escrow Account on a pari passu basis, proportionate to the amounts due to the BDA (i.e. estimated construction cost of the Community market and parking) under the Development Agreement and the Financier under the Financing Documents to the extent of Debt Due, subject to any claims of other Statutory/ Government Authorities.

5. Developer Default, Substitution of Developer in case of Developer Event of Default and Termination of Development Agreement:

- a. In case of default of the Developer under the Development Agreement or the Financing Documents before the execution of the Conveyance Deed for the Developer's share of built-up area in favour of the Developer, BDA and the Financier shall form a Joint Committee with representatives from BDA and the Financier, and the Joint Committee

shall make all reasonable efforts to substitute the Developer with a third party acceptable to the BDA as well as the Financier, in accordance with the Development Agreement. The Joint Committee shall comply with all Applicable Laws, including specifically the Real Estate (Regulation and Development) Act, 2016 (RERA) and the rules and regulations framed thereunder, while undertaking any substitution of the Developer and transfer of the Project to the substitute developer.

- b. In case the substitution does not occur within [] days from date of notification of the Developer's event of default by the BDA or the Financier, as the case may be, and the Developer's event of default under the Development Agreement and/or Financing Documents shall lead to termination of the Development Agreement, and the consequences of termination as set out in the Development Agreement and Clause 6 of this Agreement shall apply.
- c. If the Developer is entitled to receive any compensation upon termination of the Development Agreement, the Financier shall have the right to receive such termination compensation instead of the Developer.

6. Enforcement of the Security:

- a. Prior to release of the Security created by the BDA over the Developer's portion of Built-up Area: If the Financier fails to recover its loan amount under the Financing Documents from the Borrower/Developer, and further, the Joint Committee fails to substitute the Developer under the Development Agreement, then the Financier shall have the right to enforce the Security by furnishing a written notice to its intent to enforce the security to BDA and the Developer, in accordance with Applicable Laws.
- b. Within [] days of receipt of the notice of intent to enforce the Security, the Joint Committee will convene to Auction the Developer's portion of Built-up Area (including the portion actually build and the sanctioned plan), at a price equal or higher than the Market Value of the Developer's portion of Built-up Area. Notwithstanding the proceeds received from such sale, the Financier shall be entitled to recover an amount up to the Debt Due. In case, the auction is not successful for two consecutive times and the Financier is unable to sell the

Developer's share of Built-up Area, at a price equal or higher than the Market Value of such built-up area (actual built-up area and sanctioned plan portion), the Financier may conduct the auction as per its internal guidelines or banking sector guidelines, for a price lower than the Market Value of the Developer's portion of built-up area, with prior intimation to the BDA.

c. The enforcement of Security by the Lender over the Developer's Area and recovery of the Debt Due from the sale proceeds shall be subjected to the following conditions:

- i. any enforcement of Security shall be undertaken in accordance with Applicable Laws, including the ORERA;
- ii. BDA shall have no liability towards any allottee of the Residential cum/or Commercial portion of the project i.e. the Developer's portion of built-up area;
- iii. any termination compensation received by the Financier (as payable to the Developer under the Development Agreement and given to Financier as stated in 5(c) above) shall be deducted from the total Debt Due recoverable by the Financier;
- iv. the Debt Due (as reduced by the termination compensation paid by BDA, if applicable under the Development Agreement, as stated in clause 5(c) above) recoverable by the Financier from the sale proceeds of the Residential cum/or Commercial asset shall in no event exceed the sanctioned loan amount;
- v. subject to (iv) above, the amount payable to the Financier from the sale proceeds of the Residential cum/or Commercial asset shall in no event exceed the Debt Due (as reduced by the termination compensation paid by the BDA under the Development Agreement), if applicable;
- vi. in case of termination of the Development Agreement and selection of Substitute entity, by the lender, to complete the project, the Substitute entity will have the responsibility of handing over the Community Market, free of cost, to BDA in the manner described in the development agreement and as per the timelines solely decided by the BDA;

- d. It is clarified that nothing contained in sub-clauses a. to c. above will apply to any enforcement of the security created over the Developer's Area by the Developer in favour of the Financier after release of the equitable mortgage created by the BDA upon handover of the Conveyance Deeds by the BDA to the Financier. Any enforcement of the security created by the Developer over the Developer's Area will be in accordance with the documents executed by the developer in favour of the Financier for the purpose of security creation and all Applicable Laws (with no liability whatsoever on BDA). Provided further that, BDA shall have no liability towards any allottee of the Residential cum/or Commercial asset in Developer's portion of built-up area regardless of whether any security over the Developer's Area is enforced prior to or after release of the security created by the BDA over the Developer's Area.

7. Representations and Warranties

Each Party represents and warrants to the other Parties that:

- a. it is duly organized, validly existing and of good standing under the laws of India;
- b. it has full power and authority to execute, deliver and perform its obligations under this Agreement;
- c. it has taken all necessary action to authorize the execution, delivery and performance of this Agreement;
- d. the execution, delivery and performance of this Agreement will not conflict with, result in 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; and
- e. 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 the Agreement.

8. 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 email or facsimile and shall be directed to the other Party in the address mentioned below:

BDA: Attention []

Address: []

Tel: []

Fax: []

Email: []

Developer/ Borrower: Attention []

Address: []

Tel: []

Fax: []

Email: []

Financier: Attention []

Address: []

Tel: []

Fax: []

Email: []

- 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 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 addresses at the address referred above.
- c. Each Party may change the above address by prior written notice to the other Party.

9. Governing Law and Jurisdiction:

- a. This Agreement shall be construed and interpreted in accordance with and governed by the laws of India.
- b. The Courts at Bhubaneswar shall have exclusive jurisdiction over all matters arising out of or relating to this Agreement. Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be referred to a sole Arbitrator appointed by BDA with the consent of the Financier and Developer, to be governed as per the provisions of Arbitration and Conciliation Act, 1996 as amended from time to time, the last of such amendment in 2015 and the Rules framed thereunder. The sitting of the arbitrator shall be at Bhubaneswar.
- c. Only the courts at Bhubaneswar shall have the jurisdiction to decide any dispute if it so arises other than the dispute covered under arbitration.

10. Amendments, Successors and Assigns

- a. All additions, amendments, modifications, and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorized representatives of the Parties.
- b. The Agreement shall be binding on and shall endure to the benefit of the Parties and their respective successors and permitted assigns.

11. Counterparts

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

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

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 the day of hereunto been affixed in the presence of and

Directors who have signed Presents in token thereof and Secretary/ Authorized Person who has countersigned the Same in token thereof

Signature:

Name:

Designation:

Address:

Fax:

E-mail:

Attn:

SIGNED, SEALED AND DELIVERED

For and on behalf of the Financier by:

Signature:

Name:

Designation:

Address:

Fax:

E-mail:

Attn:

SIGNED, SEALED AND DELIVERED

For and on behalf of Bhubaneswar Development Authority by:

Signature:

Name:

Designation:

Address:

Fax:

E-mail:

Attn:

Annexure 3**Timelines**

Sl. No.	Description	Timeline
1.	Issuance of Letter of Award (LoA)	-
2.	Appointed Date <ul style="list-style-type: none"> · Incorporation of SPV · Payment of 1st instalment of MLP · Bank Guarantee of outstanding instalments · Payment of Project Development Fees · Submission of Performance Security · Execution of Development Agreement 	<ul style="list-style-type: none"> · Within 30 days of issue of Letter of Award (LoA) · Execution of a Tripartite Agreement with the Lender & Developer, if requested by the Developer
3.	Compliance Date <ul style="list-style-type: none"> · Payment of 2nd & 3rd installment of MLP · Approvals & clearances from Competent Authority including the sanctioned plan of the project. · Registration with ORERA · Establishment of Project Escrow account with the lender 	<ul style="list-style-type: none"> · Consent from BDA to execute 'Agreement to Sale' (ATS) with allottees/ end-users of the Commercial cum/or Residential portion of the Composite Project.
4.	Completion Date <ul style="list-style-type: none"> · Handover the Community Market with all desired specifications to BDA and acceptance of the same. · Completion/Occupancy Certificate of the Composite Project from Competent Authority. 	<ul style="list-style-type: none"> · 60 months from Appointed Date. · Execution of Conveyance Deed for Developer's portion of Built-up Area, parking, and common area, with equivalent interest on land.

Images of Community Market at Gajwel, Telengana (for illustration only)







REQUEST FOR PROPOSAL

VOLUME II

INSTRUCTION TO BIDDERS

DEVELOPMENT OF COMMUNITY MARKET & RESIDENTIAL CUM/OR COMMERCIAL FACILITIES AT GHATIKIA ON PPP MODE

MARCH 2025 (CALL -2)

RFP No. 5965/BDA, 25.03.2024



**Bhubaneswar Development Authority
Akash Shova Building, Sachivalaya Marg
Bhubaneswar, Odisha 751 001**

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1.GENERAL INFORMATION & INSTRUCTIONS

INTRODUCTION TO VOLUME

- 1.1** The “**Instructions to Bidders (ITB) and Bidding Formats**” is being issued to bidders as **Volume II** of the RfP as given below:

Volume – I: Project Information Memorandum,
Volume – III: Draft Development Agreement and Draft Conveyance Deed.

- 1.2** This volume of the RfP sets out the bidding / evaluation process and provides necessary formats for bidders to prepare their Technical and Financial Bids for implementation of the “**Development of Community Market and Residential cum/or Commercial Facilities**” at Ghatikia, Bhubaneswar”, on PPP mode, Odisha (the **Project**). This part (Part-1) of Volume II of the Request for Proposal (RFP) must be read in conjunction with the other volumes of the RFP relating to information and conditions regarding the bids. Specific information on the Technical Bid is provided in Part-2, while the information on the Financial Bid is covered in Part-3. The prescribed formats for the submission of bids are annexed to this volume.
- 1.3** The bidders are advised to submit their bids complying with the requirements stipulated in this volume. Bids will be disqualified in case these are incomplete or non-responsive, and if the information is not submitted as per the suggested formats.

FORM OF BID / SUBMISSION / DEADLINE

- 1.4** This is an e-tendering process by the Government of Odisha through the Client. The Proposals must be submitted online with electronic files to be uploaded on the tender portal www.tendersodisha.gov.in (e-Procurement Portal).
No hard copy to be submitted except the Original Copy of Bank Guarantee submitted as Bid Security.
- 1.5** The Proposals shall consist of 2 parts: Technical Proposal and Financial Proposal. The Technical Proposals shall be evaluated as per the criteria mentioned in the RFP prior

to the opening of the Financial Proposal. An authorized signatory of the bidder (**Lead Member** in case of consortium) is required to initial each page of the original copy of the Technical Bid.

- 1.6** For the Financial Bid, the bidders are required to submit the Financial Bid only in the prescribed Bill of Quantities (BOQ) format provided in the tender portal www.tendersodisha.gov.in (e-Procurement Portal). An authorized signatory of the bidder (**Lead Member** in case of consortium) is required to initial each page of the Financial Bid.

The bidder must ensure that the Financial Bid should be only in the BOQ provided at the e-procurement portal and NOT be part of the technical proposal.

- 1.7** The **separate Bids** containing the **Technical Bid** and **Financial Bid** shall be uploaded on the tender portal www.tendersodisha.gov.in (e-Procurement Portal). Bidders shall search for the Bhubaneswar Development Authority in the portal to identify the Project.

- 1.8** The bids shall be received at the portal till **24.04.2025 by 4 PM** or any extension thereof. Interested Bidders are advised to register themselves in the portal and keep following updates on Corrigendum, Extension, Reply to Queries etc., if any. The portal will not accept bids after the last date and time of submission.

- 1.9** Any bidder seeking a clarification regarding the RfP may address the request in writing mentioning “**QUERIES: RfP Document for “Development of Community Market and Residential cum/or Commercial Facilities at Ghatikia, Bhubaneswar”**” to BDA, at the following address, till **09.04.2025**:

Secretary

Bhubaneswar Development Authority (BDA)

Akash Sobha Building, Sachivalaya Marg

Bhubaneswar – 751 001, Odisha (India)

E: bdabbsr1983@gmail.com; secretarybdabbsr@gmail.com

PRE-BID MEETING

1.10 A pre-bid meeting shall be held at **1600 hrs (4 PM)** on **09.04.2025** to clarify any queries that the bidders may have. **Queries in writing should be sent to BDA at least two (2) days prior to the date of the pre-bid conference at the e-mail given under 1.9 above.** The venue of the Pre-Bid Meeting would be:

Conference Hall of the BDA

1st Floor

Bhubaneswar Development Authority (BDA)

Akash Sobha Building, Sachivalaya Marg

Bhubaneswar – 751 001, Odisha (India)

1.11 The minutes of the pre- bid conference incorporating the clarifications and reply to queries will be uploaded on the tender portal www.tendersodisha.gov.in (e-Procurement Portal) and shall form part of this RfP document.

BIDDER'S RESPONSIBILITY FOR DATA

1.12 The bidder shall be responsible for all the data provided in Technical and Financial Bids. The Bids should be prepared in reasonable detail to enable BDA or its nominated agencies/advisors to evaluate the Bids and select the bidder.

1.13 The bidder is advised to carry out necessary technical surveys, field investigations, market & demand assessment, etc. at its own cost and risk, before submitting the Technical and Financial Bid.

1.14 BDA or any of its agencies/consultants/advisors reserves the right to vet and verify any or all information submitted by the Bidder. BDA's decision regarding any Bidder's eligibility or otherwise shall be final and binding and BDA and/or any of its agencies/consultants/ advisors would be under no obligation and/ or responsibility to inform any Bidder of the grounds of such decision / rejection.

1.15 Bidders shall provide evidence of their continued eligibility, in accordance with the Technical Bid in a manner that is satisfactory to BDA and as BDA may reasonably

request till signing of Development Agreement and subsequently Conveyance Deed. A Bidder may be disqualified, if it is determined by BDA at any stage of the bidding process, that the Bidder will be unable to fulfil the requirements of the Project or fails to continue to satisfy the qualification criteria and RFP conditions.

- 1.16** Supplementary information or documentation regarding qualifications if any sought for from the Bidders at any time must be provided within the time frame stipulated in such request(s).
- 1.17** Bidders may be required to periodically update, at any time as may be notified by BDA, the information submitted in their Bids as regards the following:
- (a) Evidence of access to project funding and its sources; provided in this RfP in totality. The details of the Project, given in this RfP and veracity of the data or designs and drawings given in this RfP.
 - (b) Annual Reports including Balance Sheet and Profit & Loss Account of the bidders or of all members of the Consortium.
 - (c) Proof of experience in designing, constructing, implementing, operating, and maintaining and marketing projects relevant to the Proposed Project.
- 1.18** Bidders may, prior to submitting their Bid for the Project, visit and examine the Site of the Project and its surroundings at their own cost and expense and obtain and ascertain for themselves, all technical data, demand, and other information necessary for preparing their Bids.
- 1.19** For the above purpose, the bidders may approach BDA for assistance during any site visit. The bidders shall be responsible for all arrangements and shall release and indemnify BDA and/or any of its agencies/consultants/advisors from and against all liability in respect thereof and shall be solely responsible for any personal injury, loss of or damage to property or any other loss, damage, costs, or expenses, however caused, which, but for the exercise of such permission, would not have arisen.
- 1.20** The Bidders shall be deemed to have full knowledge of the site, whether physically inspected or not and any objection / allegation of inadequate / nor availability /

suppression of information either before or after submission of bid shall not be entertained irrespective of its consequences.

GENERAL INFORMATION TO BIDDERS

- 1.21** The bidder shall bear all costs associated with the preparation and submission of its Technical and Financial Bids, including data collection, analysis, design, etc. Neither the BDA nor any of its agencies/consultants/advisors will be responsible or liable for all such costs, regardless of the conduct or outcome of the bidding process.
- 1.22** Information relating to the examination, clarification, evaluation and comparison of proposals and recommendations for the award of a contract shall not be disclosed to Bidders or any other persons not officially concerned with such process until the award to the successful Bidder has been announced. Any effort by a Bidder to influence BDA or any of its agencies/consultants/advisors towards evaluation of bids shall result in rejection of the bid.
- 1.23** To assist in the examination, evaluation, and comparison of proposals, BDA or any of its agencies/consultants/advisors may, at its discretion, ask any Bidder for clarification. BDA or any of its agencies/consultants/advisors may utilize the services of any consultant or other advisor to assist in the examination, evaluation, and comparison of proposals.
- 1.24** In case of difference between original and photocopies, information/ data/ bid provided in the original would prevail.
- 1.25** BDA will check bids determined to be substantially responsive for any arithmetic errors. Wherever there is discrepancy between the amounts / percentage in figures and in words, the amount / percentage expressed in words will govern. Any such corrections made by BDA shall be considered as binding upon the bidder. If the bidder does not accept the corrections in proposal, BDA shall reject the Bid and Bid Security will be forfeited.

1.26 Eligible Bidders

The Bidder may be a single entity (“Bidding Company”) or a group of entities (“Consortium”) coming together to implement the project subject to compliance with applicable laws, policies, and guidelines of Government of India. The term Bidder used hereinafter would therefore apply to both a single entity and a Consortium.

An eligible entity is one which satisfies the following:

- . The entity is a Company under the Companies Act, 1956/ 2013.

OR

- . The Entity is a Trust under the Indian Trusts Act, 1882

OR

- . The Entity is a Statutory Board/ Authority/ Corporation created in India under a separate Law/ Act of India/ any State Govt.

OR

- . A partnership firm registered under the Partnership Act 1932.

OR

- . A limited liability partnership registered under the Limited Liability Partnership Act 2008.

The Bidder should submit a Power of Attorney as per the format enclosed at **Annexure A6**, authorizing the signatory of the Bid to commit the Bidder. In case the Bidder is a consortium, it must comply with the additional requirements for bidding as a Consortium as specified in the **Clause 1.27 – 1.41** (Instructions to Bidders”).

At any point in time in the Bidding Process, if required by BDA, it is the Bidders’ responsibility to provide such evidence of their eligibility as per the terms of the RFP, to the satisfaction of BDA. Bidders may be required to periodically update (at times to be notified by BDA) the information submitted in their Capability Statement as regards the following:

- Evidence of availability of financial resources.
- Commitments of other works awarded since submitting the Bid.
- Any other information that might be requested.
- Any information known to the Bidder that may affect its ability to perform the contractual obligation(s).

A Bidder may be disqualified if it is determined by BDA, at any stage of the bidding process that the Bidder fails to continue to satisfy the Eligibility Criteria /Technical and Financial Criteria. RFP is open to participation by any person or bidder in any manner from any country subject to Applicable Laws and regulations of Government of India.

- 1.27** The bidder who has been selected pursuant to the evaluation of the bids as set out in the RFP document would be termed as **Selected Bidder** and to whom the Letter of Award (**LoA**) is to be issued. The Selected Bidder in the form of a single entity ('Single Bidder') or a group of entities ('Consortium') shall fulfil some criteria to enter into a Development Agreement. Such criterion would be specified in the **LoA** (Letter of Award). One of the important conditions is formation of Special Purpose Vehicle Company (**SPV**) under Companies Act 2013 for the purpose of this project. It will be the ultimate body termed as **Developer** who will enter into the Development Agreement and Conveyance Deed and remain responsible for all consequential actions arising out of Development Agreement and Conveyance Deed.

INSTRUCTIONS FOR BIDDING CONSORTIA

- 1.28** In case the bidder is a Consortium, the members of the Consortium shall furnish a Power of Attorney designating one of the members, as per the Consortium Agreement, as their Lead Member. The Lead Member would be fully responsible for satisfactory performance under the terms of the Development Agreement and Conveyance Deed to be signed with BDA.
- 1.29** Number of companies in a Consortium would be limited to two (**2**).
- 1.30** Wherever required, the Bid should contain the information required for each member of the Consortium. The eligibility criteria of the bidder apply to aggregate qualification of members, in case the bidder is a Consortium.
- 1.31** The bid shall be signed by the duly authorized signatory of the Lead Member and shall be legally binding on all the members of the Consortium.

- 1.32** The Bid should include a description of the roles and responsibilities of individual members of the Consortium.
- 1.33** The Bidder (aggregate in case of Consortium) must be able to demonstrate its ability of financial capacity to invest in the project.
- 1.34** Any change in the composition of a bidding consortium after the final date of submission of bids, as given in this document, would result in disqualification of the Bidder.
- 1.35** No member can propose to be a member of more than one Bidding Consortium for submission of bids for the Project.
- 1.36** The Lead Member of the Consortium shall not hold less than 51% share until expiry of the construction period including extension, if any, and till expiry of the defect liability period of the property.
- 1.37** In case of formation of SPV, the members of the Consortium shall not be the independent member of the SPV, directly or indirectly.
- 1.38** Any Member, 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 Share and voting rights of the SPV from the Appointed Date until the expiry Construction Period, including extension, if any and till the expiry of Defect Liability Period of the developed property.
- 1.39** Consortium, as a whole, shall hold not less than 51% of the total Share and voting rights of the SPV till the expiry of the construction period including extensions, thereof, if any and till the expiry of Defect Liability Period of the developed property.
- 1.40** If the Selected Bidder is a single entity, then the Selected Bidder shall hold at least 51% (fifty-one per cent) of the total Share and voting rights of the SPV from the Appointed Date (i.e. execution of Development Agreement) and until the expiry of the Construction Period including extensions, thereof, if any and till the expiry of Defect Liability Period of the developed property.

- 1.41** After the expiry of the lock-in periods specified above, the Selected Bidder and in case of a Consortium, the Members of the Consortium, will be entitled to dilute their share in the total Capital of the SPV without the consent of BDA, provided that, the Selected Bidder shall inform BDA of any such change in the shareholding at the earliest.
- 1.42** A copy of the Consortium Agreement should be submitted along with the Bid. The Consortium Agreement entered into among the members of the Consortium should be specific to this Project and should contain the specified requirements failing which the Bid shall be liable to be rejected.

Amendment of RFP

- 1.43** BDA, at its sole discretion, may choose to modify the RFP by issuing an Addendum before last date of submission of bid. The draft Development Agreement and draft Conveyance Deed may be modified till execution of the same with the Selected Developer.
- 1.44** Any Addendum and Corrigendum thereto before last date of submission of bid, thus issued shall be part of the RFP and shall be uploaded in the tender portal www.tendersodisha.gov.in (e-Procurement Portal). BDA will assume no responsibility for non-receipt of the Addendum and Corrigendum by any prospective bidder(s).
- 1.45** To give prospective Bidders reasonable time in which to take any Addendum and/or Corrigendum into account in preparing their bids, BDA may, at its sole discretion, extend the last date of submission of bid.

After the bidding process, any amendment(s) in the Draft Development Agreement and Draft Conveyance Deed may be made on the mutual consent of both the selected bidder/ Developer and BDA.

Schedule of Bidding Process

1.46 The BDA shall endeavour to adhere to the following schedule:

SI. No.	Event Description	Date
1	Issue of RFP	25.03.2025
2	Last date of receiving queries	09.04.2025
3	BDA response to queries	Latest by 7 days prior to Last date of submission of bids
4	Pre- Bid Meeting	09.04.2025 at 4 PM
5	Last Date of Submission of Bid	24.04.2025 by 4 PM
6	Opening of Technical Bids	24.04.2025 by 5 PM
7	Validity of Bids	180 days from the date as specified in point 4 of this table
8	Opening of Financial Bids	To be intimated to technically qualified bidders.

VALIDITY OF TERMS OF THE BID

1.47 Each bid shall indicate that it is a firm and irrevocable offer and shall remain valid and open for a period of not less than 180 days from the last date for submission of the bid. Non-adherence to this requirement may be a ground for declaring a bid as non-responsive. However, BDA may solicit any bidder's consent for extension of the period of validity if the bidder agrees to reasonably consider such a request. The request and response shall be in writing. A bidder accepting such an extension shall not be permitted to modify their bid in any other respect.

MISCELLANEOUS INSTRUCTIONS TO BIDDERS

1.48 All Bidders should note the following:

- Bids that are incomplete in any respect or those that are not consistent with the requirements as specified in this *Request for Proposal* may be considered non-responsive and may be liable for rejection.

- Strict adherence to formats, wherever specified, is required. Non-adherence to formats shall be a ground for declaring a Bid non-responsive.
- All communication and information should be provided in writing and in English language only.
- All financial data shall be in Indian Rupees only.
- The metric system shall be followed for units.
- All communication and information provided should be legible, and wherever the information is given in figures, the same should also be mentioned in words. In case of conflict between amounts stated in figures and words, the amount stated in words will be taken as correct.
- No change in, or supplementary information to a Bid shall be accepted once submitted. However, BDA or any of its agencies/consultants/advisors reserves the right to seek additional information from the Bidders, if found necessary, during the course of evaluation of the Bid. Non-submission, incomplete submission or delayed submission of such additional information or clarifications sought by BDA or any of its agencies/consultants/advisors, can be a ground for rejecting the Bid.
- If any claim made or information provided by the Bidder in the Bid or any information provided by the Bidder in response to any subsequent query by BDA or any of its agencies/consultants/advisors, is found to be incorrect or is a material misrepresentation of facts, then the Bid will be liable for rejection. Mere clerical errors or bonafide mistakes may be treated as an exception at the sole discretion of BDA or any of its agencies/consultants/advisors, and if BDA or any of its agencies/consultants/ advisors, is adequately satisfied.
- The Bhubaneswar Development Authority is in the process of identifying PPP Partners for two (2) numbers of Community Market projects at sites Ghatikia & Jharpada. As per guidance of the Competent Authority, in case the same Bidder (Single Bidder/ Lead Member/ Consortium Member) emerges as the preferred bidder for both the projects, after conducting the transparent and competitive bid process, then the financial eligibility for the second project shall be evaluated considering the summation of the required financial capacity for both the projects. This can be done after finalization of the First project, if successful Bidder has also offered for second project, its Financial Bid shall be considered for opening provided it meets summation of financial capacity of both projects.

POWERS OF ATTORNEY

- 1.49** For Bidding Consortia, each member of the consortium (apart from the lead member) shall submit a Power of Attorney, registered (or notarized) and on a stamp paper of an appropriate value, appointing the lead member to act on its behalf in such capacity as its representative for the implementation of the Project by the Bidding Consortium. The format for the same is provided as **Annexure A5** to this document.
- 1.50** A Power of Attorney, registered (or notarized) on a stamp paper of an appropriate value, issued in favour of a specified person to act as the authorised signatory of the bidding consortium/Single bidder for the purpose of signing documents, making corrections/modifications and interacting with BDA or any of its agencies/consultants/advisors, and acting as the contact person shall be submitted by the single bidder or the lead member of the consortium, as applicable. The format for the same is provided as **Annexure A6** to this document.

BID SECURITY TO BE PAID BY THE BIDDERS

- 1.51** Each bidder shall furnish, along with the Technical Bid, a Bid Security amounting to **INR 2.5 Cr** (Rupees Two Crores and Fifty Lakhs only) **in the form of Bank Guarantee** for the Project.
- 1.52** The Bid Security shall be in the form of an unconditional and irrevocable Bank Guarantee from a scheduled / nationalized bank in India (in the format as **Annexure-8**) in favour of "Bhubaneswar Development Authority". The Bid Security shall remain valid for a period of **90** (ninety) days beyond the original validity period for the bid.
- 1.53** Any bid not accompanied by an acceptable Bid Security, in the manner stated above, shall be the ground amongst others for rejection of bid as nonresponsive.
- 1.54** The scanned copy of the Bid Security will be enclosed (as Annexure-8) in the Technical Proposal and the hard copy will have to be submitted, in a sealed envelope, at the following address, before the last date and time of online submission of the technical and financial bid:

“BID SECURITY: Development of Community Market at Ghatikia, Bhubaneswar”

Secretary

Bhubaneswar Development Authority (BDA)

Akash Sobha Building, Sachivalaya Marg

Bhubaneswar – 751 001, Odisha (India)

- 1.55** The bid security of the bidders other than the selected bidder will be returned as promptly as possible, but not later than (60) days after the expiration of the bid validity period, or selection of the selected bidder, whichever is earlier.
- 1.56** The bid security of the selected bidder shall be extended by a period of 90 days beyond the original validity period as stated in 1.52 above or till submission of Construction Performance Security, whichever is later. On submission of the Construction Performance Security the bid security of the selected bidder shall be returned.
- 1.57** The bid security will stand forfeited if:
- (a) Bids are withdrawn within the validity period.
 - (b) Selected Bidder fails to provide an acceptance of the Letter of Award, meet the requirements mentioned in the Letter of Award (LoA), and sign the Development Agreement.
 - (c) Selected Bidder fails to provide Construction Performance Security within the stipulated time-period.
- 1.58** The Selected bidder will be required to make available performance securities as per Annexure-15; and described in the Draft Development Agreement and Draft Conveyance Deed (Volume 3 of RfP).

MODIFICATIONS OR WITHDRAWALS OF BIDS

- 1.59** Any Bidder may modify or withdraw its Bid after submission prior to the deadline for submission of bids, provided that BDA receives in time the written notice of the modification or withdrawal. The responsibility of submitting the modified bid, within the deadline for submission of bids will rest solely with the bidder.

