

Directorate of Municipal Administration

Part II **Development Agreement**

**CONSTRUCTION OF 40000 E.W.S. DWELLING UNITS ON
HYBRID ANNUITY MODEL ON PPP BASIS UNDER VERTICAL-3
OF PMAY – HOUSING FOR ALL 2022 (URBAN) IN URBAN
AREAS IN JHARKHAND**

**DEVELOPMENT AGREEMENT FOR
CONSTRUCTION OF 40000 E.W.S. DWELLING UNITS ON HYBRID ANNUITY
MODEL ON PPP BASIS UNDER VERTICAL-3 OF PMAY – HOUSING FOR ALL
2022 (URBAN) IN URBAN AREAS IN JHARKHAND**

THIS CONCESSION AGREEMENT is made this ___ day of _____ 201_

BY AND BETWEEN

Directorate of Municipal Administration, Department of Urban Development & Housing, Government of Jharkhand acting through _____ having its office at _____ (hereinafter referred as "**DMA**", which expression shall, unless the context otherwise requires, include its successors and assigns);

AND

M/S _____, a company incorporated under the Companies Act, 2013 and having its registered office at _____ (hereinafter the "**Developer**", which expression shall, unless the context otherwise requires, include its successors and permitted assigns).

WHEREAS:

- A. The Government of Jharkhand (GoJ) is keen to improve the housing infrastructure in the State of Jharkhand using new and emerging construction technologies. As a part of this effort, it is proposed to develop and establish new housing colonies or through redevelopment of existing slums in Jharkhand on the public-private partnership basis involving construction of new housing complex/s and the provision of improved and enhanced facilities and amenities.
- B. DMA has decided to implement the Project on design, build and transfer basis. The Project comprises, subject to the terms and conditions of this Agreement, the development, design, financing, construction and transfer of the Project by the Developer.
- C. Pursuant to the above, DMA undertook a transparent competitive bidding process and issued a Request for Qualification cum Proposal (RFQP) dated _____ inviting bids for the Project and selected M/s _____, as the Selected Bidder, which has since incorporated the Developer (the "**SPV**") for implementing the Project.

- D. DMA hereby grants the Concession for the Project to the Developer in accordance with the provisions hereof.
- F. The Developer acknowledges and confirms that it has undertaken a due diligence audit of all aspects of the Project including technical and financial viability, legal due diligence, demand for the Project, and on the basis of its independent satisfaction hereby accepts the Concession and agrees to implement the Project at its cost and expense in accordance with the terms and conditions of this Agreement.
- G. Selected Bidder/Developer has furnished to DMA an unconditional and irrevocable bank guarantee of Rs. _____ (Rupees _____ only) as Performance Security, within 3 (three) weeks of the date of issuance of the Letter of Acceptance to the Selected Bidder, a pre-condition to the execution of this Agreement, and DMA has agreed to the implementation of the Project by the Developer on the terms, conditions and covenants hereinafter set forth in this Agreement.
- H. The Parties hereto are required to enter into the Agreement being these presents to record the terms, conditions and covenants of the Project.

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

ARTICLE 1: DEFINITIONS AND INTERPRETATION

1.1 DEFINITIONS

In this Agreement, unless repugnant to the context or inconsistent therewith, the following words, phrases and expressions shall bear the meaning hereinafter respectively assigned to them:

- i) **“Affected Party”** shall have the meaning set forth in Article 12.1.
- ii) **“Agreement”** or **“Development Agreement”** means this agreement including the recitals, schedules and attachments hereto as may be amended, supplemented or modified in accordance with the provisions hereof.
- iii) **“Agreement Date”** means the date of this Agreement.
- iv) **“Applicable Laws”** means any statute, ordinance, notification, rule, regulation, judgement, order, decree, bye-law, approval, directive, guideline, policy, requirement or other governmental restriction or any similar form of decision of, or determination by, or any interpretation or

having the force of law in the Republic of India and the State of Jharkhand, by any Competent Authority or instrumentality thereof, whether in effect as of the date of this Agreement or thereafter.

- v) **“Approved DPR”** means DPR submitted by the Developer and approved by DMA, subsequent to this Agreement.
- vi) **“Arbitration Act”** means the Arbitration and Conciliation Act, 1996 and shall include modifications to or any re-enactment thereof, as in force from time to time;
- vii) **“Bid” or “Proposal”** means the documents in their entirety comprised in the proposal or bid submitted by the Selected Bidder, M/s _____ (including the qualification, technical and price bid) in response to the Request for Qualification cum Proposal, and accepted by DMA, with amendments and modifications, if any, pursuant to negotiations between the Parties, signed for verification by the authorised representatives of the Parties, attached hereto as Schedule 11.
- viii) **“Business Day”** means a day on which banks are generally open in Jharkhand for transaction of normal banking business.
- ix) **“Carpet Area”** means the net usable floor area of an apartment, excluding the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area, but includes the area covered by the internal partition walls of the apartment;
- x) **“Change in Law”** means occurrence of any of the following events after the execution of this Agreement:
 - (a) enactment of any new Applicable Law;
 - (b) the repeal in whole or in part (unless re-enacted with the same effect) or modification of any existing Applicable Law;
 - (c) the change in interpretation or application of any Applicable Law;
 - (d) the imposition of a requirement for a Clearance(s) (other than for cause) not required on the date of this ;
 - (e) after the date of grant of any Clearance(s), a change in the terms and conditions attaching to such Clearance (s) (other than for cause) or the attachment of any new terms and conditions to a Clearance (s)(other than for cause); or
 - (f) any Clearance (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, not being renewed on a timely basis on an application therefore having been duly made in good time.

For the avoidance of doubt, a change in the rate of any Tax or the

imposition of a new Tax shall not constitute a Change in Law and the Parties shall be liable to bear the impact and incidence thereof at their cost and risk.

- xi) **“Clearances”** means any and all permissions, clearances, licenses, permits, consents, no-objections, exemptions, registrations, filings or other authorisations of whatever nature, including without limitation environmental clearances, approvals of or from any Competent Authority required in connection with the Project and for undertaking, performing or discharging the obligations or fulfilment of the purposes contemplated by this Agreement.
- xii) **“Competent Authority”** means Gol, any state government or any governmental department, commission, board, body, bureau, agency, authority, instrumentality, court or other judicial or administrative body, central, state, or local having jurisdiction over the Project, the Developer, the Project Assets, the Project Site and the Works or the performance of all or any of the services, obligations or covenants of Developer under or pursuant to this Agreement or any portion thereof.
- xiii) **“Completion Certificate”** means certificate in respect of the Project issued by DMA in consultation with the Independent Engineer pursuant to Clause 9.6 (c).
- xiv) **“Compliance Date”** shall have the meaning specified in Clause 3.3 (b).
- xv) **“Concession”** shall have the meaning ascribed thereto in Article 2.1.
- xvi) **“Concession Period”** means the period specified in Article 2.
- xvii) **“Conditions Precedent”** means the conditions set out in Article 3 hereof.
- xviii) **“Consortium”** means the group of entities that have jointly submitted the proposal for the Project and have been termed as Consortium members in the SPV formed to implement the Project.
- xix) **“Construction Completion”** shall have the meaning specified in Clause 9.5 (a).
- xx) **“Construction Period”** means period specified in Schedule 5.
- xxi) **“Construction Works”** means the works and things necessary for achieving construction completion of the Project Facilities in accordance with the provisions of this Agreement, including Commercial Operations in case of the Project.
- xxii) **“Damages”** shall have the meaning set forth in Clause 1.2 (q);

- xxiii) **“Debt Due”** means the aggregate of the following sums expressed in Indian Rupees outstanding and payable to the Lenders in respect of the Project under the Financing Documents:
- (a) The principal amount of the debt provided by the Lenders under the Financing Documents for financing the Project which is outstanding as on the Transfer Date, excluding any part of the principal (of such debt) that had fallen due for repayment one year prior to the Transfer Date unless such repayment had been rescheduled with the prior consent of DMA; and
 - (b) All accrued interest, financing fee and charges payable on or in respect of the debt referred to in the sub-clause (a) above up to the date preceding the Transfer Date but excluding any interest or charges that had fallen due one year prior to the Transfer Date, and penal interest or charges payable under the Financing Documents to the Lenders.
- xxiv) **“Developmental Standard(s)”** means the minimum parameters and standards to be achieved by the Developer in the construction, development of the Project in accordance with Approved DPR, Building byelaws, internationally sound engineering practices, National Building Code and Applicable Law and / or as determined by the relevant Governmental Authority.
- xxv) **“DPR”** includes the conceptual and detailed designs, working drawings and engineering, plans, backup technical information required for the Project Facilities and all calculations, samples, patterns, models, specifications and other technical information relating thereto.
- xxvi) **“Directive”** means any present or future requirement, instruction, direction, order, rule or regulation issued by any Competent Authority which is legally binding or which is notified/directive issued by DMA to the Developer, and any modification, extension or replacement thereof from time to time in force.
- xxvii) **“Dispute”** shall have the meaning set forth in Article 16.
- xxviii) **“Dispute Resolution Procedure”** means the procedure for resolution of disputes set forth in Article 16.
- xxix) **“Dwelling Unit”** means a building or a part thereof which is used or is intended to be used by a family for habitation;
- xxx) **“Easementary Rights”** means all easements, reservations, right of way and other similar purposes, or zoning or other restrictions as to the use of the real property, which are necessary or appropriate for the conduct of

activities of the Developer related to the Project Facilities or which customarily exist on properties which are similarly situated and are engaged in similar activities.

- xxxi) “**Encumbrances**” means any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other obligation or restriction and shall include physical or legal obstructions or encroachments on the Project Facilities or Third Party claims or rights of any kind attaching thereto.
- xxxii) “**Equity**” means the sum expressed in Indian Rupees representing the equity share capital of the Developer for the Project and shall include the funds advanced by any Consortium Member or by any of the shareholders of the Developer for meeting the equity component of the Total Project Cost. Provided, however, that for the purposes of computing Termination Payments under this Agreement, Equity shall be reckoned as an amount that is arrived at after excluding from the equity share capital of the Developer (relating to the Total Project Cost) the sum by which the capital cost of the Project, as stated by the Developer for purposes of claiming Termination Payments, exceeds the Total Project Cost.
- xxxiii) “**Event of Default**” means a Developer Event of Default and/or a DMA Event of Default, as the context may require or admit.
- xxxiv) “**Environment Management Plan**” means the plan set out in Schedule 8.
- xxxv) “**External Infrastructure**” shall mean (i) water and sewerage system, drainage system, solid waste management system, boundary walls, internal roads and pathways, green areas/ park and the associated amenities (commercial built up area such as shops, kiosks, etc.) and other facilities, community centre, conveniences and amenities, including parking lots/spaces developed specifically for housing; and (ii) any other structures, works, appurtenances or common facilities constructed at any of the Project Site/s, more particularly described in Approved DPR, that shall be developed, designed, financed, constructed, by the Developer at any of the Project Site/s;
- xxxvi) “**Financial Closure**” means the date on which the Financing Documents providing for funding by the Lenders have become effective and the Developer has immediate access to such funding under the Financing Documents.
- xxxvii) “**Financial Year**” means the year commencing from 1st April of any calendar year to the 31st March of the next calendar year except in the first and the last calendar year of the subsistence of this Agreement. In the first year of subsistence of this Agreement, it means the period from the

Compliance Date to the 31st March of next calendar year. In the last year of subsistence of this agreement, it means the period from 1st April to the Transfer Date.

- xxxviii) **“Financing Documents”** means the documents executed by the Developer in respect of financial assistance (including refinancing) for the Project to be provided by the Lenders by way of loans, advances, subscription to debentures and other debt instruments and guarantees, risk participation, take-out financing, or any other form of credit enhancement and shall include loan agreements, guarantee agreements, subscription agreements, notes, debentures and any documents providing security for such financial assistance. Provided that for the purpose of computing Termination Payments and Debt Due, the financial assistance provided by the Lenders under such documents shall be restricted to the financial assistance for the Project.
- xxxix) **“Force Majeure”** or **“Force Majeure Event”** shall mean an act, event, condition or occurrence specified in the Article 12.
- xl) **“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 contractor and/or operator, in the implementation, operation and maintenance and supervision of a project of the type and size similar to the Project.
- xli) **“GoJ”** means the Government of the State of Jharkhand.
- xlii) **“GoI”** means the Government of India.
- xliii) **“Independent Engineer”** means any other reputed Person appointed by DMA in accordance with Clause 9.9 (a) (i) (1) for supervision and monitoring of compliance of implementation of Project Facilities by the Developer and to undertake, perform, carry out the duties, responsibilities, services and activities as set out Schedule 7.
- xliv) **“Lenders”** means financial institutions, banks, non-banking financial companies, funds, trusts or trustees of the holders of debentures or other securities who provide financial assistance to the Developer under the Financing Documents.
- xlv) **“Material Adverse Effect”** means circumstances which may or do (i) render any right vested in a Party by the terms of this 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

Agreement or the legality, validity, binding nature or enforceability of this Agreement.

- xlvi) **“Material Breach”** means a breach of the obligations, terms and conditions of this Agreement or covenants by a Party, which materially and substantially affects or is likely to affect the Project/ the performance of the transactions contemplated by this Agreement or has/is likely to have a Material Adverse Effect.
- xlvii) **“Party”** means either DMA or the Developer, and **“Parties”** means collectively DMA and the Developer.
- xlviii) **“Performance Security”** means the irrevocable and unconditional bank guarantee (Performance Security) provided by the Developer/ Successful Bidder from a nationalised/ scheduled bank approved by DMA, substantially in the form set out in Schedule 10, as guarantee for the performance of its obligations in respect of the Project.
- xlix) **“Person”** means any natural person, firm, corporation, company, voluntary association, partnership, joint venture, trust, incorporated organisation, unincorporated organisation, any government or competent authority or instrumentality thereof or other entity.
- l) **“Possession through leave and license”** means constructive non-exclusive possession of the Site, together with all way leaves, easements, unrestricted access and other rights of way, howsoever described, necessary for construction or implementation of the Project in accordance with this Agreement.
- li) **“Project”** means, subject to the provisions of this Agreement, the development, financing, design, construction and transfer of the Project Facilities and all activities incidental thereto at the Project Site/s.
- lii) **“Project Agreements”** means, collectively this Agreement, the engineering, procurement and construction (EPC) agreements and any other material agreements (other than the Financing Documents) entered into or may hereinafter be entered into by the Developer in connection with the Project.
- liii) **“Project Assets”** means collectively the Project Facilities comprising all tangible and intangible assets relating respectively to the Project including, but not limited to, (a) rights over the Site in the form of licence, right-of-way or otherwise; (b) tangible assets such as foundation, buildings, substructures and superstructures, works, drainage facilities, sign boards, equipment, electrical works for lighting of and telephone and communication equipment; (c) financial assets, such as receivables, cash and investments; (d) rights under the Project Agreements and other

- agreements and (e) insurance proceeds.
- liv) **“Project Facility/ies”** means the housing complex of EWS Dwelling Units and associated facilities, located at any of the Project Site/s, comprising the housing facilities but excluding External Infrastructure and more particularly described in Approved DPR, that shall be developed, designed, financed, constructed, by the Developer at any of the Project Site/s;
 - lv) **“Project Implementation Schedule”** means the Implementation Schedule for the Project as set forth in Schedule 5.
 - lvi) **“Project Site/s”** or **“Site”** means the lands, appurtenances and rights in relation thereto on, including easementary rights and the approach land on, under, in or through which the Project Facilities or any other construction relating thereto is situated, located, passes through, sits upon or overlies, more particularly described in Schedule 1 and depicted on the site plan attached thereto.
 - lvii) **“Provisional Certificate”** means certificate in respect of the Project issued by DMA pursuant to Clause 9.6(b).
 - lviii) **“Punch List Items”** shall have the meaning specified in Clause 9.6 (b).
 - lix) **“Request for Qualification cum Proposal”** or **“RFQP”** means the Request for Qualification cum Proposal dated _____, 201_ issued by DMA inviting bids/proposals for the Project, and includes any addendum/clarifications issued in respect thereof by DMA.
 - lx) **“Rs.”** or **“Rupees”** refers to the lawful currency of the Republic of India;
 - lxi) **“SBI PLR”** means the prime lending rate per annum for loans with 1 (one) year maturity as fixed from time to time by the State Bank of India, and in the absence of such rate, the average of the prime lending rates for loans with 1 (one) year maturity fixed by the Punjab National Bank and failing that any other arrangement that substitutes such prime lending rate as mutually agreed between the Parties.
 - lxii) **“Scheduled Construction Completion Date”** shall have the meaning specified in Clause 9.5(b).
 - lxiii) **“Security Interest”** means any existing or future mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, assignment, security interest 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.

- lxiv) **“Selected Bidder”** means the Consortium/entity that has been successful in the bidding process for the Project and that has incorporated the Developer.
- lxv) **“Statutory Auditors”** means a reputed firm of chartered accountants duly licensed to practice in India acting as statutory auditors of the Developer.
- lxvi) **“Subcontractor”** means the equipment, procurement and construction (EPC) contractor(s) and/or any other contractors and sub-contractors, manufacturers or suppliers of Works or part thereof, as the context admits or require, to whom the Developer contracts or subcontracts the Works relating to the Project Facilities.
- lxvii) **“Substitute Entity”** means the entity specified in Clause 13.4 (b).
- lxviii) **“Taxation”** or **“Tax”** means all forms of taxation whether direct or indirect and whether levied by reference to income, profits, gains, net wealth, asset values, turnover, added value, goods, services, works, import, export, production or other reference and statutory, governmental, state, provincial, local governmental or municipal impositions, duties, contributions, rates and levies (including without limitation social security contributions and any other payroll taxes), whenever and wherever imposed (whether imposed by way of a withholding or deduction for or on account of tax or otherwise) and/or levied of any nature whatsoever, whether by GoI, GoJ, DMA or Competent Authorities, and in respect of any Person and all penalties, charges, costs and interest relating to it.
- lxix) **“Tests”** means the tests to be carried out pursuant to this Agreement.
- lxx) **“Termination”** means prior termination of this Agreement pursuant to Termination Notice but shall not, unless the context otherwise requires, include the expiry of this Agreement due to efflux of time in the normal course.
- lxxi) **“Termination Payment”** means the aggregate of the amounts payable by DMA to the Developer under this Agreement upon Termination. Provided, however, that for purposes of determining such Termination Payments the capital cost of the Project shall at all times be reckoned as an amount not exceeding the Total Project Cost and the liability of DMA to make such payments shall be determined as if such capital cost is restricted to Total Project Cost.
- lxxii) **“Third Party”** means any Person, real or judicial, or entity other than DMA and the Developer.