1.60 No bidder shall be allowed to modify its bid after the deadline for submissions. Bidder shall be allowed to modify the bid after the last date, only if the same is requested by BDA, to accommodate clarifications on the Bid submitted, subject to the Bid substantially conforming to the requirements of this solicitation.

1.61 In the event of withdrawal of a bid by any bidder within the validity period, the bid security submitted by the bidder shall stand forfeited.

RESPONSIVENESS OF BIDS

1.62 A Bid shall be deemed “non-responsive” and lead to rejection of the bid if it does not satisfy any of the following conditions:

- It is not received by the submission date and time in the e-procurement portal and in the form as specified in this RfP Document.
- It does not include sufficient information/qualification for it to be evaluated and/or is not in the formats specified in this RfP.
- It is not signed and/or sealed in the manner or accompanied by powers of attorney as specified in this RfP.
- Non-submission of Bank Guarantee of the specified amount as Bid Security.
- Non submission of required document (s) as specified in this RfP.

OPENING OF BIDS

1.63 The Financial Bids would be opened after completion of the verification of the compliance of the general documentation submitted as Technical Bid. The Financial Bids of only those bidders whose Technical Bids have been found to be responsive and meeting the minimum technical parameters (**Clause 1.68**) and financial parameter (**Clause 1.69**) would be opened. BDA or any of its agencies/consultants/advisors shall duly inform the technically qualified bidders of the time and place for the opening of Financial Bids in the e-procurement portal. The Financial Bids of bidders failing the evaluation of Technical Bids will not be opened.

Criteria for Evaluation

Evaluation Parameters

1.64 The Bidder's competence and capability is proposed to be established by the following parameters:

(a) Technical Experience

(b) Financial capability factor, in terms of:

i. Average Annual Turnover (aggregate in case of consortium)

1.65 On each of these parameters, the Bidder would be required to meet the evaluation criteria as detailed in this Section. Bidders meeting all the criteria only will be qualified for further evaluation of the Proposal.

1.66 Bids without Bid Security will be disqualified.

MINIMUM QUALIFYING CRITERIA FOR THE BIDDER

1.67 The Bidders should satisfy the following minimum parameters.

TECHNICAL PARAMETERS

1.68 Bidder (Single or Consortium) to demonstrate the capability of:

Minimum Development/ Construction capability of (aggregate in case of Consortium):

- at least 63,000 sq. mtrs, Residential/Commercial/ Institutional built-up space in the last 5 years (ending 31 March 2024), in a Single Project.

OR

- at least two numbers of Residential/Commercial/Institutional projects with a built-up space of 40,000 sq. mtrs each, in the last 5 years (ending 31 March 2024).

FINANCIAL PARAMETERS

1.69 **Minimum Annual Average Turnover (aggregate in case of Consortium):** Rs. 75 Crores (Rupees Seventy-Five Crores only) over the last 3 Financial Years (i.e. FY 2021-22; FY 2022-23; FY 2023-24).

1.70 To qualify for the opening of Financial Bid, a bidder must comply with all the Annexures as listed in **2.1** and meeting the minimum technical and financial parameter as listed in **Clause 1.68 and Clause 1.69.**

1.71 BDA intends to complete the entire process of bid evaluation and award within a period of 30 days from receipt of bids. In order to enable BDA to meet the target,

Bidders are expected to respond expeditiously to clarifications, if any, requested during the evaluation process. BDA shall adhere to the above schedule to the extent possible. BDA, however, reserves the right to modify the same. Intimation to this effect shall be given to all Bidders including request for extending the bid validity if required.

- 1.72** In addition to the other requirements covered above, the Bidder should provide information about any litigation or arbitration resulting from contracts undertaken by the Bidder (*including individual members of bidding consortium*) in the last **five (5)** years. Suppression of any information or material in this regard would be construed as a fundamental breach and BDA reserves the right to take appropriate action including cancellation of the Bid, forfeiting of Bid Security, etc. as may be deemed fit and proper by BDA at any time without giving any notice to the Bidder in this regard.

2. INSTRUCTIONS FOR TECHNICAL BID SUBMISSION

OVERALL SUBMISSION FOR GENERAL DOCUMENTATION

- 2.1** General Documentation (*Submission must for proposal to be considered technically responsive*)

In this section, the Bidders will provide the general documentation and information required for the proposals to be considered responsive. Some of these are applicable only for specific bidding firms and need not be provided by others (**Annexures A3, A4 and A5**). The formats for these documents are provided as Annexures to this volume (**Annexures A1-B1**), covering the following:

CONTENTS

Section 1	General parameters and evaluation
Annexure A1	Covering letter for Technical Bid
Annexure A2	Description of the Bidding Company, Project Experience & Financial Strength
Annexure A3	Letter of Acceptance/ Memorandum of Understanding (MoU) (<i>applicable in case of Consortium</i>)
Annexure A4	Consortium Agreement among the Consortium (<i>applicable only if the proposal is submitted by the Consortium</i>)
Annexure A5	Power of attorney for appointing Lead Member (<i>in case of Consortium</i>)
Annexure A6	Power of attorney for appointing signatory for the proposal

Annexure A7	Information on Litigation
Annexure A8	Bid Security
Annexure A9	Estimated Project Cost
Annexure A10	Means of Financing
Annexure A11	Financial Qualification: Average Annual Turnover
Annexure A12	Assessment of implementation capability to execute projects
Annexure A13	Conceptual Design of the Composite Project
Annexure A14	Draft Letter of Award
Annexure A15	Draft Bank Guarantee format for Construction Performance Security
Annexure A16	BG for the outstanding instalments of Maximum Land Premium (MLP)
Annexure B-1	Format for Financial Bid

2.2 The Financial Plan to be submitted by the Bidder will outline over the 5 years (maximum time allowed for completion) in the form of following formats for:

- a) Project Cost, and
- b) Means of Financing for the project

The Bidder must fill all the information as required in the listed annexure formats (Annexure A9 –A10) and present the same towards compliance of this section.

2.3 Bidders are allowed to tie up with Consortium Members having specialised experience/expertise of relevance to the Project that is not available to the Bidder in-house. The Bidders must furnish Consortium Agreement with the proposed Consortium Member for the experience/expertise of the Consortium Member to be considered. The coverage of the agreement is provided as **Annexure A4**.

2.4 In addition to the above, each Bidder is required to provide as part of the Technical Bid an estimate of the Total Project Cost and likely distribution of these costs across the proposed project components as per the formats provided in **Annexure A 9**. Each Bidder shall also provide as part of the Technical Bid an overall financing plan showing the proportion of funding expected to be met through equity and debt. However, if Bidder is not proposing any debt as a means of finance, **Annexure A 10** may not be provided.

2.5 Company/Consortium details on **Annexure-A 2** with copy of Memorandum of Association/Article of association.

2.6 Audited financial accounts of FY 2020-2021, FY 2021-2022, FY 2022-2023.

IMPLEMENTATION CAPABILITY

2.7 This parameter pertains to demonstration of past technical strength and capability to execute the project collectively for the major components of the “**Development of Community Market at Ghatikia, Bhubaneswar**” including the Composite Structure with Community Market and allied facilities, Residential cum/or Commercial facilities, parking, and support infrastructure over 2.796 acres of prime land at Ghatikia, Bhubaneswar. Such demonstration is expected through either in-house experience OR experience of the Consortium members (maximum two allowed including Lead Member).

2.8 For demonstrating Implementation Capability, Single Bidder/both Bidders in case of Consortium must fill all the information as required in the listed annexure formats (Annexure A12) and present the same towards compliance of this section. The experience certificate should be certified by the Statutory Auditor/ Chartered Accountant for both the participating firms, in case the bidder is a consortium.

2.9 All the timelines related to this Request for Proposal (RfP) may be extended at the sole discretion of Bhubaneswar Development Authority.

3. INSTRUCTIONS FOR FINANCIAL BID SUBMISSION

Although the financial bid BOQ will be submitted at the same time with technical bid, in the e-procurement portal, it will be opened only after completing the evaluation of technical bids. Prior to the evaluation of the financial bid, BDA may determine whether each bid or bidder, as the case may be:

- (i) Continues to meet the eligibility criteria as given in this RfP.
- (ii) Is in complete compliance with the Technical Bid requirements.
- (iii) Is presented in a manner that matches with the requirements of the BOQ.

3.2 Each bidder shall indicate clearly in the financial bid the amount for Land Premium for 1.132 Hectares (2.796 acres). The figure shall be quoted in INR. The Maximum

Land Premium shall be fixed and firm in all respect at any point of time during the bidding process. However, Selected bidder shall require to proportionately modify the quoted Land Premium and area of Community Market in case of a variation in the land area for the purpose of this project.

- 3.3 In case of tie among the bidders based upon the same quote, BDA may call / ask for a fresh financial BOQ submission in the same manner as the original, in the e-procurement portal, only from such bidders (whose quotes have been found to be the same) on a fixed date and time as decided by BDA. In the fresh new financial submission, the Bidders must quote a figure higher than the figure quoted in the earlier financial bid.
- 3.4 The Selected Bidder/Developer has the freedom to decide on the overall layout, design and architecture of the various components in the project, subject to the specified development controls and obtaining of required approvals:
- i. The Community Market will be air-conditioned, spread across G+2 floors with an atrium at the centre.
 - ii. There must be at least 220 numbers of shops measuring 150 sq. ft internal area.
 - iii. Common area of at least 40% inside the 'Community Market' excluding area covered by shops for: circulation, passage, staircase, storage, toilet, and others.
 - iv. Separate zoning for Vegetarian and Non-vegetarian items, washing areas and toilet facilities.
 - v. Ceiling height must be suitable to ensure natural light.
 - vi. Space for Store and industrial refrigerators in the common area.
 - vii. Dedicated and separate entrance for the Community Market and Residential cum/or Commercial facilities. The Entrance/Exit should be designed in a manner that there is no conflict in the two facilities i.e. Community Market and Residential cum/or Commercial facilities.
 - viii. Dedicated parking area of at least 60% of total built-up area of Community Market (including circulation) for the customers visiting the Community Market, nearest to the market and preferably on the first (1st) basement.

- ix. The indicative specifications of the Community Market are available in Annexure 1.
- x. All statutory approval is the responsibility of the bidder.
- xi. The FAR available for the site and charges beyond base FAR will be guided by the Odisha Development Authorities (Planning and Building Standards) Rules, 2020.

3.5 The intention to sign Development Agreement would be conveyed by BDA to the Selected Bidder whose bid has offered the Maximum Land Premium and who satisfies all other compliance requirements. Prior to expiration of the period of proposal validity, BDA will notify the Selected Bidder by a registered letter (i.e. LoA) that its bid has been accepted.

3.6 BDA reserves the right to accept or reject any proposal, and to annul the bidding process and reject all proposals, at any time prior to the Letter of Award to the Selected Bidder, without assigning any reason and without thereby incurring any liability towards the affected Bidder or Bidders or any obligation to inform the affected Bidder or Bidders of the grounds for BDA's action.

3.7 After completing the evaluation of Financial Bid (BOQ) and identifying the Selected Bidder, BDA shall issue a Letter of Award (LoA) to the Selected Bidder, indicating its intention for signing the Development Agreement.

Within 30 days, upon issuance of such LoA to the Developer and before signing of the Development Agreement, the Developer shall be required to meet the payment of:

- 1st Instalment (10% of MLP)
- Bank Guarantee for 2nd Instalment (20% of MLP)
- Bank Guarantee for 3rd Instalment (70% of MLP)
- The Developer will have the option to make the full payment before execution of Development Agreement and avoid the payment of Bank Guarantee of outstanding amounts.
- INR 1,00,00,000/- (Indian Rupees One Crore only) plus applicable GST to be paid to 'Bhubaneswar Development Authority' in the form of a Demand Draft, by the preferred bidder, before execution of the Development Agreement, and in the

manner specified in the Letter of Award (LoA), as non-refundable reimbursement of Project Development Expenses.

- **Performance Security** of INR 30 Cr (Indian Rupees Thirty Crores only) in the form of an unconditional and irrevocable Bank Guarantee valid for 60 months.

Note: The Bank Guarantee for 2nd Instalment & 3rd Instalment will be released to the Developer on payment of the amounts of 2nd Instalment & 3rd Instalment within 90 days and 240 days respectively.

4. PROCEDURE TO PARTICIPATE IN ONLINE BIDDING- E-PROCUREMENT

1. PARTICIPATING IN THE BID IN THE E-PROCUREMENT PORTAL:

The Contractor/Bidder intending to participate in the bid is required to register in the Portal using his /her active personal/ official e-mail ID as his Login ID and attach his/her valid Digital Signature Certificate (DSC) to his/her unique Login ID. The DSC used must be of appropriate class (Class II or Class III) issued from a registered Certifying Authority such as n-Code, Sify, TCS, MTNL etc. He/ She has to submit the relevant information as asked for about the firm/ contractor. **The portal registration of the bidder/ firm is to be authenticated by the State Procurement Cell after verification of original valid certificates/ documents such as (i) PAN and (II) Registration Certificate (RC)/ GST Registration Certificate and GSTIN (for procurement of goods) of the concerned bidder. The time period of validity in the portal is at par with validity of RC/ GST Registration Certificate and GSTIN. Any change of information by the bidder has to be re-authenticated by the State Procurement Cell.** After successful authentication, the bidder can participate in the online bidding process.

Contractor not registered with Government of Odisha, can participate in the e-procurement after necessary enrollment in the portal but have to subsequently register themselves with the appropriate registering authority of the State Government before award of the work as per prevalent registration norms of the State.

- a) To log on to the portal the Contractor/Bidder is required to type his/her username and password. The system will again ask to select the DSC and confirm it with the password of DSC. For each login, a user's DSC will be validated against its date of validity and also against the Certificate Revocation List (CRL) of respective CAs stored in system database. The system checks the unique ID, password and DSC combination and authenticates the login process for use of portal.
- b) The tender documents uploaded by the Tender Inviting Officer in the website <https://tendersodisha.gov.in> will appear on the "Active Tenders" Section of the homepage. Only a small notification will be published in the newspaper specifying the work details along with mention of the specific website for details. The publication of the tender will be for a specific period of time till the last date of submission of bids as mentioned in the 'Invitation for Bid' after which the same will be removed from the list of Active tenders. Any bidder can view or download the bid documents from the web site.
- c) The software application has the provision of payment of cost of tender document through payment gateways of authorized bankers by directly debiting the account of the bidders.

- 1.1 Furnishing scanned copy of such documents is mandatory along with the tender documents otherwise his/her bid shall be declared as non-responsive and thus liable for rejection. Bidders participating through Joint Venture shall declare the authorized signatory through Memorandum of Understanding duly registered and enroll in the portal in the name and style of the joint venture company. It is mandatory that the DSC issued in the name of the authorized signatory is used in the portal.
- 1.2 In the case of any failure, malfunction, or breakdown of the electronic system used during the e-procurement process, the tender inviting officer shall not accept any responsibility for failures or breakdowns other than in those systems strictly within their own control.
- 1.3 Any third party/company/person under a service contract for operation of e-procurement system in the State or his/their subsidiaries or their parent companies shall be ineligible to participate in the procurement processes that are undertaken through the e-procurement system irrespective of who operates the system.
- 1.4 For submission of Bids through the E-Procurement Portal, the bidder shall upload the scanned copy/copies of document in prescribed format wherever warranted in support of eligibility criteria and qualification information. The online bidder shall have to produce the original documents in support of the scanned copies and statements uploaded in the portal before the specified date as per DTCN.
- 1.5 Each bidder shall submit only one bid for one package. A bid is said to be complete if accompanied by cost of bid document and appropriate bid security. The system shall consider only the last bid submitted through the E-Procurement portal.
- 1.6 The bidder may ask questions related to tender online in the e-procurement portal using his/her DSC, provided the questions are raised within the period of seeking clarification as mentioned in tender call notice/Bid. The Officer inviting the Bid/Procurement Officer- Publisher will clarify queries related to the tender.
- 1.7 The details of drawings and documents pertaining to the works available with the officer inviting the Bid as well as in the office of the Superintending Engineer and Executive Engineer as mentioned in the Contract Data will be open for inspection by the bidders. The bidder is required to download all the documents for preparation of his bid. It is not necessary for the part of the Bidder to upload other Bid documents (after signing) while up-loading his bid. He is required to upload documents related to his eligibility criteria and qualification information and Bill of Quantities duly filled in. It is assumed that while participating in the bid, the bidder has referred all the drawings and documents. Seeking any revision of rates or backing out of the bid claiming for not having referred to any or all documents provided in the Bid by the Officer Inviting the Bid will be construed as plea to disrupt the bidding process and in such cases the bid security shall be forfeited.
- 1.8 Any addendum / corrigendum/ cancellation of tender shall be published in the website <https://tendersodisha.gov.in>, notice board and through paper publication and such notice shall form part of the bidding documents.
- 1.9 The system generates a mail to those bidders who have already uploaded their tenders and those bidders if they wish can modify their tenders. The bidders are required to

which the website till last date and time of bid submission for any addendum/ corrigendum/ cancellation thereof. Tender inviting authority is not responsible for communication failure of system generated mail. All the volumes/documents shall be uploaded / provided in the portal by the Officer inviting the bid. The bidder shall carefully go through the document and prepare the required documents and upload the scanned documents in Portable Document Format to the portal in the designated locations of Technical Bid. He will fill up the rates of items or percentage in the BOQ downloaded for the work in designated Cell and uploads the same in designated locations of Financial Bid. Bidders are to submit only the original BoQ uploaded by publisher after entering the relevant fields without any alteration/deletion/modification. Multiple BoQ submission shall lead to cancellation of bid. In case of item rate tender, bidders shall fill in their rates other than Zero value in the specified cells. In the percentage rate tender, the bidder quoting Zero value is valid and will be taken as Schedule of Rates. Submission of document shall be affected by using DSC of appropriate class.

2. PAYMENT OF EMD/ BID SECURITY AND COST OF BID DOCUMENTS:

The Bidder shall furnish, as part of his Bid, a Bid security for the amount mentioned under NIT/Contract Data in online mode. Non-submission of bid security within the designated period shall debar the bidder from participating in the on-line bidding system and his portal registration shall be cancelled. His name shall also be informed to the registering authority for cancellation of his registration.

- 2.1 The EMD or Bid Security payable along with the bid is as mentioned in the bid document.
- 2.2 The tender accepting authority will verify the originals of all the scanned documents of the successful lowest bidder within 5 days of opening of the tender (price bid). In the eventuality of failure on the part of the lowest successful bidder to procedure the original documents, he will be debarred in future from participating in tender for 3 years and will be blacklisted by the competent authority. In such as situation, successful L-2 bidder will be required to produce his original documents for consideration of his tender at the negotiated rate equal to L1 bidder.
- 2.3 The Government of Odisha has introduced e-payment gateway into the portal for payment of cost of Bid and Bid Security/ Earnest Money Deposit. The process of using e-payment gateway is mentioned in the "Procedure for Electronic receipt, accounting and reporting of Cost of Tender Paper and Earnest Money Deposit on submission of bids".

3. FORMAT AND SIGNING OF BID:

(Logging to the Portal)-The Contractor/ Bidder is required to type his/her Login ID and Password. The system will again ask to select the DSC and confirm it with the password of DSC as a second stage authentication. For each login, a user's DSC will be

validated against its date of validity and against the Certificate Revocation List (CRL) of respective CAs stored in system database. The system checks the unique Login ID, Password and DSC combination and authenticates the login process for use of portal. The bidder can download the tender of his choice and save it in his system and undertake the necessary preparatory work off-line and upload the completed tender at his convenience within the final date and time of submission. The bidder shall only submit a single copy of the required documents and Price Bid in the portal. In the Financial bid, the bidder cannot leave any figure blank. He has to only write the figures; the words will be self-generated. The Bidders are advised to upload the completed Bid document well ahead of the last date & time of receipt to avoid any last-minute problem of power failures etc.

- 3.1 The Bidder shall go through the Bid carefully and list the documents that are asked for submission. He shall prepare all documents including Declaration form, price bid etc. and store in the system.
- 3.2 The bidder shall log on to the portal with his DSC and move to the desired tender for uploading the documents in appropriate place one by one simultaneously checking the documents. Once the Bidder makes sure that all the documents have been uploaded in an appropriate place, he clicks the submit button to submit the bid to the portal.
- 3.3 The bids once submitted cannot be retrieved or corrected. Tender cannot be pre-opened and cannot be submitted after the due date and time. Therefore, only after satisfying that all the documents have been uploaded, the Bidder should activate submit button.
- 3.4 In the e-procurement process each process is time stamped. The system can identify each individual who has entered into the portal for any bid and the time of entering into the portal.
- 3.5 The Bidder should ensure clarity of the document uploaded by him to the portal, especially the scanned documents by taking out sample printing. Non-submission of legible documents may render the bid non-responsive. However, the Officer inviting the Bid, if so, desires can ask for legible copies or original copies for verification within a stipulated period provided such document in no way alters the Bidder's price bid. If the Bidder fails to submit the original documents within the stipulated date, his bid security shall be forfeited.

4. SUBMISSION OF BIDS: -

- 4.1 The bidder shall carefully go through the tender and prepare the required documents. The bid shall have a Technical Bid and a Financial Bid. The Technical bid generally consists of GSTIN, PAN, Registration Certificate, Affidavits, Profit Loss statement, Joint venture agreement, List of similar nature of works, work in hand, list of machineries and any other information required by OIT. The Financial Bid shall consist of the Bill of Quantities (BOQ) and any other price related information/undertaking including rebates.

- 4.2 Bidders are to submit only the original BOQ (in .xls format) uploaded by Procurement Officer Publisher (Officer Inviting Tender) after entering the relevant fields without any alteration/ deletion/ modification. Multiple BOQ submission by bidder shall lead to cancellation of bid. In case of items rate tender, bidders shall fill in their rates other than zero value in the specified cells without keeping it blank. In the percentage rate tender the bidder quoting zero percentage is valid and will be taken at par with the estimated rate of the work put to tender.
- 4.3 The bidder shall upload the scanned copy/ copies of document in support of eligibility criteria and qualification information in prescribed format in Portable Document Format (PDF) to the portal in the designated locations of Technical Bid.
- 4.4 The bidder shall write his name in the space provided in the specified location in the Protected Bill of Quantities (BOQ) published by the Officer Inviting Tender. The bidder shall type rates in figure only in the rate column of respective items(s) without any blank cell in the rate column in case of item rate tender and type percentage excess or less up to two decimal places only in case of percentage rate tender.
- 4.5 The bidder shall log to the portal with his/ her DSC and move to the desired tender for uploading the documents in appropriate place one by one simultaneously checking the documents.
- 4.6 Bids cannot be submitted after the due date and time. The bids once submitted cannot be viewed, retrieved, or corrected. The Bidder should ensure correctness of the Bid prior to uploading and take print out of the system generated summary of submission to confirm successful uploading of bid. The bids cannot be opened even by the OIT or the Procurement Officer Publisher/ opener before the due date and time of opening.
- 4.7 Each process in the e-procurement is time stamped and the system can defect the time of log in of each user including the Bidder.
- 4.8 The Bidder should ensure clarity/ legibility of the document uploaded by him to the portal.
- 4.9 The system shall require all the mandatory forms and fields filled up by the contractor during the process of submission of the bid/ tender.
- 4.10 The bidder should check the system generated confirmation statement on the status of the submission.
- 4.11 The bidder should upload sufficiently ahead of the bid closure time to avoid traffic rush and failure in the network.
- 4.12 The Tender Inviting Officer is not responsible for any failure, malfunction or breakdown of the electronic system used during the e-procurement process.
- 4.13 The Bidder is required to upload documents related to his eligibility criteria and qualification information and Bill of Quantity duly filled in. It is not necessary for the part of the bidder to upload the drawing and the other Bid documents (after signing) while uploading his bid. It is assumed that the bidder has referred to all the drawings and documents uploaded by the Officer Inviting the Bid.
- 4.14 The Bidder will not be able to submit his bid after expiry of the date and time of submission of bid (server time). The date and time of bid submission shall remain unaltered even if the specified date for the submission of bids is declared as a holiday for the Officer Inviting the Bid.

4.15 The 'Online bidder' shall digitally sign on all statement's documents, certificates uploaded by him, owning responsibility for their correctness/ authenticity as per IT ACT 2000. If any of the information furnished by the bidder is found to be false/ fabricated/bogus, his EMD/BID Security shall stand forfeited and his registration in the portal shall be blocked and the bidder is liable to be blacklisted.

5. SECURITY OF BID SUBMISSION:

- a. All bid data uploaded by the Bidder to the portal will be encrypted by the DSC of the opener(s). The system shall require all the mandatory forms and fields filled up by the contractor during the process of submission of the bid/tender.
- b. The Bid shall be received in encrypted format by the system which can only be decrypted / opened by the authorized openers only on or after the due date and time.

6. DEADLINE FOR SUBMISSION OF THE BIDS:

6.1 The online bidding will remain active till the last date and time of the bid submission. Once the date and time (Server date and time) is over, the bidder will not be able to submit the bid. The date & time of bid submission shall remain unaltered even if the specified date for the submission of bids is declared as a holiday for the Officer inviting the Bid.

7. RESUBMISSION AND WITHDRAWAL OF BIDS:

- 7.1 Resubmission of bid by the Bidders for any number of times before the final date and time of submission is allowed.
- 7.2 Resubmission of bid shall require uploading of all documents including price bid afresh.
- 7.3 If the bidder fails to submit his modified bids within the pre-defined time of receipt, the system shall consider only the last bid submitted.

8. LATE BIDS:

8.1 The system shall reject submission of any bid through portal after closure of the receipt time. For all purposes the server time displayed in the e-procurement portal shall be the time to be followed by the bidder and concerned officers.

9. MODIFICATION AND WITHDRAWAL OF BIDS:

9.1 In the E-Procurement Portal, it is allowed to modify the bid any number of times before the final date and time of submission. The bidder shall have to log on to the system and resubmit the documents as asked for by the system including the price bid. In doing so, the bids already submitted by the bidder will be removed automatically

from the system and the latest bid only will be admitted. But the bidder should avoid modification of bid at the last moment to avoid system failure or malfunction of internet or traffic jam or power failure. If the bidder fails to submit his modified bids within the designated time of receipt, the bid already in the system shall be taken for evaluation.

9.2 In the E-Procurement Portal, withdrawal of bid is allowed. But in such case, he has to write a letter with appropriate reasons for his withdrawal addressed to the Officer inviting the bid and upload the scanned document to portal in the respective bid before the closure date and time of receipt of the bid. The system shall not allow any withdrawal after expiry of the closure time of the bid.

10. OPENING OF THE BID:

10.1 Bid opening date is specified during tender creation or can be extended with corrigendum. This date is available in IFB, tender document as well as the home page of portal. Bid opening can be done by the authorized users which are defined during the tender publication / approval stage. The bids are encrypted using their public keys and can be decrypted only on or after the Bid Opening due date and time. The bid openers' private key will be required to open the bids and all the openers have to log on to the portal during that time.

10.1.1 The bidders who participated in the online bidding can witness the opening of the bid from any system logging on to the portal with the DSC away from opening place. Contractors are not required to be present during the bid opening at the opening location if they so desire.

10.1.2 Each activity is date and time stamped with user details. For time stamping, server time is taken as the reference.

10.2 In the event of the specified date of bid opening being declared a holiday for the Officer inviting the Bid/Engineer-in-Charge, the bids will be opened at the appointed time on the next working day.

10.3 In case bids are invited for more than one package, the order for opening of the "Bid" shall be that in which they appear in the "Invitation for Bid".

10.4 The Bid openers, who have been pre-defined shall log on to the portal with their respective DSC. Unless all the Officers who have been declared as Opening officers log on the portal with their DSC the Tender cannot be opened.

10.5 In case of non-responsive tender, the officer Inviting tender should complete the e-Procurement process by uploading the official letter for cancellation/ re-tender.

11. EVALUATION OF BIDS: -

11.1 All the opened bids shall be downloaded and printed for taking up evaluation. The officer authorized to open the tender shall sign and number on each page of the documents downloaded and furnish a certificate that "the documents as available in the portal containing..... nos. of pages".

- 11.2 After opening of technical bid, the bidder may be asked in writing / online (in their registered e-mail ID) to clarify on the uploaded documents provided in the Technical Bid, if necessary, with respect to any doubts or illegible documents required for Technical Evaluation. The Officer Inviting Tender may ask for any other document of historical nature during Technical Evaluation of the tender. Provided in all such cases, furnishing of any document in no way alters the bidder's price bid. Non submission of legible documents may render the bid non-responsive. The authority inviting bid may reserve the right to accept any additional document.
- 11.3 The bidders will respond in not more than 7 days of issue of the clarification letter, failing which the bid of the bidder will be evaluated on its own merit.
- 11.4 Immediately, on receipt of these clarifications, the Evaluating Officers, predefined in the system for the bid, will finalize the list of responsive bidders. They will log on to the site with their DSC and record their comments on the technical evaluation page in the system. The Officer Inviting the Bid, if also the accepting authority, shall log on to the system with his digital signature and check the technical evaluation. He can either accept or pass it on to the evaluating officers for re-evaluation. Upon acceptance of technical evaluation by the Accepting authority in the system, the system shall automatically generate letter to all the responsive bidders and the system shall forward the letter to all the responsive bidder that their technical bid has been evaluated responsive with respect to the data/information furnished by him and the letter shall also intimate him the date & time of opening of financial bid. The system shall also inform the non-responsive bidders in their e-mail ID that their bid has been found non-responsive.
- 11.5 The Technical evaluation of all the bids shall be carried out up as per the information furnished by the Bidders. But evaluation of the bid does not exonerate the bidders from checking their original documents and if at a later date the bidder is found to have misled the evaluation through wrong information, action as per relevant clause of DTCN shall be taken against the bidder/contractor.
- 11.6 The Procurement Officer-Evaluators will evaluate bid and finalized list of responsive bidders.
- 11.7 Opening of price bid and evaluation of lowest bidder is subject to satisfaction of other qualification information.
- 11.8 The financial bids of the technically responsive bidders shall be opened on the due date of opening. The Procurement Officer-Openers shall log on to the system in sequence and open the financial bids.
- 11.9 The Financial Bid will be opened on the notified date & time in the presence of bidders or their authorized representative who wishes to be present.
- 11.10 At the time of opening of "Financial Bid", the names of the bidders whose technical bids were found responsive will be announced and the bids of only those bidders will be opened. The remaining bids will be rejected.
- 11.11 The responsive bidders' name, the bid prices, the item wise rates, the total amount of each item in case the item rate tender and percentage above or less in case of percentage rate tenders will be announced. any discounts and withdrawals, and such

- other details as the officer inviting the tender may consider appropriate, will be announced by him or his authorized representatives at the time of opening.
- 11.12 Rebate/discount offer if any uploaded to the system shall be declared and recorded first.
- 11.13 The Financial bid of the bidders shall be opened one by one by the designated officers. The system shall auto-generate the Comparative statement.
- 11.14 The Bidder can witness the principal activities and view the documents/summary reports for that particular work by logging on to the portal with his DSC from anywhere.
- 11.15 Procurement Officer-Openers shall sign on each page of the download BOQ and the Comparative Statement and furnish a certificate to that respect.
- 11.16 System provides an option to Procurement Officer Publisher for reconsidering the rejected bid with the approval of concern Chief Engineer/ Head of Department.

12. CLARIFICATION AND NEGOTIATION OF BIDS:

- 12.1 For examination, evaluation, and comparison of bids, the officer inviting the bid may, at his discretion, ask the lowest bidder for clarification of his rates including reduction of rate on negotiation and breakdowns of unit rates.
- 12.2 On opening of the price bid the system shall arrange the financial bids in order of their value (L1 first, followed by L2, L3) for subsequent evaluation. The evaluation status (Sheet) will be visible to all the participating bidders after opening on their respective logins. Each activity is recorded in the system with date and time stamping.

13. NOTIFICATION OF AWARD AND SIGNING OF AGREEMENT:

- 13.1 In the E-Procurement Portal, the system shall generate the template of award letter and the Officer Inviting the Bid shall mention the amount of Performance Security and additional security required to be furnished in the letter and intimate the bidders in his email ID.
- 13.2 The Employer/ Engineer-in-Charge shall notify acceptance of the work prior to expiry of the validity period by cable, telex or facsimile or e-mail confirmed by registered letter. This letter of Acceptance will state the sum that the Engineer-in-Charge will pay the contractor in consideration of execution and completion of the works by the contractor as prescribed by the contract and the amount of performance security and Additional Performance Security required to be furnished. The issue of the letter of Acceptance shall be treated as closure of the Bid process and commencement of the contract.
- 13.3 The Contractor after furnishing the required acceptable Performance Security and Additional Performance Security, "Letter of Proceed" or "Work Order" shall be issued by the Engineer-in-Charge with copy thereof to the Procurement Officer-Publisher. The Procurement Officer-Publisher shall upload the summary and declare the process as complete.

13.4 If the L1 bidder does not turn up for agreement after finalization of the tender, then he shall be debarred from participation in bidding for three years and action will be taken to blacklist the contractor. Besides the consortium/ JV/firm where such an agency/ firm already happens to be or is going to be a partner/ member/ proprietor, he/ they shall neither be allowed for participation in bidding for three years nor his/ their application will be considered for registration and action will be initiated to blacklist him/ them. In that case, the L2 bidder, if fulfils other required criteria, would be called for drawing agreement for execution of work subject to condition that the L2 bidder negotiates at par with the quoted y the L1 bidder, otherwise the tender will be cancelled.

14. **BLOCKING OF PORTAL REGISTRATION**

- 14.1 If the registration Certificate of the contractor is cancelled/ suspended by the registering authority/ blacklisted by the competent authority his portal registration shall be blocked automatically on receipt of information to that effect.
- 14.2 The portal registration blocked in the ground mentioned in the above Para- 11.1 shall be unblocked automatically in receipt of revocation order of cancellation/ suspension/ blacklisting from the concerned authority.
- 14.3 The Officer Inviting Tender shall make due inquiry and issue show cause notice to the concerned contractor who in turn shall furnish his reply, if any, within a fortnight of the date of issue of show cause notice. Thereafter the Officer Inviting Tender is required to issue an intimation to the defaulting bidder about his unsatisfactory reply and recommend to the Chief Manager (Tech) for blocking of portal registration within 10 days of intimation to the defaulting bidder regarding his unsatisfactory reply with intimation to the Registering Authority and concerned Chief Engineer/ Heads of Office if any of the following provisions are violated.
- 14.4 Fails to furnish original Technical Documents before the designated officer within the stipulated date and time.
- 14.5 Backs out from the bid on any day after the last date of receipt of tender till expiry of the bid validity period (including till the extended bid validity period)
- 14.6 Fails to execute the agreement within the stipulated date.
- 14.7 If any of the information furnished by the bidder is found to be false/ fabricated/ bogus.
- 14.8 Accordingly, the officer Inviting Tender shall recommend to the Chief Manager (Tech) State Procurement Cell, Odisha for blocking of portal registration of bidder and simultaneously action shall also be initiated by OFFICER INVITING TENDER for blacklisting as per Appendix-XXXIV of OPWD code Volume-II.
- 14.9 The minimum period of blocking of Portal Registration shall in no case be less than 180 days.

ANNEXURE A1 – FORMAT OF COVERING LETTER FOR TECHNICAL BID

(The covering letter is to be submitted by the Bidding Company or the Lead Consortium Member of a Bidding Consortium, along with the other documents required in Envelope A)

Date:

Place:

To

Secretary

Bhubaneswar Development Authority

Akash Sobha Building

Sachivalaya Marg

Bhubaneswar – 751 001, Odisha (India)

Sir,

Sub: **Technical Bid for “Selection of Developer for Development of Community Market at Ghatikia, Bhubaneswar on PPP mode – Call 2”**

Please find enclosed our Technical Bid in respect of the “*Selection of Developer for Development of Community Market at Ghatikia, Bhubaneswar on PPP mode*”, in response to and complying with the *Request for Proposal* ("RfP") Document issued by BDA.

We hereby confirm the following:

1. The Bid is being submitted by *(name of the Bidding Company/Lead Member Company)*, who is the Bidding Company / the Lead Consortium Member of the Bidding Consortium comprising *(mention the names of the entities who are the Member Companies)*, in accordance with the conditions stipulated in the RfP *(in case of a Bidding Consortium)*. Our Bid includes the Letter (s) of Acceptance in the format specified in the RfP, and the Consortium Agreement (as per the principles stated in the RfP) between, *(mention names of the entities that are the Member Companies)*, who are the Member Company(s) as per the condition stipulated in the RfP.

2. We have examined in detail and have understood the terms and conditions stipulated for Qualification of the bidders in the RfP Document issued by BDA and in any subsequent communication sent by BDA. We agree and undertake to abide by all these terms and conditions.
3. The information submitted with respect to our qualification criteria is complete, and strictly as per the requirements stipulated in the RfP and is correct to the best of our knowledge and understanding. We would be solely responsible for any errors or omissions in our Bid.
4. The Bidding Company/Bidding Consortium of which we are the Lead Consortium Member (*strike out whichever is not applicable*), satisfy the legal requirements and in our opinion by itself / along with its bidding partners and meets all the eligibility criteria laid down in RfP.
5. A Power of Attorney, by all other Bidding Companies of the consortium, appointing Lead Consortium Member, authorizing Lead Consortium Member Company to sign all Technical and Financial Proposals, negotiate with BDA and sign the Development Agreement and Conveyance Deed, in respect of the Project, is included as part of the Proposal.
6. A Power of Attorney from the Bidding Company / Lead Consortium Member authorizing the undersigned as the Authorised Representative, Signatory and Contact Person who is authorised to perform all tasks including, but not limited to providing information, responding to enquiries, entering into contractual commitments on behalf of the Bidder etc., in respect of the Project is included as a part of the Proposal.
7. We have paid the Bid Processing Fee of INR 11,800/- (non-refundable and including GST) in the e-procurement portal and enclosed the scanned copy of Bid Security of INR 2.5 Cr (Indian Rupees Two Crores and Fifty Lakhs only) in the form of an unconditional and irrevocable Bank Guarantee, in our Technical Bid.

8. We have submitted all the relevant information as per the format specified in the RFP documents along with requisite Bid Security.

9. It shall remain valid and open for a period of not less than 180 days from the last date for submission of the bid.

For and on behalf of _____ :

Signature _____ :

(Authorised Representative and Signatory)

Name of the Person :

Designation _____ :

Enclosures: Power of Attorneys & other information as per RfP requirements for the Authorised Representative.

ANNEXURE A-2 – DESCRIPTION OF THE BIDDING COMPANY / BIDDING CONSORTIUM

Name and address of the Bidding Company	
Name of the Lead Consortium Member <i>(In case of Bidding Consortium)</i>	
Address of the Lead Consortium Member and Contact Person, Phone/Fax Nos., E-mail	

(use a similar format for the Consortium member also, in case of Consortium)

In case of a Bidding Consortium

Sl. No.	Name of Member Company	Proposed % contribution	equity	Role as per the Consortium Agreement signed by and between the Member Companies

(Signature of Authorized signatory)

ANNEXURE A3-FORMAT OF LETTER OF ACCEPTANCE

(The Letter of Acceptance is to be submitted by each Member Company of the Bidding Consortium)

Date:

Place:

Secretary

Bhubaneswar Development Authority

Akash Sobha Building

Sachivalaya Marg

Bhubaneswar – 751 001, Odisha (India)

Sir,

Sub: **Technical Bid for “Selection of Developer for Development of Community Market at Ghatikia, Bhubaneswar on PPP mode – Call 2”**

This has reference to the Bid being submitted by (mention the Lead/ Consortium Member of the Bidding Consortium), as Lead/ Consortium Member of the Bidding Consortium comprising (mention name(s) of the Member Companies) in respect of “*Selection of Developer for Development of Community Market at Ghatikia, Bhubaneswar on PPP mode*” in response to the Request for Proposal ("RfP") issued by BDA.

We hereby confirm the following:

1. We (*name of the Member Company furnishing the Letter of Acceptance*), have examined in detail and have understood and satisfied ourselves regarding the contents including in respect of the following:
 - The RfP Document issued by BDA.
 - All subsequent communications between BDA and the Bidder, will be represented by (*Mention name of the Lead Member*).
 - The Consortium Agreement signed between / among (*names of the Member Companies*), as members of the Bidding Consortium; and
 - The Bid being submitted by (*name of the Lead/ Consortium Member*).

2. We have satisfied ourselves regarding our role as *(here give a brief description of the role)* in the Project as specified in the Bid. If the Bidding Consortium is awarded the Project, we shall perform our role as outlined in the Bid to the best of our abilities. We have examined the Bid in detail and the commitments made in the same. We agree and undertake to abide by the Bid and the commitments made therein.

3. We authorize *(name of the Lead Member)*, as the Lead Member and authorize the same to perform all tasks including, but not limited to providing information, responding to enquiries, entering into contractual commitments etc. on behalf of the consortium, in respect of this Project.

4. We understand that no change in the membership in the Bidding Consortium, in the role and form of responsibility of any Member Company shall be permitted after submission of the Bid. If any change in the membership of the Consortium is desired, it would need to be communicated to BDA in writing for its approval. BDA would reserve the right to reject such requests for a change of consortium structure, if in its opinion, it would adversely affect the project.

For and on behalf of _____ :
Signature _____ :

(Authorised Representative and Signatory of the member of the consortium)

Name of the Person : _____
Designation _____ :

Countersigned: **(Authorised Representative and Signatory of the Lead Member)**

ANNEXURE A4 – CONSORTIUM AGREEMENT

(to be executed by the Consortium Member and countersigned by Authorized Signatory)

THIS CONSORTIUM AGREEMENT ("Agreement") is entered into on this [●] Day of [●] 2024 AMONGST

1., with its registered office at (referred to as the FIRST PART which expression will, unless repugnant to the context include its successors and permitted assigns);

AND

2., with its registered office at (referred to as the SECOND PART which expression will, unless repugnant to the context include its successors and permitted assigns);

The above-mentioned parties of the FIRST and SECOND, are collectively referred to as the Parties and each is individually referred to as a Party.

WHEREAS

- A. The Bhubaneswar Development Authority is in the process of identifying a Private Developer for Development of 'Community Market and Residential cum/or Commercial Facilities' at Ghatikia, Bhubaneswar on PPP mode.
- B. The Parties are interested in jointly bidding for the Project as Members of a Consortium and in accordance with the terms and conditions of the RFP.
- C. It is a necessary condition under the RFP that the Members enter into a Consortium Agreement and furnish a copy of it with the Proposal.

NOW IT IS HEREBY AGREED as follows:

1. Definitions and interpretations

In this Agreement, the capitalized terms will, unless the context otherwise requires, have the meaning ascribed thereto under the RFP.

2. Consortium

- i. The Parties do hereby irrevocably constitute a consortium (the Consortium) for the

purposes of jointly participating in the Bid Process for the Project.

- ii. The Parties hereby undertake to participate in the Bid Process only through this Consortium and not individually and or through any other consortium constituted for the Project, either directly or indirectly or through any of their Associates.

3. Covenants

- i. The Parties agree that they have examined in detail and understood the terms and satisfied themselves regarding the contents of the RFP.

4. Role of the Parties

The Parties hereby agree that Party of the First Part will be the Lead Member of the Consortium and will have the power of attorney from the other Part and bind all Parts for and in conducting all business for and on behalf of the Consortium during the Bid Process and, if the Consortium is declared as the Selected Bidder, during the execution of the Project.

5. Representations of the Parties

Each Party represents to the other Parties as of the date of this Agreement that:

- a) such Party is duly organized, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement.
- b) the execution, delivery and performance by such Party of this Agreement has been authorized by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:
 - i. require any consent or approval not already obtained
 - ii. violate any applicable law presently in effect and applicable to it;
 - iii. violate the memorandum and articles of association, by-laws or other applicable organizational documents;
 - iv. violate any clearance, permit, concession, grant, license or other governmental authorization, approval, judgment, order or decree or any

mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or

- v. create or impose any liens, mortgages, pledges, claims, security interests, charges or encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;
- c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Associates is a party that presently affects, or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfilment of its obligations under this Agreement.

6. Termination

This Agreement will be effective from the date hereof and will continue in full force for the entire duration of the Project in accordance with the Development Agreement in case the Project is awarded to the Consortium. However, in case the Consortium is not selected for award of the Project, the Agreement will stand terminated once the Consortium is not selected as the Selected Bidder or upon return of the Bid Security by the Authority to the Bidder, as the case may be.

7. Miscellaneous

- a) This Agreement will be governed by the laws of India.
- b) The Parties acknowledge and accept that this Agreement will not be amended by the Parties without the prior written consent of the Bhubaneswar Development Authority.
- c) The competent courts at Bhubaneswar shall have exclusive jurisdiction over all disputes arising under, pursuant to and/or in connection with this Consortium Agreement.

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

SIGNED, SEALED AND DELIVERED

For and on behalf of the

PARTY OF THE FIRST PARTY:

SIGNED, SEALED AND DELIVERED

For and on behalf of the

PARTY OF THE SECOND PARTY:

Name:

Designation:

Address:

Name:

Designation

Address:

**ANNEXURE A5 – FORMAT OF POWER OF ATTORNEY FOR APPOINTING THE
LEAD MEMBER**

{On Requisite INR 100/- Stamp Paper}

KNOW ALL MEN by these presents that we, [name of the company], a company incorporated under the Companies Act 1956/2013, having its Registered Office at [Address of the Company] (hereinafter referred to as “Company”):

WHEREAS the Company is forming a joint venture/consortium to submit Technical and Financial Bids in response to the Request for Proposal (“RfP”) for “***Selection of Developer for Development of Community Market at Ghatikia, Bhubaneswar on PPP mode***” issued by the BDA and is desirous of appointing an attorney for the purpose thereof.

Whereas the Company deems it expedient to appoint M/s. _____ (name of the lead member, registered office address) as the Attorney of the Company.

NOW KNOW ALL MEN BY THESE PRESENTS, that _____ [name of the Company] do hereby nominate, constitute and appoint [name of the lead member] as its true and lawful Attorney to do and execute all or any of the following acts, deed and things for the Company in its name and on its behalf, that is to say :

- To act as the Lead Member of the Consortium for the Purposes of the Project;
- In such capacity, to act as the Company’s official representative for submitting the Technical and Financial Proposals for the Project and other relevant documents in connection therewith;
- To sign all papers for all bids, offers, Project documents, necessary documents, papers, applications, representations and correspondence necessary and proper for the purpose aforesaid;
- To submit documents, receive and make inquiries, make the necessary corrections and clarifications to the Project documents, as may be necessary;
- To sign and execute contracts relating to the Project, including variation and modification thereto;
- To represent the Company at meetings, discussions, negotiations and presentations with BDA, BMC, City Administrations, Government Authorities, Competent Authorities and other Project related stakeholders;

- To receive notices, instructions and information for and on behalf of the Company;
- To execute the Development Agreement and Conveyance Deed for and on behalf of the Company;
- To do all such acts, deed, and things in the name and on behalf of the Company as necessary for the purpose aforesaid.

AND the Company hereby covenants with the said Attorney to ratify and confirm all and whatever the attorney may lawfully do or cause to be done by virtue of these presents.

IN WITNESS WHEREOF the Company puts its hand and seal to this Power of Attorney on this .. [day, month & year]

The common seal of [name of the company] was here unto affixed pursuant to a resolution passed at the meeting of Committee of Directors held on the _____ day of _____, 20-- in the presence of [name & designation of the person] and countersigned by [name & designation of the person] of the Company of [name of the company]) The common seal of [name of the Company])))-----) [name & designation of the person])
--	---

**ANNEXURE A6 – FORMAT OF POWER OF ATTORNEY APPOINTING
SIGNATORY**

{On Requisite INR 100/- Stamp Paper}

KNOW ALL MEN by these presents that we, ...[name of the company], a company incorporated under the Companies Act 1956/2013, having its Registered Office at [Address of the Company] (hereinafter referred to as “Company”):

WHEREAS the Company has been authorised by _____ and _____ (give names and registered office addresses), vide its respective power of attorney, to act as the Lead Member of the Consortium bidding for the “***Selection of Developer for Development of Community Market at Ghatikia, Bhubaneswar on PPP mode***”.

WHEREAS in response to the Request for Proposal (RfP) for “***Selection of Developer for Development of Community Market at Ghatikia, Bhubaneswar on PPP mode***” (“Project”), the Company is submitting Technical bids/[on behalf of the consortium] for “Selection of Developer for Development of Community Market at Ghatikia, Bhubaneswar on PPP mode” issued by the BDA and is desirous of appointing an attorney for the purpose thereof.

Whereas the Company deems it expedient to appoint Ms./ Mr. _____ daughter/ son of _____ resident of _____, holding the post of _____ as the Attorney of the Company.

NOW KNOW ALL MEN BY THESE PRESENTS, that _____[name of the Company] do hereby nominate, constitute and appoint [name & designation of the person] as its true and lawful Attorney so long as she/ he is in the employment of the Company to do and execute all or any of the following acts, deed and things for the Company in its name and on its behalf, that is to say:

To act as the Company’s official representative for submitting the Technical and Financial Bids for selection of the “***Selection of Developer for Development of Community Market at Ghatikia, Bhubaneswar on PPP mode***” and other relevant documents in connection therewith.

To sign all papers for all bids, offers, Project documents, necessary documents, papers, applications, representations and correspondence necessary and proper for the purpose aforesaid.

To submit documents, receive and make inquiries, make the necessary corrections and clarifications to the Project documents, as may be necessary.

To sign and execute contracts relating to the Project, including variation and modification thereto.

To do all such acts, deed, and things in the name and on behalf of the Company as necessary for the purpose aforesaid.

The common seal of [name of the company] was here unto affixed pursuant to a resolution passed at the meeting of Committee of Directors held on the ____day of _____, 20-- in the presence of [name & designation of the person] and countersigned by [name & designation of the person] of the Company of [name of the company]))))----- ---) [name & designation of the person])))----- ---) [name & designation of the person]
---	---

ANNEXURE A7 – INFORMATION ON LITIGATION
(in the last 5 years)

(To be provided for the bidder or each member of the consortium)

Sl. No.	Name	Name of agency with which litigation and brief subject	Estimated financial liability

Signature of Authorised Signatory

ANNEXURE A8 – PRO-FORMA OF BANK GUARANTEE FOR BID SECURITY

(To be executed on appropriate value of Non-Judicial Stamp Paper)

WHEREAS, (name of the Bidder) wishes to submit his Bid for the “**Selection of Developer for Development of Community Market at Ghatikia, Bhubaneswar on PPP mode**”, hereinafter called "the Bid",

KNOW ALL MEN by these presents that we (name of Bank) of (City and Country) having our registered office at _____ (hereinafter called "the Bank") are irrevocably and unconditionally bound to the **Bhubaneswar Development Authority** or its successor, (hereinafter referred to as “BDA” in the sum of Rs. _____ (In Words)_____ which payment can truly be made to BDA. The Bank binds themselves, their successors and assigns by these presents.

Sealed with the Common Seal of the Bank this _____ day of _____, 20....

THE CONDITIONS of this obligation are:

- (a) If the Bidder withdraws his Bid at any time during the stipulated period of Bid Validity specified in the Request for Proposal Document (or such period of validity as may be extended as per RfP, issued by BDA; or
- (b) If the Bidder, for the period of the Bid Validity as per RfP in BDA’s opinion, commits a material breach of any of the terms and / or conditions contained in the RfP Document and / or subsequent communication from BDA in this regard; or
- (c) If the Bidder refuses to accept the correction of errors in the Bid; or
- (d) If the Bidder, having been notified of the acceptance of its Bid by the BDA:
 - (i) fails or refuses to sign the Development Agreement for the “**Development of Community Market at Ghatikia, Bhubaneswar on PPP mode**”.
 - (ii) fails or refuses to pay the 1st instalment of the Land Premium in the manner specified in the Letter of Award (LoA).
 - (iii) fails or refuses to submit the Bank Guarantee of outstanding amounts of the Land Premium in the manner specified in the Letter of Award (LoA).

- (iv) Fails or refuses to provide the Construction Performance Security to the BDA in accordance with, and when required by (within the stipulated time), RfP Volume III (Draft Development Agreement and Draft Conveyance Deed);
- (iii) Material Variation / Material fact suppression/ other non fulfilment of conditions specified in RfP documents.

We agree and undertake, absolutely, irrevocably and unconditionally make the above payments, as the case may be, the above amount without protest, delay or demur upon receipt of BDA's first written demand, without the BDA having to substantiate its demand, provided that in its demand the BDA will note that the amount claimed by it is due to it owing to the occurrence of one or more of the conditions set out above, specifying the occurred condition or conditions.

The Guarantee will remain in force up to and including the date of expiry of the period of Bid Validity as stated in the RfP Document or as extended by BDA at any time as per RfP, notice of which extension to the Bank being hereby waived.

Provided however, that

In the event that this Bidder is selected for award of the project through the issue of the Letter of Award, the Bid Security shall remain in force until the provisions of the Letter of Award (LoA) are satisfied.

OR

In the event this Bidder is not selected for award of the Project, the Bid Security shall remain in force up to and including a period of 60 days after the announcement of award of the Project to the Selected Bidder and the issue of the Letter of Award awarding the same (provided, however, that in the event that the Bidder is declared Technically Non Responsive, then the Bid Security of such Bidder can cease to be in force upon return of the unopened financial proposals of his Bid).

Any demand in respect of this Guarantee should reach the Bank not later than the date of expiry (as defined above) of this Guarantee.

The jurisdiction in relation to this Guarantee shall be the courts of Bhubaneswar and the Indian law shall be applicable.

SIGNATURE OF AUTHORISED

REPRESENTATIVE OF THE

BANK _____

NAME AND

DESIGNATION _____

SEAL OF THE

BANK _____

SIGNATURE OF THE

WITNESS _____

NAME OF THE

WITNESS _____

ADDRESS OF THE

WITNESS _____

ANNEXURE A9 – ESTIMATED PROJECT COST

A. The bidder shall submit its estimated quarterly distribution of costs with regard to the project.

Year Wise- Quarter Wise distribution of costs	Total Capital / Construction Cost of project	Physical Contingency, architect/ PMC/legal/maintenance/marketing etc.	Any Other Costs (name the item for such costs)
YEAR 1			
Quarter 1			
Quarter 2			
Quarter 3			
Quarter 4			
YEAR 2			
Quarter 1			
Quarter 2			
Quarter 3			
Quarter 4			
YEAR 3			
Quarter 1			
Quarter 2			
Quarter 3			
Quarter 4			
YEAR 4			
Quarter 1			
Quarter 2			
Quarter 3			
Quarter 4			
YEAR 5			

Quarter 1			
Quarter 2			
Quarter 3			
Quarter 4			
TOTAL PROJECT COST			

The Estimated Project Cost estimated for “***Development of Community Market at Ghatikia, Bhubaneswar on PPP mode***” is INR (in words)

Signature of Authorised Signatory

ANNEXURE A-10 – MEANS OF FINANCING FOR PROJECT

The Bidder shall submit its estimated yearly distribution of financing arrangement with regard to the project.

Year Wise- Quarter Wise distribution of costs	Total Estimated Project Cost	Equity	Debt proposed to be taken by the developer
Quarter 1			
Quarter 2			
Quarter 3			
Quarter 4			
Quarter 5			
Quarter 6			
Quarter 7			
Quarter 8			
Quarter 9			
Quarter 10			
Quarter...			
Quarter...			
Quarter...			
Quarter...			
Quarter...			
Quarter 20			
Total			

Signature of Authorised Signatory

ANNEXURE A 11 – AVERAGE ANNUAL TURNOVER

- The aggregate and average Annual Turnover as per the previous years audited annual reports presented in the following tabular format and certified by the Statutory Auditor OR the Chartered Accountant (CA). In case of Consortium, each member of the consortium to certify this information by the relevant CA. The copies of the relevant annual reports must be submitted to support the calculations or relevant CA certificate.

S. No	Bidder	Annual Turnover (INR Cr)		
		2021-22	2022-23	2023-24
1.	(Name of the Single Bidder OR Lead Member of Consortium)			
2.	(Name of Consortium Member)			
Aggregate for FY				
Average Annual Turnover of last 3 Years				

Signature of Authorised Signatory

This is to certify that the above information has been examined by us on the basis of relevant documents; books of accounts & other relevant information pertaining to year ended 31 March 2023, and the information submitted above is as per record and as per details annexed.

Signature, Address, Seal & Membership No. of Chartered Accountant

ANNEXURE A 12**Project Experience:**

The Bidder (in case of single Bidder) or a Member (in case of a Consortium) must showcase relevant experience in the development of similar projects only (with integrated responsibility of planning, constructing, financing and marketing) to fulfil the technical eligibility criteria. For this purpose, the Bidder must present relevant information in the following format.

Name of Single Bidder/ Member of Consortium: _____

Sl. No.	Name and location of relevant project	Name of the Client	Name of Implementing Agency and its relationship with the Bidder with documentary evidence	Brief description about the Nature of the Project and Project Cost	Total Land Area & Built up Area in Sq.M.	Date of Completion of Project	Remarks
1							
2							
3							
4							
5							
6							

Certificate:

We declare that all information stated in the table above is complete and absolutely correct.

Dated this _____ day of _____ 202..

For and on behalf of _____ :

Signature _____ :

(Authorised Representative and Signatory)

Name of the Person :

Designation :

This is to certify that the above information has been examined by us on the basis of relevant documents & other relevant information pertaining to year ended 31 March 2024, and the information submitted above is as per record, the project(s) implemented are within the Years (2019-20 to 2023-24) and as per details annexed.

Signature, Address, Seal & Membership No. of Chartered Accountant

Note:

- i. In case a body corporate is drawing any experience of its holding/ subsidiary or a Constituent, the name of such company and relationship with the Bidder/Member of the Consortium shall also be clearly mentioned in the 'Remarks' column against the project.*
- ii. In case Members of a Consortium are aggregating their individual experiences to demonstrate qualifying experience, the above information must be provided separately for each Member strictly as per the specified format.*
- iii. In case a project is registered with ORERA with a registration number and implemented in phases, the project experience will include all phase wise implementation.*

ANNEXURE A-13

Conceptual Design of the Composite Project comprising:

- Community Market
- Dedicated Parking for 'Community Market'
- Residential cum/or Commercial facilities in balance built-up space
- Parking for Residential cum/or Commercial facilities as per Development Controls
- Allied infrastructure and utilities

Note:

- i. Conceptual Plan & Elevation should suffice along with estimated built-up area of the Community Market and Residential cum/or Commercial facilities in balance built-up space.*
- ii. Detailed design and dimensions to scale is not required at this stage.*

Certificate:

We declare that all information stated in the conceptual drawings above are based on our understanding of the Project.