- lxxiii) **“Third Party Agreements”** means all Agreements entered into between the Developer and third Persons, including, but not limited to other Agreements with Developer and vendors of any goods or services to the Developer.
- lxxiv) **“Total Project Cost”** means the lowest of the following:
- (a) Total Project Cost for the Project as set forth in the Financing Documents.
 - (b) Actual Capital Cost of the Project upon completion thereof as certified by statutory auditors.
 - (c) Project Cost in Approved DPR.
- lxxv) **“Transaction Documents”** means collectively the Project Agreements and the Financing Documents.
- lxxvi) **“Transfer Date”** means the period specified in Clause 9.7 or as mutually decided by DMA and the Developer subject to issuance of the Completion Certificate for the Project, including any extensions thereto or earlier termination thereof, in accordance with the terms of this Agreement.
- lxxvii) **“Users”** means Persons and entities using the any of the Project component.
- lxxviii) **“Vacant Possession”** means delivery of possession of the lands comprising the Project Site/s, free from all Encumbrances, and the grant of all Easementary Rights and all other rights appurtenant thereto.
- lxxix) **“Works”** or **“Scope of Works”** means the works relating to the development, design, construction of the Project Facilities (singularly or collectively, as the context admits or requires), to be undertaken by the Developer and/or its Subcontractors in accordance with the provisions hereof, including the Developmental Standards, and the services and things to be designed, engineered, constructed, supplied, executed, manufactured, installed, completed, tested, commissioned, rectified, replaced, made good, carried out and undertaken and any other permanent, temporary or urgent works required hereunder in respect of such facility, detailed in Schedule 2.
- lxxx) **“WPI”** means the wholesale price index for all commodities published monthly by the Office of the Economic Advisor to the Government of India, Ministry of Commerce and Industry, Gol and shall include any index which substitutes the WPI.

1.2 PRINCIPLES OF INTERPRETATION

In this Agreement, unless the context otherwise requires:

- (a) reference to any legislation or law or to any provision thereof shall include references to any such law as it may, after the date of this Agreement, from time to time be amended, supplemented or re-enacted;
- (b) words importing singular shall include plural and vice versa, and words importing the masculine shall include the feminine gender; and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organizations or other entities (whether or not having a separate legal entity);
- (c) the table of contents and headings are for convenience of reference only, and shall not be used in and shall not affect the construction or interpretation of this Agreement;
- (d) words “include” and “including” are to be construed without limitation;
- (e) any reference to any point in time shall mean a reference to that point in time according to Indian Standard Time; any reference to Rs. or Rupees shall mean a reference to Indian Rs. or Rupees (currency of India);
- (f) any reference to day shall mean a reference to a calendar day; any reference to month shall mean a reference to a calendar month;
- (g) the Schedules to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- (h) reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to such agreement, deed, instrument, license or other document as the same may be amended, varied, supplemented, modified, novated or suspended at the time of such reference;
- (i) references to recitals, clauses, sub-clauses, schedules in this Agreement shall, except where the context otherwise requires, be deemed to be references to recitals, clauses, sub-clauses, schedules of or to this Agreement;
- (j) “lakh or lac” means a hundred thousand (100,000) and “crore” means ten million (10,000,000);
- (k) any reference to any period commencing “from” a specified day or date and

“till” or “until” a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a Business Day, then the period shall run until the end of the next Business Day;

- (l) references to “construction” include, unless the context otherwise requires, investigation, design, development of site, engineering, procurement, delivery, transportation, installation, processing, fabrication, upgradation, equipping, installation, establishment, testing, commissioning and other activities incidental to the construction and “construct” shall be construed accordingly;
- (m) any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent Engineer shall be valid and effective only if it is in writing under the hands of duly authorised representative of such Party or the Independent Engineer;
- (n) wherever in this Agreement provision is made for the giving or issuing of any notice, endorsement, consent, approval, certificate or determination by any Person, unless otherwise specified, such notice, consent, approval, certificate or determination shall be in writing and the words “notify”, “endorsed”, “consent”, “approval”, “certify” or “determined” shall be construed accordingly;
- (o) unless otherwise provided, any interest to be calculated and payable under this Agreement shall accrue on a monthly basis and from the respective due dates as provided for in this Agreement;
- (p) any word or expression used in this Agreement shall, unless defined or construed in this Agreement, bear its ordinary English meaning;
- (q) the damages payable by a Party to the other Party as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage/liquidated damages likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “**Damages**”);
- (r) reference to an individual shall include his legal representative, successor, legal heir, executor and administrator;
- (s) reference to a Person shall be construed as including a reference to its successors and permitted assigns in accordance with their respective interests; and
- (t) reference to the Project Site may be for all the land parcels in the Project or a specific land parcel in the Project Site/s, as the context may require.

1.3 MEASUREMENTS AND ARITHMETIC CONVENTIONS

All measurements 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.

1.4 AMBIGUITIES WITHIN AGREEMENT

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

- (a) Between two Clauses of this Agreement, the provisions of specific Clauses relevant to the issue under consideration shall prevail over those in other Clauses;
- (b) Between the Clauses and the Schedules, the Clauses shall prevail, save and except as expressly provided in the Clauses or the Schedules;
- (c) Between the written description on the drawings and the Scope of Work or Developmental Standards, the Scope of Work or Developmental Standards shall prevail;
- (d) Between the dimension scaled from the drawing and its specific written dimension, the latter shall prevail; and
- (e) Between any value written in numerals and that in words, the latter shall prevail.

1.5 PRIORITY OF DOCUMENTS

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

- (a) This Agreement
- (b) Approved DPR of the Project
- (c) The Schedules to this Agreement
- (d) The Letter of Acceptance issued to the Developer
- (e) The written clarifications issued to the bidders
- (f) Written addenda to the RFQP Document
- (g) The RFQP Document
- (h) The Developer's Bid or Proposal

- (i) Written addenda to the RFQP Notice/Advertisement, if any
- (j) The RFQP Notice /Advertisement

ARTICLE 2: GRANT OF CONCESSION

2.1 CONCESSION

Subject to the terms and conditions of the Agreement, DMA grants to the Developer and the Developer hereby accepts the Concession including the exclusive right, authority and authorisation during the subsistence of this Agreement, including extension thereof, to plan, design, finance, engineer, construct, develop, transfer the Project and enjoy its commercial benefits for the Concession Period.

Subject to and in accordance with the terms and conditions set forth in this Agreement, the Concession hereby granted shall entitle the Developer, the exclusive right and authority to enjoy and undertake the following in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits:

- (a) Develop, finance, design, construct, transfer the Project as per the Scope of Work of the Project as mentioned in Schedule 2 as per good industry practice and to manage and handle the use thereof by third parties;
- (b) Manage, operate and execute rights over all or any part of the Project Assets without any limitation or restriction other than those expressly set out in this Development Agreement;
- (c) Appoint Subcontractors or agents on its behalf to assist the Developer in fulfilling its obligations in relation the Project;
- (d) Have access and liberty to plan, design, construct, finance, the proposed Project with the associated facilities and services at the Project Site during the Concession Period in accordance with the provisions of this Agreement.
- (e) Handover the Project/ Project Facilities to DMA on the Transfer Date; and
- (f) Exercise and/or enjoy the rights, powers, privileges, authorisations and entitlements as set forth in this Agreement.

2.2 CONCESSION PERIOD

The Concession Period shall commence from the Compliance Date and shall extend for a period of 10 (ten) years or the earlier termination or any extension of

this Agreement in terms hereof.

2.3 ACTIONS IN SUPPORT OF CONCESSION

- (a) DMA shall assist the Developer, as necessary and mutually agreeable, to enable the Developer to achieve Financial Closure. Such assistance shall include discussion in good faith and entering into appropriate further documentation or additional writings in order to facilitate the process of achieving Financial Closure and which do not materially and adversely affect the rights and interests of DMA hereunder or impose additional material liabilities.
- (b) In order to implement the Project, the Developer shall have the right to sub-contract to Subcontractors, at its cost and risk, any of the Works without in any way relieving the Developer of its obligations as set out in this Agreement, provided such Subcontractors are capable of discharging the obligations under this Agreement for and on behalf of the Developer and possess the qualifications, experience and skills for undertaking such works; provided further, in the event the Developer subcontracts over 50% or whole of the works relating to the Project Facilities, it may do so only with the prior written consent of DMA, which consent shall be given within 15 (fifteen) days of receipt of the Developer's written request in this behalf, failing which DMA shall be deemed to have consented to such subcontracting. Notwithstanding the express or deemed consent of DMA to such subcontracting, the Developer shall be solely responsible for the same and shall not be relieved in any manner of its obligations herein. The Developer shall ensure that any of its obligations, which are relevant to the scope of work of a Subcontractors, pursuant to this Agreement, are incorporated in the terms and conditions under which such Subcontractors is retained.
- (d) DMA shall use best efforts to ensure that the other concerned Competent Authorities expend the requisite facilitation and assistance to the Developer in the implementation of the Project Facilities, including the construction of the approach roads to and from the Site, the provision of police assistance on payment by Developer at the applicable rates and the approvals or facilitation needed from the municipal/local bodies.

ARTICLE 3: CONDITIONS PRECEDENT

Save and except as expressly provided in Articles 3, 4, 5, 10, 12,15,16 and 19 or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent relating to the other Party (the “**Conditions Precedent**”).

3.1 CONDITIONS PRECEDENT FOR DMA

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

- (a) Handed over to the Developer the Possession of the Project Site/s or a part thereof as mutually agreed, as a licensee through leave and license in accordance with the terms of this Agreement; and
- (b) Made/procured change in the land use of the Project Site at its cost, if required.
- (c) Provided a parcel of land¹ of _____ square meter (“Factory Land”) for the purpose of setting up the factory for the Project implementation. Such land shall be handed back to DMA, within 6 (six) months from the issue of Completion Certificate for all the land parcels comprising the Project Site or on Termination of this Development Agreement, as the case may be.

3.2 CONDITIONS PRECEDENT FOR DEVELOPER

The obligations of DMA hereunder are subject to the satisfaction in full of the following Conditions Precedent of the Developer. The Developer shall have

- (a) Made all the applications at its cost and procured the Clearances set out in Schedule 9, including environmental clearances that are required for commencing construction and execution of the Works unconditionally or if subject to conditions then all such conditions have been satisfied in full and such Clearances are in full force and effect;
- (b) Provided DMA certified true copies of its constitutional documents and board resolutions authorising the execution, delivery and performance of this Agreement by the Developer;
- (c) Achieved Financial Closure and provided to DMA notarised true copies of

¹ Based on the requirement of the Developer with maximum 1 Acre.

the Financing Documents along with soft copies;

- (d) All the representations and warranties of the Developer as set forth in its Bid (by Selected Bidder) and this Agreement are true and correct as on the date of execution of this Agreement and as on the Compliance Date;
- (e) Submitted to DMA the final design and Detailed Project Report with construction technology approved by DMA for the Project adhering to requirements of this Agreement within the period specified in Clause 9.1 (a);
- (f) delivered to DMA a legal opinion from the legal counsel of the Developer with respect to the authority of the Developer to enter into this Agreement and the enforceability of the provisions thereof;
- (g) Provided to DMA copies (certified as true by the Director of the Developer) of all resolutions adopted by the Board of Directors of the Developer authorising the execution, delivery and performance of this Agreement by the Developer;

Provided that upon request in writing by the Developer, DMA may, in its sole discretion, waive fully or partially any or all the Conditions Precedent set forth in this Article 3.2.

3.3 OBLIGATIONS TO SATISFY CONDITIONS PRECEDENT

- (a) Each Party shall make all reasonable endeavours at its respective cost and expense to procure the satisfaction in full of the Conditions Precedent relating to it within a period of 180 (one eighty) days from the Agreement Date.
- (b) The later of the date, within such 180 days, when the Developer or DMA satisfied its Conditions Precedents shall be the Compliance Date (the “**Compliance Date**”), whereupon the obligations of the Parties under this Agreement shall commence.

3.4 NON-FULFILMENT OF CONDITIONS PRECEDENT

- (a) In the event the Conditions Precedent for a Party have not been satisfied within the stipulated time and DMA has not waived, fully or partially, such conditions relating to the Developer, this Agreement shall cease to have any effect as of that date and shall be deemed to have been terminated by the mutual agreement of the Parties and no Party shall subsequently have any rights or obligations under this Agreement and DMA shall not be liable

in any manner whatsoever to the Developer or Persons claiming through or under it.

- (d) In the event that Possession of the Project Site/s as a licensee through leave and license has been delivered to the Developer prior to the fulfilment in full of the Conditions Precedent, upon the termination of this Agreement under this Article 3.4, the Project Site shall immediately revert to DMA, free and clear from any Encumbrances and along with all Easementary Rights, irrespective of any outstanding mutual claims between the Parties.
- (e) In the event this Agreement is terminated due to non fulfillment of DMA's Conditions Precedent, DMA shall upon such termination return/refund in full the Performance Security to the Developer; provided there are no outstanding claims of DMA on the Developer unless DMA's failure to fulfill its Conditions Precedent is a result of the Developer's default, in which case DMA shall forfeit the Performance Security as damages.
- (f) Instead of this Agreement terminating as provided in Article 3.4, the Parties may by mutual agreement extend the time for fulfilling the Conditions Precedent.
- (g) In the event of termination of this Agreement under Article 3.4 due to non fulfillment of Conditions Precedent by either Party, DMA shall not be liable in any manner whatsoever to the Developer or its contractors, agents and employees. DMA's liability shall remain limited to the provisions under this Article 3.4.

ARTICLE 4: PERFORMANCE SECURITY

4.1 CONSTRUCTION PERFORMANCE SECURITY

For securing the due and punctual performance of its obligations relating to the Project and the terms and conditions of this Agreement by the Developer from the date of execution of the Development Agreement, including under Article 3, and during Construction Period, the Selected Bidder/Developer shall, on or before the date of signing of Agreement, deliver to DMA an unconditional and irrevocable bank guarantee for a sum of Rs. _____Cr² (Rupees _____ only) in favour of DMA from a scheduled/ nationalised bank acceptable to DMA and payable and enforceable in Ranchi, in the form set forth in Schedule 10. (the “Performance Security”).

4.2 APPROPRIATION OF PERFORMANCE SECURITY

- (a) In the event of the Developer being in default of the due, faithful and punctual performance of its obligations relating to the Project under this Agreement and failing to remedy such default within the relevant cure period or owing any sums to DMA under this 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 DMA for or against the Developer under this Agreement or against DMA in respect of this Agreement, DMA shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to call in, encash and appropriate the relevant or delinquent amounts from the Performance Security as damages for such default, dues, demands or claims.
- (b) The decision of DMA 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. The Developer specifically confirms and agrees that no proof of any amount of liability accrued or loss or damages caused or suffered by DMA under this Agreement is required to be provided in connection with any demand made by DMA to recover such compensation through encashment of the Performance Security under this Agreement and that no document or any action shall be required other than DMA’s written demand in this behalf.
- (c) In the event of encashment of the Performance Security by DMA, in full or part, the Developer shall within 30 (thirty) days of receipt of the encashment

² Equivalent to 2% of the contract value

notice from DMA provide a fresh Performance Security or replenish the existing Performance Security, as the case may be. The provisions of this Article 4 shall apply mutatis mutandis to such fresh Performance Security. The Developer's failure to comply with this provision shall constitute a Developer Event of Default, which shall entitle DMA to terminate this Agreement in accordance with the provisions of Article 14 hereof.

4.3 RELEASE OF PERFORMANCE SECURITY

- (a) Subject to the provisions hereof, DMA shall return the Performance Security to the Developer within (4) four weeks of the Defects Liability Period for all the land parcels comprising the Project Sites, provided that there are no outstanding claims of DMA on the Developer.

ARTICLE 5: REPRESENTATIONS AND WARRANTIES

5.1 REPRESENTATIONS AND WARRANTIES OF PARTIES

Each Party represents and warrants to the other that:

- (a) It is duly organized, validly existing and in good standing under the laws of India;
- (b) It has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (c) It has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of this Agreement;
- (d) It has the financial standing and capacity to undertake the Project;
- (e) This Agreement constitutes its legal, valid and binding obligation fully enforceable against it in accordance with the terms hereof;
- (f) It is subject to civil and commercial laws of India with respect to this Agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof; and
- (g) It shall have an obligation to disclose to the other Party as and when any of its representations and warranties ceases to be true and valid.

5.2 ADDITIONAL REPRESENTATIONS AND WARRANTIES OF DEVELOPER

In addition, the Developer represents and warrants to DMA that:

- (a) The execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Developer's Memorandum and Articles of Association or any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;

- (b) There are no actions, suits, proceedings, or investigations pending or, to the Developer's knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi judicial or other authority, the outcome of which may result in the breach of or constitute a default of the Developer under this Agreement or which individually or in the aggregate may result in any Material Adverse Effect;
- (c) 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 Competent Authority or any other pending or potential matters which may result in any Material Adverse Effect or impairment of the Developer's ability to perform its obligations and duties under this Agreement;
- (d) 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 a Material Adverse Effect;
- (e) No representation or warranty by the Developer contained herein or in any other document furnished by it to DMA or to any Competent Authority in relation to Clearances or otherwise contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (f) Each Consortium Member/the Selected Bidder was and is duly organised and existing under the laws of the jurisdiction of its incorporation and has full power and authority to consent to and has consented to the Developer entering into this Agreement and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;

Provided that whenever any pending or potential matter, including the matters listed under the aforesaid sub-clauses comes to the knowledge of the Developer during the Concession Period, the outcome of which may result in the breach of or constitute a default of the Developer under this Agreement or which individually or in the aggregate may result in any Material Adverse Effect or impairment of the Developer's ability to perform its obligations and duties under this Agreement, the Developer shall immediately intimate the same to DMA;

- (g) no order has been made and no resolution has been passed for the winding up of the Developer or for a provisional liquidator to be appointed in respect of the Developer and no petition has been presented and no meeting has been convened for the purpose of winding up the Developer. No receiver has been appointed in respect of the Developer or all or any of its assets. The Developer is not insolvent or unable to pay its debts as they fall due;
- (h) the information furnished in the Proposal and as updated on or before the

date of this Agreement is true and accurate in all respects as on the date of this Agreement;

- (i) the existing Lead Member of the Consortium holds not less than 26% (twenty-six percent) of its issued and paid up Equity and together with the existing consortium members holds not less than 100% as on the date of this Agreement and the respective holding of each Consortium Member conforms to the representation made by the Consortium and accepted by DMA as part of the Bid;
- (j) All rights and interests of the Developer in the Project and Project Assets shall pass to and vest in DMA or its nominated agency on the Transfer Date free and clear of all liens, claims, and encumbrances, without any further act or deed on the part of the Developer or DMA and that none of Project Assets including materials, supplies or equipment forming part thereof shall be acquired by the Developer subject to any agreement under which a security interest or other lien or encumbrance is retained by any person save and except as expressly provided in this Agreement; and
- (k) No sums, in cash or kind, have been paid or will be paid by or on behalf of the Developer, to any person by way of commission or otherwise for securing the Concession execution of this Agreement or for influencing or attempting to influence any officer or employee of DMA.

5.3 DISCLOSURE

In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any obligation of either Party under this Agreement.

5.4 DISCLAIMER

- (a) Without prejudice to any express provision contained in this Agreement, the Developer acknowledges that prior to the execution of this Agreement, the Developer has after a complete and careful examination made an independent evaluation of the Project, the legal framework and the technical and financial aspects of the Project, Scope of Work, the Developmental Standards, the Project Site and the suitability of its condition, soil and location for implementation of the Project, the availability of goods, materials and things implementing Project, all the information and documents provided by DMA, its consultants or any Competent

Authority, the market and demand conditions, information relating to Users and the cost, risks, consequences and liabilities involved in implementing the Project, 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.

- (b) The Developer further acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in sub-clause (a) above and hereby confirms that DMA, any Competent Authority and their consultants shall not be liable for the same in any manner whatsoever to the Developer or Persons claiming through or under the Developer.
- (c) The Developer accepts that it is solely responsible for the verification of any design, data, documents or information provided by DMA to the Developer, its consultants or any Competent Authority and that it shall accept and act thereon at its own cost and risk.
- (d) The Developer shall be solely responsible for the contents, adequacy and correctness of the Design and Drawing, data and detailed engineering prepared or procured by the Developer for implementing the Project.

ARTICLE 6: PROJECT SITE

6.1 POSSESSION OF SITE

- (a) The Project Site/s shall comprise of the parcels of land as described in Schedule 1 in respect of which the possession through leave and license shall be provided by DMA to the Developer as per the terms and conditions set forth in this Agreement.
- (b) The Parties shall, within 15 (fifteen) days of DMA's notice in this behalf to the Developer prior to the Compliance Date, carry out through their duly authorised representative, a joint inspection and verification of all the real estate, structures, land, buildings and record the report thereof in a memorandum duly signed by the Parties/their representatives. The participation of the Developer in such joint inspection shall be mandatory.
- (c) DMA shall on Compliance Date hand over to the Developer the Possession of the Site on an 'as is where is' basis as a licensee, through leave and license, for a period that is co-terminus with the Concession Period, together with the necessary rights of way/way leaves and along with the right, authority and license to implement the Project thereat in accordance with the provisions hereof. For avoidance of doubt the land parcels forming a part of the Site may be handed over in different phases co-terminus with the Concession Period in various districts of Jharkhand.
- (d) The grant of the leave and license herein and handing over of the Site as aforesaid shall not confer or be deemed to have conferred on the Developer any right, title or interest whatsoever (whether in the nature of an easement or otherwise) in the Site or any part thereof and nothing in these presents contained shall be construed as a demise in law of the Site unto the Developer so as to give the Developer any legal interest therein. The Developer shall only have the non-exclusive right to enter upon the Site for the purpose of implementing the Project in accordance with the terms hereof.
- (e) Upon the Developer observing and performing its obligations, the several covenants, conditions and agreements herein contained and on the part of the Developer to be observed and performed, the Developer shall remain in peaceful possession and enjoyment of the Site during the Concession Period. In the event the Developer is obstructed by any Person claiming any right, title or interest in or over the Site or in the event of any enforcement action including any attachment, distraint, appointment of receiver or liquidator being initiated by any Person claiming to have any

interest in/ charge on the Site or any part thereof, DMA shall, if called upon by the Developer, defend such claims and proceedings at its cost and expense and the Developer shall not be liable for the same in any manner whatsoever.

- (f) The Developer shall remove the utilities at, on, over or under the Site at its cost and expense and with the approval of the concerned Competent Authorities and DMA shall render all necessary assistance in this behalf.
- (g) The Developer and the persons claiming through or under it shall keep the Site free from any trespass or encroachment and keep DMA informed thereof and take appropriate and timely legal and remedial action.
- (h) It is being expressly agreed and understood that DMA shall have no liability whatsoever in respect of survey and investigations carried out or work undertaken by the Developer pursuant hereto in the event of Termination or otherwise
- (i) It is expressly agreed that the rights granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by DMA to terminate the rights, upon the Termination of this Agreement for any reason whatsoever.
- (j) It is expressly agreed that mining rights do not form part of the rights granted to the Developer under this Agreement and the Developer hereby acknowledges that it shall not have any mining rights or any interest in the underlying minerals on or under the area where cable have been laid. For the avoidance of doubt, mining rights mean the right to mine any and all minerals or interest therein.

6.2 ANTIQUE ARTICLES

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

6.3 INFORMATION ABOUT SITE

The information about the Site, provided by DMA to the Developer in good faith and with due regard to the matters for which such information is required by the Developer. DMA agrees to provide to the Developer, upon a reasonable request, any further information relating to the Site, which DMA may now possess or may

hereafter come to possess. Subject to this, DMA makes no representation and gives no warranty to the Developer in respect of the condition of the Site and the Developer shall accept the Site handed over to it by DMA on an “as is where is basis”.

6.4 DMA’S PROPERTY AT SITE

All existing debris and construction and building materials (sand, gravel, stone, rock, loose earth etc.) lying at the Site or generated during implementation of Project or generated from demolition of existing structures shall be promptly disposed off by the Developer at its cost. The Developer may if it deems appropriate use the same for the execution of the Works. For avoidance of doubt, the Developer shall not have any right on the construction and building materials (sand, gravel, stone, rock, loose earth etc.) lying at the Site or generated during any construction activity by third parties or DMA.

6.5 ACCESS TO SITE

Following the delivery of Possession of the Site through leave and license, the Developer shall, at all reasonable times and on reasonable notice, afford access to the Site to DMA and the representatives of DMA or Persons duly authorised by the relevant Competent Authority concerned with safety, security, sanitation or environmental protection etc. to inspect the Site and to investigate any other matter within its authority.

6.6 USE OF SITE

- (a) The Developer shall use the Site only for the purposes of implementing the Project there at and for purposes incidental or necessary thereto as permitted under this Agreement and shall not, without the prior written consent of DMA, use the Site for any other purpose. The Developer accepts that this is an essential condition of this Agreement
- (b) The Developer shall not part with or create any Encumbrances on the whole or any part of the Site save and except as expressly permitted under this Agreement; *provided* that nothing contained herein shall be construed or interpreted as restricting the right of the Developer to appoint subcontractors in accordance with the terms hereof. For the avoidance of doubt, the Developer shall not sell, mortgage or lease the Site/built up area thereat or any part thereof under any form, device or arrangement save and except as expressly provided herein or otherwise expressly authorized in writing by DMA.

6.7 ACCESS TO THE DMA AND ANY THIRD PARTIES APPOINTED BY DMA

The right of way granted for construction on the Project site shall always be subject to the right of access of the person appointed by DMA and its authorised representatives for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.

DMA reserves the right to appoint third parties to undertake additional works within the Project Site and in such case, the Developer shall cooperate with such third party in implementation of its scope and provide requisite information as per the directives of DMA.

6.8 SPECIAL/TEMPORARY RIGHT OF WAY

The Developer shall bear all costs and charges for any special or temporary right of way required by it in connection with access to the Project Site. The Developer shall obtain at its cost such facilities on or outside the Site as may be required by it for the purposes of the Construction and the performance of its obligations under this Agreement.

6.9 DISPLAY OF LOGO

Notwithstanding any statement to the contrary contained herein, DMA reserves the right to prominently display the Government of Jharkhand logo or any entity controlled by it on the Project Site as deemed appropriate by the Authority. The cost of maintenance of such logo/sign shall be borne by the Developer till the Transfer Date.

ARTICLE 7: OBLIGATIONS OF PARTIES

7.1 OBLIGATIONS OF DMA

In addition to and without prejudice to its obligations specified in the other provisions of this Agreement, DMA shall, at its own cost and expense, during the Concession Period comply with the following obligations in respect of the Project:

- (a) All litigation involving the Project Site/s prior to the Compliance Date and wherein the actions have been filed against DMA shall be conducted solely by DMA. The Developer shall not be liable or responsible for the same in any manner. DMA shall indemnify the Developer and shall hold it harmless from and against any claim or cost that may arise as a result of any such litigation.
- (b) Undertake Information, Education and Communication (IEC) activities with the slum dwellers and other stakeholders.
- (c) upon written request from the Developer, DMA shall use its best efforts to provide the Developer for the Project Facilities access to all infrastructure facilities and utilities, including water, electricity, telecommunication, sewerage and drainage facilities already available on /at the site, at fair rates and on terms no less favourable to the Developer than those generally available to customers receiving substantially equivalent services; provided the Developer has made the requisite applications and is in compliance with the necessary conditions for getting such connections; provided further that the Developer shall arrange at its cost and consequence any such additional facilities that it may require and DMA shall provide the requisite facilitation in this behalf.
- (d) upon request from the Developer, DMA shall grant all Clearances which are necessary for the implementation of the Project at the appropriate stages and which are in its authority to grant or provide assistance in the procuring of the same by the relevant Competent Authorities subject to the Developer complying with the eligibility criteria for the grant of such Clearances.
- (f) DMA shall permit the Developer to finance, construct, infrastructure at the Site in accordance with the scope of this Agreement and grant or facilitate the requisite Clearances for the same.
- (g) DMA shall use best endeavours to assist the Developer in removing or adequately protecting at the Developer's cost and expense, all structures including, physical or structural impediments, residents, buildings, pipelines,

utilities on or under the ground at the Site, constructed, procured, installed by the Developer in accordance with Approved DPR and as necessary to enable the Developer to commence and undertake construction of the Project Facilities.

- (h) DMA shall facilitate the Developer in liaising with the concerned Competent Authorities and including in seeking assistance of traffic or other police, in matters as necessary, including regulation of movement of any person on the Project site, removal of trespassers and for security of the material, labour and machinery, against payment for the same at the applicable rates.
- (i) make timely payments to Developer in accordance with the terms of this Agreement.

7.2 OBLIGATIONS OF DEVELOPER

In addition to and without prejudice to or derogation of its obligations specified elsewhere in this Agreement, the Developer shall, without qualification, upto the Transfer Date observe, undertake, comply with and perform the following:

- (a) Develop, design, finance, construct, and transfer the Project Facilities in accordance with the terms of this Agreement, including without limitation the Applicable Laws, terms of Clearance, Developmental Standards and Good Industry Practice. The Developer shall plan, organise and execute the works so that there is least disruption to the movement on adjoining roads and minimal inconvenience to the neighbouring residents. DMA shall assist the Developer in all respects with reference to such works, but the assistance or denial thereof shall not release the Developer from its obligations.
- (b) without prejudice to the Developer's obligations in this respect, make or cause to be made the necessary applications to the relevant Competent Authority for all Clearances and supply the appropriate particulars and details to such Competent Authority as may be necessary to confirm that the Developer fulfils the eligibility criteria to enable such authority reasonably to consider the request for the grant of the relevant Clearance and, following the grant of any such Clearance, maintain such Clearance in full force and effect so long as it is necessary in order for the Developer to perform its obligations hereunder.
- (c) procure, as required, the appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes and systems used or incorporated into development and operations of the Project.

- (d) organise the supervision, monitoring and control of the construction of the Project Facilities by the Subcontractors, if any, as may be necessary to ensure the proper performance of their respective obligations under their respective contracts and in accordance with the terms and conditions of this Agreement.
- (e) periodically report to DMA during the Concession Period as detailed in Clause 9.9(ii)(e) and elsewhere in this Agreement.
- (f) achieve Construction Completion within Construction Period for Project; *provided* that the Developer shall not be in breach of this provision, if any non-fulfilment or delay in fulfilment of its obligations herein are caused by (i) the occurrence of an event of Force Majeure in accordance with Article 12 hereof or (ii) a DMA Event of Default under this Agreement or (iii) increase in scope of work certified by Independent Engineer.
- (g) arrange and access at its cost and expense all infrastructural facilities like water, electricity and goods, materials, consumables, things and services etc. as necessary for the implementation and construction of the Project and make arrangements for back-up supply of power.
- (h) make timely payments to DMA in accordance with the terms of this Agreement.
- (i) save and except as expressly provided herein, not transfer or dispose off or otherwise alienate any of the Project Assets without the prior written approval of DMA.
- (j) be responsible for safety, soundness and durability of the Project Facilities, including all structures forming part thereof and their compliance with the provisions of this Agreement.
- (m) provide a security and watch and ward service at the Site to maintain the safety and security of the life and property and make provision and arrangement for first aid and prompt medical attention in cases of accidents and emergencies.
- (n) procure and maintain the requisite insurance in respect of the Project Facilities for meeting liabilities arising out of loss of property/or life during the Concession Period. The Developer would be responsible for payments arising out of any third party claims and DMA shall not be liable for any such claims.
- (o) comply with its obligations under this Agreement in the event of the termination or prior expiry of this Agreement/Concession Period,.

- (p) For the demolition of the existing structures at the Project Site (if any), the following provision shall be taken into consideration:
 - i) The land for the Project shall be carved out after the demolition of the existing immovable structures as per requirements. The demolition work shall be taken in a planned manner as per Good Industry Practice to avoid any damage to the adjoining properties, men and machinery.
 - ii) The area to be dismantled/ demolished shall be adequately segregated/ cordoned off by suitable means and measures and display boards shall be erected all around for warning of general public and adjoining / nearby activities. Further requisite measures shall be taken to avoid any damage to adjoining properties / assets by providing under pinning, under shoring and sheet piling etc. as per requirements of the Project Site.
 - iii) The solid and other wastes, debris and building and excavation material as a result of dismantling/ demolishing and other works undertaken during the implementation of the Project, shall be disposed of at the discretion of Developer, at sites approved by DMA or Competent Authorities. For avoidance of the doubt, the Project Site shall be cleared of all debris before undertaking construction.
- (q) promptly notify the Competent Authorities and hand over to them any archaeological finds, treasures and precious and semi-precious minerals discovered at the Project Site by the Developer or its employees, agents and subcontractors.
- (r) comply to laws, rules and regulations relating to development near heritage structures, in case if such laws, rules and regulations are applicable on the project site.
- (s) provide to DMA notarised true copies of the duly executed Transaction Documents to which the Developer is a party, including any related instruments, deeds, contracts, supplemental agreements and other such documents relating thereto and of any amendments, supplements or replacements etc. thereof within 15 (fifteen) days of the execution or such amendment etc.
- (t) Not make any replacement, modification or amendment to any of the Transaction Documents at any time without the prior written consent of DMA if such replacement, modification or amendment has or may have the effect of imposing or increasing any financial liability or obligation on DMA and in the event that any replacement, modification or amendment is made without such consent, the Developer shall not enforce such replacement, modification or amendment nor permit enforcement thereof against DMA.