Dated this _____ day of _____ 2024

For and on behalf of _____ :

Signature _____ :

(Authorised Representative and Signatory)

Name of the Person :

Designation _____ :

ANNEXURE A-14
Draft Letter of Award

To,
(Name and address of the Selected Bidder)

Dear Sir,

Sub: Letter of Award (LoA) for “Selection of Developer for Development of Community Market at Ghatikia, Bhubaneswar on PPP mode – Call 2” by the Bhubaneswar Development Authority (BDA).

1. We refer to your proposal (the capitalized terms used herein shall have the same meaning as set forth in the Development Agreement), under the cover letter dated, submitted in response to the Request for Proposal (Tender No:Bhubaneswar, Dated.....) for implementation of the Project **“Development of Community Market at Ghatikia, Bhubaneswar on PPP mode”**.
2. We are pleased to inform that your aforesaid Proposal, including the Financial Bid of INR....., as the Land Premium, has been accepted and *{the name of the selected bidder}* has been selected as the “selected bidder” for the project, subject to fulfilment of the following terms and conditions.
 - “Selected bidder” shall incorporate a Special Purpose Vehicle (the Developer) under the Companies Act, 2013 for implementing the project.
 - In accordance with the provisions of the Request for Proposal, the Developer shall develop, design, finance, construct, market, operate and maintain the Project, during the tenure of the Term, in accordance with provisions set forth in the Development Agreement and Conveyance Deed.
3. With reference to the clause no. 3.7 of Vol II of the “Request for Proposal”, within 7 (seven) days, upon issuance of such Letter of Award (LoA), the Selected bidder shall be required to meet the following compliance requirements:
 - i. Sign and stamp the Letter of Award (LoA), indicating acceptance of the LoA;

4. Within 30 days, upon issuance of such LoA to the Developer and before signing of the Development Agreement, the Selected Bidder shall be required to meet the payment of:
 - i. 1st Instalment of the Maximum Land Premium (MLP) equivalent to 10% of the MLP.
 - ii. Bank Guarantee for 2nd Instalment (20% of MLP) – to be released after payment withing 90 days from Execution of Development Agreement.
 - iii. Bank Guarantee for 3rd Instalment (70% of MLP) – to be released after payment within 240 days from Execution of Development Agreement.
 - iv. The Developer will have the option to make the full payment before execution of Development Agreement and avoid the payment of Bank Guarantee of outstanding amounts.
 - v. INR 1,00,00,000/- (Indian Rupees One Crore only) plus applicable GST to be paid to 'Bhubaneswar Development Authority' in the form of a Demand Draft, by the preferred bidder, before execution of the Development Agreement, and in the manner specified in the Letter of Award (LoA), as non-refundable reimbursement of Project Development Expenses.
 - vi. Performance Security of INR 30 Cr (Indian Rupees Thirty Crores only) in the form of an unconditional and irrevocable Bank Guarantee valid for 60 months.
5. You the Selected Bidder shall sign the Development Agreement with Bhubaneswar Development Authority after submission of the Construction Performance Security and making the payments as described in **Point 4 and 5** above and / or any other conditions specified, if any, in RFP documents.
6. In the event, you the Selected Bidder is found unresponsive, or fails or refuses to provide the Performance Security and make the above payments or sign the Development Agreement, the Bhubaneswar Development Authority shall forfeit the Bid Security provided by you.
6. In addition to the above, you the Selected Bidder shall comply with all other requirements as set out in the RFP and for all purposes the conditions of the RFP may be read as part and parcel of the letter of acceptance and any condition specified, if any, in the LoA runs contrary to the specification in the RFP terms shall prevail.

You are requested to do the needful as outlined in this Letter to facilitate the signing of the Development Agreement for the implementation of the Project.

Secretary
Bhubaneswar Development Authority

N.B: BDA reserves the right to add/alter/modify/delete some/ or any of the conditions in the final Letter of Award.

ANNEXURE A-15

Format of Bank Guarantee for Construction Performance Security

(To be issued by a Scheduled Bank in India)

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

In favour of Bhubaneswar Development Authority (BDA), hereinafter called BDA (which
expression shall include its successors and assigns);

WHEREAS

A. Bhubaneswar Development Authority (BDA) had invited open Bids for “**Development of Community Market at Ghatikia, Bhubaneswar on PPP mode**” and has selected (Name of the Selected bidder) as the Selected Bidder. (Name of the Selected Bidder) has incorporated M/s. Limited, a company incorporated under the Companies Act, 2013 having its registered office at ----- hereinafter called “the Company”.

B. In terms of the RFP Documents and Development Agreement, the Company is required to furnish to BDA, an unconditional and irrevocable bank guarantee for an amount of INR 30 Cr (Indian Rupees Thirty Crores only) (‘hereinafter referred to as the said Bank Guarantee’) as Construction Performance Security for due and punctual performance/discharge of its obligations under the Development Agreement proposed to be executed by and between BDA, (name of the bidder) and the (name of the SPV). The said Bank Guarantee is required to be valid from the date of issue thereof and until the expiry of the 6 (six) years from the date of the execution of the Development Agreement and any extension thereof.

C. At the request of the Company, the Guarantor has agreed to provide guarantee, being these presents guaranteeing the due and punctual performance/discharge by the Company of its obligations under the Agreement.

NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS:

1. Capitalised terms used herein but not defined shall have the meaning assigned to them respectively in the Agreement.

2. The Guarantor hereby guarantees the due and punctual performance by the Company of all its obligations under the Agreement.
3. The Guarantor shall, without demur, pay to BDA sums not exceeding in aggregate (INR.....), within five (5) days of receipt of a written demand from BDA stating that the Company has failed to meet its performance obligations under the Development Agreement. The Guarantor shall have no obligation to go into the veracity of any 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 Company or any other Person.
4. In order to give effect to this Guarantee, BDA shall be entitled to treat the Guarantor as the principal debtor. The obligations of the Guarantor shall not be affected by any variations in the terms and conditions of the Development Agreement or other documents or by the extension of time for performance granted to the Company or postponement/non exercise/delayed exercise of any of its rights by BDA or any indulgence shown by BDA to the Developer and the Guarantor shall not be relieved from its obligations under this Guarantee on account of any such variation, extension, postponement, non exercise, delayed exercise of any of its rights by BDA or any indulgence shown by BDA provided nothing contained herein shall enlarge the Guarantor's obligation hereunder.
5. This Guarantee shall be irrevocable and shall remain in full force and effect until discharge by the Guarantor of all its obligations hereunder.
6. This Guarantee shall not be affected by any change in the constitution or winding up of the Company/the Guarantor or any absorption, merger or amalgamation of the Company/the Guarantor with any other Person.
7. The Guarantor has power to issue this guarantee and discharge the obligations contemplated herein, and the undersigned is duly authorised to execute this Guarantee pursuant to the power granted under _____.

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

SIGNED AND DELIVERED by ----- Bank by the hand of Shri ----- its ----- and authorised official.

N.B: BDA reserves the right to add/alter/modify/delete/substitute any/ or some conditions in the format before requiring its execution by the Selected Bidder.

ANNEXURE A-16
PERFORMA OF BANK GUARANTEE
For the outstanding Instalments of Maximum Land Premium
(To be issued by a Scheduled Bank in India)

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

In favour of Bhubaneswar Development Authority (BDA), hereinafter called BDA (which
expression shall include its successors and assigns);

WHEREAS

A. Bhubaneswar Development Authority (BDA) had invited open Bids for “**Development of
Community Market at Ghatikia, Bhubaneswar on PPP mode**”, and has selected
_____ as the Selected Bidder.
_____ has incorporated
_____, a company incorporated under the Companies Act,
2013 having its registered office at
_____ hereinafter called “the
Developer”.

B. In terms of the RFP Documents, LoA and Development Agreement, the Company is
required to furnish to BDA, an unconditional and irrevocable bank guarantee for an amount
of Rs..... /- (Rupees____only) as the Second/Last Instalment which is equivalent to
20%/70% of the Land Premium as agreed and defined in Pt No. 6 (10) (Maximum Land
Premium) of the Project Summary of Vol-I the RFP. The Bank Guarantee shall remain
operative for the period of 12 (twelve) months from the signing of the Development
Agreement and in case the developer fails to pay the 2nd/3rd instalment of the MLP, the BDA
shall en cash the Bank Guarantee of like amount at the cost and risk of Developer.

NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS:

Capitalized terms used herein but not defined shall have the meaning assigned to them respectively in the Agreement.

1. The Guarantor hereby guarantees the remaining 20%/70% to be deposited to BDA within 90/240 days of executing the Development Agreement.
2. The Guarantor shall, without demur, pay to BDA sums not exceeding in aggregate _____/- (Rupees _____ only), within five (5) days of receipt of a written demand from BDA stating that the Developer has failed to provide the 2nd/3rd instalment which is 20%/70% of the Maximum Land Premium within 90/240 days from the date of execution of the Development Agreement.
3. The Guarantor shall have no obligation to go into the veracity of any 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 Company or any other Person.
4. In order to give effect to this Guarantee, BDA shall be entitled to treat the Guarantor as the principal debtor. The obligations of the Guarantor shall not be affected by any variations in the terms and conditions of the Development Agreement or other documents or by the extension of time for payment granted to the Company or postponement/non-exercise/ delayed exercise of any of its rights by BDA or any indulgence shown by BDA to the Developer and the Guarantor shall not be relieved from its obligations under this Guarantee on account of any such variation, extension, postponement, non-exercise, delayed exercise of any of its rights by BDA or any indulgence shown by BDA provided nothing contained herein shall enlarge the Guarantor's obligation hereunder.
5. This Guarantee shall be irrevocable and shall remain in full force and effect until discharge by the Guarantor of all its obligations hereunder.
6. This Guarantee shall not be affected by any change in the constitution or winding up of the Company/the Guarantor or any absorption, merger, or amalgamation of the Company/the Guarantor with any other Person.
7. The Guarantor has power to issue this guarantee and discharge the obligations contemplated herein, and the undersigned is duly authorized to execute this Guarantee pursuant to the power granted under _____.

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

SIGNED AND DELIVERED by ----- Bank by the hand of Shri. -----
its ----- and authorized official.

Annexure B-1

FORMATS FOR FINANCIAL BID

**(to be filled up only in the BOQ available in E-procurement Portal)
(NOT TO BE SUBMITTED IN THE TECHNICAL PROPOSAL)**

CONTENTS

Section 1	Financial Bid BOQ
------------------	--------------------------

FINANCIAL BID

- i. The Financial Bid will be the Maximum Land Premium (in INR excluding GST) offered by the Bidder to Bhubaneswar Development Authority.
- ii. The Financial Bid should be submitted **only in the BOQ provided at the E-procurement portal** and should not be disclosed in any other document in the Technical Bid or any other communication.
- iii. The format of the BOQ will be similar to the one provided below:

Tender inviting Authority:		BHUBANESWAR DEVELOPMENT AUTHORITY
Name of Work:		Selection of Private Developer for Development of Community Market at Ghatikia, Bhubaneswar on PPP mode
RFP No:		
Sl. No.	Item	Basic Rate in figures to be entered by Bidder in Rs. (excluding GST)
1	Selection of Private Developer for Development of Community Market at Ghatikia, Bhubaneswar on PPP mode	<i>{Name of Bidder}</i>
1.01	Land Premium for 2.796 Acres of land at Ghatikia for development of Composite Project including Community Market & Residential and/or Commercial Facilities.	
	Total in Figures	
	Total in Words (Indian Rupees)	

REQUEST FOR PROPOSAL

VOLUME III

**DRAFT DEVELOPMENT AGREEMENT
&
DRAFT CONVEYANCE DEED**

**DEVELOPMENT OF COMMUNITY MARKET &
RESIDENTIAL CUM/OR COMMERCIAL
FACILITIES
AT GHATIKIA ON PPP MODE**

MARCH 2025 (CALL -2)

RFP No. 5965/BDA, 25.03.2025



**Bhubaneswar Development Authority
Akash Shova Building, Sachivalaya Marg
Bhubaneswar, Odisha 751 001**

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DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT (the “**Development Agreement**”) dated this [▪] day of [▪] 2024 is made and entered into at _____ by and between:

1. **Bhubaneswar Development Authority**, a statutory authority constituted and created by the Government of Odisha in the year 1983 under the Odisha Development Authorities Act, 1982, having its registered office at Akash Sobha Building, Sachivalaya Marg, Bhubaneswar – 751 001, Odisha (India) acting through _____, _____, [insert name of the office and his designation] (hereinafter referred to as “**BDA**”, which term or expression shall, unless repugnant to or inconsistent with the context, mean and include it, its successors and permitted assigns) of the **FIRST PART**;

AND

2. ----- [insert name of the Developer i.e. Project SPV], a company organized, incorporated, registered and existing under the Indian Companies Act, 2013 and having its registered office at _____ [insert address] acting through _____, _____, [insert name of the office and his designation] 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 “**Developer**”, which term or expression shall, unless repugnant to or inconsistent with the context, mean and include it, its successors, liquidators and permitted assigns) of the **SECOND PART**;

AND

3. _____ [insert name of the Single Bidder or Lead Member of the Consortium], a company organized, incorporated, registered and existing under the Indian Companies Act, 1956/2013 and having its registered office at _____ [insert address] acting through _____, _____, [insert name of the office and his designation] 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 term or expression shall, unless repugnant to or inconsistent with the context, mean and include it, its successors, liquidators and permitted assigns) of the **THIRD PART**.

'BDA', the 'Developer', the 'Confirming Party' shall hereinafter individually / singly be referred to as "Party" and collectively as "Parties".

WHEREAS:

- A. BDA is a statutory authority constituted and created by the Government of Odisha in the year 1983 under the Orissa Development Authorities Act, 1982 with the objective inter alia undertaking works pertaining to construction of housing colonies, shopping centers, markets and public amenities.
- B. In order to achieve such objectives, Department, Government of Odisha, has allotted a land measuring 2.796 acres more or less bearing Plot No. 4998, Khata No. 2334, Ghatikia, Bhubaneswar, Odisha, India for development vide its allotment letter no. -----¹ dated -----² as more particularly described in 'Schedule I' to this Development Agreement (the "Site") on 'freehold' basis and possession of the Site had been handed over to BDA vide Government Order No. -----³ dated -----.
- C. BDA intends to undertake development of a Community Market on the Site by following a Public Private Partnership mode, for providing such facility to the citizens and particularly residents of Kalinga Nagar. In order to capture the FAR available for the site (both side frontage of 60-meter roads), the Authority has decided to allow residential cum/or commercial facilities in balance built-up area, within the composite project.
- D. As part of the proposed development of the Site, BDA had conducted a competitive bidding process by inviting proposal in the form of bids (the "Bid") vide its Request for Proposal No. -----⁴ dated -----⁵ (the "RfP Document") to undertake the development of the Site, on the terms and conditions as specified and contained therein.
- E. M/s. -----⁶ OR a consortium of M/s. -----⁷, and M/s. -----⁸ [insert names of the Lead Member and members] submitted the highest Financial Bid with a Maximum Land Premium ("MLP") of INR -----⁹ (Indian Rupees -----

¹ Please insert the details.

² Please insert the details.

³ Please insert the details.

⁴ Please insert the details.

⁵ Please insert the details.

⁶ Please insert the details.

⁷ Please insert the details.

⁸ Please insert the details.

⁹ Please insert the details.

----- only)¹⁰ and was selected by BDA as the Selected Bidder (the “**Selected Bidder**”) vide the Letter of Award (“**LoA**”) no. -----¹¹ dated -----¹²;

F. The Selected Bidder has, in accordance with RfP and LoA, promoted, organized and incorporated the SPV Company under the provisions of the Indian Companies Act, 2013 and has, by its letter no. -----¹³ dated -----¹⁴, requested BDA to accept the SPV Company as Developer, which in turn shall undertake and perform all the obligations and enjoy the rights as specified herein.

G. In addition, the Selected Bidder, in compliance of the terms and conditions of LoA, has:

- a) paid to BDA an amount of INR -----¹⁵ (Indian Rupees ----- only)¹⁶ towards the First Instalment of MLP as specified in LoA vide Demand Draft/ Pay Order /RTGS/ Banker’s Cheque No. -----¹⁷ dated -----¹⁸ drawn on -----¹⁹ Bank, -----²⁰ Branch, -----²¹ payable at Bhubaneswar in favour of “Bhubaneswar Development Authority”; (the “**First Instalment**”);
- b) paid to BDA the **Project Development Fees**, an amount of INR 1,00,00,000/- (Indian Rupees One Crore only) plus applicable GST to be paid to ‘**Bhubaneswar Development Authority**’ in the form of a Demand Draft, by the preferred bidder, before execution of the Development Agreement, and in the manner specified in the Letter of Award (LoA), as non-refundable reimbursement of Project Development Expenses.
- c) deposited with BDA an unconditional and irrevocable bank guarantee of value INR -----²² (Indian Rupees ----- only)²³ (BG no. ----- issued by -----²⁴ Bank, -----

¹⁰ Please insert the details.

¹¹ Please insert the details.

¹² Please insert the details.

¹³ Please insert the details.

¹⁴ Please insert the details.

¹⁵ Please insert the details.

¹⁶ Please insert the details.

¹⁷ Please insert the details.

¹⁸ Please insert the details.

¹⁹ Please insert the details.

²⁰ Please insert the details.

²¹ Please insert the details of the city and State.

²² Please insert the details.

²³ Please insert the details.

²⁴ Please insert the details.

----²⁵- Branch, -----²⁶; dated -----²⁷) as Construction Performance Security (the “**Construction Performance Security**”);

d) deposited with BDA an unconditional and irrevocable bank guarantee of value INR -----²⁸ (Indian Rupees ----- only)²⁹ (BG no. ----- issued by -----³⁰ Bank, -----
----³¹- Branch, -----³²; dated -----³³) as outstanding amount of the MLP (the “**BG for 2nd Instalment of the MLP**”) to be deposited with **90 days** of execution of this agreement.

e) deposited with BDA an unconditional and irrevocable bank guarantee of value INR -----³⁴ (Indian Rupees ----- only)³⁵ (BG no. ----- issued by -----³⁶ Bank, -----
----³⁷- Branch, -----³⁸; dated -----³⁹) as outstanding amount of the MLP (the “**BG for 3rd Instalment of the MLP**”) to be deposited with **240 days** of execution of this agreement.

H. The Selected Bidder having duly complied with the above mentioned formalities is desirous of acquiring the development rights over the Site in favour of the Developer for the purposes of conceptualizing, designing, financing and construction of the Community Market and handing it back to the Authority in the manner specified in the RFP document, and a parking space not lesser than 60% of the built-up-area of the Community Market, completed in all respect to the satisfaction of the Authority. Additionally, conceptualizing, designing, financing, construction, marketing, take bookings through 'Agreement to Sale', operating and maintaining the other Project Assets (*as defined hereinafter*) upon the Site by signing this Development Agreement.

²⁵ Please insert the details.

²⁶ Please insert the details of the city and State.

²⁷ Please insert the details.

²⁸ Please insert the details.

²⁹ Please insert the details.

³⁰ Please insert the details.

³¹ Please insert the details.

³² Please insert the details of the city and State.

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³⁸ Please insert the details of the city and State.

³⁹ Please insert the details.

- I. Accordingly, BDA on the basis of the representations and warranties of the Developer has agreed to grant to the Developer development rights in the Site as specified herein for the purposes as set out herein in this Development Agreement, subject to the fulfilment of the Developer's obligations as set out and contained herein in this Development Agreement in accordance with the terms and conditions of this Development Agreement.
- J. M/s. -----⁴⁰ (single Bidder) or (Lead Member of the consortium) has agreed to be a Conforming Party to this Development Agreement.

NOW THEREFORE, in consideration of the mutual covenants, terms and conditions and understandings set forth in this Development Agreement and other good and valuable consideration (the receipt and adequacy of which is hereby mutually acknowledged), the Parties, with the intent to be legally bound, hereby agree as follows in Articles I to XXI, Schedules I to ----- and Annexure A to ----- :

Article I

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions:

In these presents, including the recitals hereof, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

- a) **"Affected Party"** shall have the meaning ascribed to it in Article 15.1 of this Development Agreement;
- b) **"Appendix"** and **"Appendices"** mean any of the schedules, annexures, supplements or documents appended to this Development Agreement;
- c) **"Applicable Laws"** means any statute, law, regulation, ordinance, notification, rule, regulation, judgment, order, decree, bye-law, approval, directive, guideline, policy, requirement or other governmental restriction or any similar form of decision or determination by, or any interpretation or administration of Government of India (GoI) / Government of Odisha (GoO) or Bhubaneswar Development Authority (BDA) or by any Government Authority(ies) or instrumentality thereof, as may be in effect on the date of this Development Agreement and during the subsistence thereof and shall not include any change in decision of the Authority subsequent to execution of this Development Agreement adversely affecting the right title and interest of the Developer, BDA and the Confirming Party herein;

⁴⁰ Please insert the details.

- d) **“Applicable Permits”** means any or all permissions, licenses, sanctions, clearances, authorizations, consents, rulings, exemptions, no-objections, approvals of and / or from any Government Authority(ies) / Bodies and any other quasi governmental, administrative, judicial, public or statutory body, ministry, department, agency, authority, board, bureau, municipality, corporation or body entrusted with and / or carrying out any statutory functions or commissions, required from time to time, as per Applicable Laws required in connection with the Project and for undertaking, performing or discharging the obligations or fulfillment of the purposes as contemplated by this Development Agreement;
- e) **“Appointed Date”** means incorporation of Project SPV, Execution of Development Agreement, submission of 1st instalment of MLP, BG of outstanding payments, project development fees and Performance Security within 30 days of the issuance of Letter of Award (LOA) and before execution of this agreement.
- f) **“BDA”** shall have the meaning ascribed to it in Preamble of this Development Agreement;
- g) **“BDA Event of Default”** shall have the meaning ascribed to it in Article 16.2 of this Development Agreement;
- h) **“Bid”** shall have the meaning ascribed to it in Recital D of this Development Agreement;
- i) **“Bid Security”** means the bank guarantee of INR 2.5 Cr (Rupees Two Crores and Fifty Lakhs only) as provided and tendered by the Selected Bidder to BDA along with the Bid;
- j) **“Business Day”** means a day on which banks are generally open in Bhubaneswar/ State of Odisha, for transaction of normal banking business;
- k) **“Change in Law”** means occurrence of any of the following events after the execution of this Development Agreement:
- i. enactment of any new Applicable Law;
 - ii. the repeal in whole or in part (unless re-enacted with the same effect) or modifications of any existing Applicable Law;
 - iii. the change in interpretation or application of any Applicable Law by a court of record as compared to such interpretation or application by a court of record, prior to the date of this Development Agreement;
 - iv. the imposition of a requirement for an Applicable Permit (s) (other than for cause) not required on the date of this Development Agreement;
 - v. after the date of grant of any Applicable Permit(s), a change in the terms and conditions attaching to such Applicable Permit(s) (other than for

- cause) or the attachment of any new terms and conditions to the Applicable Permit (s) (other than for cause); or,
- vi. any Applicable Permit(s) previously granted ceasing to remain in full force and effect, though there is no fault of or breach by a Party (including a failure to renew), or if granted for a limited period, nor being renewed on a timely basis on an application therefore having been duly made in good time.
- l) **“Development of Community Market at Ghatikia, Bhubaneswar on PPP mode”** means the project to be developed by Developer on the Site (the project proposal of the Selected Bidder).
- m) **“Compliance Date”** shall have the meaning as ascribed to it in Article 4.5.2 of this Development Agreement.
- n) **“Confirming Party”** to this Development Agreement is the Selected Bidder, be it an individual entity or Lead member of a consortium.
- o) **“Conditions Precedent”** shall have the meaning ascribed to it in Article 4.1.1 of this Development Agreement.
- p) **“Consideration”** shall have the meaning ascribed to it in Article 8.1 of this Development Agreement.
- q) **“Construction Completion Date”** or **“Scheduled Construction Completion Date”** means the date on which the Competent Authority of the Government of Odisha issues the ‘Occupancy Certificate’, certifying the completion of the construction activity relating to the Project Facilities and BDA receiving a copy of the same.
- r) **“Construction Completion Certificate”** means the certificate issued by the BDA to the Developer confirming the completion of the construction of Project facilities.
- s) **“Cure Period”** shall have the meaning ascribed to it in Article 16.4.1 of this Development Agreement.
- t) **“Deficiency”** shall have the meaning ascribed to it in Article 3.3.3 of this Development Agreement.
- u) **“Developer”** shall mean the SPV Company as defined in Article 1.1.(fff) below to execute this Development Agreement and subsequent Conveyance Deed.
- v) **“Development Agreement”** means, this Agreement as of date hereof, including recitals, Appendices and attachments hereto as may be amended,

supplemented, or modified in accordance with the provisions hereof.

- w) **“Development Control”** means the fixed parameters of the bid and all other conditions as per the Odisha Development Authorities (Planning and Building Standards) Rules, 2020, including:
- i. The Community Market will be air-conditioned, spread across G+2 floors with an atrium at the centre.
 - ii. There must be at least 220 numbers of shops measuring 150 sq. ft internal area.
 - iii. Common area of at least 40% inside the ‘Community Market’ excluding area covered by shops for: circulation, passage, staircase, storage, toilet, and others.
 - iv. Separate zoning for Vegetarian and Non-vegetarian items, washing areas and toilet facilities.
 - v. Ceiling height must be suitable to ensure natural light.
 - vi. Space for Store and industrial refrigerators in the common area.
 - vii. Dedicated and separate entrance for the Community Market and Residential cum/or Commercial facilities. The Entrance/Exit should be designed in a manner that there is no conflict in the two facilities i.e. Community Market and Residential cum/or Commercial facilities.
 - viii. Dedicated parking area of at least 60% of total built-up area of Community Market (including circulation) for the customers visiting the Community Market, nearest to the market and preferably on the first (1st) basement.
 - ix. The indicative specifications of the Community Market are available in Annexure 1 of Vol-1, Project Information Memorandum of the RFP.
 - x. All statutory approval is the responsibility of the bidder.
 - xi. The FAR available for the site and charges beyond base FAR will be guided by the Odisha Development Authorities (Planning and Building Standards) Rules, 2020.
- x) **“Dispute”** shall have the meaning ascribed to it in Article 19.1.1 of this Development Agreement.
- y) **“End Date”** means the date immediately following the date of expiry or prior termination, as the case may be, of this Development Agreement in accordance with the provisions hereof.
- z) **“Extended Project Completion Period”** shall have the meaning ascribed to it in Article 7.5.1 of this Development Agreement.
- aa) **“First Installment”** shall have the meaning ascribed to it in Article 8.2.2 of this Development Agreement.
- bb) **“Force Majeure Event”** shall have the meaning ascribed to it in Article 15.1 of this Development Agreement.