- (u) In the event of an accident within the Project Site the Developer shall, by most expeditious means, inform the police and other concerned Competent Authorities and DMA. The Developer shall take expeditious action to provide medical aid, emergency services and relief to the accident victims and upon completion of legal formalities clear the accident site and remove the debris and wreckage. The Developer shall liaison with the emergency hospital and ambulance service providers to meet exigencies and emergencies arising out of accidents. DMA shall not be liable to pay any compensation to the accident victims unless such accident is due to the default or negligence of its employees or representatives or DMA is required to make such payment under the applicable laws or orders of any court.
- (v) The Developer shall be liable to pay to the concerned Competent Authorities the electricity, water, sewerage, power, telephone, sanitation and other applicable utility expenses, charges and rates, including penalties for delay or default in payment, at the rates applicable from time to time, in respect of the use of such utilities for the Project Facilities during the Construction Period and indemnify and keep indemnified DMA in this respect.
- (w) The Developer shall indemnify and keep indemnified DMA, its employees and consultants from and against any claim, liability, cost, suit or legal proceeding and attorney costs arising in any manner from the implementation of the Project.
- (x) The Developer shall pay or ensure payment of all present and future applicable taxes, charges, rates, assessments, duties, levies, fines, cesses including labour welfare cess, penalties and other outgoings, including property and municipality taxes from time to time to the Competent Authorities in respect of the Project Facilities/Project Site. The Developer shall be responsible for payment of applicable service tax on the instalments of any payment to DMA. The Developer shall indemnify and keep indemnified DMA from any and all liabilities and consequences arising from any and all such non-payment, delayed payment, attachment, disturbance of possession, notice, order, litigation etc.
- (y) The Developer shall make efforts to maintain harmony and good industrial relations among the labour and personnel employed in connection with the performance of the Developer's obligations under this Agreement/ implementation of the Project and be the principal employer in respect of such labour and personnel. The Developer shall be solely responsible and liable for compliance with all Applicable Laws, including labour and local laws, pertaining to the employment of labour, staff and personnel by it and its Subcontractors for implementing the Project.
- (z) The Developer shall pay liquidated damages to DMA for the occurrence of events and at the rates as set forth in Schedule 6 other than where such occurrences are caused by (i) an event of Force Majeure in accordance with

Article 12 hereof or (ii) a DMA Event of Default or any other act or omission by DMA in material contravention of its obligations under this Agreement;

- (aa) ensure that to the extent possible transplant or relocate the existing trees within the Project Site and minimize the tree cutting. In case, tree cutting is necessary, the Developer shall obtain necessary Clearance from Competent Authority required for the same and adhere to the conditions of such approval. Further design the Project Facilities in such a way that the aforesaid could be achieved to maintain the green cover.
- (bb) provide the necessary documents and other information and such assistance, labour, materials, consumables, electricity, fuel, stores, apparatus and instruments as may reasonably be required by DMA to carry out tests in the Project. The Developer shall provide engineering support and technical know-how as necessary to carry out such tests.
- (cc) not to do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement.
- (dd) not to create any third party rights on the Site, except as permitted under this Agreement, and also to ensure that Government of Jharkhand/DMA are not adversely affected in any way.

7.2.1 OBLIGATIONS RELATING TO OTHER AGREEMENTS

- (a) It is expressly agreed that the Developer shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in any other agreement, and no default under any agreement shall excuse the Developer from its obligations or liability hereunder.
- (b) The Developer shall submit to DMA the drafts of all Third Party Agreements or any amendments or replacements thereto for its review and comments, and DMA shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Developer within 15 (fifteen) days of the receipt of such drafts. Within 7 (seven) days of execution of any Third Party Agreement or amendment thereto, the Developer shall submit to DMA a true copy thereof, duly attested by a Director of the Developer, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that any failure or omission of DMA to review and/ or comment hereunder shall not be construed or deemed as acceptance of any such agreement or document by DMA. No review and/or observation of DMA and/or its failure to review and/or convey its observations on any document shall relieve the Developer of its obligations and liabilities under this Agreement in any manner nor shall DMA be liable

for the same in any manner whatsoever.

- (c) The Developer shall not make any replacement or amendments to any of the Financing Documents without the prior written consent of DMA if such replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on DMA, and in the event that any replacement or amendment is made without such consent, the Developer shall not enforce such replacement or amendment nor permit enforcement thereof against DMA. For the avoidance of doubt, DMA acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the debt dues.
- (d) The Developer shall procure that each of the Third Party Agreements contains provisions that entitle DMA to step into such agreement, in its sole discretion, in substitution of the Developer in the event of Termination or Suspension.
- (e) The Developer may undertake development of Project by itself or through one or more contractors possessing requisite technical, financial and managerial expertise/capability; but in either case, the Developer shall remain solely responsible to meet the scope of work as mentioned under Schedule 2.

7.2.2 OBLIGATIONS RELATING TO CHANGE IN OWNERSHIP OF SPV

- (a) The Developer shall not undertake or permit any change in ownership, except with the prior written approval of DMA as per the provisions of this Article 7.2.2. DMA shall accord or deny its approval within 30 days of receipt of written request in this behalf, failing which DMA shall be deemed to have consented to such change of shareholding.
- (b) The Developer shall ensure that (i) Lead Member of the Consortium or the in case of individual Bidder such Bidder shall hold a minimum stake of 26% (twenty six percent) and (ii) in case of Consortium, other non-lead members shall hold not less than 10%, in the issued, subscribed and paid up equity share capital of the Developer. All the Consortium Members in the SPV, shall continue hold the equity stake which shall be greater than or equal the respective 51% and 10% as the case may be till the second anniversary of Construction Completion of Project.

7.3 OBLIGATIONS OF PARTIES

Each Party shall:

- (a) Comply with and perform its respective obligations under this Agreement

and shall work and cooperate in good faith with the other Party.

- (b) Carry out its respective obligations during the subsistence of this Agreement in accordance with the transition plan such that construction of the Project is carried out simultaneously and with minimum dislocation and disruption to others persons or accidents at the Site.
- (c) Comply with its respective obligations under the Environment Management Plan.

ARTICLE 8: Not Used

ARTICLE 9: IMPLEMENTATION OF PROJECT

9.1 DETAILED PROJECT REPORT

(a) Preparation of Detailed Project Report

Within 90 days from Agreement Date, the Developer shall, at its cost, charges and expenses, prepare or cause preparation of the Detailed Project Report (or DPR) for the Project based on the construction technology decided by DMA, in accordance with the provisions hereof, including the Developmental Standards as mentioned in Schedules, the Applicable Laws, the terms of Clearances and Good Industry Practice and submit the same, along with the specifications and calculations, to the DMA/ Independent Engineer for its/his review.

In case any Project Site (land parcel) is handed over to the Developer after 45 days from the Agreement Date, the Developer shall submit the DPR for such land parcel with 45 days from the handover of land parcel.

The DPR shall also have the certified true copy Structural Stability Certificate and other certified copies as may be required for the proposed technology from any of the institutions specified in Schedule - 3.

(b) Review of DPR

(i) DMA/ Independent Engineer shall review the DPR and specifications and calculations submitted by the Developer and subject to the provisions of sub-clause (ii) herein below, communicate its/his approval within 21 (twenty one) days from the date of the receipt thereof. The DMA/ Independent Engineer may in consultation with the Developer prescribe a schedule for submission, clarifications and approval of DPR for specific components of the Project.

The finalised Technical Specifications shall be part of Approved DPR.

(ii) In the event that DMA/ Independent Engineer has any objection to the DPR and specifications and calculations or any part thereof, it/he shall promptly within the said 21 (twenty one) days notify the Developer of its/his objections, seek clarifications or suggest changes or modifications or corrections thereto. Thereupon, the Developer shall within 14 (fourteen) days of such notification provide the necessary clarification to the and/ or re-submit the DPR and/or specifications and calculations or part thereof, as the case may be, after incorporating the changes, modifications or corrections suggested by the DMA/

Independent Engineer without changing financial quotation.

- (iii) If DMA/ Independent Engineer does not object to the DPR and specifications and calculations submitted to it/him by the Developer within 30 (thirty) days of submission, DMA shall be deemed to have approved such DPR and the Developer shall be entitled to proceed with the Project accordingly.
- (iv) DPR when approved by DMA, with or without any changes, shall be called Approved DPR.
- (v) The Developer shall not be entitled to any extension of time for completing construction or any other relief on account of delay caused due to providing any clarification or in resubmitting the DPR.
- (vi) The Developer shall not make any changes to Approved DPR, specifications and calculations approved or deemed to be approved by DMA under this Agreement, without the prior written consent of DMA. Provided that the Developer may, for more efficient functioning of the Project Facilities propose to and seek the consent of DMA for changes to the Approved DPR and specifications of any equipment consistent with all design standards applicable thereto and the Applicable Laws, which consent shall not be unreasonably denied or delayed by DMA; provided that the Developer shall bear the costs of such change.
- (vi) Notwithstanding the express or deemed approval by DMA or Independent Engineer, the Developer shall be solely responsible for any defect and/or deficiency in the DPR or any part thereof and accordingly the Developer shall at all times remain responsible for its obligations under this Agreement.
- (vii) Any Designs and Drawing or specifications provided by DMA to the Developer shall only be indicative and the Developer shall accept the same at its sole risk, cost and consequence.
- (viii) Any civil or other engineering review conducted by DMA or the Independent Engineer is solely for DMA's own information and that by conducting such review, DMA does not accept any responsibility for the quality or workmanship of any civil or other engineering or soundness of the work relating to the Project Facilities done by the Developer or any part thereof. DMA shall not be responsible or liable in any manner for the accuracy, completeness or otherwise of the DPR or the construction and implementation of the Works by the Developer on the basis thereof, irrespective of any perusal or review thereof or comment thereon by DMA, any Competent Authority or the Independent Engineer.
- (ix) The Developer shall in no way represent to any Person that, as a result of

any review by DMA or the Independent Engineer, DMA has accepted responsibility for the engineering or soundness of any work relating to the Project Facilities or part thereof carried out by the Developer and the Developer shall, subject to the provisions of this Agreement, be solely responsible for the technical feasibility, operational capability and reliability of the Project Facilities or any part thereof.

- (x) Within 90 (ninety) days of completing construction of the Project, the Developer shall furnish to DMA three copies of "as built" drawings reflecting such facility as actually designed, engineered and constructed, including without limitation an "as built" survey illustrating the layout of such facility and setback lines, if any, of the buildings and structures forming part thereof.

9.2 MOBILISATION AND COMMENCEMENT

- (a) The rights and obligations of the Parties under this Agreement shall commence from the Compliance Date. Any works of whatever nature, which the Developer elects to carry out prior to the Compliance Date including design or mobilisation, shall be entirely at the risk and cost of the Developer.
- (b) The Developer shall mobilize its manpower, plant, equipment, materials and resources within 30 (thirty) days of the Compliance Date.
- (c) Prior to commencement of construction the Developer shall:
 - (i) Submit to DMA/Independent Engineer with due regard to the Project Implementation Schedule and Scheduled Construction Completion Date, its design, engineering and construction time schedule created using precedence network techniques, construction methodology outlining, inter alia, the quality assurance, safety and surveillance plan and programme of works and shall formulate and provide Critical Path Method (CPM)/ Project Evaluation and Review Technique (PERT) charts for the completion of the said activities;
 - (ii) Have requisite organization and designate and appoint suitable officers/ representatives, as it may deem appropriate to supervise the Project and to deal with DMA/ Independent Engineer.
- (d) Within 30 (thirty) days of the Compliance Date, the Developer shall develop and institute a quality assurance system and implement the same until the Transfer Date. The quality assurance system shall involve maintenance of appropriate records, documents and data, charts, samples etc. regarding the construction of the Project. DMA or any nominee of DMA shall have the right to inspect, periodically or at random, such records, documents and

data etc. and as applicable to make copies thereof, verify the samples or take measurements. The Developer agrees to provide full co-operation to DMA and DMA's nominee in this behalf.

9.3 CONSTRUCTION OF THE PROJECT

- (a) Before the Compliance Date, the Developer shall successfully demonstrate its capability to complete the construction of 2 blocks comprising minimum 32 Dwelling Units on pilot basis to the satisfaction of DMA on the Project site provided by DMA. Subsequent to successful demonstration of the pilot Works, within 30 (thirty) days of approval by DMA the Developer shall commence Works in other Project Site(s) and the Developer shall adhere to Project Implementation Schedule as provided in the Schedule 5.
- (b) The Developer shall construct, install and establish the Project, including the basic and detailed engineering, design, completion, testing and commissioning in accordance with the provisions of this Agreement, including the Approved DPR, Project Implementation Schedule, the Scope of Work, the Developmental Standards, Applicable Laws, terms of Clearances and Good Industry Practice and after obtaining, as applicable, the sanction to the building plan, with necessary designs, plans and specifications from the proper municipal or other authority, at its own expenses.
- (c) The Developer shall arrange the power, water and other utilities as may be required for execution and implementation of the Construction Works at its cost and expense.
- (d) The Developer shall be responsible for the design and programming of the Construction Works and for the accuracy and completeness of the information used for such design and programming in accordance with the requirements established in the Developmental Standards. The Developer shall be responsible for any discrepancies, errors or omissions in the data, specifications, drawings and other technical documents that it has prepared or procured, whether the same have been approved, deemed to be approved or not approved by DMA or any Competent Authority.
- (e) The Developer shall ensure that all contract(s) and arrangement(s) entered into in relation to the Construction Works shall (to the extent such provisions can be reasonably obtained in the market concerned) include provisions whereby the relevant Subcontractor warrants that each part of such works carried out there under shall be fit for its purpose and free from all defects in design, workmanship and materials.
- (f) The Developer shall ensure that the Works shall comprise only materials,

goods and workmanship which are of sound quality and which have been manufactured and prepared in accordance or are in conformity, as the case may be, with the Developmental Standards and Good Industry Practice and that each part of the Works shall be fit for the purpose for which it is required as stated in or as may be reasonably inferred from the such plans.

- (g) The Developer shall ensure that in fulfilling its obligations hereunder it shall procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for the designs, software, materials, methods, processes and systems used or incorporated into the Works undertaken by it and indemnify and keep indemnified DMA and its advisors and consultants against all costs, damages, liabilities or consequences arising out of any breach by the Developer in this behalf.
- (h) In the execution of the Construction Works, the Developer shall procure coordination amongst and avoidance of conflicts in the working of the Subcontractors, including all types of suppliers, agents and consultants. The Developer shall monitor and supervise the activities of the Subcontractors, retained by it to fulfill its obligations hereunder, under the terms of their respective agreements.
- (i) The Developer shall carry out or cause to be carried out the Construction Works with the skill, care and diligence to be expected of appropriately qualified and experienced professional designers, engineers and contractors with experience of work similar in scope and nature to that required under this Agreement. The Developer shall design, engineer and execute the construction and implementation of the Works using the best design and engineering principles and practices.
- (j) The Developer shall at its responsibility arrange for materials such as bricks, cement, steel, aggregates, soil, bituminous and asphalt materials, chemicals, consumables and any other materials used in undertaking the Works, as well as equipment, machinery, tools and ancillary materials such as shuttering and scaffolding, bearings, joint fillers and similar materials. The Developer shall make arrangements for transport, loading and unloading, stacking and proper storage (including making sheds) for all materials and equipment. The Independent Engineer shall have the right to inspect and check the quality and quantity of the materials and equipment and their storage in compliance with the terms of this Agreement.
- (k) The Developer shall be solely and exclusively responsible for the recruitment, transportation, accommodation, catering, payment of the salaries, wages and other payments and costs incidental thereto, health, hygiene, safety etc. and all taxes, charges, levies, duties payable under Applicable Laws arising from the respective terms and conditions of employment of all labor and personnel employed on or connected with the Project, Works or the Site under or through whatever legal relationship.

- (l) The Developer shall ensure that at all times during the Construction Period for Project, a resident general manager, notified in writing and acceptable to DMA, having appropriate experience in like works shall remain in residence at Project Site, and take charge of and monitor, oversee and ensure the construction of the Works, as notified in writing to DMA (the “**Developer’s Representative**”). The Developer’s Representative may only be changed after notification to DMA of such change and appointment of a replacement in such representative’s place with the prior written approval of DMA.
- (m) During the Construction Period for Project, the Developer shall organise on the Site and be responsible for support activities including safety precautions, fire protection, security, transportation, delivery of goods, materials, plant and equipment, control of pollution, maintenance of competent personnel and labour and industrial relations and general site services including, without limitation, access to and on the Site and shall be liable for the safe storage and handling of and removal from the Site of all toxic and hazardous materials and substances.
- (n) The Developer shall make its own arrangements at its cost for quarrying, if necessary, and observe and fulfill the environmental and other requirements under the Applicable Laws and Clearances. The Developer shall also remove and shift the utilities and structures at, on or under the Site at its cost and expense.
- (o) The Developer shall confine its activities to the Site and to any additional areas arranged by the Developer at its cost and not encroach upon, damage or degrade adjacent land and be liable for all costs and consequences for its failure to do so.
- (p) The Developer shall promptly 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 keep the Site in a neat and clean condition and in conformity with the Applicable Laws and Clearances.
- (q) The Developer shall within 30 (thirty) days of Construction Completion for the site, clear the Site of all temporary structures, labour camps, site offices, utility lines and surplus or unused materials, plant, equipment or tools, etc.
- (r) The Developer shall give priority to safety in its construction and planning activities in order to protect life, health, property and environment.
- (s) For the purposes of determining that the construction of the Project is being undertaken in accordance with Developmental Standards and Good Industry Practice and for quality assurance, the Developer shall carry out

such tests at such time and frequency and in such manner as may be required by DMA or as may be necessary in accordance with Good Industry Practice. The Developer shall with due diligence carry out all such tests in accordance with the instructions and under the supervision of the Independent Engineer. The Developer shall promptly carry out such remedial measures as may be necessary to cure the defects or deficiencies, if any, indicated in such test results. The Developer shall promptly report to the Independent Engineer the remedial measures taken by it to cure the defects/deficiencies if any indicated in the test results.

- (t) If the Independent Engineer reasonably determines that the rate of progress of the construction of the Project is such that the Construction Completion is not feasible on or before the Scheduled Construction Completion Date, it shall so notify the Developer. Thereupon, the Developer shall within 15 (fifteen) days thereof notify the Independent Engineer about the steps it proposes to take to expedite progress and the period within which it shall achieve Construction Completion.
- (u) The Developer shall execute the Construction Works in accordance with the Project Implementation Schedule and achieve Construction Completion by the Scheduled Construction Completion Date, unless such time has been extended in accordance with provisions hereof.

9.4 PROGRESS REVIEW DURING CONSTRUCTION

- (a) During the Construction Period for Project, the Developer shall, on or before the 15th (fifteenth) day of every month, prepare and submit to the Independent Engineer and DMA a monthly progress report, for the previous month, in the form and manner prescribed by the Independent Engineer from time to time along with such other relevant information as may reasonably be required by DMA or the Independent Engineer. Such report shall describe the progress of the design, procurement, completion and commissioning of the Project.
- (b) The Developer shall also submit to the Independent Engineer, with a copy endorsed to DMA, the relevant DPR and other technical information as may be reasonably necessary to determine and confirm compliance with the Developmental Standards.
- (c) The Developer shall promptly 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 Agreement.

9.5 CONSTRUCTION COMPLETION

- (a) The Project shall be deemed to be complete only when DMA issues the Provisional Certificate or the Completion Certificate in consultation with the Independent Engineer in accordance with the provisions of Clause 9.6 (the “**Construction Completion**”).
- (b) The Developer guarantees that the Construction Completion for the Project shall be achieved in accordance with the provisions of this Agreement on a date not later than period specified in the Schedule 14 from the Compliance Date (the “**Scheduled Construction Completion Date for Project**”).
- (c) In the event that any of the Project Milestone specified in Schedule 5 is not completed by its schedule date, unless the delay is on account of reasons solely attributable to DMA or due to Force Majeure or due to an increase in scope of work as certified by an Independent Engineer, the Developer shall subject to sub-clause (d) below, pay to DMA damages for delay beyond the its scheduled date to the extent of 1% of the project cost in the Approved DPR for the site per month, for every month of delay for a maximum cumulative delay of a period of 12 (twelve) months after which DMA shall be entitled to terminate this Agreement. Provided that nothing contained in this sub-clause (c) shall be deemed or construed to authorize any delay by the Developer in achieving Construction Completion of Project.
- (d) In the event of termination as per Clause 9.5(c), DMA shall be entitled to invoke the Performance Security and to terminate this Agreement for a Developer Event of Default in accordance with the provisions of Article 14 hereof. Provided that instead of terminating this Agreement, DMA may at its sole option extend the time for achieving Construction Completion of Project on such terms and conditions as it deems fit in its sole discretion.

9.6 TESTS

- (a) At least 30 (thirty) days prior to the likely Construction Completion, the Developer shall notify DMA and the Independent Engineer of the same and shall give notice to it of its intent to conduct the Tests. The Developer shall give DMA and the Independent Engineer at least 10 (ten) days prior notice of the actual date on which it intends to commence the Tests and at least 7 (seven) days prior notice of the commencement date of any subsequent Tests. Such notice will set out the place, date and time when such Tests. It shall be compulsory for the Independent Engineer to attend the Tests. DMA may designate a representative with suitable qualifications and experience to witness and observe the Tests.

- (b) Within seven days from the date of inspection in accordance with sub-clause (a) above, DMA shall in consultation with the Independent Engineer issue a provisional certificate (the “**Provisional Certificate**”) on successful completion of the Tests if the Project, or any part thereof, to the Independent Engineer’s reasonable satisfaction, can legally, safely and reliably be opened for Commercial Operations despite certain items of work or things forming part thereof (being within the Scope of Works) not being complete as such works and things do not, in any manner whatsoever, affect the safety or usability of the Project in any material respect. In such an event, the Provisional Certificate shall have appended thereto a list of outstanding items signed jointly by DMA, Independent Engineer and the Developer (the “**Punch List**”).
- (c) The Developer shall complete or cause to be completed the Punch List Items appended to the Provisional Certificate within a period of 30 (thirty) days from the date of issue of the Provisional Certificate and, upon completion thereof, the Developer shall notify the Independent Engineer. The Independent Engineer shall, within 7 (seven) days of receipt of such notice, inspect the Project and confirm completion of the Punch List Items to DMA and DMA shall issue the construction completion certificate (the “**Completion Certificate**”).
- (d) In the event of the Developer’s failure to complete the Punch List items within the stipulated period of 30 (thirty) days from the date of issue of the Provisional Certificate, DMA may, without prejudice to any other rights or remedy available to it under this Agreement or at law, have such items completed at the risk and costs of the Developer. The Developer shall reimburse to DMA on demand the entire costs incurred by DMA in completing the Punch List items, failing which DMA shall have the right to appropriate the relevant amounts from the Performance Security and/or set off any amounts due and payable by DMA to the Developer to the extent required/ available and to recover the deficit amount, if any, from the Developer.
- (e) The Developer shall bear all the expenses relating to Tests under this Agreement. The Independent Engineer shall have the right to suspend or postpone any Test if it is reasonably anticipated or determined during the course of the Test that the performance of the Project or any part thereof does not meet the Developmental Standards.
- (f) Whenever obligatory inspection by the concerned Competent Authorities is required, the same shall be arranged and attended to by the Developer or its Subcontractors or authorised representatives. DMA shall provide the necessary facilitation in this behalf. All the deficiencies pointed out by the concerned Competent Authorities during the inspection shall be promptly attended by the Developer at its cost to the entire satisfaction of the inspecting authorities.

9.7 HANDOVER OF PROJECT ASSETS

The Developer shall, within 15 days of issue of Completion Certificate for a Project Site(s) or any extensions provided by DMA, handover the Project Assets of such site to DMA, and Factory Land shall be handed over within 6 months of the issue of Completion Certificate for all the land parcels comprising the Project Site including all rights, interests and title therein or thereto, for ownership, possession, occupation and use thereof by DMA or its nominated agency in such manner as DMA in its sole discretion deems fit.

9.8 CHANGE OF SCOPE

- (a) DMA may, notwithstanding anything to the contrary contained in this Agreement, require provision of such additional works and services on or about the Project which are beyond the Scope of Works (the "**Change of Scope**"), Provided such changes do not require expenditure exceeding 25% (twenty five percent) of the Total Project Cost and do not adversely affect the Scheduled Project Completion Date. All such changes shall be made by DMA by an order (the "**Change of Scope Order**") issued in accordance with the procedure set forth in sub-clause (c) to (i).
- (b) DMA shall whenever it desires provision of additional works and services referred to in sub-clause (a) above, issue to the Developer a notice of Change of Scope (the "**Change of Scope Notice**") through the Independent Engineer.
- (c) Upon receipt of Change of Scope Notice, the Developer shall, within a period of 15 (fifteen) days, provide to DMA and the Independent Engineer such information as is necessary and reasonable together with preliminary documentation in support of the following:
 - (i) The impact which the Change of Scope is likely to have on the Project Implementation Schedule if the work is required to be carried out before the Construction completion, and
 - (ii) The cost to the Developer of complying with such Change of Scope Notice on account of increases in quantities of items of work, material and labour costs along with an analysis of rates (as per current schedule of rates applicable to works assigned by DMA to its contractors, including premium on such rates) for carrying out such items of work; the options suggested for implementing the proposed Change of Scope and the effect, if any, of each such option on the cost and time for its implementation.

Provided that the cost of providing such information shall be reimbursed by DMA to the Developer to the extent the same are certified as reasonable by the Independent Engineer.

- (d) The Independent Engineer shall review the information provided by the Developer, assess the change in quantities of items of work, verify the analysis of rates if required, settle the rates and quantities and approve the designs (without DMA being liable in any manner for such approval), determine the additional cost resulting from such change that shall be payable by DMA to the Developer. Provided that the final cost computation shall be made by taking into account the actual work executed as measured and certified by the Independent Engineer at the settled rates.
- (e) The Independent Engineer shall communicate its recommendation to DMA within a period of 15 (fifteen) days from the receipt of information from the Developer.
- (f) DMA shall, on the basis of the recommendation of the Independent Engineer, issue the Change of Scope Order within a period of 15 (fifteen) days from the date of recommendation made by the Independent Engineer in accordance with preceding sub-clause (e) above.
- (g) The Change of Scope Order shall be effective and binding upon receipt thereof by the Developer. Notwithstanding a dispute regarding cost and time for implementation of such order, the Developer shall proceed with the performance of such order promptly following receipt thereof. Any such dispute shall be resolved in accordance with the Dispute Resolution Procedure. Pending resolution of the dispute, DMA shall pay to the Developer an amount equal to the costs certified by the Independent Engineer in case the Change of Scope involves an increase in the bill of quantities.
- (h) All claims by the Developer pursuant to this Article 9.8 shall be supported by such documentation as is reasonably sufficient for DMA/Independent Engineer to determine the accuracy thereof, including invoices from Subcontractors and certification of such claims by the Statutory Auditors.
- (i) DMA shall pay to the Developer the amounts certified as the additional cost by the Independent Engineer in periodic instalments as per the milestones determined by the Independent Engineer at the settled rates on the basis of actual work executed as measured and certified by the Independent Engineer.

9.9 MONITORING AND INSPECTION

(a) Independent Engineer

i.) Appointment and Remuneration

- 1) DMA shall appoint a consulting engineering firm to be the independent consultant under this Agreement (the "Independent Engineer" or "IE"). The appointment shall be made no later than 90 (ninety) days from the date of this Agreement and shall be for a period of 3 (three) years. On expiry or termination of the aforesaid period, DMA may in its discretion renew the appointment, or appoint another firm from a fresh panel to be the Independent Engineer for a term of 3 (three) years, and such procedure shall be repeated after expiry of each appointment.
- 2) DMA shall notify the Developer in writing of the appointment and identity of the IE and of any replacement thereof from time to time. where necessary, the IE may in turn appoint suitably qualified sub-consultants or sub-contractors to undertake and perform any of the IE's functions as contemplated under this Agreement.
- 3) The remuneration, cost and expenses of the Independent Engineer shall be paid by DMA, one-half of such remuneration, cost and expenses shall be reimbursed by the Developer to DMA within 15 (fifteen) days of receiving a statement of expenditure from DMA

ii.) Termination of Appointment

- 1) DMA may replace the Independent Engineer in any of the following reasons by giving atleast 30 days written notice:
 - (a) if, in accordance with the terms of its appointment the Independent Engineer resigns or notifies its intention not to continue as the Independent Engineer;
 - (b) if, DMA has reason to believe that the Independent Engineer has not discharged its duties in a fair, appropriate, efficient and diligent manner;
 - (c) If the Developer has reason to believe that the Independent Engineer is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to DMA, supported with necessary documents, and seek termination of the appointment of the Independent Engineer. Upon receipt of such representation, DMA shall hold a

tripartite meeting with the Developer and Independent Engineer for an amicable resolution of the Dispute, and if any difference or disagreement between DMA and the Developer remains unresolved, the Dispute shall be settled in accordance with the Dispute Resolution Procedure. In the event that the appointment of the Independent Engineer is terminated hereunder, DMA shall appoint forthwith another Independent Engineer as provided below.

- 2) The replacement of the Independent Engineer shall be effected so as to maintain the continuity in supervision and monitoring of the Project Facility by the Independent Engineer.

(b) Dispute Resolution

If either Party disputes any advice, instruction, decision, direction or award of the Independent Engineer, or, as the case may be, the assertion or failure to assert jurisdiction, the Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

(c) Inspection

(i) Notwithstanding any provisions of this Agreement and without prejudice to any of the other rights vested under the provisions hereof, DMA, the Independent Engineer, any Competent Authority and any Person authorised by either of them shall during the Concession Period at all reasonable times and upon reasonable notice have access to the Project Site and the Project Facilities to inspect and examine the materials, plant, equipment and workmanship and all the documents, reports, data, books, accounts, information for compliance thereof with the provisions hereof and to check the progress of the works or for performing statutory duties and the Developer shall provide the necessary cooperation and assistance to them in this behalf.

(ii) DMA and Independent Engineer shall be entitled, during fabrication, construction or preparation at any places where Works are being carried out, to inspect, examine and test the materials and workmanship, and to check the progress thereof of all works under this Agreement. The Developer shall give DMA and Independent Engineer full opportunity to inspect, examine, measure and test any work on the Site or wherever carried out.

(iii) The Developer shall give due notice to DMA and Independent Engineer whenever such work is ready, before packaging, covering up or putting out of view, including foundation works. The Independent Engineer and DMA shall then respond to the

Developer with their intention to either carry out the inspection, examination, measurement or testing within 14 (fourteen) days, or notify that it is considered unnecessary. If the Developer fails to give such notice, it shall, when required by the Independent Engineer, uncover such work and thereafter reinstate and make good the same at its own cost.

- (iv) If the Independent Engineer or DMA fail to respond to the Developer's notice within 14 (fourteen) days of receiving the notice, it shall be deemed to imply that they do not consider it necessary to inspect the work mentioned in the notice.
- (v) DMA shall also have the right, without prejudice to the aforesaid, to carry out surprise checks of the works, operations and documents and records relating to the Project.

(d) Testing During Concession Period

- (i) DMA and/or the Independent Engineer may during the Concession Period conduct or cause to be conducted through Third Parties or require the Developer to conduct such tests in respect of the Project as are may be required pursuant to the Developmental Standards and Good Industry Practice or as it/they may reasonably deem appropriate.
- (ii) The Developer shall provide the necessary documents and other information and such assistance, labour, materials, consumables, electricity, fuel, stores, apparatus and instruments as may reasonably be required to carry out such tests. The Developer shall provide engineering support and technical know-how as necessary to carry out such tests.
- (iii) Such tests shall be held in the presence of DMA and/or the Independent Engineer, who shall verify the result thereof and in the event of the tests being successful issue the certificate of compliance.
- (iv) The cost of such tests shall be borne by the Developer.
- (v) If, as a result of such tests, DMA and/or the Independent Engineer decides that any plant, materials, consumables, design, process or workmanship relating to the Project is defective or otherwise not in compliance with the Developmental Standards and Good Industry Practice, DMA and/or the Independent Engineer may reject such plant, materials, consumables, design, process or workmanship and shall forthwith notify the Developer with reasons for rejection and require correction of such defects within the stipulated time.

- (vi) The Developer shall make good such notified defects within the stipulated time, and undertake re-testing, if any, at its cost that may be required by DMA and/or the Independent Engineer. In the event that the Developer fails to repair, replace or rectify such defects within a period of 15 (fifteen) days from the date of notice issued by DMA/ Independent Engineer in this behalf, DMA shall be entitled to get the same repaired, replaced or rectified at the Developer's risk and cost so as to ensure that the Project is in conformity with the Developmental Standards. All costs incurred by DMA in this behalf shall be reimbursed by the Developer to DMA within 15 (fifteen) days of receipt of demand in this behalf.
- (vii) DMA shall be entitled to appropriate the relevant amounts necessary to secure performance of the Developer's obligations under this Clause 9.9(d) from the Performance Security.
- (viii) Any such inspection or testing by DMA, the Independent Engineer or any Competent Authority shall not relieve or absolve the Developer of its obligations and liabilities hereunder in any manner whatsoever.

(e) Reporting Requirements

The Developer shall, in addition to the reporting requirements set forth elsewhere in this Agreement, comply with the reporting requirements hereunder. DMA may from time to time specify any changes in the formats or periodicity for any reports. The Developer shall be liable for and shall indemnify, protect, defend and hold harmless, DMA, DMA's officers, employees and agents from any liability, costs, expenses, settlements and judgements arising out of any failure to prepare and submit reports in accordance with the requirements of law, directive or clearance

(i) Construction Period Reports

The Developer shall provide to DMA and the Independent Engineer a monthly progress report during the Construction Period for Project , which shall contain the following information

- (A) Summary of Progress: summary of the progress of the Project for that month which shall detail:
 - 1) any areas of significant concern and the action being taken to resolve any significant difficulties;
 - 2) the actual progress made during that month against the construction schedule including a description in reasonable detail of the work carried out;

- 3) any matters which have come to light which are likely materially and adversely to affect the construction of the Project;
 - 4) any potential or actual deviations from the construction schedule, the Developmental Standards and Good Industry Practice or otherwise confirmation that construction is proceeding in accordance therewith; and
 - 5) a commentary on the progress plan;
- (B) Budget Analysis: showing actual expenditure in that month against the relevant budget for that period and detailing the remaining costs of the Project and the means of financing available to cover such costs;
- (C) Completion: details of any changes to the proposed date of completion of construction of the Project Facility and the reasons for such changes; and
- (D) Clearances: written confirmation that all Clearances then required are in full force and effect including a list of such clearances.

(ii) Additional Information

The Developer agrees to provide DMA and the Independent Engineer such further information as any of them may reasonably request in order for them to monitor the progress and performance of the Project.

The Developer shall also provide DMA with such reports, which are required to comply with the instructions of Competent Authority or the standing procedures for any clearance, etc.

(iii) Other Information

The Developer will provide the following information to DMA promptly after becoming aware of it:

- a. Force Majeure: details of any Force Majeure Event which has occurred or which is imminent and fortnightly updates with respect to it as long as it continues or is imminent;
- b. Litigation: details of any actual, pending or threatened material litigation, arbitration, claim or labour dispute;
- c. Legislation: details of contravention of any Applicable Law or with the

terms of any Clearance and any fines or penalties that have or may thereby be incurred;

- d. Notices: All penalties or notices of violation issued by any Competent Authority; and
- e. Financial Condition: notification of any adverse material change in the financial condition of the Developer or the Project promptly following such occurrence.