- cc) **“Good Industry Practice”** means the exercise of that degree of skill, diligence and prudence and those practices, methods, specifications and standards of engineering, procurement, construction, equipment, safety, operation 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 construction contractor and/or operator, in a project of the type and size similar to the Project.
- dd) **“GoI”** shall mean Government of India.
- ee) **“GoO”** shall mean Government of Odisha.
- ff) **“Indemnified Party”** shall have the meaning ascribed to it in Article 20.3.1 of this Development Agreement.
- gg) **“Independent Engineer”** shall mean the firm and/ or any other person appointed by the BDA for acting as an independent evaluator of construction quality, progress of the Project, compliance of various related provisions of this Development Agreement and finally authorize person for issuing the Construction Completion Certificate and cost of such Independent Engineer to be borne by the Developer.
- hh) **“Insurance Cover”** shall have the meaning ascribed to it in Article 10 of this Development Agreement.
- ii) **“Lenders”** mean any institution based in India or abroad providing Financial Assistance under the Financing Documents and includes banks, financial institution, non-banking financial companies, funds, trusts and/or trustees for the holders of debentures/ or other debt instruments/securities issued by them who provide Financial Assistance to the Developer under the Financing Documents.
- jj) **“Conveyance Rights”** shall have the meaning ascribed to it in Article 3.2.1 of this Development Agreement.
- kk) **“LoA”** shall have the meaning ascribed to it in Recital E of this Development Agreement.
- ll) **“Material Adverse Effect”** means circumstances which may or do (i) render any right vested in a Party by the terms of this Development Agreement ineffective or (ii) adversely affect or restrict or frustrate the ability of any Party to observe and perform in a timely manner its obligations under this Development Agreement or the legality, validity, binding nature or enforceability of this Development Agreement.
- mm) **“Material Breach”** means a breach of any of the obligations, terms, conditions

- and covenants of this Development Agreement or covenants by a Party, which materially and substantially affects the performance of the transactions contemplated by this Development Agreement/and has a Material Adverse Effect.
- nn) **“Nominated Company/Substitute Entity”** shall mean the company who will get the right on the Project as per this Development Agreement as replacement of the Developer and shall be selected by the Lender(s) to the Developer or otherwise, but not the Developer itself, with approval from the Authority.
- oo) **“Notice of Intention to Terminate”** shall have the meaning ascribed to it in Article 16.4.1 of this Development Agreement.
- pp) **“On-Site Infrastructure Facilities”** including internal roads, pavements, drains, sewerage, sidewalks, perimeter fencing, street lighting within the perimeter, electricity sub-stations, electricity mains, water mains, sewer mains, power and water supply, rainwater harvesting, waste disposal systems, sewage treatment plant (STP), waste collection for composting, telecom services, logistics center, firefighting system, and utility corridor and green belt development within the perimeter of the Site etc., as applicable.
- qq) **“Payment Default”** shall have the meaning ascribed to it in Article 8.4.1 of this Development Agreement.
- rr) **“Person”** means any individual, company, corporation, partnership, joint venture, trust, unincorporated organization, Government or Governmental Authority or agency or any other legal entity.
- ss) **“Construction Performance Security”** shall mean the irrevocable and unconditional bank guarantee (Construction Performance Security) provided by the Selected Bidder from a nationalized / scheduled bank having a branch at Bhubaneswar, Odisha as guarantee for the performance of its obligations in respect of the Project.
- tt) **“Selected Bidder”** shall mean the Bidder, either single company or consortium of companies, who has been selected, pursuant to the bid evaluation process set forth in the RfP Document, for implementation of the Project and to whom LoA has been issued by BDA.
- uu) **“Project Agreements”** means collectively (a) this Development Agreement, (b) the Charter Documents, and any other agreement in connection with the Project as and when required by either of the parties and or the Authority, their agents, officials, authorized representatives for the purpose.
- vv) **“Project”** or **“Development of Community Market at Ghatikia, Bhubaneswar on PPP mode”** means, the project for financing, construction,

- operation and maintenance of the Project Facilities at the Project Sites in accordance with the terms and conditions of this Development Agreement.
- ww) **“Project Assets”** means, collectively, all the structures, facilities and areas that are developed on the Project Site, in accordance with as per the terms and provisions of this Development Agreement and the RfP, which would include: (i) all Project Facilities, and (ii) all types of works that the Developer is authorized to undertake and develop, operate and maintain on the Project Site.
- xx) **“Project Facilities”** mean collectively or singularly, as the context may admit or require: (i) Community Market (ii) Residential cum/or Commercial facilities in balance built-up space (iii) external areas like circulation, parking spaces, open area and landscaped areas and (iv) On site Infrastructure along with the structures, common areas, infrastructure and facilities and services relating thereto, that shall be developed, designed, financed, constructed, completed, commissioned and operated and maintained at the Project Site by the Developer in accordance with the provisions hereof.
- yy) **“Project Site”** or **“Site”** means 2.796 acres of land situated in along with the rights in relation thereto, the easementary rights, right of way, appurtenances, the approaches within the site and other areas on, into, at, under, over or through which the Project/Project Facilities or any other construction relating thereto is situated, located, passes through, sits upon or overlies, more particularly described in Schedule I hereunder and delineated in Annexure thereto and thereon bordered in red.
- zz) **“Proposal”** or **“Bid”** means the documents in their entirety comprised in the proposal or bid submitted by Any Firm/Bidder (including the technical and financial proposal/ bid) in response to the Request for Proposal, and accepted by BDA, signed for verification by the authorized representatives of the Parties.
- aaa) **“Request for Proposal”** or **“RfP”** means the Request for Proposal in 3 volumes dated _____ issued by BDA inviting proposals for the Project, and includes any addendum / clarifications issued in respect thereof by BDA.
- bbb) **“Scheduled Completion Date”** shall have the meaning ascribed to it in Article 7.5.1 of this Development Agreement.
- ccc) **“Scope of the Project”** means the scope for the Project as set out in Article 2.1 in this Development Agreement.
- ddd) **“Second / Third Installment”** shall have the meaning ascribed to it in Article 8.2.3/8.2.4 of this Development Agreement.
- eee) **“Security Interest”** means any mortgage, charge (whether fixed or floating or

otherwise), pledge, lien, hypothecation, assignment, security interest, privilege or priority of any kind having the effect of security or other obligation or restriction or other encumbrances of any kind securing or conferring any priority of payment in respect of any obligation of any Person and includes without limitation any right granted by a transaction which, in legal terms, is not the granting of security but which has an economic or financial effect similar to the granting of security in each case under any Applicable Law;

- fff) **“SPV Company”** shall mean a company separately formed by the Selected Bidder under Companies Act 2013 as per the terms of the LoA to deal with the Project along with all responsibilities/ obligations arising out of this Development Agreement and Conveyance Deed at its costs and risks.
- ggg) **“Term”** shall have the meaning ascribed to it in Article 14.1 of this Development Agreement.
- hhh) **“Termination”** shall have the meaning ascribed to it in Article 16.4.1 of this Development Agreement.
- iii) **“Termination Notice”** shall have the meaning ascribed to it in Article 16.4.1 of this Development Agreement.
- jjj) **“Maximum Land Premium/ MLP”** shall have the meaning ascribed to it in Article 8.2.1 of this Development Agreement.
- kkk) **“Users”** shall mean the Person/s who will be allotted units/ spaces in the Project Assets, either whole or in part, by the Developer.
- lll) **“User Agreement”** shall have the meaning ascribed to it in Article 12.1 of this Development Agreement.

1.2. Interpretation:

In this Development Agreement, unless the context otherwise requires:

1.2.1. Any reference to any statute or statutory provision shall include:

- a) all subordinate legislation made from time to time under that provision (whether or not varied, amended, modified, re-enacted or consolidated).
- b) such provision as from time to time, be amended, modified, re-enacted or consolidated (whether before or after the date of this Development Agreement) to the extent such amendment, modification, re-enactment or consolidation applies or is capable of applying to any transactions entered into under this Development Agreement and to the extent liability there under may exist or can arise.

- 1.2.2. The singular includes the plural and vice versa and any word or expression defined in the singular shall have a corresponding meaning if used in the plural and vice versa. A reference to any gender includes the other gender.
- 1.2.3. A reference to any document, Agreement or other deed or document of any description or other instrument (including, without limitation, references to this Development Agreement), includes a reference to any document, agreement, or other instrument as may be varied, amended, supplemented, restated, novated, or replaced, from time to time.
- 1.2.4. A reference to any document, agreement, or other instrument (including, without limitation, references to this Development Agreement), means a reference to such document, agreement, or other instrument and to all appendices, annexure, schedules, and parts attached or relatable thereto, all of which shall form an integral part of such document, agreement or other instrument, as the case may be.
- 1.2.5. A reference to any statutory body or authority includes a reference to any successor as to such of its functions as are relevant in the context in which the statutory body or authority was referred to.
- 1.2.6. Where a word or phrase has a defined meaning, any other part of speech or grammatical form in respect of the word or phrase has a corresponding meaning.
- 1.2.7. References to a particular article, clause, paragraph, sub-paragraph, section, schedule, or annexure shall, except where the context requires otherwise, be a reference to that article, clause, paragraph, sub-paragraph, section, schedule or annexure in or to this Development Agreement, as the case may be.
- 1.2.8. The words 'include' and 'including' are to be construed without limitation. The terms 'herein', 'hereof', 'hereto', 'hereunder' and words of similar purport refer to this Development Agreement as a whole. Where a wider construction is possible, the words 'other' and 'otherwise' shall not be construed ejusdem generis with any foregoing words.
- 1.2.9. In this Development Agreement, headings are for the convenience of reference only and are not intended as complete or accurate descriptions of the content thereof and shall not be used to interpret the provisions of this Development Agreement.
- 1.2.10. Where in this Development Agreement, provision is made for the giving or issue of any notice, consent, approval, certificate, or determination by any person, unless otherwise specified such notice, consent, approval, certificates of determination shall be in writing.
- 1.2.11. Any obligation not to do something shall be deemed to include an obligation not to suffer, permit or cause that thing to be done. An obligation to do something shall be deemed to include an obligation to cause that thing to be done.

- 1.2.12. A right conferred by this Development Agreement to do any act or thing shall be capable of being exercised from time to time.
- 1.2.13. The rule of interpretation which requires that an agreement be interpreted against a person or party/ies like the consultants and the legal retainer of BDA, drafting it shall have no application in the case of this Development Agreement.
- 1.2.14. If any provision in this Article is a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to it as if it were a substantive provision in the body of this Development Agreement.
- 1.2.15. Unless a Party granted discretion to render a decision or enter in to an agreement is specifically described as being required to act reasonably in making such decision or entering in to such agreement, as the case may be, the Party granted such discretion shall be entitled to act with absolute discretion.
- 1.2.16. Any reference to 'day' shall mean a reference to a calendar day, any reference to 'month' shall mean a reference to a month of the Gregorian calendar. All dates are in the form of dd/mm/yyyy.
- 1.2.17. Any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include both such days and dates.
- 1.2.18. References to a person (or to a word importing a person) shall be construed so as to include:
- a) Individual, firm, partnership, trust, joint venture, company, corporation, body corporate, unincorporated body, association, organization, any government, or state or any agency of a government or state, or any local or municipal authority or other Governmental Authority (whether or not in each case having separate legal personality);
 - b) That person's successors in title and assigns or transferees permitted in accordance with the terms of this Development Agreement; and,
 - c) References to a person's representatives shall be to its officers, personnel, legal or other professional advisers, subcontractors, agents, attorneys, and other duly authorized representatives.
- 1.2.19. The terms and expressions elsewhere defined in this Development Agreement shall have the meanings ascribed therein.
- 1.2.20. This Development Agreement, and all other agreements and documents forming part of this Development Agreement are to be taken as mutually explanatory and, unless

otherwise expressly provided elsewhere in this Development Agreement, the priority of this Development Agreement and other documents and agreements forming part hereof shall, in the event of any conflict between them, be in the following order:

- a) this Development Agreement; and
- b) all other agreements and documents forming part hereof,

i.e. the Development Agreement at (a) hereinabove shall prevail over the agreements and documents at (b) hereinabove.

1.3. Measurements and Arithmetic Conventions:

All measurement and calculations shall be in metric system and calculations done to 2 (two) decimal places, with the third digit of 5 (five) or above being rounded up and below 5 (five) being rounded down except in money calculation, which shall be rounded off to nearest rupee.

Article II

2. SCOPE OF PROJECT AND ACCESS TO SITE

2.1. Scope of Project:

2.1.1. The scope of the Composite Project is to develop a 'Community Market' and parking as per development guidelines provided by the Authority and utilize the unused built-up space for Residential cum/or Commercial Facilities on the Site by the Developer by following the Applicable Laws, Applicable Permits and in accordance with the terms and conditions of this Development Agreement.

2.1.2. The scope of the Project shall mean and include, during the Term:

- a) Planning, designing, financing, construction of the Assets and Project Facilities upon the Site as per Good Industry Practice, for the purposes of the 'Community Market' and parking as per development guidelines provided by the Authority and handover the same to the Authority, free of cost and as per specifications mentioned in the bidding documents and obtain completion certificate from the Competent Authority.
Additionally, utilize the unused built-up space for Residential cum/or Commercial Facilities on the Site and its subsequent use as per the discretion of the Developer.
- b) Obtaining the Applicable Permits under the Applicable Law.

- c) After payment of MLP, Performance Security, obtaining all approvals and clearances from competent authority and registration with ORERA, obtain permission from the BDA to execute the 'Agreement to Sale' with the end-users for marketing of the proposed Residential cum/or Commercial Facilities.
- d) Execute the Conveyance Deed for the Residential cum/or Commercial Facilities on the Developer's share of built-up area with proportionate interest on land, parking, and utilities after completion of the Composite Project.
- e) Operating and maintaining the Assets and Project Facilities as per Good Industry Practice till the same is handed over to the Associations of End Users like Resident Welfare Association, Cooperative Housing Society etc in accordance with the prevailing law and till completion of the defect liability period; and,
- f) Performance and fulfillment of all other obligations of the Developer pursuant to this Development Agreement and matters incidental thereto or necessary thereof.

2.2. Handover of the Site:

- 2.2.1. On the execution of this Development Agreement and subject to compliance of Article No. 4.3, BDA shall give the right of way and/ or access (as the case may be) to the Site for the Project to the Developer without any encroachment and encumbrance for the purposes of and to the extent conferred by the provisions of this Development Agreement and subsequent to the execution of the Conveyance Deed handover the formal possession of the Site to enjoy the freehold rights in the proportionate or Developer's share of built-up area with equivalent interest on land.
- 2.2.2. BDA and the Developer shall carry out a joint survey of the Site for the purposes of demarcation of the boundaries of the Site and would sign a joint survey plan of the Site and the joint survey letter.

Article III

3. GRANT OF DEVELOPMENT RIGHT / FREEHOLD RIGHT

3.1. Grant of Development Right:

- 3.1.1. On payment of 10% of Maximum Land Premium (MLP) as provided in Article No. 8.2.1 and bank guarantee of the balance consideration as per the specific provisions of Article 8 of this Development Agreement and meeting all other conditions as per the LoA, commitment to handover the Community Market and dedicated parking complete in all respect, and in compliance of the Representation and Warranties and covenants by the Developer as specified in Article No. 6.2.1, BDA, in accordance with this Development Agreement, hereby grants,

- ✓ exclusive right and authority for the Term to the Developer for undertaking the Project.
- ✓ and the Developer hereby agrees to undertake the Project in accordance with the terms and conditions of this Development Agreement.

3.1.2. Subject to and in accordance with the provisions of this Development Agreement, the right of development hereby granted shall oblige or entitle (as the case may be) the Developer to the following:

- a) Right to execute Conveyance Deed for the Residential cum/or Commercial Facilities on the Developer's share of built-up area with proportionate interest on land, parking, and utilities after completion of the Composite Project and other terms and conditions as stated in this Development Agreement.
- b) Right to take formal possession of Developer's share of built-up area and proportionate interest on land, parking and utilities upon signing of Conveyance Deed.
- g) Right of access to the Site for the purposes of and to the extent conferred by the provisions of this Development Agreement, and subsequent to meeting the conditions, obtain permission from the BDA to execute the 'Agreement for Sale' with the end-users for marketing of the proposed Residential cum/or Commercial Facilities.
- c) Enter into sub-contracts for the purposes of the development of the Project.
- d) Apply for and obtain all Applicable Permits required for the Project, including plans for construction of building/s and other structure/s thereon for such uses and purposes as described herein.
- e) Enjoy all the rights, privileges and benefits in accordance with the provisions of this Development Agreement, Applicable Laws and Applicable Permits and subject to receipt of approval and authorization in accordance with the terms hereof, to design, engineer, finance, procure, construct, erect, operate, market and maintain the Assets and Project Facilities, and for that purpose to remove, renovate, use or demolish any structures with prior approval from BDA that may be existing on the Site as on handing over of the possession of the Site to the Developer and/ or after the execution of the Development Agreement.
- f) Proceed with the development of the Project at its own account and at its own risk, costs and expenses and shall be solely responsible and liable to all the Governmental Authorities / Allottees / Sub-Contractors / Lenders / Users.
- g) To facilitate the development of the Project, obtain in its own name loans or raise funds from any Lender and subject to the provisions hereof and with 15 (Fifteen)

days prior intimation to BDA as security for the same, to create an encumbrance on the Assets and Project Facilities provided however that the Site is not encumbered in any manner whatsoever.

- h) Subject to the provisions of this Development Agreement, allot built up space in the Developer's share of built-up area and parking on allotment for sale/ rent / licence / right to use right of access or similar rights and facilities to any third party(ies) (the "Users") for using the space(s) as may be permitted under applicable Development Controls ("DC") and/ or this Development Agreement for a duration not exceeding the period of Term of the development agreement.
- i) Demand, collect appropriate charges from the Users, who have been granted rights or facilities, including sub-conveyance facility, right of use, right of access or similar rights and facilities, in accordance with the terms and conditions hereof.
- j) Bear and pay all costs, expenses, and charges in connection with or incidental to the performance of the obligations of the Developer under this Development Agreement.
Not to use the Site for any purpose other than the purposes of the Project and purposes incidental thereto as permitted under this Development Agreement.
- k) Not to assign, transfer, sublet or create any lien or Encumbrance on this Development Agreement, or the Grant hereby granted or on the whole or any part of the Site nor transfer, conveyance or part possession thereof, save and except as expressly permitted by this Development Agreement.
- l) Perform and fulfil all of the Developer's obligations under and in accordance with this Development Agreement.

3.1.3. For the avoidance of any doubt, it is clarified that the Developer shall not have any right in the Developer's share of built-up area and proportionate interest on land, parking and utilities except as expressly given to it in terms of this Development Agreement and / or as set forth in this Development Agreement and the Conveyance Deed to be executed in its favour.

3.2. **Grant of Conveyance Right:**

3.2.1. Both the Parties expressly agree that by virtue of Article No. 8.2.3, upon completion of the composite project, and handing over of the Community Market and dedicated parking in the manner specified in the bidding documents and to the satisfaction of BDA, its due acknowledgement by BDA and compliance of all the condition precedent as per Article No. 4 of this Development Agreement, the Parties hereto shall enter into and execute the Conveyance Deed (as set out in the "Annexure"), in respect of the Developer's share of built-up area and proportionate interest on land, parking and

utilities as described, delineated and shown in “**Schedule ____**”, annexed hereto, whereby and whereunder the Conveyance Deed will be executed to provide freehold right on the Developer’s share of built-up area and proportionate interest on land, parking and utilities along with all rights, liberties, privileges whatsoever to such area, as contemplated in this Development Agreement and the Developer’s obligations hereof, and for no other purpose whatsoever (the “**Conveyance Rights**”).

- 3.2.2. On the execution of the Conveyance Deed by BDA in favor of the Developer, BDA shall issue formal possession of the proportionate built-up area to the Developer and the Parties shall execute a formal possession letter with the condition that conveyance rights of the Developer is confined to the Developer’s share of built-up area and proportionate interest on land, parking and utilities. Notwithstanding such handover of possession, the Developer shall not have any claim whatsoever against BDA with respect to the Conveyance Rights from the Effective Date itself so long as the land area is in conformity with joint survey letter; save and except any past claims raised by any third party on the basis of any valid right, title and interest whether disclosed or otherwise.
- 3.2.3. The tenure of conveyance under the Conveyance Deed would be till perpetuity.
- 3.2.4. On execution of the Conveyance Deed, the Developer would be referred to as the freehold owner of their proportion of built-up area and parking with equivalent interest on land.
- 3.2.5. In accordance with this Development Agreement and subsequent Conveyance Deed/s, the Developer will have full right to market the residential cum/or commercial space of the Project to any Users in conformity with this Development Agreement / Conveyance Deed on short term or long-term contract within the overall parameter and timelines of this Development Agreement and the Conveyance Deed. All other terms and conditions relating to implementation and operation and maintenance of the Project will remain unchanged and effective as it is in this Development Agreement.

Further provided that, notwithstanding the approved use of the Assets and Project Facilities by the proposed Users in terms of the letters of allotment issued to them (after meetings the conditions precedent) by the Developer, based on the ‘Agreement to Sale’ will not be followed by the ‘Sale Deed’ or any other deed till the Construction Completion Certificate is issued by the Competent Authority. After the receipt of Construction Completion Certificate and Occupancy Certificate from Competent Authority(ies), the Developer shall be entitled to grant sale/ rent / licence / right to use right of access or similar rights and facilities to the Users.

In the event of Termination of this Development Agreement, the ‘Agreement to Sale’ shall stand automatically terminated on the date of Termination of this Development Agreement and BDA will have no liability towards the allottees who have made advance payments under the ‘Agreement to Sale’ with the Developer.

3.2.6. All the other agreements, sub-conveyance, licence agreement, franchise agreement, etc. entered into by the Developer with any user, shall also co-terminate with this Development Agreement.

3.3. Site Conditions:

3.3.1. On execution of this Development Agreement, the Developer has declared and acknowledged that:

- a.** It has inspected the Site and its surroundings and is aware of the existing condition and existing structures etc., if any, on the Site, which is being offered strictly on an “as is where is basis”. It is hereby confirmed by the parties hereto that a joint survey by the Confirming Party and BDA is completed before the Appointed Date and the Joint Survey Letter is submitted. The Developer shall not claim for any change on the Site after the Compliance Date so long as the land area is in conformity with joint survey letter; save and except any past claims whether disclosed or otherwise.
- b.** It has satisfied itself as to the nature of the climatic, hydrological and general physical conditions of the Site, the nature of the ground and subsoil, the form and nature of the Assets permitted to be developed at the Site, and the nature of the design, work and materials necessary for the performance of its obligations under this Development Agreement.
- c.** It has satisfied itself as to the means of communication with, access to and accommodation at the Site, it may require or as may be otherwise necessary for the performance of its obligations under this Development Agreement.
- d.** It has satisfied itself as to the usefulness, usability etc. of the Site.
- e.** It has assessed the applicability of land revenue and BDA’s right over the said site.
- f.** It has assessed the availability of power, water and other necessary infrastructure etc.
- g.** It has assessed the existing site of the Project and its surroundings including its land use pattern, local government and other restrictions and difficulties etc.
- h.** It has carried out market study, demand survey, user’s opinion survey etc. and satisfied itself regarding the commercial viability of the Project.
- i.** It has assessed the conditions of the approach roads to the Project Site.

- j.** It has assessed the conditions affecting transportation, disposal, handling, and storage of the materials required for construction work.
- k.** It has examined all Applicable Laws and Applicable Permits.
- l.** It shall take over the possession of the Site more elaborately described in Clause 2.2.1 in terms of this Development Agreement on and “as is where is basis”.
- m.** It has unconditionally waived its claim against BDA in respect of the Site including in respect of failure to obtain the Applicable Permits.
- n.** All other matters that might affect the performance under this Development Agreement and has determined to the Developer’s satisfaction the nature and extent of such difficulties, risks, and hazards as are likely to arise or may be faced by the Developer in the course of performance of its obligations hereunder.

3.3.2. The Developer expressly acknowledges that it shall have no recourse against BDA in the event of any mistake made or misapprehension harbored by the Developer in relation to any of the foregoing provisions of this Article 3 and BDA hereby expressly disclaims any liability in respect thereof.

3.3.3. The Developer acknowledges that after a complete and careful examination, the Developer has made an independent evaluation of the Site as a whole and has determined the nature and extent of the difficulties, inputs, costs, time, resources, risks and hazards that are likely to arise or may be faced by it in the course of the performance of its obligations under this Development Agreement. The Developer further acknowledges that it shall have no recourse against BDA if it is, at a later date, found that the Site is deficient in any manner whatsoever (the “**Deficiency**”) except any deficiency in the title of BDA to the Site. If a Deficiency is found, the Developer acknowledges and agrees that it shall, at its own cost and risk, take all appropriate measures to remedy the same in order to undertake the Project and BDA shall not be liable for the same in manner whatsoever to the Developer.

3.4. **Reservation of Mines etc.:**

3.4.1. BDA excepts and reserves unto itself all mines, minerals, coal, gold-washing, earth oils and quarries etc. in or under the Site, and full right and power at all times to do all acts, deeds and things which may be necessary or expedient for the purpose of searching for, working, obtaining, removing and enjoying the same without providing or leaving any vertical support on the surface of the Site or for any building standing thereon; provided always that BDA / other Government Authority(ies) shall make reasonable compensation to the Developer for all damage directly occasioned by the exercise of the rights hereby reserved or any of them.

3.4.2. All debris and construction and building materials (sand, gravel, stone, rock, loose earth etc.) lying at the Site or generated during the implementation of the Project including scrap material, if any, on the Site will belong to the Developer and shall be promptly disposed off by the Developer at its cost. The Developer may if it deems appropriate use the same by selling it or for the execution of the Project.

3.4.3. All articles of antique value found on or under the Site shall be the property of BDA. The Developer shall take reasonable precautions to prevent its labour and personnel and that of its contractors from removing or damaging any such article or thing. The Developer shall immediately upon discovery of such article or thing, inform BDA, which may issue instructions for dealing therewith.

3.5. Exceptions to the Grant:

3.5.1. It is expressly agreed between the Parties that BDA reserves for itself, provided that the same is not inconsistent with the development in accordance with this Development Agreement, the right to grant any easements over or rights of access or rights of way on, over, under, through or across the Site for:

- a) The purpose of supply of electricity, gas, telecommunication cables, water, sewerage, drainage or any other services and utilities; or,
- b) The purpose of transport or other services to the public.

Article IV

4. CONDITION PRECEDENT

4.1. Conditions Precedent:

4.1.1. Save and except as may otherwise be expressly provided herein, the Grant, the respective rights and obligations of a Party under this Agreement shall be subject to the satisfaction in full of the conditions precedent relating to the other Party (the “**Conditions Precedent**”).

4.2. Conditions Precedent for BDA:

4.2.1. The obligations of the Developer hereunder are subject to the satisfaction in full of the following Conditions Precedent by BDA: The BDA shall have:

- a) granted right of way and / or access (as the case may be) to the Site for the Project to the Developer without any encroachment and Encumbrance for the purposes of and to the extent conferred by the provisions of this Development Agreement.

- b) Issued necessary notification / government orders, if required, exempting the Developer from the applicability of the relevant Land Reforms laws or any other ceiling related Applicable Law in relation to the Site for the purposes as contemplated in this Development Agreement.
- c) Satisfied to the Developer and Confirming Party that the Title of the Project Site and/or land of the Site is free from any encumbrances and BDA has full authority and power to deal/handover the Site to the Developer.

4.3. BDA shall grant the right of way and/ or access of the site to the developer after compliance of Article No. 4.4.1.(a) to 4.4.1.(l) of Conditions Precedent required to be satisfied by the Developer.

4.4. **Conditions Precedent for Developer:**

4.4.1. The obligations of BDA hereunder are subject to the satisfaction in full of the following Conditions Precedent by the Developer. The Developer shall have:

- a) Executed and procured execution of the Shareholder's Agreement amongst the shareholders of the Developer (i.e. Project SPV) in case of Consortium;
- b) provided the BDA true copies duly attested by notary/ executive magistrate of its constitutional documents and board resolutions authorizing the execution, delivery and performance of this Development Agreement by the Developer;
- c) included / inducted a representative of BDA in the Board of Directors of the Developer as BDA's nominee Director;
- d) achieved the Financial Closure and delivered to BDA, 2 (two) true copies each of the Financing Agreement, the Financial Package and the Financial Model, duly attested by a Director of the Developer so far as those documents are as applicable to the developer;
- e) delivered to BDA by the Board/Shareholders of the Developer that their respective confirmation in original, of the correctness of their representation and warranties set forth in this Development Agreement and more particularly in Article 6;
- f) delivered to BDA a legal opinion from the legal counsel of the Developer with respect to rights of the Developer to enter into this Development Agreement and the enforceability of the provisions thereof;
- g) made all the applications at its cost and expense for the Applicable Permits under the Applicable Law and procured and / or obtained all the Applicable Permits as are required for commencing construction and execution of the Project

unconditionally or if subject to conditions, then all such conditions have been satisfied in full and such Applicable permits are in full force and effect within 12 (twelve) months from signing of this Development Agreement;

- h) procured environmental clearance from the State Agency and / or Ministry of Environmental and Forests, GoI as the case may be, after having completed preparation of the Detailed Project Report;
- i) fulfilled all the financial obligations including commitment to handover the Community Market and dedicated parking, completed in all respect and to the satisfaction of BDA within the project timeline, as mentioned in the Letter of Award;
- j) completed the payment of all outstanding amounts of the MLP to BDA, paid the project development fees, submitted the performance Bank Guarantee and other requirements more specifically mentioned in the Letter of Award (LoA);
- k) completed the registration with ORERA;
- l) established the project escrow account in which all the receivable from prospective allottees will be deposited.

Provided that upon request in writing by the Developer, the BDA may, in its sole discretion, waive fully or partially any or all the Conditions Precedent set forth in this Article 4.4.

4.5. Obligations to Satisfy Conditions Precedent:

- 4.5.1. Each Party shall make all reasonable endeavors at its respective cost and expense to procure the fulfillment of the Conditions Precedent relating to it, unless specifically mentioned otherwise.
- 4.5.2. The date, when the Developer and the BDA fulfils its Conditions Precedents shall be the Compliance Date (the “**Compliance Date**”), as jointly certified in writing by the Parties/ their authorized representatives forthwith upon such fulfillment, whereupon the obligations of the Parties under this Agreement shall commence.
- 4.5.3. The permission from BDA to execute ‘Agreement to Sale’ (ATS) with prospective end-users will be accorded on or after the Compliance Date.

4.6. Non-fulfillment of Conditions Precedent:

- 4.6.1. In the event, the Conditions Precedent of a Party (defaulting party) have not been fulfilled for any reason whatsoever within the stipulated time and the other party (non defaulting party) has not waived, fully or partially, such conditions relating to the

defaulting party nor granted any extension of time for compliance in respect thereof, and the non-defaulting party deciding in such event to terminate this Development Agreement by issuing a notice to the defaulting party to this effect then this Development Agreement shall cease to have any effect as of that date as mentioned in the notice of termination issued by the non-defaulting party and be deemed to have been terminated by the mutual agreement of the Parties and no Party shall subsequently have any rights or obligations under this Development Agreement. In the event of such termination, BDA shall not be liable in any manner whatsoever to the Developer or any Persons claiming through or under it except otherwise laid down in this Development Agreement. Further, all rights, privileges, claims of the Developer, including those related to this Development Agreement, shall be deemed to have been ceased with the concurrence of the Developer.