9.10 NO BREACH

- (a) The Developer shall not be considered to be in breach of its obligations herein nor shall it incur or suffer any liability if and to the extent performance of any such obligations is affected by or on account of any of the following:
 - (i) Force Majeure Events, subject to provisions of Article 12;
 - (ii) DMA Event of Default or any other material act or omission of DMA in contravention of its obligations under this Agreement or a material delay, impediment, default or prevention due to or caused by DMA or any Competent Authority;
 - (iii) Compliance with the instructions or directions of DMA /Independent Engineer/ any Competent Authority other than instructions issued as a consequence of a breach or default by the Developer of any of its obligations hereunder;
 - (iv) extensions granted under the provisions of this Agreement, or specific extensions granted by DMA or extensions made by the mutual agreement of the Parties;
 - (v) Measures taken to ensure the safe use of the Project Facilities except when the unsafe conditions have been occasioned by the Developer's failure to perform its obligations under this Agreement.
- (b) In the event of delay due to circumstances set forth in sub-clause (a) above, the Developer shall be relieved of its obligations to the extent of such delay and, upon written request, be granted an extension of the time equal to the period of delay, as certified by the Independent Engineer, for fulfilling its obligations relating to the Project.

9.11 DEFECTS LIABILITY PERIOD

The Developer shall maintain, rectify and make good at his own cost any defect/ deficiencies, which may develop in the Project or as notified by the DMA/ Independent Engineer during a period of 2 years from issue of Completion Certificate for that site ("Defects Liability Period").

9.12 RWA FORMATION

- (a) Upon successful hander over of each Project Assets, the Developer shall assist DMA in formation of a separate resident welfare association (RWA) of the residents of sites under the Project.
- (b) The Developer shall also contribute to Initial Maintenance Fund of the RWA of an amount equivalent to Rs.1/sq ft/ dwelling unit.

ARTICLE 10: FINANCIAL COVENANTS

10.1 FORM OF FINANCES

- (a) The Developer shall be responsible for arranging all the financing in the form of equity, debt or otherwise as required for implementing the Project.
- (b) DMAs hereby agrees that for the purpose of raising financing for the Project, the Developer may assign all its rights, title, interest and benefits under this Agreement, limited to the extent of such rights herein, to or in favour of the Lenders in accordance with the provisions of this Agreement. The Developer shall not create nor permit to subsist any Encumbrance over the Project Site, except as envisaged under this Agreement. Provided that in the event of the termination of this Agreement such assignment shall stand extinguished. It is further clarified that the Project Site has to be handed over to DMA by the Transfer Date free of all encumbrances. Provided further nothing contained in this sub-clause (b) shall (i) absolve the Developer from its responsibilities to perform/discharge any of its obligations under and in accordance with the provisions of this Agreement; (ii) shall authorise or be deemed to authorise the Lenders to implement and execute Project Facilities themselves and (iii) under any circumstances amount to any guarantee from or recourse to DMA.
- (c) Except as stated in sub-clause (b) above as may otherwise be provided elsewhere in this Agreement, the Developer shall not, without the prior written consent of DMA, (i) assign in favour of any Person this Agreement or its rights, title, interest, benefits or obligation hereunder or create a security interest with respect to its rights under the Agreement or any part thereof in favour of any Person; or (ii) mortgage, assign, transfer, lease, sub-lease, license, sub-license or otherwise alienate or dispose off in any form, manner or arrangement whatsoever the Project Site/Project or any part thereof.
- (d) The restraint set forth in sub-clause (c) above shall not apply to:
 - (i) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Developer;
 - (ii) pledges/hypothecation of goods/movable assets, revenue and receivables and their related documents of title arising in the ordinary course of business of the Developer as security only for indebtedness to the Lenders, which shall include step in rights, under the Financing Documents and/or for working capital arrangements for the Project;

- (iii) liens and encumbrances required by the Applicable Law;
- (iv) Assignment of Developer's rights, benefits and interest under this Agreement to or in favour of the Lenders under this Agreement as security for the financial assistance provided by them.
- (e) The Developer shall not assign in favour of any person any right or benefit that has not been provided to the Developer by DMA. It is clarified that freehold rights or leasehold rights to the Project Site/s is not being given to the Developer and the same cannot be mortgaged to raise funds.
- (f) Notwithstanding anything contained in Article 10.1 the rights of the Developer shall not be contrary or in derogation to the provisions relating to Divestment Requirements contained in Article 14.6.

10.2 ASSIGNMENT BY DMA

Notwithstanding anything to the contrary contained in this Agreement, DMA may, after giving 60 (sixty) days' notice to the Developer, assign any of its rights and benefits and/or obligations under this Agreement pursuant to any direction of GoJ or by operation of law or in the course of its business.

10.3 AUDIT AND ACCOUNT

(a) Appointment of Auditors

- (i) The Developer shall appoint and have during the subsistence of this Agreement, as its statutory auditors, a reputed firm of chartered accountants duly licensed to practice in India. All fees and expenses of the statutory auditors shall be borne by the Developer.
- (ii) Any claim or document provided by the Developer to DMA relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto, in connection with the Project shall be valid and effective only if certified by the Developer's statutory auditors.
- (iii) The Developer shall extend full co-operation to the statutory auditor.
- (iv) All contracts, books, records, documents and vouchers relating to the construction of the Project shall be open to inspection by such statutory auditor. Any information secured as a consequence of such examination shall be kept confidential by all concerned.

- (v) The Developer may terminate the appointment of its statutory auditors after a notice of 45 (forty five) days to DMA, subject to the replacement of statutory auditors being appointed.
- (vi) Notwithstanding anything to the contrary contained in this Agreement, DMA shall have the right, but not the obligation, to appoint at its cost from time to time and at anytime through a competitive bidding process, another reputed firm of chartered accountants duly licensed to practice in India (the "**Additional Auditors**") to audit and verify all those matters, expenses, costs/ allocation of costs during the subsistence of Force Majeure, realisations, Termination Payments, etc. and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Development Agreement. The Parties agree that the Additional Auditors so appointed shall have the status of an expert whose reports and decisions shall be final and binding on the Parties, save in the case of manifest error or fraud.

(b) Maintenance of Accounts

- (i) The Developer shall, during the subsistence of this Agreement, in a format approved by DMA, and on generally accepted Indian accounting principles, maintain books of account recording all its receipts from all sources derived or on account of the Project, income, expenditure, and payments; and assets and liabilities, in accordance with this Agreement, the Applicable Laws and Good Industry Practice.
- (ii) The Developer shall provide DMA 2 (two) copies of its audited balance sheet and profit and loss account along with a report thereon by its statutory auditors, within 120 (one hundred and twenty) days of the close of the Financial Year to which they pertain.
- (iii) The Developer shall establish and maintain a daily and monthly reporting system to provide storage and ready retrieval of data related to the construction and operation of Project Facilities, including all such information which is necessary to verify costs and expenses incurred or revenues earned and to confirm that the Developer is in compliance with its obligations under this Agreement. The Developer shall provide copies of such reports to DMA within five days of the end of each month.
- (iv) The Developer shall retain and store on the premises for a period of ten years all records relating to the Project, which shall be the property of DMA. The Developer shall provide support to DMA to meet all the data requirements of all competent authorities.

10.4 PAYMENT TO DEVELOPER

(a) DMA shall pay to the Developer an amount of Rs. _____ (Rupees _____ only) per square sq ft of Carpet Area of the Dwelling Units towards the construction of housing component of the Project. For each land parcel of the Project Site, the payment under the head shall be calculated by multiplying it with the Carpet Area of all the Dwelling Units in such land parcel.

(b) The payments per Dwelling Unit shall be made by DMA to the Developer as follows:

On Handover of completed Project	<ul style="list-style-type: none"> Cost of one dwelling unit less the Government of India and Government of Jharkhand Share amounting to Rs. 3.00 lakhs (Rupees Three Lakhs Only) by the beneficiary (i.e. to whom the dwelling unit would be allotted)
Subsequent to the Project Completion	<ul style="list-style-type: none"> An amount of 3 lakhs (The Government of Jharkhand Share of Rs. 1,50,000/- +Government of India share 1,50,000/-Only) plus the interest (based on the interest rate quoted by the Selected Bidder) shall be payable in 8 (eight) equated half yearly instalments ("Instalment Amount") payable in May and October every year, starting 3 months after the completion of any project.

(c) All payments are subject to the application of liquidated damages defined and provided for in this Agreement.

(d) The Developer hereby expressly authorises DMA to pay any amount due under this Agreement which becomes payable by DMA to the Developer under this Agreement directly into the designated account whose details would be given by the Developer to DMA within 15 days of Compliance Date.

(e)

ARTICLE 11: INSURANCE FOR THE PROJECT

11.1 INSURANCE COVER

- (a) Upto the date of Transfer Date for each Project Assets, the Developer shall 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**”).
- (b) The Insurance Cover shall be made assignable to DMA 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 DMA and DMA alone shall be entitled to the receipt of all amounts receivable under such policies.
- (c) 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 till the Transfer Date, and in case of sub-clause (i) below during the Construction Period for Project, such insurances as are necessary, including but not limited to the following:
 - (i) Construction/builders’/contractors’ all risk insurance (during Construction Period);
 - (ii) comprehensive insurance for the Project Assets for their full market value or replacement cost;
 - (iii) comprehensive third party liability insurance, including injury or death of Persons who may enter the Site;
 - (iv) workmen’s’ compensation insurance;
 - (v) 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 (i) to (iv).

11.2 EVIDENCE OF INSURANCE

- (a) The Developer shall, from time to time, furnish to DMA 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 after they are received by the Developer and furnish evidence to DMA 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 unless 10 (ten) days' clear notice of cancellation is provided to DMA in writing.
- (b) In the event the Developer does not maintain any Insurance Cover pursuant hereto, DMA may, at its option, effect such insurance and the Developer shall reimburse all the costs and expenses incurred in this behalf by DMA within 15 (fifteen) days of receipt of DMA's claim in respect thereof, failing which the same shall be recovered by DMA by exercising right of set off or from the Performance Security or otherwise. In case of such failure on the part of the Developer, DMA shall not be liable for damages or claims and the Developer shall indemnify DMA for and against all liabilities, costs and expenses arising out of or as a consequence of such failure.

11.3 APPLICATION OF INSURANCE PROCEEDS

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 re-instatement of the Project Facilities or any part thereof, which may have been damaged or destroyed.

The Developer may, with prior written consent of DMA, designate the Lenders (providing financial assistance for the Project) as the loss payees under the insurance policies/assign the insurance policies relating to Project in favour of such Lenders as security for the financial assistance provided by them for the Project.

11.4 INSURANCE COMPANIES AND WAIVER OF SUBROGATION

- (a) The Developer shall insure all insurable assets comprised in the Project Facilities through Indian insurance companies and if so permitted by Gol, through foreign insurance companies, to the extent that insurances can be effected with them.
- (b) The premiums payable on insurance coverage as indicated above, including any costs and expenses incidental to the procurement and enforcement of

such insurance coverage shall be borne by the Developer.

- (c) All insurance policies supplied by Developer shall include a waiver of any right of subrogation of the insurers there under against, *inter alia*, DMA and its assigns, 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 insured under any such policy.

The Developer hereby further releases, assigns and waives any and all rights of recovery against, *inter alia*, DMA and its 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.

ARTICLE 12: FORCE MAJEURE

12.1 FORCE MAJEURE EVENTS

Force Majeure Event shall mean any event or circumstance or a combination of events and circumstances (occurring in India) set out hereunder or the consequence(s) thereof which affect or prevent the Party (DMA or Developer) claiming force majeure (**“Affected Party”**) from performing its obligations, in whole or in part, under this Agreement and which event or circumstance (i) is beyond the reasonable control and not arising out of the fault of the Affected Party, (ii) the Affected Party has been unable to overcome such event or circumstance by the exercise of due diligence and reasonable efforts, skill and care, and has a Material Adverse Effect. Such events mean:

(a) Non Political Events

- (i) Acts of God or natural disasters 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, flood, landslide, drought, lightning, earthquakes, volcanic eruption, fire or exceptionally adverse weather conditions affecting the implementation of the Project.
- (ii) Radioactive contamination, ionizing radiation.
- (iii) Epidemic, famine.
- (iv) An act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action, nuclear blast / explosion, sabotage or civil commotion.
- (v) Industry wide or state wide or India wide strikes or industrial action or disturbances which has a Material Adverse Effect on the Project and which are not on account of acts of the Developer, its Subcontractors or persons claiming through or under it;
- (vi) Any judgment or order of any court of competent jurisdiction or statutory authority in India made against the Developer in any proceedings (which are non collusive and duly prosecuted by the Developer) for reasons other than failure of the Developer or of any Person claiming through or under it to comply with any Applicable Law or terms of Clearances or on account of breach thereof, or of any

contract, or enforcement of this Agreement or exercise of any of its rights under this Agreement by DMA;

- (vii) any failure of another service provider to the extent caused by any of the Force Majeure Event mentioned above affecting the performance of the Agreement ; or
- (viii) Any event or circumstances of a nature analogous to any of the foregoing.

(b) Political Events

- (i) A Change in Law to which the provisions of Article 19.15 cannot be applied;
- (ii) Expropriation or compulsory acquisition by any Competent Authority of the Project or part thereof or rights of the Developer relating thereto; provided the same has not resulted from an act or default of the Developer or any Person claiming through or under it.
- (iii) Any unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid cause any Clearance required by the Developer or any of the Subcontractors to perform their respective obligations hereunder (other than a consent the obtaining of which is condition precedent) provided that such delay, modification, denial, refusal or revocation did not result from the Developer's or any Subcontractor's (1) inability or failure to comply with any condition relating to grant, maintenance or renewal of such consents or permits; or (2) breach or failure in complying with the provisions hereof, including the Developmental Standards, the Applicable Laws, the terms of Clearances, any judgement or order or Directive of any Competent Authority or of any contract to which the Developer or such Subcontractor, as the case may be, is bound.

12.2 NOTICE OF FORCE MAJEURE EVENTS

- (a) The Affected Party shall give notice to the other Party in writing of the occurrence of any of the Force Majeure Event ("**the Notice**") as soon as the same arises or as soon as reasonably practicable and in any event within 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence and the adverse effect it has or is likely to have on the performance of its obligations under this Agreement. The Affected Party shall not be entitled to any relief under the Agreement for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event.

- (b) The Notice shall inter-alia include full particulars of:
 - (i) the nature, time of occurrence and extent of the Force Majeure Event with evidence in respect thereof;
 - (ii) the duration or estimated duration and the effect or probable effect which such Force Majeure Event has or will have on the Affected Party's ability to perform its obligations or any of them under this Agreement;
 - (iii) the measures which the Affected Party has taken or proposes to take, to alleviate the impact of the Force Majeure Event or to mitigate the damage; and
 - (iv) any other relevant information.
- (c) So long as the Affected Party continues to claim to be affected by a Force Majeure Event, it shall provide the other Party with periodic (fortnightly) written reports containing the information called for by Clause 12.2(b) and such other information as the other Party may reasonably request.

12.3 PERIOD OF FORCE MAJEURE

Period of Force Majeure shall mean the period from the time of occurrence specified in the notice given by the Affected Party in respect of the Force Majeure Event until the expiry of the period during which the Affected Party is excused from performance of its obligations in accordance with Article 12.4.

12.4 PERFORMANCE EXCUSED

The Affected Party, to the extent rendered unable to perform its obligations or part thereof under this Agreement as a consequence of the Force Majeure Event shall be excused from performance of such 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. Notwithstanding any provision of this Article 12, a Force Majeure Event shall not absolve the Developer from any obligation to make payment in respect of its obligations under this Agreement in the event such payment obligations have arisen or accrued prior to the occurrence of the Force Majeure Event.

12.5 RESUMPTION OF PERFORMANCE

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

12.6 COSTS, REVISED TIMETABLE

(a) Costs

Upon occurrence of a Force Majeure Event after Compliance Date, the cost arising out of such event shall be allocated as follows:

- (i) When the Force Majeure Event is a Non Political Event, the Parties shall bear their respective costs and neither Party shall be required to pay to the other Party any cost arising out of any such Force Majeure Event;
- (ii) Where the Force Majeure Event is a Political Event, the Force Majeure costs relating to the Project to the extent actually incurred and duly certified by the Statutory Auditors shall be reimbursed by DMA to the Developer in one lump sum not later than 120 (one hundred and twenty) days after the end of the Force Majeure Event and receipt of notice by DMA to that effect.

For avoidance of doubt, "Force Majeure cost" shall be such cost in respect of the Project and shall not include any debt repayment obligations but shall include interest payments on the debt in respect of the Project pursuant to the Financing Documents and all other costs in respect of the Project that are directly attributable to the Force Majeure Event.

(b) Extension of Time

To the extent the performance of the obligations of the Affected Party is affected by the Force Majeure Event, the time period for the performance of the obligations of the Affected Party shall be extended by a similar time period on a day to day basis.

12.7 CONSULTATION AND DUTY TO MITIGATE

The Parties shall consult with each other to determine the reasonable measures to be implemented to minimise the losses of each Party resulting from the Force Majeure Event. Except as specifically stated to the contrary, no Party shall be relieved of its obligations under this Agreement by reason of impossibility of performance or any other circumstance whatsoever beyond its control.

12.8 LIABILITY FOR OTHER LOSSES, DAMAGES ETC.

Save and except as expressly provided in this Article 12, neither party hereto shall be liable in any manner whatsoever to other party in respect of any loss, damage, cost, expense, claims, demand and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant to this Article 12.

12.9 TERMINATION DUE TO FORCE MAJEURE EVENT

If the Period of Force Majeure continues or is in the reasonable judgement of the Parties is likely to continue beyond a period of 6 (six) months, the Parties may mutually decide to terminate this Agreement or continue this Agreement on mutually agreed revised terms. If the Parties are unable to reach an agreement in this regard, the Affected Party shall after the expiry of the period of 6 (six) months, be entitled to terminate the Agreement in which event, the provisions of Article 14 shall, to the extent expressly made applicable, apply.

12.10 DISPUTE RESOLUTION

In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure as mentioned in Article 16; provided that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event.