- 4.6.2. All the rights of way and / or access in / to the Site as granted / allowed to the Developer shall immediately revert to BDA, free and clear from any Encumbrances, irrespective of any outstanding mutual claims between the Parties.
- 4.6.3. In the event this Development Agreement is terminated due to nonfulfillment of the Developer's Conditions Precedent and the same is not due to any default on the part of BDA, BDA without prejudice to its other rights, claims and contentions shall be fully and legally and lawfully entitled to forfeit the Construction Performance Security as damages. However, the MLP, as paid before execution of this Development Agreement, will be returned to the Developer without any interest thereon.
- 4.6.4. In the event this Development Agreement is terminated due to nonfulfillment of BDA's Conditions Precedent, BDA shall upon such termination return / refund in full the Construction Performance Security, MLP without any interest, but not the non-refundable project development fees, provided there are no other outstanding claims of BDA on the Developer unless the BDA's failure to fulfill its Conditions Precedent is as a result of the Developer's default.
- 4.6.5. Notwithstanding, as mentioned hereinabove, instead of terminating this Development Agreement, the Parties may by mutual agreement extend the time for fulfilling the Conditions Precedent.

Article V

5. EQUITY LOCK IN OBLIGATIONS OF THE DEVELOPER

- 5.1. The member(s) of the Selected Bidder shall hold singly or jointly not less than 51% (fifty one percent) of the total paid-up equity share capital of the Developer with effect from the Compliance Date.
- 5.2. In case of consortium, the lead member of the Consortium shall not hold less than 51% share until expiry of the construction period including extension, if any, and till expiry of the defect liability period of the property.

- 5.3. In case of formation of SPV, the members of the Consortium shall not be the independent member of the SPV, directly or indirectly.
- 5.4. Any Member, 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 Share and voting rights of the SPV from the Appointed Date until the expiry Construction Period, including extension, if any and till receipt of the Completion Certificate from BDA.
- 5.5. Consortium, as a whole, shall hold not less than 51% of the total Share and voting rights of the SPV till the expiry of the construction period including extensions, thereof, if any and till the expiry of Defect Liability Period of the developed property.
- 5.6. If the Selected Bidder is a single entity, then the Selected Bidder shall hold at least 51% (fifty-one per cent) of the total Share and voting rights of the SPV from the Appointed Date and until the expiry of the Construction Period including extensions, thereof, if any and till the expiry of Defect Liability Period of the developed property.
- 5.7. After the expiry of the lock-in periods specified above, the Selected Bidder and in case of a Consortium, the Members of the Consortium, will be entitled to dilute their share in the total Capital of the SPV without the consent of BDA, provided that, the Selected Bidder shall inform BDA of any such change in the shareholding at the earliest.
- 5.8. The holding stipulation as mentioned in Article No 5.1 and 5.2 should be maintained up to 5 years from the Scheduled Completion Date (i.e. Defect Liability Period) or any extension thereof ("Equity Lock In Period").
- 5.9. Any violation/ modification in the shareholding pattern in the Equity Lock in Period would be treated as Developers' Event of Default.

Article VI

6. REPRESENTATIONS AND WARRANTIES

6.1. Representations and Warranties of BDA:

6.1.1. BDA hereby represents and warrants to the Developer that, as of the Appointed Date:

- a) it is duly organized and validly existing under the laws of India and has been in continuous existence since its constitution;
- b) it has full power and authority to execute, deliver and perform its obligations under this Development Agreement and to carry out the transactions contemplated hereby;

- c) it has taken all necessary actions under Applicable Laws to authorize the execution, delivery and performance of this Development Agreement;
- d) the obligations of BDA under this Development Agreement will be legally valid, binding and enforceable obligations against BDA in accordance with the terms hereof;
- e) it has not violated or defaulted any order, writ, injunction or any decree of any court or any legally binding order of any Governmental Authority which may result in any Material Adverse Effect or impairment of BDA's ability to perform its obligations and duties under this Development Agreement;
- f) the Site is free from all Encumbrances and is available for development, in accordance with the terms of this Development Agreement;
- g) there are no actions, suits, proceedings, or investigations pending against it, before any court or Governmental Authority in relation to the Site, the outcome of which may result in the breach of or constitute a default of BDA under this Development Agreement or result in impairment of BDA's ability to perform its obligations and duties under this Development Agreement.

6.2. Representation and Warranties of the Developer:

6.2.1. The Developer (i.e. Project SPV) hereby represents and warrants to BDA that as of the Effective Date:

- a) it has constituted for sole purpose of the Project and not for any other purpose;
- b) it is duly organized and validly existing under the laws of India and has been in continuous existence since incorporation;
- c) it shall have full power and authority to execute and deliver as per the terms and conditions of this Development Agreement;
- d) it has taken all necessary corporate and other action under Applicable Laws and its Memorandum of Association and Articles of Association to authorize the execution and delivery of this Development Agreement;
- e) it has the technical and financial standing and capacity to undertake and complete the Project;
- f) the obligations of Developer under this Development Agreement will be legally valid, binding and enforceable obligations against the Developer in accordance with the terms hereof;

- g) the information furnished in the Bid by the Selected Bidder and as updated on or before the date of this Development Agreement is true and accurate in all respects as on the date of this Development Agreement;
- h) the execution, delivery and performance of this Development Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of its Memorandum of Association and Articles of Association or any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- i) all receivables from the Project through 'Agreement to Sale' will be deposited in the project specific Escrow Account and used for the project;
- j) there are no actions, suits, proceedings, or investigations pending or, to the best of the Developer's knowledge, threatened against it and/ or Selected Bidder before any court or before any other judicial, quasi judicial or other authority, the outcome of which may result in the breach of or constitute a default of Developer under this Development Agreement or which individually or in the aggregate may result in any Material Adverse Effect on its business, properties or assets or its condition, financial or otherwise, or in any impairment of its ability to perform its obligations and duties under this Development Agreement;
- k) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Governmental Authority which may result in any Material Adverse Effect or impairment of Developer's ability to perform its obligations and duties under this Development Agreement or to undertake the Project;
- l) it has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities, which in the aggregate have or may have Material Adverse Effect on its financial condition or its ability to perform its obligations and duties under this Development Agreement and undertake the Project;
- m) no representation or warranty by Developer contained herein or in any other document furnished by it to BDA, or to any Governmental Authority in relation to Applicable Permits contains or will contain any untrue, inaccurate or incorrect statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading.

6.3. Disclosure:

- 6.3.1. In the event at any time after the date hereof, any event or circumstance comes to the attention of either Party that renders any of its abovementioned representations or

warranties untrue, inaccurate, or incorrect, then such Party shall immediately notify the other Party of the same. Such notification shall not have the effect of (i) remedying any breach of the representation or warranty that has been found to be untrue, inaccurate or incorrect; or (ii) adversely affecting or release any obligation of either Party under this Development Agreement.

Article VII

7. OBLIGATIONS OF THE DEVELOPER AND BDA

7.1. The Developer's Obligations:

7.1.1. The Developer agrees that it shall at its own cost and expense observe, undertake, comply with and perform, in addition to and not in derogation of its obligations elsewhere set out in this Development Agreement, the following:

- a) undertake timely and effective designing, engineering, procurement and construction and financing of the Project and operation and maintenance of the Project, Assets and Project Facilities during the tenure of the Term in accordance with this Development Agreement;
- b) make timely payment of consideration as set out in this Development Agreement;
- c) make, or cause to be made in a time bound manner, necessary applications to the relevant authorities with such particulars and details, as may be necessary for obtaining all Applicable Permits and obtain such Applicable Permits in conformity with the Applicable Laws and comply such other conditions as are set out in this Development Agreement;
- d) follow the conditions of development as set out in this Development Agreement;
- e) follow the conditions relating to construction of the Project as set out in this Development Agreement;
- f) submit to BDA certified true copies of each of the Project Agreements as far as practicable and any agreement if any not submitted, the certified true copies of such agreement may be submitted within 7 (seven) days of such demand by BDA;
- g) procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used or incorporated into the Project;
- h) provide all assistance to the Independent Engineer, appointed by BDA, as it may require for the performance of its duties and services;

- i) the Developer shall provide to the BDA and the Independent Engineer reports on a regular basis during the Term including Construction Period, in accordance with the provisions of this Development Agreement and at all times provide the BDA such information, data and documents as the BDA may reasonably require;
- j) obtain and maintain in force on and from the Compliance Date all insurance in accordance with the provisions of this Development Agreement and Good Industry Practice;
- k) undertake servicing of the debt in accordance with any financial arrangement taken by the Developer for the Project;
- l) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of the Developer's obligations under this Development Agreement;
- m) be solely responsible at all times for its employees and employees of its sub-Contractors and BDA shall not be liable in any manner whatsoever in respect of such employees and their employment;
- n) employ and retain during the Term including Construction Period suitably qualified and experienced personnel on the Site to manage the Project on a day-today basis;
- o) not to place or create and nor permit any Contractor or other person claiming through or under the Developer to create or place any Encumbrance or security interest over all or any part of Site or on the Project Assets, or on any rights of the Developer therein or under this Development Agreement, save and except as expressly set forth in this Development Agreement;
- p) make its own arrangements for quarrying, and observe and fulfill the environmental and all other requirements under the Applicable Laws and Applicable Permits at its own cost and expense;
- q) be responsible for safety, soundness and durability of the Project including other structures forming part thereof and their compliance with the Specifications and Standards;
- r) adhere to Safety Standards as per requirements of Applicable law, Good Industry Practice;
- s) not claim or demand possession or control of any roads, structures or real estate which do not form part of the Project;

- t) from the Effective Date the Developer and from the date as stated in the User Agreement(s), User(s) shall, as the case may be and to the extent as applicable and otherwise provided for in this Development Agreement and in the Conveyance Deed, pay in a timely manner all outgoings, taxes (including municipal taxes), duties, levies, cess, import duties, fee (including any licence fees), rates and charges (including those applicable for existing utility connections) and any other dues, assessments and outgoings in respect of the Project and / or the implementation thereof and / or the Residential cum/or Commercial Complex and / or the units / Assets and Project Facilities. The aforesaid shall also include amongst others income tax, sales tax, service tax, value added tax, excise duty, customs duty, octroi, property and municipal taxes, charges for water, sewerage disposal, fuel, garbage collection and disposal, electricity and other utilities that may be levied, claimed or demanded from time to time by any Government Authority including any increase therein effected or fines or penalties related thereto. BDA shall not be liable for the payments of the aforesaid, if in any event and under any circumstances, the Developer fails to pay the same. In case, BDA is made and / or caused to pay any sums of money on account of the aforementioned heads, BDA will be entitled to receive such amounts from the Developer along with interest @ 15% (fifteen percent) per annum from the date the payment is made by BDA till the due receipt thereof by BDA to the complete satisfaction of BDA;
- u) after receiving vacant possession of the Site or part thereof, ensure that such Site remains free from all encroachments and take all steps necessary to remove encroachments, if any;
- v) comply with the divestment requirements and hand over the Project, the Assets and the Project Facilities as the case may be, to BDA upon Termination of this Development Agreement;
- w) the Developer shall be solely responsible for the marketing of the Project to potential Users and shall make its best endeavor in this regard. The Developer shall undertake all marketing activities in this regard at its own costs and expenses;
- x) the Developer shall not directly or indirectly either by itself or through its agents or any person claiming under it, to solicit, accept, collect or appropriate any application or any money, in whatever form, towards the use, allotment, occupation or license of any developed or built-up space or any facilities or amenities proposed to be established, operated and maintained in the Project prior to execution of this Agreement;
- y) Although the developer has the flexibility to develop combination of various type of dwelling units/ commercial spaces, the following development controls must be adhered to:

- The Community Market will be air-conditioned, spread across G+2 floors with an atrium at the centre.
- There must be at least 220 numbers of shops measuring 150 sq. ft internal area.
- Common area of at least 40% inside the 'Community Market' excluding area covered by shops for: circulation, passage, staircase, storage, toilet, and others.
- Separate zoning for Vegetarian and Non-vegetarian items, washing areas and toilet facilities.
- Ceiling height must be suitable to ensure natural light.
- Space for Store and industrial refrigerators in the common area.
- Dedicated and separate entrance for the Community Market and Residential cum/or Commercial facilities. The Entrance/Exit should be designed in a manner that there is no conflict in the two facilities i.e. Community Market and Residential cum/or Commercial facilities.
- Dedicated parking area of at least 60% of total built-up area of Community Market (including circulation) for the customers visiting the Community Market, nearest to the market and preferably on the first (1st) basement.
- The indicative specifications of the Community Market are available in Annexure 1.
- All statutory approval is the responsibility of the bidder.
- The FAR available for the site and charges beyond base FAR will be guided by the Odisha Development Authorities (Planning and Building Standards) Rules, 2020.

7.2. **Indemnification:**

- 7.2.1. The Developer shall indemnify and keep indemnified BDA against all actions, suits, claims, demands and proceedings and any loss or damage or cost or expense that may be suffered by them on account of anything done or omitted to be done by the Developer in connection with the enjoyments of its rights and performance, of its obligations under this Development Agreement and shall also indemnify the BDA from any and all liabilities and consequences, in relation to payment of taxes, duties, levies, cess and charges etc., arising from any and all such non-payment, delayed payment, attachment, disturbance of possession, notice, order, litigation etc.

7.3. BDA's Obligations:

7.3.1. BDA agrees to observe, comply and perform the following:

- a) enable the Developer to have access to the Site, free from encumbrances, in accordance with this Development Agreement;
- b) handover of the site to the Developer free from all Utilities and High-tension electrical lines if any;
- c) permit use of the Site by the Developer as licensee under and in accordance with the provisions of this Development Agreement without hindrance from BDA or persons claiming through or under it;
- d) assist and provide all reasonable support to the Developer in obtaining Applicable Permits;
- e) upon written request from the Developer, assist the Developer in obtaining access to reasonable infrastructure facilities and utilities, including water, electricity and telecommunication facilities;
- f) observe and comply with its obligations set forth in this Development Agreement;
- g) provide full cooperation to the Developer in order to achieve the objectives of this Development Agreement.

7.4. Construction of the Project

7.4.1. The Developer shall have right to start any construction work on the Site from the date of the **Compliance Date** and shall have to mobilize its manpower, equipment, materials and resources for construction within 30 (thirty) days or obtaining Applicable Permits whichever is later;

7.4.2. The permission to execute 'Agreement to Sale' with end-users will be granted on achievement of condition precedent by the **Compliance Date**.

7.4.3. The Developer shall complete the Project on or before the Scheduled Completion Date, in accordance with Applicable Laws, terms of Applicable Permits and Good Industry Practice. The Developer shall, for such purposes do all such acts, agreements and things, as may be required under this Development Agreement;

7.4.4. The date of achieving Construction Completion Certificate and Occupancy Certificate from the Competent Authority and handover of the Community Market and dedicated parking to BDA with all desired specifications and to the satisfaction of the Authority will be identified as the **Completion Date**;

- 7.4.5. The Developer shall undertake at its cost and risk the development (including site development, demolition of existing structure, and removal of utilities at, over or under the Project Site), implementation, financing, design, construction, completion, testing and commissioning of the Project/ Project Assets/ Project Facilities at the Project Site, by itself or through sub-contractors, licensees or franchisees in accordance with provisions hereof, the Development Controls, Applicable Laws, terms of Applicable Permits and Good Industry Practice;
- 7.4.6. The Developer shall obtain and maintain at its cost all Applicable Permits in conformity with the Applicable Laws, including all environmental clearances, if required, for the purposes of the Project, including developing, constructing, operating and maintaining the Project and / or Project Assets and / or Project Facilities in accordance with the terms of this Agreement and be in compliance therewith;
- 7.4.7. The Developer may sub-contract at its cost and risk to sub-contractors possessing the requisite skill, expertise, capacity and technical and financial qualifications, as may deem fit, for the designing, engineering, procurement and construction of civil / mechanical / electrical engineering structures / equipment and / or operation and maintenance of the Project/ Project Assets/ Project Facilities provided the Developer shall at all times be solely responsible for any defect, deficiency or delay in completion of the Project in accordance with the provisions of this Development Agreement;
- 7.4.8. The Developer shall organize the works at the Project Site during Construction Period with regard to safety precautions, fire protection, security, transportation, delivery of goods, materials, plant and equipment, control of pollution, maintenance of competent personnel and labor and industrial relations and general site services including access to and from the Site;
- 7.4.9. The Developer shall ensure that the works shall be carried out in accordance with the provisions hereof, the approved building plans and the bye-laws of the relevant municipal or other authority;
- 7.4.10. The Developer shall maintain own vigilance over the Site during the Term to prevent encroachments or occupation of the Site and in case of any encroachment or occupation forthwith remove the same at its cost and expense and inform BDA thereof;
- 7.4.11. Upon the completion of the activity of construction of the Project, the Developer shall remove from the Site, in accordance with Good Industry Practice, all surplus construction machinery and materials, waste materials (including, without limitation, hazardous materials, all types of solid and liquid waste), rubbish and other debris and shall keep them in a neat and clean condition and in conformity with the Applicable Laws and Applicable Permits;

- 7.4.12. In the event that there are any existing utilities / structures laid upon or under the Site, then the Developer shall be required to relocate all such utilities / structures at its own risk and cost, with the prior written approval of BDA and such city utility bodies;
- 7.4.13. The Developer shall also submit to the Independent Engineer, with a copy endorsed to the BDA, the relevant DPR and Designs and other technical information as may be reasonably necessary to determine and confirm compliance with the Specifications and Standards;
- 7.4.14. During the Construction Period, the Developer, on or before the 15th (fifteenth) day of fourth month, prepare and submit to the BDA a quarterly progress report, for the previous quarter, in the form and manner prescribed by the Independent Engineer from time to time. Such report shall describe the progress of the design, procurement and completion of the Project;
- 7.4.15. The Developer shall carry out at its cost such further works as may be necessary to remove the defects and deficiencies observed by the Independent Engineer and ensure completion of construction of the Project in all respects in accordance with the provisions of this Development Agreement;
- 7.4.16. Notwithstanding anything contained anywhere else in this Development Agreement, all works under or in course of execution or executed in pursuance of this Development Agreement shall at all times be open to the inspection and supervision by the authorized representatives of BDA or the Independent Engineer. The Developer shall at all times during the usual working hours and at all other times at which reasonable notice of the intention of the representatives of BDA to visit the work shall have been given to the Developer, have a responsible agent / representative present at the Site for that purpose. Based on such inspections, BDA may, without being obliged to do so, issue, if found necessary, instructions to the Developer for addressing the Deficiencies noted at the Site in terms of this Development Agreement especially towards health, safety and environmental requirements. The Developer shall comply with such instructions within 30 (thirty) days of receipt of such instructions. No such inspection or communication of comments or non-communication of comments by BDA shall amount to validation or approval or acceptance by BDA of the construction by the Developer or its confirmation to the Applicable Law, Applicable Permits and the terms of this Development Agreement or waiver by BDA of any breach by the Developer. It shall be the obligation of the Developer alone to supervise the construction and to ensure that the construction is being carried out in conformity with the Applicable Law, Applicable Permits and the terms of this Development Agreement.
- 7.4.17. The Project to be undertaken by the Developer is an independent one and accordingly the BDA shall not be deemed as principal employer in respect of any employee engaged by the Developer and/ or its subcontractors and/ or agents, if any and for the purpose the Developer may ensure compliance of all statutory norms specified under different

welfare acts including EPF, ESI and labour & industrial laws at its cost and risk and may take necessary and appropriate steps entering into insurance contract at its cost and risk

7.5. Completion of the Project

- 7.5.1. The Developer shall achieve Construction Completion of the Project/ Project Assets/ Project Facilities within 5 (five) years from execution of the Development Agreement (the “**Scheduled Completion Date**”), failing which it shall be required to complete the same within next 12 (twelve) months (**Extended Project Completion Period**) from such date upon payment of the stipulated damages. “**Construction Period**” means a maximum of 5 years between the date of signing of Development Agreement and issuance of Construction Completion/Occupancy Certificate by Competent Authority.
- 7.5.2. In the event that Scheduled Completion Date of the Project is not achieved for any reason other than Force Majeure or reasons attributable to BDA or any government authority, as certified by the Independent Engineer, the Developer shall, subject to Article No. 16.1 below, pay to BDA damages for delay beyond the Scheduled Completion Date @ Rs. 30,00,000/- (Rupees Thirty Lakh only) per month of delay or part thereof, as delay charges until such construction completion is achieved. Provided that nothing contained in this Article shall be deemed or construed to authorize any delay by the Developer in achieving construction completion of the Project.
- 7.5.3. In the event that construction completion of the Project does not occur within a period of 12 (twelve) months from the Scheduled Completion Date for reasons attributable to the Developer, BDA shall be entitled to terminate this Development Agreement and the Conveyance Deed for a Developer’s Event of Default.
- 7.5.4. On the completion of the construction of the Project, the Developer shall notify BDA in writing. Such notice will set out the place, date and time when the inspection and assessment of such works shall be held (which shall not be a date that is earlier than 7 (seven) days following the date of such notice). It shall be compulsory for the Independent Engineer (as appointed) to attend such inspection and assessment with a view to determining if construction completion has occurred.
- 7.5.5. Within 30 (thirty) days from the date of inspection and assessment, and submission of the Completion/Occupancy Certificate issued by Competent Authority to BDA, the BDA shall either (i) issue the Construction Completion Certificate due to construction completion being achieved, if in the reasoned opinion of BDA construction completion of the Project has been achieved or (ii) notify the Developer of any other item or work which is required to be completed in the reasonable opinion of the Independent Engineer before the Construction Completion Certificate may be issued, whereupon the Developer shall promptly complete such works.

7.5.6. Imposition of damages for delay, extended project completion period and termination of Development Agreement, as per the above conditions, shall be at the sole discretion of the BDA and the Developer consents not to challenge such decisions.

7.6. Operation and Maintenance of the Project

7.6.1. The BDA will have the sole ownership and responsibility of the Community Market. The Shops/Shop spaces in the Community Market will be allotted to beneficiaries/shopkeepers by the Authority.

7.6.2. The Community Market will not be a part of the Apartment (since not within the purview of the conveyance) and not part of the Apartment Owners' Association.

7.6.3. There will be two separate Association of Allottees to be formed by the Developer (for the Residential cum/or Commercial Facilities) and BDA (for the Community Market) after submission of separate application to the Competent Authority.

The proportionate Common Area owned by the two Associations will be demarcated in the application forms for formation of the Association of Allottees.

7.6.4. The nominated member of the BDA in the board of the SPV will be for the proportionate common area owned by the Authority (as per the share of built-up area of the Community Market).

7.6.5. The Selected Developer shall ensure formation of Association / society in accordance with the governing law and amendments made time to time and the occupiers / allottees / any sub-allottees as end user shall become and remain as the member of the association and shall observe and perform the terms and conditions, by-laws and the rules and regulations prescribed by the Association/ society. The society / Association so formed shall maintain the common amenities and shall attend to various matters of common interest including repair, maintenance, whitewashing, painting etc. in respect of residential cum/or commercial complex.

7.6.6. The Selected Developer shall be responsible to ensure at its cost and risk, maintenance of the common amenities and to provide common facilities either directly or through maintenance services in respect of residential cum/or commercial complex till formation of the society / Association as referred to in clause 7.6.4 and its functioning and handing over such amenities to the said society / Association.

7.6.7. The Association shall be formed in the manner and has been provided under Orissa Apartment Ownership Rules (Feb 2024) while amendments made if any and / or any Act brought in place and /or society formed under Societies Registration Act 1860 irrespective of any provision under the Act referred to and / or any other Act for the purpose and the occupiers / allottees shall become and remain a member of the Association and shall observe and perform the terms and conditions, bye laws and the rules and regulations prescribed by the Association. The Association shall be formed for

the purpose of attending to the various matters of common interest, including repairs, maintenance, whitewashing, painting, etc., in respect of the Commercial cum/or Residential Complex.

- 7.6.8. The Special Purpose Vehicle (SPV) so formed by the preferred bidder to undertake the project shall remain in operation for meeting all financial commitments to BDA and any such statutory dues directly to the Govt. of Odisha. However, the ownership of the SPV may be transferred to the Resident's Association after the lock-in period described earlier.

Article VIII

8. PAYMENT OF CONSIDERATION

8.1. Consideration

- 8.1.1. The sums payable by the Developer in terms of this Article 8.2 and 8.3 to BDA shall hereinafter together be referred to as Consideration (the "**Consideration**").

8.2. Maximum Land Premium (MLP):

- 8.2.1. In accordance with this Agreement and other rights, privileges and benefits set forth herein, the Developer hereby undertake to make a payment of Rs. _____ (Rupees _____) only towards Maximum Land Premium (the "**Maximum Land Premium / MLP**") in 3 instalments of 10% within 30 days, 20% within 90 days and 70% within 240 days of executing this agreement, to BDA and undertake implementation of the Project, in accordance with this Development Agreement. The payment schedule of the MLP may be paid in lump sum or in instalments as specified hereunder.

- 8.2.2. A sum of Rs. _____ (Rupees _____ only) (equivalent to 10% of the Maximum Land Premium / MLP) being the First Instalment has already been paid by the Developer as precondition to signing of this Development Agreement on _____ (date of payment) vide Demand Draft / RTGS/ Banker's Cheque No. _____ drawn on _____ Bank, _____ Branch dated _____] to BDA (the "**First Instalment**") along with the Bank Guarantee from a scheduled commercial bank for the outstanding amounts of the Maximum Land Premium (MLP), as described in Clause 8.1.1 above towards the "Second & Third Instalments".

The balance 90% of the Maximum Land Premium (MLP) is to be paid to BDA as per the following schedule:

- 8.2.3. Accordingly, the Developer shall pay, by the _____ day of _____, (due date of payment) which is 90 days from the date of signing of this Development Agreement a total sum of Rs. _____ (Rupees _____ only)

(equivalent to 20% of the Maximum Land Premium) towards the second Instalment (the “**Second Instalment**”) to BDA.

- 8.2.4. And, the Developer shall pay, by the ----- day of -----, (due date of payment) which is 240 days from the date of signing of this Development Agreement a total sum of Rs.----- (Rupees ----- only) (equivalent to 70% of the Maximum Land Premium) towards the third Instalment (the “**Third Instalment**”) to BDA.

The developer shall have an option of prepayment of balance Maximum Land Premium / MLP in part or full and avoid the submission of Bank Guarantees of such amounts.

- 8.2.5. The Base Floor Area Ratio (“**FAR**”) of the site is 2 and maximum FAR will be guided by the Odisha Development Authorities (Planning and Building Standards) Rules, 2020. If and only if the Developer decides to enhance the Floor Area Ratio (“**FAR**”) of the project from the appointed date and during the term, they will have to pay for the purchasable FAR in the manner specified in the Statutory documents of the Government of Odisha.

- 8.2.6. Delayed payment within the period specified in Article 8.2.2, 8.2.3 and 8.2.4, will be treated as Developer’s Event of Default by the BDA.

8.3. **Default in payment of consideration:**

- 8.3.1. In the event the Developer fails to pay / defaults in the payment of, all or any amounts along with interest thereof due for payment by the due dates, it shall be construed as a payment default (the “**Payment Default**”) on behalf of the Developer. However, any amount secured in the form of Bank Guarantee shall not be construed as payment default.

- 8.3.2. It is expressly agreed between the Parties hereto that in the event, there is a Payment Default, and the said Payment Default is not rectified within 30 (thirty) days of the occurrence of such default, the Development Agreement shall be terminated as per the provisions of Article 16.4.1. No extension whatsoever shall be provided beyond the aforesaid period and the payment of interest for such period would not entitle the Developer to seek any further extension.

- 8.3.3. Notwithstanding anything contained herein, in the event there are two consecutive Payment Default(s) by the Developer, this Development Agreement shall be terminated as per the provisions of Article 16.4.1.

- 8.3.4. Notwithstanding anything contained herein, in the event of Payment Default(s), no Cure Period of any nature whatsoever, other than the period of 30 (thirty) days specified in Article 8.4.2, shall be available to the Developer before termination of this Development Agreement.