ARTICLE 13: EVENTS OF DEFAULT

Event of Default means the Developer Event of Default or DMA Event of Default and/or both as the context may admit or require.

13.1 EVENTS OF DEFAULT

(a) Developer Event of Default

The Developer Event of Default means any of the following events unless such an event has occurred as a consequence of a Force Majeure Event (the “**Developer Event of Default**”):

- (i) the Developer commits a Material Breach of this Agreement and such breach is not cured by the Developer within the specified cure period or if not so specified within 90 days of DMA’s notice to the Developer specifying such breach and requiring the Developer to remedy the same.
- (ii) the Developer’s failure to perform or discharge any of its obligations under any other Transaction Document which has or is likely to have a Material Adverse Effect.
- (iii) any representation made or warranties given by the Developer/Consortium Members/Selected Bidder under this Agreement is found to be false or misleading.
- (iv) the Developer, any of its creditors or any other eligible party files for the Developer’s liquidation, winding up, receivership, reorganization, compulsory composition or dissolution in case of such a proceeding by a creditor or any other eligible party and such filing is not revoked or discharged within 90 (ninety) days from such filing.
- (v) levy of an execution or restraint on the Developer’s assets which has or is likely to have Material Adverse Effect and such execution or restraint remaining in force for a period exceeding 60 (sixty) days.
- (vi) amalgamation of the Developer with any other company or reconstruction or transfer of the whole or part of the Developer’s undertaking (other than transfer of assets in the ordinary course of business) without DMA’s prior written approval; provided, if the amalgamated entity, reconstructed entity or the transferee, as the case may be, has the financial and technical ability demonstrated to

the satisfaction of DMA, to undertake, perform/discharge the obligations of the Developer under this Agreement, DMA shall not unreasonably withhold the necessary approval.

- (vii) the Developer engages or knowingly allows any of its employees, agents, Subcontractor, agent or representative to engage in, in the course of any activity undertaken pursuant to this Agreement, any activity prohibited by law or which constitutes a breach of or an offence under any law.
- (viii) the Developer repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by this Agreement.
- (ix) the Developer has delayed payment that has fallen due under this Agreement, beyond the specified time period or if not so specified beyond 90 (ninety) days of the due date.
- (x) The Developer has failed to make any payment towards damages to any user or any utility within the period specified in this Agreement.
- (xi) the Developer is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Developer or for the whole or material part of its assets at any time before the Construction Completion.
- (xii) the Developer does not attend to or abandons the Project for a consecutive period of 90 (ninety) days or manifests intention to abandon the Project without prior written consent of DMA.
- (xiii) As a result of any act or omission of the Developer, any lender (for the Project) enforces or initiates measures to enforce any security interest over any of the assets of the Developer, or the shares of the Developer owned by the Selected Bidder/Consortium Members.
- (xiv) the occurrence of a breach identified as an event of default under any Transaction Document.
- (xv) the minimum Equity requirements specified in Clause 7.2.2 are not maintained.
- (xvi) the Developer is in Material Breach of its obligations in relation to the Project.
- (xvii) the Performance Security has been partially or fully invoked and appropriated by DMA as per the Development Agreement and the Developer fails to replenish or provide fresh Performance Security within a Cure Period of 30 (thirty) days.

- (xviii) such events as have been specified as Developer Events of Default under the provisions of this Agreement.
- (xix) the Developer novates and /or assigns the agreement to any third party without any prior approval from DMA.

(b) DMA Event of Default

DMA Event of Default means any of the following events unless such an event has occurred as a consequence of a Force Majeure Event (the “**DMA Event of Default**”):

- (i) DMA is in Material Breach of its obligations under this Agreement such breach is not cured by DMA within the specified cure period or if not so specified within 90 days of the Developer’s notice to DMA specifying such breach and requiring DMA. to remedy the same.
- (ii) Any defect in DMA’s title, ownership and possession of the Project Site.

13.2 RIGHTS OF PARTIES

- (a) Upon the occurrence of the Developer Event of Default, DMA shall without prejudice to any other rights and remedies available to it under this Agreement or law but subject to rights of Lenders herein be entitled to terminate this Agreement.
- (b) Upon the occurrence of DMA Event of Default, the Developer shall without prejudice to any other rights and remedies available to it under this Agreement be entitled to terminate this Agreement.
- (c) Provided that before proceeding to terminate this Agreement, the Party entitled to do so shall give due consideration and shall have due regard to the nature of the underlying Event of Default, its implication on the performance of the respective obligations of Parties under this Agreement and the circumstances in which the same has occurred.

13.3 CONSULTATION NOTICE

Either Party exercising its right under Article 13.2, shall issue to the other Party a notice in writing specifying in reasonable detail the underlying Event of Default(s) and proposing consultation amongst the Parties and the Lenders to consider possible measures of curing or otherwise dealing with the underlying Event of

Default (the “**Consultation Notice**”).

13.4 REMEDIAL PROCESS

Following the issue of Consultation Notice by either Party, within a period not exceeding 90 days or such extended period as they may agree (the “**Remedial Period**”) the Parties shall, in consultation with the Lenders, endeavour to arrive at an agreement as to the manner of rectifying or remedying the underlying Event of Default. Without prejudice to this, if the underlying event is a Developer Event of Default, the Parties shall in consultation with the Lenders endeavour to arrive at an agreement as to one or more of the following measures and/or such other measures as may be considered appropriate by them in the attendant circumstances;

- (a) the change of management or control/ownership of the Developer;
- (b) the replacement of the Developer by a new developer (the “**Substitute Entity**”) on terms no less favourable than those contained in this Agreement and the specific terms and conditions of such replacement which shall include:
 - (i) the criteria for selection of the Substitute Entity,
 - (ii) the transfer of rights and obligations of the Developer surviving under this Agreement to the Substitute Entity,
 - (iii) handing over/ transfer of the Project Assets and the Project to the Substitute Entity,
 - (iv) assumption by the Substitute Entity of the outstanding obligations of the Developer under the Financing Documents and preserving Lenders’ charge on the Developer’s assets ,
 - (v) assumption by Substitute Entity of any amounts due to DMA from the Developer under this Agreement,
 - (vi) the provision of Performance Security by the Substitute Entity.

13.5 OBLIGATIONS DURING REMEDIAL PERIOD

During the Remedial Period, the Parties shall continue to perform their respective obligations under this Agreement which can be performed, failing which the Party in breach shall compensate the other Party for any loss or damage occasioned or suffered on account of the underlying failure/breach.

13.6 REVOCATION OF CONSULTATION NOTICE

If during the Remedial Period the underlying Event of Default is cured or waived or the Parties and the Lenders agree upon any of the measures set out in Article 13.4, the Consultation Notice shall be withdrawn by the Party who has issued the same.

13.7 TERMINATION DUE TO EVENTS OF DEFAULT

If before the expiry of the Remedial Period, the underlying Event of Default is neither cured nor waived nor the Parties and the Lenders have agreed upon any of the measures in accordance with Article 13.4, the Party who has issued the Consultation Notice shall have the right to terminate this Agreement, in which event, the provisions of Article 14 shall, to the extent expressly made applicable, apply.

ARTICLE 14: TERMINATION/ EXPIRY OF AGREEMENT

14.1 TERMINATION PROCEDURE

The Party entitled to terminate this Agreement either on account of a Force Majeure Event or on account of an Event of Default shall do so by issue of a notice in writing ("**Termination Notice**") to the other Party and simultaneously deliver a copy thereof to the Lenders. The Termination Notice shall be of not less than 60 (sixty) days and not ordinarily be more than 90 (ninety) days, ("**Termination Period**") and at the expiry of the Termination Period, this Agreement shall stand terminated.

14.2 OBLIGATIONS DURING TERMINATION PERIOD

During Termination Period, the Parties shall, subject where applicable to the provisions of Article 13, continue to perform such of their respective obligations under this Agreement which are capable of being performed.

14.3 REQUISITION

Upon issue or receipt, as the case may be, of the Termination Notice, either as a consequence of a Force Majeure Event or as a consequence of an Event of Default, DMA shall by a notice in writing ("**Requisition**") call upon the Developer to furnish the following information to enable DMA to estimate the outstanding liabilities/assets of the Developer and/or to finalise the assets to be handed over to/taken over by DMA;

- (a) the progress, stage and manner of implementation of the Project and the details of the assets and liabilities of the Developer;
- (b) data or records (to be specified by DMA) regarding the establishment, of the Project;
- (c) any other information or records (to be specified by DMA) regarding Developer and the Persons claiming through or under the Developer, its/their business, assets and liabilities.
- (d) the particulars of Licensing Arrangements and the details of functioning of the Subcontractors

- (e) the particulars of the security interests supported by Lenders' certificate;

The Developer shall within a period of 30 (thirty) days of receipt of Requisition furnish the particulars called for by DMA.

14.4 CONDITION SURVEY

- (a) The Developer agrees that on the service of a Termination Notice or 6 (six) months prior to the expiry of the Concession Period by efflux of time, it shall conduct or cause to be conducted by an Expert under DMA's supervision, a condition survey of the Project and the Project Assets to ascertain the condition thereof, verifying compliance with the Developer's obligations under this Agreement and to prepare an inventory of the assets comprised in the Project
- (b) In the event the Developer fails to comply with the provisions of this Agreement, DMA may itself cause the condition survey and inventory of Project Assets and the Project to be conducted. DMA shall be compensated by the Developer for any costs incurred in conducting such survey and preparation of inventory as also in putting the Project or the Project Assets in good working condition.

14.5 CONSEQUENCES OF TERMINATION

Without prejudice to any other consequences or requirements under this Agreement or under any law, the following consequences shall follow upon expiry of the Concession Period/this Agreement by efflux of time or termination due to an Event of Default or a Force Majeure Event:

14.5.1 In Relation to Project

(a) Transfer of Assets

- (i) On the Transfer Date, the Developer shall subject to the provisions of this Agreement :
 1. transfer, assign and deliver to DMA or its nominated agency the Project and the Project Assets, including vacant possession of all buildings, facilities and structures relating thereto and its right, title and interest therein.
 2. transfer all its rights, titles and interest in or over the tangible assets comprised in the Project to DMA or its nominated

agency and execute such deeds and documents as may be necessary for the purpose and complete all legal or other formalities required in this regard.

3. hand over to DMA or its nominated agency all documents including as built drawings, manuals, designs, documents, information and records relating to the Project and the Project Assets.
 4. to the extent possible assign to DMA or its nominated agency at the time of transfer all unexpired guarantees and warranties by Subcontractors and suppliers and all insurance policies.
 5. at its cost remove from the Site all such moveable assets which are not taken over by or transferred/assigned to DMA or its nominated agency. In the event the Developer fails to remove such objects within the stipulated time, DMA or its nominated agency may remove and transport or cause removal and transportation of such objects, after giving the Developer notice of its intention to do so to a suitable location for safe storage. The Developer shall be liable to bear the reasonable cost and the risk of such removal, transportation and storage.
 6. All proceeds of insurance claims shall be handed over to DMA or its nominated agency and the Developer or Persons claiming through or under it shall have no claim thereon or rights thereto.
- (ii) The transfer of immovable property comprising the Project and the Project Assets shall be deemed to be a termination of all arrangements or licenses in relation thereto and title to all such immovable property shall automatically revert to DMA or its nominated agency. The movable property comprising the Project and the Project Assets shall be deemed to be transferred by delivery and possession.
- (iii) DMA and the Developer shall at least 45 (fourty five) days prior to the expiry of the Concession Period or upon commencement of Termination Period, as the case may be, promptly agree upon the modalities and take all necessary steps to complete the aforesaid process of transfer of assets on the Transfer Date. During this period, the designated key personnel of DMA shall be associated with the operations of the Project in order to facilitate smooth takeover of the same by DMA on the Transfer Date.
- (iv) It is clarified that only the assets of the Developer shall be taken over and not the liabilities, including without limitation liabilities relating to

labour and personnel related obligations of the Developer and the Persons claiming through or under the Developer. All such labour and employees shall be its responsibility of the Developer/such Persons even after the expiry of the Concession Period and they shall have no claim to any type of employment or compensation from DMA or its nominated agency.

- (v) On the Transfer Date the Project and the Project Assets shall be in fair condition, subject to normal wear and tear, having regard for the nature of the asset, the construction and life of the facilities, constructions, structures etc.
- (vi) The Licensing Arrangements and the agreements with Subcontractors shall be terminated and the Developer, Licensees, the Subcontractors, and all Persons claiming through or under them shall, forthwith vacate the Site/Project without demur or delay.
- (vii) If on the Transfer Date, any Person is found to be occupying the Site, the Project or Project Assets or any part thereof, it shall be lawful for DMA to secure summary eviction of such Person in accordance with the Applicable Laws.

(b) Project Agreements

The Developer shall at the cost of DMA or its nominated agency transfer/assign such of the Project Agreements which (i) are valid and subsisting, capable of being transferred/assigned, (iii) DMA or its nominated agency has chosen to take over in its favour. The Developer shall entirely at its cost, terminate all such Project Agreements which are not transferred/assigned to DMA or its nominated agency.

(c) Clearances

The Developer shall, at its cost, transfer to DMA or its nominated agency all such Clearances relating to the Project which DMA may require and which can be legally transferred.

(d) Transfer Costs

- (i) The Project and the Project Assets shall be transferred to DMA or its nominated agency, as the case may be, for a sum of Rupee 1.00.
- (ii) DMA or its nominated agency shall be responsible for the costs and expenses, including stamp duties, taxes, legal fees and expenses incurred in connection with the transfer of the Project and the Project Assets by the Developer to DMA or its nominated agency.

(e) Guarantees

- (i) DMA shall be entitled to call in, forfeit, encash and appropriate any subsisting Performance Security/bank guarantee(s) provided by the Developer, if the termination is on account of a Developer Event of Default.
- (ii) Upon termination of this Agreement due to any Force Majeure Event (non-political or political event) or a DMA Event of Default, DMA shall return the Performance Security to the Developer; provided there are no outstanding claims of DMA on the Developer. Upon termination of this Agreement due to a Developer Event of Default, DMA shall forfeit and retain the Performance Security.

(f) Termination Payments

In the event of termination of this Agreement/Concession due to Force Majeure Event or an Event of Default, DMA shall, upon transfer of the Project and the Project Assets by the Developer to DMA or its nominated agency, pay to the Developer the following Termination Payments:

- (i) Upon termination by either party due to a Non Political Force Majeure Event, DMA shall pay to the Developer by way of Termination Payment an amount equal to 80% (eighty percent) of the Debt Due for Project.
- (iv) Upon termination by the Developer due to a DMA Event of Default or upon termination by either party due to a Political Force Majeure Event, DMA shall pay to the Developer by way of Termination Payment an amount equal to Total Debt Due plus 100% (one hundred percent) of Equity component of the Total Project Cost subscribed and paid in cash till date of termination, if such termination occurs during the Construction Period for Project but prior to the Construction Completion being achieved;
- (v) In either case under sub-clause (i), (ii) or (iii) above, less (1) the amount of any insurance proceeds received by the Developer or which should have been received had the Developer complied with its obligations under this Agreement and (2) any amounts then due and payable to DMA by the Developer under this Agreement and (3) any amounts which the Developer is entitled to claim in compensation in respect of the expropriation or compulsory acquisition of the assets or rights of the Developer etc. from the party responsible for such expropriation or acquisition. If the amount calculated in accordance with this paragraph is less than zero then the Developer shall pay the amount of shortfall to DMA.

- (ii) In either case under sub-clause (i), (ii) or (iii) above, if such Termination occurs upon issuance of Completion Certificate for the site than DMA shall pay all the amounts due and payable to the Developer under this Agreement for the site.
- (vi) Nothing in this clause shall prejudice the right of DMA to recover from the Developer any amounts due and payable to it by the Developer hereunder.
- (vii) The Developer hereby irrevocably authorises DMA to pay to the Lenders or at their instruction to any designated bank account in India the compensation payable to the Developer. The Developer confirms that upon such payment being made, DMA shall stand duly discharged of its obligations regarding payment of compensation under this Agreement Provided, if there are no amounts outstanding under the Financing Documents and a certificate to that effect issued by the Lenders is furnished by the Developer to DMA, the compensation shall, subject to the provisions of Article 14.5 below, be paid by DMA directly to the Developer.
- (viii) Notwithstanding anything to the contrary contained in this Agreement, any Termination pursuant to the provisions of this Agreement shall be without prejudice to accrued rights of a Party, including its right to claim and recover money damages and other rights and remedies which it may have in law or contract. All rights and obligations of a Party under this Agreement shall survive the Termination of this Agreement to the extent such survival is necessary for giving effect to such rights and obligations.

14.6 DIVESTMENT OF RIGHTS AND INTEREST

The divestment of all rights, title and interest in the Project Facilities shall be deemed to be complete on the date when all of the requirements have been fulfilled as mentioned in Article 14, and DMA shall, without unreasonable delay, thereupon issue a certificate (the "**Vesting Certificate**"), which will have the effect of constituting evidence of divestment by the Developer of all of its rights, title and interest in the Project Facilities, and their vesting in DMA pursuant hereto. It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by DMA or its nominee on, or in respect of, the Project Facilities on the footing that all divestment requirements have been complied with by the Developer.