8.4. Construction Performance Security:

- 8.4.1. For securing the performance of the obligations of the Developer under this Agreement, the Developer had prior to the execution of this Development Agreement, delivered to BDA a bank guarantee for a sum of INR 30,00,00,000/- (Rupees Thirty Crores) only, valid from the date of issue thereof and until the expiry of the 6 (Six) years from the date of this Agreement plus any extension granted in terms of this Development Agreement in favor of BDA from a nationalized / scheduled bank, and payable and enforceable in Bhubaneswar, Odisha (the “**Construction Performance Security**”).
- 8.4.2. The release of “Construction Performance Security” will be made to the Developer by BDA after the submission of Completion/Occupancy Certificate from Competent Authority to BDA by the developer, and release of Completion Certificate by BDA after receipt of the Community Market and related Parking space in the manner specified in this bidding document and to the satisfaction of BDA.
- 8.4.3. The Developer must always keep the Construction Performance Security valid during the stipulated period.
- 8.4.4. In the event of the Developer being in default of the due, faithful and punctual performance of its obligations under the Development Agreement or in case the construction of all the Project Assets/ Project Facilities within the Site is not completed by the Developer within the period of 5 (five) years from the date of signing the Development Agreement or in the event of there being any claims or demands whatsoever whether liquidated or which may at any time be made or have been made on behalf of BDA for or against the Developer under this Development Agreement or against BDA in respect of this Development Agreement, BDA shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to call in, encash and appropriate the relevant amounts from the Construction Performance Security as damages for such default, or loss suffered due to non-completion of construction within the said time period or dues, demands or claims.
- 8.4.5. The decision of BDA as to any breach / delay having been committed, liability accrued or loss or damage caused or suffered shall be conclusive, absolute and binding on the Developer and the Developer specifically confirms and agrees that no proof of any amount of liability accrued or loss or damages caused or suffered by BDA under this Development Agreement is required to be provided in connection with any demand made by BDA to recover such compensation through invoking and encashment of the Construction Performance Security under this Development Agreement. But however, the parties are free to raise, claim, like damage and compensation, if any, arising out of or as a consequence of the clause.
- 8.4.6. In the event of encashment of the Construction Performance Security by BDA, in full or part, the Developer shall within 30 (thirty) days of receipt of the encashment notice from BDA provide a fresh Construction Performance Security or replenish the existing

Construction Performance Security, as the case may be. The provisions of this Article shall apply mutatis mutandis to such fresh Construction Performance Security. The Developer failure to comply with this provision shall constitute a Developer's Event of Default which shall entitle BDA to terminate this Development Agreement in accordance with the provisions of the Development Agreement.

- 8.4.7. Subject to the provisions hereof, BDA shall promptly return the Construction Performance Security to the Developer upon issue of the Construction Completion Certificate within the stipulated time, provided that there are no outstanding claims of BDA on any account whatsoever on the Developer.

Article IX

9. FINANCING ARRANGEMENT AND SECURITY

- 9.1. The Developer expressly agrees and undertakes that the Developer shall himself arrange for financing and / or meeting all financing requirements through suitable debt, equity and quasi-equity contributions or any other acceptable financial mode in order to comply with its obligations under the Development Agreement including but not limited to its obligations to arrange the financing for the construction of the Project, Project Assets and Project Facilities. As and when such Financing Agreements are approved by the Lenders, with or without modifications, a copy of the same shall be furnished by the Developer to BDA forthwith for information before its execution as more particularly set out in Article 4.4.1. of this Developer Agreement provided however that the site / schedule land cannot be encumbered in any manner whatsoever.
- 9.2. The BDA will consider executing a Tripartite Agreement with the Lender & Developer (Draft provided in Volume 1 – Project Information Memorandum, Annexure 2), if requested by the Developer, after execution of the Development Agreement. Accordingly, the Developer on signing the Development Agreement shall have the right to create mortgage/ charge over the development right, and any or all of the receivables from the Project to its Lenders only.
- 9.3. Additionally, subject to consent from BDA, the Developer can enter into 'Agreement to Sale' (ATS) with allottees/ end-users of the Commercial cum/or Residential portion of the Composite Project, after obtaining all approvals and clearances from the Competent Authority(ies) and registration of the project under ORERA, as per 'Annexure – A' of the ORERA Rules 2017. The proceeds of advances received from end-users through the ATS must be deposited in the designated escrow account created for the project.
- 9.4. Provided further any such mortgage or charge shall not in any way relieve the Developer claiming through or under it of its obligations under this Development Agreement and the same shall be carried out in compliance with the terms and conditions of this Development Agreement.

- 9.5. Provided further that BDA shall be informed by the Developer as to the creation of any Encumbrance together with the Lender's particulars within a period of 14 (fourteen) days from the date such security comes into existence and provide to BDA within such time true copies of documents/ agreements relating thereto. Failure to do so shall amount to an Event of Default on the part of the Developer and any consequential failure or inability on the part of BDA to provide any notice or intimation to such Lender, in terms of the relevant provisions of this Development Agreement, if any required, shall be at the risk and responsibility of the Developer only.
- 9.6. Provided further, nothing contained above shall (i) absolve the Developer from its responsibilities to perform/ discharge any of its obligations under and in accordance with the provisions of this Development Agreement; (ii) authorize or be deemed to authorize the Lenders to implement and execute Project themselves; and (iii) under any circumstances amount to any guarantee from or recourse to BDA.
- 9.7. BDA and the Developer hereby irrevocably agree that upon occurrence of a Developer Event of Default, the Lender(s) shall, without prejudice to any other rights or remedies available to them under law/ Financing documents and without being required to exercise or exhaust such rights or remedies, have the right to seek substitution of the Developer, after receipt of approval of BDA, by selectee (Substitute Entity) for the remaining period under the Development Agreement in accordance with the provisions of this Agreement on such terms and conditions if any fixed by BDA to ensure compliance of the objective of the Project. In case the Lender resorts to other remedies provided under law shall do the same only after approval of the BDA and in such event the Parties acquiring rights through the lender shall ensure completion of the Project strictly in accordance with the Development Agreement and Conveyance Deed and selection of such person and/ or granting right to such person shall require prior approval of BDA on such terms and conditions fixed to ensure the completion of the Project within the existing/revised timelines.

Article X

10. INSURANCE

- 10.1. The Developer shall during the Term purchase and maintain or cause to be purchased and maintained, at its own expense, insurance policies as are customarily and ordinarily available in India on commercially reasonable terms and reasonably required to be maintained to insure the Project Facilities and all related assets against risks in an adequate amount, consistent with similar facilities of the size and type of the Project and as may be required by the Lenders (the "Insurance Cover").
- 10.2. The Insurance Cover shall be made assignable to BDA and the respective insurance policies shall contain a specific stipulation to that effect. Upon the termination of this Agreement, all such insurance policies and benefits there under shall forthwith stand transferred and assigned to BDA and BDA alone shall be entitled to the receipt of all amounts receivable under such policies.

- 10.3. Without limiting the generality of the foregoing, the Developer shall, at its cost and expense, purchase and maintain or cause to be purchased and maintained during the Term, and in case of sub-Article (a) and (b) below during the construction period, such insurances as are necessary, including but not limited to the following:
- a) Construction/ builders'/contractors' all risk insurance (during construction period);
 - b) Erection all risk policy (during construction period);
 - c) Comprehensive insurance for the Facilities for their full market value or replacement cost (including fire, burglary, standard and special peril);
 - d) Loss, damage or destruction of Project Assets and Project Facilities;
 - e) Comprehensive third-party liability insurance, including injury or death of Persons who may enter the Project Site;
 - f) The Developer's general liability arising pursuant to this Development Agreement;
 - g) Liability to third parties for goods or property damaged;
 - h) Workmen's' compensation insurance;
 - i) Any other insurance that may be necessary to protect the Developer, the Persons claiming through or under it, its employees, and its assets (against loss, damage or destruction at replacement value) including all Force Majeure Events that are insurable and not otherwise covered in items (a) to (i).
- 10.4. The Developer shall, from time to time, furnish to BDA copies of all insurance policies in respect of the Insurance Cover (or appropriate endorsements, certification of other satisfactory evidence of insurance) as soon as reasonably practical and not later than 30 (thirty) days after they are received by the Developer and furnish evidence to BDA that all premiums have been paid and that the relevant policies remain in existence. Each insurance policy shall provide that the same shall not be cancelled or terminated or changed unless 10 (ten) days' clear notice of cancellation is provided to BDA in writing.
- 10.5. In the event the Developer does not effect, keep in force and maintain Insurance Cover pursuant hereto, BDA shall not be liable in any manner in this behalf and the Developer shall indemnify BDA for and against all liabilities, costs and expenses arising out of or as a consequence of such failure. Such failure shall also constitute a Developers' Event of Default. In such an event, BDA shall have the option to keep in force any such Insurance Cover and pay such premium and recover the cost and expenses thereof from the Developer.
- 10.6. Unless otherwise provided herein, the proceeds from all insurance claims, except for life and injury, shall promptly be applied for the repair, renovation, restoration or reinstatement of the Project/ Project Assets / Project Facilities or any part thereof, which may have been damaged or destroyed.
- 10.7. Further to the above, it is clarified that -

- a) The Developer shall insure all insurable assets comprised in the Project / Assets / Project Utilities through Indian insurance companies and if so permitted by Government of India, through foreign insurance companies, to the extent that insurances can be effective;
 - b) All insurance policies supplied by the Developer shall include a waiver of any right of subrogation of the insurers there under against, inter alia, BDA and its assigns, successor, subsidiaries, affiliates, employees, insurers and underwriters and of any right of the insurers of any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.
 - c) The Developer hereby further releases, assigns and waives any and all rights of subrogation or recovery against, inter alia, BDA and its successor, affiliates, subsidiaries, employees, successors, assigns, insurers and underwriters, which the Developer may otherwise have or acquire in or from or in any way connected with any loss covered by policies of insurance maintained or required to be maintained by the Developer pursuant to this Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.
- 10.8. Further the above provisions to the extent as applicable shall also apply to the insurance of the relevant units and the inventory therein of the Users.

11. ACCOUNTS AND AUDIT

- 11.1. The Developer agrees and undertakes that during the subsistence of this Development Agreement, it shall maintain books of account recording all receipts, income receipt, payments, assets and liabilities in accordance with Good Industry Practice and Applicable Laws. The said account shall, inter-alia, clearly reflect:
- (i) Users wise account of receipts and receivables;
 - (ii) Account of all other receipts and receivables;
 - (iii) Obligations towards contractors, Sub-Contractors, suppliers and all payments made.
- 11.2. BDA shall have the right to inspect the records of the Developer during office hours and require copies of relevant extracts of books of account, duly certified by auditors, and to be provided to BDA.
- 11.3. The Developer also agrees and undertakes that it shall within 60 (sixty) days of the close of each quarter of a Financial Year / Accounting Year, furnish to BDA its unaudited financial results in respect of the preceding quarter, in accordance with Applicable Law.

Article XI

12. MARKETING / RIGHT OF ALLOTMENT / BOOKING OF RESIDENTIAL AND/OR COMMERCIAL SPACES IN THE ASSETS

12.1. The Developer shall be entitled to commence booking of units / spaces in the Assets after the Compliance Date and permission from BDA to execute 'Agreement to Sale' with end-users subject to successful execution of the Project and signing of the Conveyance Deed. Till the time the Conveyance Deed is executed allowing 'Agreement to Sale' / rent / licence / right to use / right of access or similar rights and facilities to the Users, the Developer may market the under-construction built-up space under letter of allotment or such other instruments. On execution of the Conveyance Deed, the Developer shall be allowed to enter into 'Sale Deed' / rent / licence / right to use / right of access or similar rights and facilities with the User (the "**User Agreement**"). The Developer, while marketing the Assets, shall comply with the following and the same should also be included in the draft letter of allotment, which shall be approved by BDA, prior to booking of any space:

- (i) the Developer shall be solely responsible for timely implementation of the project and shall be answerable to the end users, consequent upon the agreement entered into, between and among them, but however, such obligation shall be limited to Developer's default only;
- (ii) in case any allotment made contrary to this condition shall be deemed void and any consequences shall be at the cost and risk of the Developer;
- (iii) such letter of allotment shall not bestow any right on a User for usage of space in the Assets till such time as the User Agreement is duly executed in terms of this Development Agreement;
- (iv) during the Construction Period, if the Development Agreement is terminated, such letter of allotment shall be liable to be terminated at the discretion of either the Nominated Company or BDA, as the case may be. However, in such an event, the User shall be entitled from the Developer for refund of the amounts of upfront payment already paid and the interest-free security deposit, if any and all other sums of money as paid by the User and / or to the account of the Developer.

12.2. The Developer shall, at all times be required to maintain a Management Information System (MIS), for all bookings done, payments received, and User Agreement executed and this shall, inter alia, include the following details:

- (i) The physical progress of the Project, which would track work-in-progress followed by cold/ warm shell/furnished completion;
- (ii) List and values of allotments/ User Agreement executed;

- (iii) Upfront deposits received from User;
- (iv) Rates agreed with the User;
- (v) Profile of payments made by Users during the Term hereof; and,
- (vi) Track record of Users in terms of promptness of payments /delays.

The Developer shall submit a quarterly MIS covering all the above information.

Article XII

13. GRANT OF RIGHTS IN THE ASSETS TO USERS

- 13.1. The term of User Agreement (including subsequent User Agreements) shall not exceed the Term as defined in this Agreement and same would be run co-terminus with the Conveyance Deed.
- 13.2. The right to grant rights to the User as mentioned in this Development Agreement shall vest solely with the Developer and shall not be transferable in any form except to its successors and permitted assigns.
- 13.3. The Developer agrees and undertakes that during the Term, it shall maintain a User Register in such format as may be acceptable to BDA, of all the User Agreement entered by it throughout the Term.

Article XIII

14. TERM AND EXPIRY

14.1. Term and Expiry:

- a) Unless terminated earlier in accordance with Article 16.4.1 or by mutual agreement between the Parties in writing, this Development Agreement shall continue in full force until the execution of Conveyance Deed (the “**Term**”).
- b) Upon expiry before execution of Conveyance Deed, the Site, all immovable Project Assets and Project Facilities on the Site will automatically vest in BDA free from all Encumbrances, without BDA being required to pay any consideration in respect thereof and without the requirement of performance of any act or deed by either party to this Development Agreement.
- c) Under exceptional circumstances, if required for BDA’s own use, BDA can take back the Site along with the Project Assets and Project Facilities. In such an

event, the Development Agreement will be terminated and BDA or any entity designated by it shall acquire all of Developer's rights and interests in and to the Project Assets and Project Facilities in the manner set out in this Development Agreement and due compensation would be payable to the Developer as determined by in accordance with Article 16.6.

Article XIV

15. FORCE MAJEURE

15.1. A Force Majeure event (the "**Force Majeure Event**") means any event or circumstance or a combination of events and circumstances set out hereunder or consequences thereof which affect or prevent the Party claiming to be affected by the Force Majeure Event (the "**Affected Party**"), from performing its obligations in whole or in part under this Development Agreement and which event or circumstance (i) is beyond the reasonable control and not arising out of the fault of the Affected Party, (ii) could not have prevented or reasonably overcome by such Party with the exercise of reasonable skill and care in relation to the implementation of the Project, (iii) the Affected Party has been unable to overcome such event or circumstance by the exercise of due diligence and reasonable efforts, skill and care, (iv) which do not result from the negligence of such Party or the failure of such Party to perform its obligations hereunder, (v) which are of an incapacitating nature and of a severe magnitude, (vi) has a Material Adverse Effect on the transaction as contemplated between the Parties herein, and (vii) which prevent, restrict or interfere with the performance of obligations by the Affected Party under this Agreement. Such events mean:

- a) Acts of God or natural disasters or events beyond the reasonable control of the Affected Party, which could not reasonably have been expected to occur, including but not limited to storm, cyclone, typhoon, hurricane, tsunami, whirlwind, flood, landslide, drought, lightning, earthquakes, volcanic eruption, fire, pandemic or exceptionally adverse weather conditions affecting the Site and / or the implementation of the Project, and also the operation and maintenance thereof.
- b) An act of war (whether declared or undeclared), war like conditions, invasion, armed conflict or act of foreign enemy, in each case involving or directly affecting the Site.
- c) Blockade, embargo, sanctions, revolution, riot, rebellion, insurrection, terrorist or military action or other civil commotion, act of terrorism or sabotage in each case within the Site or near vicinity.
- d) Nuclear blast / explosion, radioactive or chemical contamination or ionizing radiation directly affecting the Site and/ or Project/ Project Facilities, unless the source or cause of the explosion, contamination, radiation or hazardous thing is

brought to or near the Site by the Developer or any Sub-Contractor of the Developer or any of their respective employees, servants or agents.

- e) Strikes, working to rule, go-slows and/or lockouts which are in each case widespread, nationwide or political and affects the Site.
- f) Explosion (other than a nuclear explosion or an explosion resulting from an act of war) within the Site or near vicinity.
- g) Epidemic famine, other epidemic quarantine or pandemic within the Site or near vicinity.
- h) Destruction of infrastructure beyond the control of the Affected Party thereby, revocation of Applicable Permits, no objections, consents, licenses, exemptions, etc. granted by Government Authority and / or statutory authority, Change in Law, action and / or order by Government Authority and / or statutory authority, action or act of commission or omission by Government Authority.
- i) Any judgment or order of any court of competent jurisdiction or statutory authority in India made against BDA, the Developer, the Selected Bidder in any proceedings (which are non collusive and duly prosecuted by the Party) for reasons other than failure of BDA, the Developer, the Selected Bidder, as the case may be, or any person claiming through or under; it to comply with the Applicable Law, Applicable Permits etc. or on account of breaches thereof or of any contract or enforcement of this Development Agreement or exercise of any of its rights under this Development Agreement.
- j) Any event or circumstances of a nature analogous to any of the foregoing.

15.2. Procedure for Force Majeure:

- a) If a Party claims relief on account of a Force Majeure Event, then the Party claiming to be affected by the Force Majeure Event shall, immediately on becoming aware of the Force Majeure Event, give notice of and describe in detail: (i) the Force Majeure Event(s) that has occurred; (ii) the obligation(s) affected as described in this Article 15; (iii) the dates of commencement and estimated cessation of such event of Force Majeure; and (iv) the manner in which the Force Majeure event(s) affect the Party's ability to perform its obligation(s) under this Development Agreement. No Party shall be able to suspend or excuse the non-performance of its obligations hereunder unless such Party has given notice specified above. The Parties expressly agree that payment of annual statutory taxes/obligations to respective authorities and shall not be suspended during the pendency of Force Majeure Event and / or its effect.

- b) The affected Party shall have the right to suspend the performance of the obligation(s) affected as described in Article 15, upon delivery of the notice of the occurrence of a Force Majeure Event in accordance with sub-Section (a) above. The affected party, to the extent rendered unable to perform its obligations or part thereof under this Development Agreement, as a consequence of the Force Majeure Event, shall be excused from performance of the obligations provided that the excuse from performance shall be of no greater scope and of no longer duration than is reasonably warranted by the Force Majeure Event.
- c) The time for performance by the affected Party of any obligation or compliance by the affected Party with any time limit affected by Force Majeure Event, and for the exercise of any right affected thereby, shall be extended by the period during which such Force Majeure Event continues and by such additional period thereafter as is necessary to enable the affected Party to achieve the level of activity prevailing before the event of Force Majeure Event.
- d) Each Party shall bear its own costs, if any, incurred as a consequence of the Force Majeure Event.
- e) The Party receiving the claim for relief under Force Majeure Event shall, if it wishes to dispute the claim, give a written notice of dispute to the Party making the claim within 30 (thirty) days of receiving the notice of claim. If the notice of claim is not contested within 30 (thirty) days as stated above, all the Parties to this Development Agreement shall be deemed to have accepted the validity of the claim. If any Party disputes a claim, the Parties shall follow the procedures set forth in Article 19.

15.3. **Mitigation:** The Party claiming to be affected by a Force Majeure Event shall take all reasonable steps to prevent, reduce to a minimum and mitigate the effect of such Force Majeure Event. The affected Party shall also make efforts to resume performance of its obligations under this Development Agreement as soon as possible and upon resumption, shall forthwith notify the other Party of the same in writing.

15.4. If any Force Majeure Event continuously impedes or prevent a Party's performance for a period longer than 6 (six) months from the date of commencement of such Force Majeure Event, the Parties shall decide through consultation either the terms upon which to continue the performance under this Project or to terminate it by mutual consent.

Article XV

16. DEFAULT AND TERMINATION

16.1. Developer Event of Default:

16.1.1. For the purposes of this Development Agreement, each of the following events or circumstances, to the extent not caused by a default of BDA or Force Majeure Event, shall be considered, as events of default of the Developer (the "Developer Event of Default") which, if not remedied upon receipt of written notice from BDA, shall provide BDA the right to terminate this Development Agreement in accordance with Article 16.4.1:

- a) Any breach, including but not limited to the events specified hereunder by the Developer of its obligations under this Development Agreement, and such breach if capable of being remedied, is not remedied within 60 (Sixty) days of issuance of written notice, from BDA specifying such breach and requiring the Developer to remedy the same.
- b) A breach of any representation or warranty by the Developer which has a Material Adverse Effect on BDA's ability to perform its obligations under this Development Agreement and such breach, if capable of being remedied, is not remedied.
- c) Suspension by the Developer of the performance of the obligations under this Development Agreement for a period exceeding 30 (thirty) consecutive days (except during the subsistence of a Force Majeure Event).
- d) Failure by the Developer to operate and maintain the Assets in accordance with the Applicable Laws or committing a default of its obligation.
- e) Failure of the Developer to maintain insurance(s) as required in terms of Article 10.
- f) The Developer is ordered to be wound up by a court; filing of a petition for voluntary winding up by the Developer; or levy of an execution or restraint on the Developer's assets; or appointment of a provisional liquidator, administrator, trustee or receiver of the whole or substantially whole of the undertaking of Developer by a court of competent jurisdiction.
- g) The Developer is using, permitting or causing the use of the Site (i) for purposes other than permissible purpose or (ii) in violation of any of the provisions relating to development of the Project as per the Development Agreement.
- h) The Developer doing or permitting to do any act, matter, Agreement or thing in violation of Applicable Law and/ or Applicable Permits.
- i) The Developer setting up an interest in the Site or any portion thereof (i) adverse to that of BDA or (ii) a third person; or (iii) claiming an absolute interest in the Site or any portion thereof in itself.

- j) Non-compliance of Equity lock-in provisions set forth in Article 5.
- k) Failure to achieve the Scheduled Completion Date or any extension thereof.
- l) Commits a breach of any of the provisions of the Development Agreement, Conveyance Deed or any of the Financing Document.

Save as the necessary approvals enabling the project could not be secured by the Developer despite best efforts and with no fault attributable to it.

16.2. BDA Event of Default:

16.2.1. For the purposes of this Development Agreement, each of the following events or circumstances, to the extent not caused by a default of the Developer or are not Force Majeure Events, shall be considered, as events of default of BDA (the "**BDA Event of Default**"), which shall provide the Developer the right to terminate this Development Agreement in accordance with Article 16.4.1 :

- a) failure to provide to the Developer the rights to the Site in accordance with this Development Agreement;
- b) a breach of any representation or warranty by BDA, which has a Material Adverse Effect on the Developer's ability to perform its obligations under this Development Agreement.

16.3. Termination:

16.3.1. Upon occurrence of the Developer Event of Default or where the Developer/ BDA elects to terminate this Development Agreement due to a Force Majeure Event it shall be lawful for BDA, or the Developer to issue a Termination Notice (notwithstanding the waiver of any previous cause or right of re-entry upon, the Site/ the building, structures and fixtures there upon/ Project/ Facilities) and upon service of the said Termination Notice to re-enter upon, take possession of the Project Site/ the buildings, structures and fixtures there upon/ Project/ Facilities and this right and everything herein contained shall cease and determine.

16.3.2. All the rights, entitlements and interest of the Developer in this Project/ Project Facility and of persons claiming through or under it, in and to the Site, the buildings, structures and fixtures there upon, the Project, the Facilities, whether complete or incomplete, free and clear of any encumbrances created or suffered by the Developer or by the person's claiming through or under it, shall cease and determine and the Developer and the Persons claiming through or under it shall not be entitled to any payment or compensation whatsoever and shall forthwith vacate the Site/ the Project/ Project Facilities and hand over vacant possession thereof to BDA or its nominated agency. The remedies of all persons claiming through or under Developer shall lie only against the

Developer. However, the Developer shall have the right to remove from the Site all moveable properties and assets belonging to the Developer.

16.3.3. The employees and personnel of the Developer and persons claiming through or under it shall continue to be their respective employees and personnel and the transfer of the Site/ the buildings, structures and fixtures there upon /Project Facilities shall not in any manner affect their status as employees or personnel of the Developer and persons claiming through or under it and such employees and personnel shall have no claim to any type of employment or compensation on BDA or its nominated agency.

16.3.4. Provided that, notwithstanding anything contained herein to the contrary, BDA may without prejudice to its right of re-entry as aforesaid, and in its absolute discretion, waive or condone breaches, temporarily or otherwise, or relieve against forfeiture, for reasons to be recorded in writing, on receipt of such amount and on such terms and conditions as may be determined by it and may also accept any payments hereby reserved which are in arrears together with applicable interest, if any thereon or as decided by BDA.

16.4. **Notice of Termination:**

16.4.1. Without prejudice to any other rights or remedies which the non-defaulting Party may have under this Development Agreement, upon the occurrence of either a Developer Event of Default or a BDA Event of Default, the defaulting Party shall be liable for the breach caused and consequences thereof and the non-defaulting Party shall have the right to issue a notice expressing its intention to terminate this Development Agreement to the other Party (the “**Notice of Intention to Terminate**”). Upon the issuance of a Notice of Intention to Terminate, the defaulting Party shall have the right to rectify or cure the breach within 60 (sixty) days of receipt of such Notice of Intention to Terminate (the “**Cure Period**”). If the breach is not rectified by the defaulting Party within the Cure Period, the non-defaulting Party shall have the right to terminate this Development Agreement by issuance of a termination notice (the “**Termination Notice**”). Notwithstanding anything contained in the Development Agreement, the Developer cannot exercise the right to issue Notice of Intention to Terminate after expiry of 1 (one) year from the Appointed Date.

16.4.2. Without prejudice to anything to the contrary as contained in this Development Agreement, upon the occurrence of a Payment Default or Payment Default(s) by the Developer in terms of Article no 8.4.1, BDA shall have the right to terminate this Development Agreement by issuance of a Termination Notice. Provided that in case of termination of the Development Agreement, BDA shall not be required to issue any prior notice expressing its intention to terminate the Development Agreement and calling upon him to cure or rectify the Payment Default and the Developer hereby expressly waives his right, if any, to challenge to same on the ground of non-issuance of prior Notice of Intention to terminate in case of termination of this Development Agreement on the ground of Payment Default.

16.5. Consequences of Termination:

16.5.1. In case of any Termination before completion of the Project due to the Default of the Developer it shall be the responsibility of the Developer to ensure refund any amount received from the Users and/ or to make such other arrangement through the substitute party and/ or to suffer the consequences for the aforesaid latches at its cost and risk and in any circumstances BDA will not be responsible in any manner towards the claim of the Users and in the event claim made against the BDA shall be borne by the Developer and such claim shall be held not maintainable against the BDA.

16.5.2. **Substitution in case of Developer's Event of Default resulting in Termination:** In such case, either the lenders of the Developer or BDA will have the right to substitute the Developer by a new entity to take over the SPV's rights and obligations under the Development Agreement and Conveyance Deed. The method of selection of such new entity will be decided mutually by the BDA and Lender(s) as applicable.

16.6. Termination Payment:

16.6.1. Termination of this Development Agreement shall be without prejudice to any other right or remedies of Parties under this Development Agreement. Upon Termination of the Development Agreement in accordance with the provisions of this Agreement, the Termination Payment shall be calculated in the following manner:

- a. **Developer Event of Default before execution of Conveyance Deed or handover of the Site:** Upon termination by BDA on account of occurrences of a Developer Event of Default prior to the execution of the Conveyance Deed, no termination payment shall be paid, and BDA shall forfeit the full amount of Construction Performance Security. The MLP so paid and bank guarantee (2nd installment) if any given by the Developer as per the provisions of this Agreement, to BDA shall be returned without interest to the Developer within Thirty (30) days of realization of the Construction Performance Security by BDA.

The Substitute Entity in the event of default by the developer shall be responsible to make any compensation to the Developer as per the provisions of this Agreement. The Substitute Entity shall be responsible for making compensation payment to the Developer which shall be computed in the following manner: -

85% of the project investment including the cost of the Site (as approved by the Independent Engineer) till the date of termination:

Less: Gross project revenues earned (as per the audited financial statements of the project company) till the date of termination;

Less: Outstanding debt and other liabilities to be taken over;

Less: Dues outstanding, if any to BDA from the Developer; and

Less: Amounts, if any, received or receivable by the Developer as insurance claims.

b. BDA Event of Default before execution of Conveyance Deed: Upon Termination of this Agreement by the Developer due to a BDA Event of Default, prior to execution of Conveyance Deed, the Developer shall be entitled to receive from BDA the Construction Performance Security and the Maximum Land Premium paid by the Developer to BDA without interest provided there are no outstanding claims of BDA on the Developer. However, the non-refundable payments will be retained.

c. Termination due to Force Majeure Event: No compensation to be paid to the Developer upon Termination of this Agreement due to occurrence of any of the Force Majeure Event.

16.6.2. Provided further, any amount which shall be required, as approved by the Independent Engineer, for restoration of the Site in its original condition, shall be borne by the Developer at its own cost and BDA has the authority to adjust the same amount from the Termination Payment, if any.

Article XVI

17. RIGHTS AND TITLE OVER THE SITE

17.1. The Parties recognize and agree that nothing contained in this Development Agreement or in the Conveyance Deed, (in the event the same is executed), shall be construed to constitute a transfer of title in the Site or the entire Assets developed thereupon in favour of the Developer.

17.2. Notwithstanding anything contained in Article 3.1, for abundant caution, it is clarified that the Developer shall only have freehold rights in relation to the share of balance built-up space after handing over the Community Market to BDA in the manner specified in the bidding documents, with equivalent/proportionate interest on land.

17.3. It is expressly agreed, understood and recorded between the Parties that the Developer shall allow access to, and use of the Site for telegraph lines, electric lines or such other public purposes as BDA may specify. Where such access or use causes any financial loss to the Developer, it may seek compensation from such user of the Site as per Applicable Laws.

Article XVII

18. VESTING AND PROVISIONS

18.1. In case of expiry of the Term of Development Agreement, before execution of Conveyance Deed, BDA shall take over the possession of the Site, Assets and Project

Facilities and the Developer shall ensure that on the Transfer Date, the interest of Developer in:

- a) all the Assets and Project Facilities, as existing, shall be vested in BDA or its nominee, clear of any Encumbrances, if any, and with good title;
- b) the rights and obligations of the Developer under or pursuant to all sub-contracts related to Assets and Project Facilities and other arrangements entered into in accordance with the provisions of this Development Agreement between the Developer and any Users shall (in consideration of BDA's assumption of the obligations under or pursuant to the contracts and other arrangements) be vested in BDA or its nominee, clear of any Encumbrance and with good title; and,
- c) the rights and obligations of the Developer and any User under or pursuant to all letter of allotments and other contracts and arrangements between the Developer and such Users in assets, property and rights relating to Assets and Project Facilities shall (in consideration of BDA's assumption of the obligations under or pursuant to the contracts, arrangements, assets, property and rights) be vested in BDA or its nominee, clear of any Encumbrance and with good title.

18.2. Without prejudice to the foregoing, the Developer agrees to indemnify and keep indemnified BDA from and against all actions, proceedings, losses, damages, liabilities, claims, costs and expenses, whatsoever which may be sustained or suffered by BDA as a result of any actions or omissions of Developer prior to the transfer of the Assets.

18.3. The Developer shall ensure that all property, assets, rights and other items (constituting Assets and Project Facilities), which are vested in or transferred to BDA shall be in good working order and in a good state of repair. For this purpose, the Parties shall appoint an independent engineer to conduct an audit of the Assets and Project Facilities being transferred.

18.4. Expiry or termination of this Development Agreement shall be without prejudice to all rights and obligations then having accrued to BDA and / or Developer (or which may thereafter accrue in respect of any act or omission prior to such expiry or termination) and without prejudice to those provisions, which expressly provide for continuing obligations or which are required to give effect to such expiry or termination or the consequences of such expiry or termination.

18.5. The Parties' rights to terminate this Development Agreement shall be limited to those expressly set out in this Development Agreement.

- 18.6. Transfer costs and taxes, if applicable, for the transfer of the Assets consequent to termination of this Development Agreement in the event of Default of the Developer, shall be borne by the Developer.

Article XVIII

19. DISPUTE RESOLUTION

19.1. Disputes - Amicable Settlement:

- 19.1.1. The Parties shall use their respective reasonable endeavors to settle any dispute amicably. If a dispute is not resolved within 30 (thirty) days after written notice of a Dispute by one Party to the other Party, then the provisions of Article 19.2 shall apply.

19.2. Arbitration:

- 19.2.1. Any Dispute which is not resolved amicably, as provided in Article 19.1, shall be finally decided by reference to sole arbitration of the Vice Chairman, BDA and / or any other person so nominated / appointed by him. The Developer will have no objection that the arbitrator is a government servant and that he has to deal with the matters to which this Development Agreement relates, or that in the course of his duties as a government servant he has expressed views on all or any of the matter in Dispute.

- 19.2.2. Such arbitration shall be held subject to the provisions of the Arbitration and Conciliation Act, 1996 and Arbitration and Conciliation (Amendment) Bill, 2021. The governing law of the arbitration shall be the laws of India.

- 19.2.3. The venue or seat of arbitration shall only be at Bhubaneswar, and the arbitration shall be conducted in English language.

- 19.2.4. The Sole Arbitrator shall make a reasoned award (the “**Award**”) giving reasons for each claim allowed or disallowed. Any Award made in any arbitration held pursuant to this Article 19.2.4 shall be final and binding on the Parties as from the date it is made, and the Parties hereto agree and undertake to obey and implement such Award without delay.

- 19.2.5. The Parties hereto agree that an Award may be enforced against any of the Parties hereto, as the case may be, and their respective assets wherever situated.

- 19.2.6. This Development Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the submission of the dispute, difference, controversy, claim to arbitration and thereafter until the final decision of the arbitrator. Till the Award in any arbitration proceedings hereunder, the Parties shall continue to perform all of their obligations under this Development Agreement, without prejudice to a final adjustment in accordance with such a decision and except for any obligation of BDA, which shall automatically cease and come to an end upon the expiry or Termination of

the Development Agreement. Further, this Development Agreement shall remain subsisting and operative during the pendency of such dispute etc. and no payment due and payable to either Party shall be withheld except the payment in dispute, if any.

19.2.7. Article 19 shall survive the termination or expiry of this Development Agreement.

19.2.8. The Developer and BDA agree that an Award may be enforced against the Developer and / or BDA, as the case may be, and their respective assets wherever situated.

19.2.9. The award passed shall be binding to the parties, unless and until reversed by the competent Principal Civil Court at Bhubaneswar only in case challenged by any of the aggrieved parties.

19.2.10. In case any dispute not covered within the scope of Arbitration, shall lie to the Principal Civil Court at Bhubaneswar in exclusion of any other jurisdiction specified under any Act and/or Code.

19.2.11. The costs of the arbitration shall be equally borne by both the Parties. The arbitrator may provide in the arbitral award for reimbursement to the prevailing Party of its costs and expenses in bringing or defending the arbitration claim, including legal fees and expenses incurred by such Party.

Article XIX

20. Liability and Indemnification

20.1. Liability in respect of the Project:

20.1.1. The Developer shall be solely responsible for the construction, operation and management of the Project and shall have the overall responsibility and liability with respect to the Project and all Assets and Project Facilities located upon the Site. In no event shall BDA have any liability or be subject to any claim for the Damages arising out of the design, development, financing, construction, operation, maintenance or management of the Project and the Assets and Project Facilities located upon the Site.

20.1.2. The Developer will have the liability to handover the Community Market and dedicated parking to BDA in the manner specified in the bidding documents.

20.2. General Indemnity:

20.2.1. The Developer hereby indemnifies and agrees and undertakes that from the Appointed Date and during the Term and thereafter, it shall keep indemnified and otherwise saved and harmless, BDA, its agents and employees, its consultants from and against any and all claims, demands made against and / or loss caused and / or the Damages suffered and / or cost, charges / expenses incurred or put to and / or penalty levied and / or any claim due to injury to or death of any person and / or loss or damage

caused or suffered to property owned or belonging to BDA, its agents and employees or third party as a result of any acts, deeds or thing done or omitted to be done by Developer or as a result of failure on the part of Developer to perform any of its obligations under this Development Agreement or on the Developer committing breach of any of the terms and conditions of this Development Agreement or on the failure of the Developer to perform any of its statutory duty and / or obligations or failure or negligence on the part of Developer to comply with any statutory provisions or as a consequence of any notice, show cause notice, action, suit or proceedings, given, initiated, filed or commenced by any third party or Government Authority or as a result of any failure or negligence or default of Developer or its contractor(s) and / or Sub-Contractors and / or invitees and / or the Users as the case may be, in connection with or arising out of this Development Agreement and / or arising out of or in connection with Developer's use and occupation of the Site and / or Assets located thereon or due to the non performance by the Developer of any of its obligations under the Development Agreement to execute sale deed with the allottees, including but not limited to the obligation pertaining to the timely completion of the Project and delivery of the residential/ commercial spaces in the Assets.

20.2.2. The Developer hereby indemnifies and agrees and undertakes that it shall, at all times, defend and hold BDA, and the Lenders, acting through the Lenders' Representative, harmless against from and against all liabilities, damages, losses, expenses, claims, suits, proceedings, judgments, settlements, actions, costs of any nature whatsoever, whether directly or indirectly arising, for personal injury, for damage to or loss of any property and any third party liability, including reasonable attorney's fees, actually incurred or suffered by the Indemnified Party, arising out of or in any way connected with (a) any breach, negligence, default, omission, violation, infringement etc., as the case may be, by the Developer or Persons claiming through or under it of the Developer's representations and warranties herein; obligations contained herein or the terms and conditions hereof; any intellectual property right of any Person; (b) failure of the Developer or Persons claiming through or under it to comply with any law or Applicable Permit or pay taxes or make contractual or other payments due and payable to any Person; (c) the employment, sickness, injury or death of any Person employed directly or indirectly by the Developer or Persons claiming through or under it; (d) personal injury and for damage to or loss of any property arising out of or in any way connected with the Developer's performance under this Agreement, except to the extent that such injury, damage on loss is attributable to a negligent or willful act or omission of the party seeking to be indemnified; or (e) as provided elsewhere in this Agreement.

20.2.3. BDA hereby indemnifies and agrees and undertakes that it shall, at all times, defend and hold the Developer harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of BDA to fulfill any of its obligations under this Development Agreement materially and adversely affecting the performance of the Developer's obligations under the Development Agreement or this Development Agreement other than any loss, damage, cost and

expenses, arising out of acts done in discharge of their lawful functions by BDA, its officers, officers, employees, agents, advisors, consultants, authorized representatives.

20.3. Notice and contest of claims / demands:

20.3.1. In the event that any Party hereto receives a claims or demands from a third party in respect of which it is entitled to the benefit of an indemnity under Article 20.2 or in respect of which it is entitled to reimbursement (the “**Indemnified Party**”), it shall notify the other Party responsible for indemnifying such claim hereunder (the “**Indemnifying Party**”) within 15 (fifteen) days of receipt of the claim and / or shall not settle or pay the claim / demand without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and at its (Indemnifying Party’s) risk, costs and expense. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

20.3.2. Furthermore, the Indemnified Party shall make available to the Indemnifying Party, a copy of the third party claim or demand and give the Indemnifying Party the opportunity to defend the Indemnified Party against such claim, employing their own counsel at their sole costs, expense and risk. The Indemnifying Party, at its own cost, shall have the right to defend the claim by all appropriate proceedings and shall have the sole right to direct and control such defense. In particular, without limitation, the Indemnifying Party may (i) participate in and direct all negotiations and correspondence with the third party; (ii) appoint and instruct counsel acting, if necessary, in the name of the Indemnified Party (with all costs and expenses to be borne by the Indemnifying Party); and (iii) require that the claim be litigated or settled in accordance with the instructions of the Indemnifying Party. The Indemnifying Party shall conduct such proceedings in good faith and take into account the interest of the Indemnified Party. As long as the Indemnifying Party is defending a claim, the Indemnified Party shall provide or cause to be provided, to the Indemnifying Party or its representatives, any information reasonably requested by it and / or them relating to such claim, and the Indemnified Party shall otherwise cooperate with the Indemnifying Party and its representatives in good faith in order to contest effectively such claim. The Indemnifying Party shall inform the Indemnified Party in writing without undue delay of all developments and events relating to such claim.

20.3.3. Notwithstanding anything to the contrary contained in this Development Agreement, in no event shall any Party, its officers, employees or agents be liable to indemnify the other Party for any matter arising out of or in connection with this Development Agreement in respect of any indirect or consequential loss, including loss of profit, suffered by such other Party.

20.3.4. Notwithstanding anything to the contrary contained in this Development Agreement, the Developer shall indemnify and hold harmless BDA, from and against all claims, demands made against and / or loss caused and / or the Damages suffered and / or cost, charges / expenses incurred or put to and / or penalty levied and / or any claim pursuant to the non performance by the Developer of any of its obligations under this Development Agreement and / or the Conveyance Deed including but not limited to the obligation pertaining to the timely completion of the Project and delivery of the residential and/or commercial spaces in the Assets.

Article XX

21. MISCELLANEOUS

21.1. Assignment

21.1.1. **By Developer** - Save and except otherwise permitted by this Development Agreement, Developer shall not assign, transfer, mortgage, charge, sub-let, deal with, sub-contract, or otherwise grant rights in or over all or any of the rights, or all or any of its obligations or liabilities under this Development Agreement.

21.1.2. **By BDA** – Save and except other wise permitted by this development agreement, BDA shall have the unilateral right to assign, transfer, mortgage, charge, sub-let, deal with, sub-contract, or otherwise grant rights in or over all or any of the rights, or all or any of its obligations or liabilities (including those relating to arbitration) under this Development Agreement to any entity.

21.2. Entire Agreement

21.2.1. This Development Agreement along with terms and conditions of the RfP Document together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof and no amendment or modification hereto shall be valid and effective unless expressly previously approved in writing by BDA and executed by the authorised person of BDA in this behalf.

21.2.2. Wherever there is discrepancy between this Development Agreement clause and terms and conditions of the RfP Document, the terms and conditions of the Development Agreement will prevail over clauses of this RfP Document.

21.2.3. This Development Agreement, Schedules, Annexure and RfP documents together constitute a complete and exclusive understanding of the terms of the Development Agreement between the Parties on the subject hereof.

21.3. Amendment

21.3.1. Any amendment or waiver of any provision of this Development Agreement, or consent to any departure by any of the Parties there from, shall be effective only when the same

shall be in writing and signed by the Parties hereto and then such amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

21.3.2. After the bidding process, any amendment(s) in the Draft Development Agreement may be made on the mutual consent of both the Selected bidder/ Developer and BDA.

21.4. Waiver and Remedies

21.4.1. Any term or condition of the Development Agreement may be waived at any time by the Party that is entitled to the benefit thereof. Such waiver must be in writing and must be executed by an authorized officer of such Party. A waiver on occasion will not be deemed to be waiver of the same or any breach or non-fulfillment on a future occasion. No omission or delay on the part of either Party to require due and punctual performance of any obligation of the other Party shall constitute a waiver of such obligation of the other Party or the due and punctual performance thereof by such other Party and it shall not in any manner constitute a continuing waiver and / or as a waiver of other breaches of the same or other (similar or otherwise) obligations hereunder or as a waiver of any right or remedy that it may otherwise have, in law or in equity. However, the waiver by any Party of any breach of the Development Agreement shall not be deemed to be or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of the Development Agreement, nor shall such waiver be deemed to be or construed as a waiver by any other Party.

21.4.2. No forbearance, indulgence or relaxation or inaction by any Party hereto at any time to require performance of any of the provisions of the Development Agreement shall in any way affect, diminish or prejudice the right of such party to require performance of that provision and any waiver or acquiescence by any Party hereto of any breach of any of the provisions of the Development Agreement shall not be construed as a waiver or acquiescence of any right under or arising out of the Development Agreement, or acquiescence to or recognition of any right under or arising out of the Development Agreement, or acquiescence to or recognition of rights and / or position other than as expressly stipulated in the Development Agreement.

21.4.3. That the failure of either Party to enforce at any time, or for any period of time the provisions hereof shall not be construed to be waiver of any provisions or of the right thereafter to enforce each and every provision.

21.5. Severance of Terms

21.5.1. If for any reasons whatsoever, any provisions of this Development Agreement are declared to be void, invalid, unenforceable or illegal by any competent arbitral tribunal or court of competent jurisdiction, such invalidity, unenforceability or illegality shall not prejudice or affect the remaining provisions of this Development Agreement, which shall continue in full force and effect and in such event, the Parties shall endeavour in

good faith to forthwith agree upon a legally enforceable substitute provision as will most closely correspond to the legal and economic contents of the unenforceable provision.

21.6. Survival

21.6.1. The Termination of this Agreement:

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

21.7. Notices, communications, and Language

21.7.1. The Language of the Development Agreement is English. All notices, certificates, correspondence or other communications, specifications, standard and information under or in connection with this Development Agreement or the Project shall be in English Language. All other written and printed matter, communications, documentation, proceedings, and notices etc. pursuant or relevant to the Development Agreement shall be in English language.

21.7.2. Unless otherwise stated, all notices, communications, letters etc. including but not limited to a notice of waiver of any term, breach of any term of this Development Agreement and Termination of this Development Agreement required to be made, served and communications in terms of this Development Agreement and / or under these presents shall be in writing and shall be deemed to have been duly made, served, communicated or received.

- (i) Immediately, if sent by e-mail or facsimile transmission to the e-mail I. D. or the correct fax number of the addressee (with a confirming copy sent the same business day by registered post acknowledgement due or speed post acknowledgment due or by a reputed and recognized national or international courier service) or by hand delivery (with signed return receipt).
- (ii) Within 72 (seventy-two) hours of posting, if sent by prepaid registered post acknowledgement due or speed post acknowledgment due or by a reputed and recognized national or international courier service only if the notice or letter or communication is addressed to the other Party,

at the following addresses:

If to BDA :

Facsimile: _____

e-mail: _____

Kind Attn : _____

If to the Developer :

Facsimile: _____

e-mail: _____

Kind Attn : _____

If to the Confirming Party:

Facsimile: _____

e-mail: _____

Kind Attn : _____

Or

to such other addresses and addressees, as may be intimated in writing by one Party to the other.

If BDA or the Developer or the Confirming Party changes its address or acquires any new address, telephone, facsimile, e-mail for notices, communications, and letters etc. required by or under this Development Agreement, the respective Party shall immediately notify the others of that change as soon as may be practicable and in any event within 72 (seventy-two) hours of such change or acquisition. Written notice required by the Development Agreement shall be deemed sufficient and adequate, if sent to the last known address of the Developer or the Selected Bidder in the manner provided hereinabove.

21.8. Governing Law and Jurisdiction

21.8.1. This Development Agreement shall be governed by and construed in accordance with the laws of India and the courts of Bhubaneswar shall have the exclusive jurisdiction over all matters pertaining to or arising out of or in relation to this Development Agreement.

21.9. No agency or Partnership

21.9.1. Nothing contained in this Agreement shall be in any manner constructed or interpreted as constituting a partnership or agency for or on behalf of any other Party and the relationship between the Parties is as a principal to principal and on an arm's length basis. Except as otherwise expressly agreed to, nothing contained herein shall confer on any Party, BDA to incur any obligation or liability on behalf of the other Party. Further, except as otherwise expressly agreed to neither Party shall have any authority to bind the other in any manner whatsoever.

21.10. Exclusion of Implied Warranties etc.

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

21.11. Costs and expenses

21.11.1. Each Party shall bear its own costs (and expenses, including without limitation any fees payable to its advisors) in connection with the negotiation, preparation, and execution of this Development Agreement. Provided that all the taxes including the stamp duty and registration charges with respect to this Development Agreement and Conveyance Deed shall be borne by the Developer. The Parties expressly agree that it shall be the responsibility of the Developer to comply with the requirements in relation to the registration of this Development Agreement and Conveyance Deed with any relevant Governmental Authority.

21.12. Timelines

21.12.1. All the timelines related to this Request for Proposal (RFP) may be extended at the sole discretion of Bhubaneswar Development Authority.

21.13. Change in Land Area

21.13.1. If there is any change in the land area after the joint verification by the Selected Bidder and the BDA after the signing of the Development Agreement, then the Selected Bidder will have to pay to BDA a consideration pro rata to the Quoted Bid Amount.

21.14. Counterparts:

21.14.1. This Development Agreement is being executed in 3 (three) counterparts each having the same contents, and the Parties have read and thoroughly understand the contents hereof and have hereby affixed their respective signatures and seals before

witnesses. One counterpart is to be retained by BDA, the one counterpart to be retained by the Developer (i.e. Project SPV) and the other counterpart to be retained by Selected Bidder (Authorized Signatory in case of Consortium). All counterparts shall constitute but one and the same Development Agreement.

21.14.2. The Parties represent that they have read the entire Agreement constituting 21 Articles including the Schedules therein and Annexures and Appendices thereto and further state that the Parties shall be bound by all the terms and conditions thereof.

SCHEDULE – 1
(the land or Project Site)

IN WITNESS WHEREOF this Agreement has been executed by the duly authorized representatives of the Parties hereto at the place and on the day, month and year first above written.

For and on behalf of Bhubaneswar Development Authority [NAME] [DESIGNATION]	
For and on behalf of Developer (i.e. Project SPV) [NAME] DESIGNATION]	
For and on behalf of Selected Bidder (Conforming Party) [NAME] DESIGNATION]	
Witnesses: 1. 2.	

Annexure to Draft Development Agreement

**DRAFT CONVEYANCE DEED OR BUILT-UP AREA FOR DEVELOPMENT OF
COMMUNITY MARKET AT GHATIKIA, BHUBANESWAR ON PPP MODE**

THIS INDENTURE (“Indenture”) is made and executed on this theday of
2024.

BETWEEN

Bhubaneswar Development Authority, established under the Orissa Development Authorities Act, 1982 (Orissa Act, 14 of 1982), having its office at Akash Sova Building, Sachivalaya Marg, Bhubaneswar, Odisha (hereinafter referred to as “BDA” which expression shall unless repugnant to the context or meaning thereof, be deemed to include its successors-in-interest and permitted assigns) of the **FIRST PART**

AND

....., a company incorporated under the Companies Act, 2013 and having its registered office at, India.(hereinafter referred to as the “**Developer**” which expression shall unless repugnant to the context or meaning thereof be deemed to include its successors in interest and assigns) of the **OTHER PART**

“**BDA**” and the “**Developer**” are, where the context demands, individually referred to as “**Party**” and collectively as “**Parties**”.

WHEREAS:

The Government of Odisha transferred the Government land on freehold basis as per the provision under Section-75 of the ODA Act,1982 vide its Sanction Letter no. dated in favour of the First Party for the purpose of affordable housing project.

And whereas, The First Party vide its Notification No. dt..... received approval from the Government for developing the Community Market on the land at Ghatikia on Public Private Partnership mode.

And whereas, The First Party vide its Notification No. dt..... and RFP No dt..... conducted a transparent and competitive bid process to identify the Private Developer for developing the Community Market at Ghatikia on Public Private Partnership mode.

Whereas the Second Party was selected as the successful bidder to undertake the project over the schedule plot on terms and conditions specified in the RFP documents and has handed over the Community Market measuring sq. ft of built up area comprising

Number of shops/ shop spaces, dedicated parking for the community Market measuring sq. ft, fully completed in all respect to the satisfaction of BDA and achieved the Occupancy Certificate No. Dated and Project Completion Certificate No. dated from {Competent Authority} and deposited the full bid amount of INR (Rupees only) against the land.

NOW THIS INDENTURE WITNESSES THAT in consideration of the above, the First Party hereby grants, conveys, releases and transfers, assigns and assures unto the aforesaid Second Party/ subsequent allottee(s) / purchaser(s) the permanent, transferable and heritable rights in respect of the built-up area of sq. ft with equivalent interest on proportionate land situated over Plot No., Area Ac..... in Mouza- Ghatikia, P.S.- Bhubaneswar of Tahsil - Bhubaneswar District - Khordha (hereinafter referred to as the said land / property) more fully described in the Schedule hereunder TO HAVE AND TO HOLD the same unto the Second Party / subsequent allottee(s) / purchaser(s) of the asset over the land with permanent heritable and transferable rights, subject to the exceptions, reservations covenants and conditions hereafter contained, that is to say, as follows:-

1. The Second Party / subsequent purchaser(s) of the asset(s) developed over the land shall have only the exclusive proportionate rights over the said land for the built-up area covered by the Residential cum/or Commercial facility in the total built-up area of the Project. The exclusive title and rights of the built-up area covered by the Community Market and proportionate land will continue to vest with the BDA.

2. The Government of Odisha except and reserves unto himself all mines and minerals of whatever nature lying in or under the said property together with full liberty at all times for the Government of Odisha and its agents and workmen, to enter upon all or any part of the land / Property to search for, win, make merchantable, and carry away the said mines and minerals under or upon the said property or any adjoining lands of the Government and to lay down the surface of all or any part of the said land / property and any building under or hereafter to be erected thereon making fair compensation to the Second Party / subsequent purchaser(s) of the asset developed over the land for damage done unto him thereby, subjected to the payment of land revenue or other imposition payable or which may become lawfully payable in respect of said land /property and to all public rights or easement affecting the same.

3. The Second Party / subsequent purchaser(s) of the asset so developed over the land shall comply with the building, drainage and other bye-laws of the Bhubaneswar Development Authority for the time being in force.

4. If it is discovered at any stage that this deed has been obtained by suppressions of any fact by any mis-statement, mis-representation or fraud, then this deed shall become void at the option of the Bhubaneswar Development Authority who shall have the right to cancel this deed and forfeit the bid amount paid by the Second Party / Subsequent Purchaser(s) of the land / asset developed over the land. The decision of the BDA in this regard shall be final and binding upon the Second Party / Subsequent Purchaser(s) of the asset over the said land.

5. The Second Party / Subsequent Purchaser(s) of the asset developed over land shall not commit any act of waste on the said land /property so as to render it unfit for the purpose of being used as a commercial / residential purpose. However, the Second Party / Subsequent Purchaser(s) of the land / asset has no right to further sub-division/ amalgamation / change of land use without prior permission of the 1st Party (BDA). If it is found that further sub-division /amalgamation / change of land use made by the Second Party / Subsequent Purchaser(s) and their successor(s), administrator(s) representative(s), permitted assignee(s) and in case of such, the consequences as referred to in Clause-5 shall apply and the deed shall become void and shall stand cancelled on forfeiture of the bid amount paid by the Second Party / subsequent Purchaser(s) of the asset so developed over the land. In such events, the Second Party / subsequent purchaser(s), successor(s), administrator(s), representative(s) permitted assignee(s) shall handover the possession of the land / property to BDA failing which BDA shall proceed to recover the property as per the provisions provided under ODA Act, 1982 and / OPP(EOU) Act 1972 and such other Act(s). The Second Party / Subsequent purchaser shall have to pay the ground rent, cess etc to the concerned Revenue Authorities as per the provision of law. The rent is liable for revision during survey and settlement operations or at the end of each 15th year, as the case may be subjected to a maximum limit of 50 (fifty) per cent over the rate of rent in force in the previous year or the rates applicable at the time to similar lands in the vicinity.

6. That the Second Party shall operate the residential cum/or commercial and other facility and other activities permissible as per prevailing Planning and Building Standards Rules / Regulations with all requisite walls sewers, drains and other conveniences as approved by the competent authority or his authorized representatives and shall maintain the same in all respects at all times.

7. The Second Party must always recognize that the Community Market is a public infrastructure and the residential cum/or commercial facilities have been developed on the surplus built-up area after developing the Community Market. Accordingly, they should make all efforts to ensure the seamless functioning of the Community Market and co-operate on all matters related to the same.

Consequent upon cancellation of allotment based on the permission obtained from BDA to execute 'Agreement to Sale' with end -users dated; on the grounds referred to in the Transfer of Land conditions, the Second party shall be responsible for all consequences arising out of agreement entered into with the third party allottee, if any, and in case of such, the aforesaid allotment and the claim (s) of the allottee out of such transaction (s) shall be at the cost and risk of the Second party and may form the buildup/part of buildup construction area and in this context the Second party shall be bound by and to comply with the provisions of Real Estate (Regulation and Development) Act 2016 and shall also be responsible for all consequences arising out of the default of the Second party. BDA, in no manner, shall be responsible for all aforementioned transaction (s) made by the Second party.

8. The Second Party shall indemnify and hold harmless the First Party from and against all claims, liabilities, expenses, costs and losses suffered or incurred by the First Party in the event of cancellation of Conveyance Deed for non-fulfilment of the conditions by the Second Party.

9. It is further declared that as a result of this Conveyance Deed, the Second Party/allottee/successful bidder from the date mentioned hereafter will be the owner of the said property with permanent, transferable and heritable rights.

10. The stamp duty and registration charges, if any leviable upon this instrument shall be borne by the Second Party / subsequent purchaser.

11. This transfer shall be deemed to have come into force with effect from the date of registration of this deed.

12. The Second Party shall apply for correction of ROR (Odisha Record of Rights) in respect of the proportionate interest on Scheduled land on the basis of allotment made on free hold i.e. proportion of built-up area used for residential cum/or commercial facilities and excluding the built-up area of the Community Market.

13. The documents furnished by the Second Party / subsequent purchaser(s) during the process of auction and process to execution deed shall form part and parcel of this deed.

14. That the expression "Developer" or the "Alottes" hereinbefore used shall include its heirs, executors, administrators and agents.

15. **IT IS HEREBY FURTHER AGREED** by and between the parties, in case any constraints/ restrains/difficulties arising out of and in connection with conditions mentioned in the Conveyance Deed the rights shall be resolved mutually and in such event the parties in writing may add/alter/modify/repeal any of the condition of explain any of the condition, keeping in view the provisions of law prevailing as on the said date and such addition/alteration/modification/deletion and explanation of any condition(s) shall from part of the conveyance deed.

IN WITNESS WHEREOF the undersigned have executed this Agreement as of the date first above written.

Signed and delivered for an on behalf of
Bhubaneswar Development Authority

Signed and delivered for and on behalf of
{Developer}

Name:

Name:

Title:

Title:

Witness:

- 1.**
- 2.**

Witness:

- 1.**
- 2.**

Annexure

1. Plot map
2. Built-up area as per sanctioned plan
3. Built-up are of Residential cum/or Commercial facilities.
4. Project Completion Certificate from Competent Authority/Independent Engineer
5. Occupancy Certificate from Competent Authority