ARTICLE 15: LIABILITY AND INDEMNIFICATION

15.1 LIABILITY OF DEVELOPER

Notwithstanding anything to the contrary contained in this Agreement,

- (a) In addition to the Developer's liability and obligations and DMA's remedies provided elsewhere in this Agreement, the Developer shall be solely responsible for any loss of or damage to the Project Facilities, damage to environment, death or injury to person, and any other liabilities, damages, losses and reasonable cost and expenses (including legal costs) suffered by DMA during the Concession Period:
 - (i) resulting from any act, omission or negligence of the Developer or any other Person claiming through or under it, including Subcontractors, and their respective employees, agents, subcontractors and representatives.
 - (ii) in connection with, arising out of, or resulting from any breach of warranty, material misrepresentation by the Developer or any other Person claiming through or under it, or non-performance of any term, condition, covenant or obligation to be performed by the Developer under this Agreement.
- (b) The Developer shall also be liable for any loss or damage which occurs as a result of any act, event, omission, negligence or default (including property circumstances, quality of materials used, workmanship, structural, design or other defects, latent or patent, non-compliance with building bye laws, other Applicable Laws, regulatory requirements of Competent Authorities, Developmental Standards or any other matter) for which the Developer is liable or which is attributable to the Developer and, in turn, the Persons claiming through or under the Developer.
- (c) The Developer shall be fully and solely liable for all works, contracts, dealings and activities in relation to the development, design, financing, construction and implementation of the Project.

15.2 INDEMNIFICATION

- (a) Without prejudice to and in addition to the indemnification provisions elsewhere in this Agreement, the Developer agrees to indemnify and hold harmless DMA and its shareholders, managers, officers, directors,

employees and advisors (each a “**DMA Indemnified Party**”) promptly upon demand at any time and from time to time, from and against any and all losses, claims, damages, liabilities, costs, penalties, litigation, proceedings (including reasonable attorneys' fees and disbursements) and expenses of any nature whatsoever (collectively, “**Losses**”) to which DMA Indemnified Party may become subject, insofar as such Losses directly arise out of, in any way relate to, or result from (i) any mis-statement or any breach of any representation or warranty made by Developer or (ii) the failure by Developer to fulfil any agreement, covenant or condition contained in this Agreement, including without limitation the breach of any terms and conditions of this Agreement by any employee or agent of the Developer or Person claiming through or under the Developer or (iii) any claim or proceeding by any Third Party against DMA arising out of any act, deed or omission by the Developer. For the avoidance of doubt, indemnification of Losses pursuant to this Article 15 shall be made in an amount or amounts sufficient to restore each DMA Indemnified Party to the financial position it would have been in had the Losses not occurred.

- (b) Without limiting the generality of sub-clause (a) of this Article 15.
- (i) the Developer shall fully indemnify and defend DMA Indemnified Party from and against any and all Losses arising out of or with respect to (1) failure of the Developer and the Persons claiming through or under the Developer to comply with Applicable Laws and Clearances, (2) payments of Taxes relating to the Developer and the Persons claiming through or under the Developer, including contractors, suppliers and representatives, including the income or other taxes required to be paid by the Developer/such Persons, (3) non-payment of amounts due as a result of materials or services furnished to the Developer or any Person claiming through or under the Developer, which are payable by the Developer or such Person, or (4) breach by the Developer of any of the obligations under this Agreement.
 - (ii) the Developer shall fully indemnify and defend DMA Indemnified Party harmless from and against any and all Losses which DMA Indemnified Party may hereafter suffer or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Developer or by the Persons claiming through or under the Developer in performing the Developer's obligations or in any way incorporated in or related to the Project. If in any such suit, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Developer shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the suspension of the injunction or restraint order. If, in any such suit claim or proceedings, the Project, or any part, thereof or

comprised therein is held to constitute an infringement and its use is permanently enjoined, the Developer shall promptly make every reasonable effort to secure for DMA Indemnified Party, a license, at no cost to DMA Indemnified Party, authorising continued use of the infringing work. If the Developer is unable to secure such license within a reasonable time, the Developer shall, at its own expense and without impairing the Developmental Standards either replace the affected work, or part, or process thereof with non-infringing work or parts or process, or modify the same so that it becomes non-infringing.

- (iii) the Developer shall further indemnify, defend and hold harmless DMA Indemnified Party from any and all Third Party claims for loss of or physical damage to property or for death or injury and against all Losses for personal injury and for damage to or loss of any property arising out of or in any way connected with the Developer's performance of this Agreement or arising out of any act or omission of the Developer, and in turn of the Persons claiming through or under the Developer.
- (c) Any payment made under this Agreement pursuant to an indemnity or claim for breach of any provision of this Agreement shall be net of applicable Taxes.

15.3 INDIRECT OR CONSEQUENTIAL LOSSES

Notwithstanding anything to the contrary contained in this Article 15, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect or consequential nature except as expressly provided in this Agreement.

15.4 SURVIVAL

The provisions of Article 15 shall survive the expiry or prior termination of this Agreement/the Concession.

ARTICLE 16: DISPUTE RESOLUTION

16.1 AMICABLE SETTLEMENT

If any dispute or difference or claims of any kind arises between the Parties in connection with construction, interpretation or application of any terms and conditions or any matter or thing in any way connected with or in connection with or arising out of this Agreement, or the rights, duties or liabilities of any Party under this Agreement and so notified in writing by either Party to the other Party (the “**Dispute**”), whether before or after the termination of this Agreement, then the Parties shall meet together promptly, at the request of any Party, in an effort to resolve such dispute, difference or claim by discussion between them.

16.2 ASSISTANCE OF EXPERT

The Parties may, in appropriate cases agree to refer the matter to an Expert appointed by them with mutual consent. The Parties agree to abide by the decision/opinion of the Expert. The cost of obtaining the service of the Expert shall be shared equally.

16.3 ARBITRATION

(a) Arbitrators

In the event the dispute or difference or claim, as the case may be, is not resolved, as evidenced by the signing of the written terms of settlement by the Parties, within 30 (thirty) days of reference for amicable settlement and/or settlement with the assistance of Expert, as the case may be, the same shall be finally settled by binding arbitration under the Arbitration and Conciliation Act, 1996. The arbitration shall be by a panel of three arbitrators, one each to be appointed by DMA and the Developer and the third to be appointed by the two arbitrators so appointed, who shall act as chairperson of the arbitral tribunal.

(b) Place of Arbitration

The place of arbitration shall be Ranchi but by agreement of the Parties, the arbitration hearings, if required, can be held elsewhere from time to time.

(c) English Language

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

(d) **Enforcement of Award**

Any decision or award resulting from arbitration shall be final and binding upon the Parties. The Parties hereto hereby waive, to the extent permitted by law, any rights to appeal or to review of such award by any court or tribunal. The Parties hereto agree that the arbitral award may be enforced against the Parties to the arbitration proceeding or their assets wherever they may be found and that a judgement upon the arbitral award may be entered in any court having jurisdiction thereof.

(e) **Fees and Expenses**

The fees and expenses of the arbitrators and all other expenses of the arbitration shall be initially borne and paid by respective Parties subject to determination by the arbitrators. The arbitrators may provide in the arbitral award for the 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.

(f) **Performance during Arbitration**

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

ARTICLE 17: INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIALITY

17.1 INTELLECTUAL PROPERTY RIGHTS

- (a) The Developer accepts and agrees that DMA shall be the absolute and exclusive owner and proprietor of the all details, plans, specifications, schedules, programs, budget, reports, calculations and other work relating to the Project hereafter referred to as "**Proprietary Material**", which have been or are hereafter written, originated or made by any of the Developer or the Persons claiming through or under it or any of their respective employees, contractors, consultants or agents in connection with this Agreement or the design, construction, insurance and financing of the Project. All Proprietary Material shall be clearly marked as such in capital letters and in bold face print.
- (b) DMA shall own all the intellectual property rights in or relating to the Proprietary Material and all rights, privileges, entitlements, interests, title, property and benefits and associated rights whatsoever therein for the full period in accordance with the Applicable Laws and with all the reservations and extensions thereof and together with the exclusive right of DMA to use such information and intellectual property/authorize the use thereof by Third Parties in India and abroad in any form, including without limitation the right to reproduce, translate, edit, modify, distribute, sell or assign such rights, with or without consideration.
- (c) DMA shall have the exclusive right to apply for/procure registration such intellectual property rights at its cost with relevant competent authorities in India and abroad.
- (d) The Developer and DMA hereby grant to each other an irrevocable, royalty-free, non-exclusive license to use all proprietary material owned by any of them or any of their respective employees, contractors, consultants or agents in connection with this Agreement or the design, construction, insurance and financing of the Project. Such license shall carry the right to use such material for all purposes connected with the Project; however, it shall not be transferable to any Person other than to the permitted assignee under this Agreement. Such license shall discontinue on the termination or expiry of this Agreement or the discharge by any Party of its duties hereunder.

17.2 CONFIDENTIALITY

No Party shall, without the prior written consent of the other Party, at any time divulge or disclose or suffer or permit its servants or agents to divulge or disclose to any Person or use for any purpose unconnected with the Project any information which is by its nature or is marked as Proprietary Material or “confidential”, concerning the other (including any information concerning the contents of this Agreement) except to its officers, directors, employers, agents, representatives and professional advisors or as may be required by any law, rule, regulation or any judicial process; provided, however, that a Party, with the written consent of the other Party, may issue press releases containing non-sensitive information in relation to the progress of the Project. This provision shall not apply to information:

- (a) already in the public domain, otherwise than by breach of this Agreement;
- (b) already in the possession of the receiving Party on a lawful basis before it was received from the other Party in connection with this Agreement and which was not obtained under any obligation of confidentiality;
- (c) obtained from a Third Party who is free to divulge the same and which was not obtained under any obligation of confidentiality;
- (d) disclosed to the Lenders under terms of confidentiality; or
- (e) which is required to be disclosed by judicial, administrative or stock exchange process, any enquiry, investigation, action, suit, proceeding or claim or otherwise by or under any Applicable Law or by any Competent Authority.

17.3 SURVIVAL

The provisions of Article 17 shall survive the expiry or prior termination of this Agreement/Concession.

ARTICLE 18: SAFETY REQUIREMENTS

18.1 SAFETY REQUIREMENTS

- (a) The Developer shall be responsible at its cost, for procurement, transport, receiving, unloading and safe keeping of all plant and machinery, materials, Developer's equipment and other things required for the completion of the Works, services of the Project Facilities. Unless otherwise stated in this Development Agreement:
 - i) The Developer shall be responsible for keeping unauthorised persons off the Project Site and preventing encroachment on the Project Site during the Construction Period.
 - ii) Authorised persons during the Construction Period for Project shall be limited to the employees of the Developer, employees of its Subcontractors, and employees and persons authorised by DMA.
- (b) Within 3 (three) months from the Agreement Date, the Developer shall provide to DMA details of its safety plans and procedures for the Works, buildings, services and construction. The Developer shall comply with all safety regulations applicable, in its design, access arrangements and operations on Project Site. Unless otherwise stated in this Development Agreement, the Developer shall, from the commencement of work on the Project Site until the expiration of this Development Agreement or upon termination of this Agreement, provide fencing, lighting, guarding and watching of the Works and Project. The Developer shall be responsible in the operation of machinery and equipment, use of explosives and any other work and to take all precautions to ensure safety of the staff, labourers and public.

18.2 ACCIDENTS

- (a) The Developer shall take all reasonable precautions for the prevention of accidents on or about the Project Site and provide all reasonable assistance and emergency medical aid to accident victims.
- (b) In the event of an accident, the Developer shall, by most expeditious means, inform the concerned Civil and Police Authorities and also DMA. The Developer's responsibilities with regard to the operation of the Project shall in no way be diminished by informing the above officials, as it shall be required to take expeditious action for the medical and legal aspects

notwithstanding any delay on the part of these officials to give any instructions. The Developer shall preserve the Project Site of such accident intact, until completion of all legal formalities. The Developer shall then arrange for the expeditious removal of the wreckage or debris, and for cleaning the Project Site. If any portion of the Project suffers any damage, the Developer shall, with the consent of DMA, arrange for the repair and rectification thereof.

- (c) The Developer shall, in the event of any accident, incur any expenditure or take any other action as necessary (in accordance with Good Industry Practices). Except when the cause of the accident is attributed to any act or negligence of DMA, any expenditure in connection with an accident shall be compensated to the Developer in accordance with Article 9.8.
- (d) Any communication to the news media made by the Developer shall provide only enough information to satisfy public concern and the Developer shall neither make any admissions nor accept any liability in any such communications.

ARTICLE 19: MISCELLANEOUS PROVISIONS

19.1 GOVERNING LAW AND JURISDICTION

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India and the courts at Ranchi shall have jurisdiction over all matters arising out of or relating to this Agreement.

19.2 WAIVER & REMEDIES

- (a) The waiver by either Party, including conditional or partial waiver, of any default by the other Party in the observance and performance of any provision of or obligations or under this Agreement:
 - (i) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions or obligations under this Agreement;
 - (ii) shall not be effective unless it is in writing and executed by a duly authorized representative of such Party; and
 - (iii) shall not affect the validity or enforceability of this Agreement in any manner.
- (b) No failure on the part of any Party to exercise, and no delay in exercising, any right, power, obligation or privilege hereunder or time or indulgence granted by a Party to the other Party shall operate or be treated or deemed as a waiver thereof or a consent thereto or the acceptance of any variation or relinquishment of any such right hereunder; nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The remedies herein provided are cumulative and not exclusive of any remedies provided by the Applicable Laws.
- (c) Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation there under nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

19.3 SURVIVAL

The termination /expiry of this Agreement

- (a) shall not relieve either Party of any obligations hereunder, which expressly or by implication, survive the expiry or prior termination of this Agreement/the Concession, 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/expiry or arising out of such termination/expiry.

19.4 ENTIRE AGREEMENTS AND AMENDMENTS

- (a) This Agreement constitutes the complete, exclusive and entire statement of the terms of the agreement between the Parties on the subject hereof and supersede all previous agreements or arrangements between the Parties, including any memoranda of understanding entered into in respect of the contents hereof.
- (b) No amendment or modification or waiver of any provision of this Agreement, nor consent to any departure by any of the Parties there from, shall in any event be valid and effective unless the same is in writing and signed by the Parties or their duly authorised representative especially empowered in this behalf and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it is given. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn.

19.5 NOTICES

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

If to DMA

If to Developer

Fax No. _____

Attn: Mr. _____

Or such address, telex number, or facsimile number as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered (i) in the case of any communication made by letter, when delivered by hand, by recognized courier or by mail (registered, return receipt requested) at that address and (ii) in the case of any communication made by telex or facsimile, when transmitted properly addressed to such telex number or facsimile number.

In case any Party changes its address, communication numbers, or directed attention as set forth above, it shall notify the other Party in writing prior to the adoption thereof.

19.6 SEVERABILITY

- (a) If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not prejudice or affect the remaining provisions of this Agreement which shall continue in full force and effect.
- (b) The Parties will negotiate in good faith with a view to agreeing upon one or more provisions which may be substituted, as nearly as is practicable, to such invalid, illegal and unenforceable provision. Provided failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure under this Agreement.

19.7 NO PARTNERSHIP

Nothing contained in this Agreement shall be construed to create an association, trust, partnership, agency or joint venture among the Parties and Parties shall be

liable to perform their respective duties and discharge their respective liabilities or obligations in accordance with the provisions of this Agreement. Neither Party shall have any authority to enter into any Agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind the other in any manner whatsoever.

19.8 LANGUAGE

The language of this Agreement is English. All notices, correspondence, Project Agreements, documentation, DPR, data, test reports, certificates and information in respect of this Agreement shall be in the English language. All other written and printed matter, communications, documentation, proceedings and notices etc. pursuant or relevant to this Agreement shall be in the English language.

19.9 EXCLUSION OF IMPLIED WARRANTIES ETC.

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

19.10 COUNTERPARTS

This Agreement may be executed in three counterparts, each in the like form, which when taken together shall constitute one and the same document.

19.11 FURTHER ASSURANCES

At all times after the date hereof the Parties shall execute all such documents and do such acts, deeds and things as may reasonably be required for the purpose of giving full effect to this Agreement.

19.12 REMEDIES CUMULATIVE

The exercise of right by either Party to terminate this Agreement, as provided herein, shall not preclude, such Party from availing any other rights or remedies that may be available to it under law. All remedies available to the Parties shall be cumulative and the exercise or failure to exercise one or more remedies by any Party shall not limit or preclude the exercise of or constitute a waiver of any other

remedies by such Party.

19.13 NO LIABILITY FOR REVIEW

Except to the extent expressly provided in this Agreement.

- (a) no review, comment or approval by DMA /Competent Authorities/ Independent Engineer /advisors, nominees or representatives of DMA of the Designs and Drawing, the Environment Management Plan, the Developmental Standards, the Transaction Documents or documents submitted by the Developer or its employees or agents or Persons claiming through or under the Developer nor any observation or inspection of the construction of the Project nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Developer from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Clearances; and
- (b) DMA or any Competent Authority or the advisors, nominees or representatives of DMA shall not be liable to the Developer by reason of any review, comment, approval observation or inspection referred in sub-clause (a) above and the Developer shall indemnify them and keep them indemnified in this behalf.

19.14 TIME

Any date or period as set out in this Agreement may be extended with the written consent of the Parties, failing which time shall be of the essence.

19.15 CHANGE IN LAW

In the event of a Change in Law results in a Material Adverse Effect, DMA or the Developer may by notice in writing to the other party request such modifications to the terms of this Agreement as the requesting party reasonably believes is necessary to place it in substantially the same legal, commercial and economic position as it was prior to such Change in Law. The Developer and DMA shall thereafter consult in good faith to agree to such modifications and in the event agreement cannot be reached, either of them may refer the matter for determination in accordance with the Dispute Resolution Procedure.

19.16 DEPRECIATION

For the purposes of claiming tax depreciation, the property representing the

capital investment made by the Developer/Persons claiming through or under the Developer shall be deemed to be acquired and owned by the Developer/Persons claiming through or under the Developer.

19.17 VIOLATION OF TERMS

The Parties agree that in the event of any breach of the provisions of this Agreement, the Parties shall suffer irreparable harm and injury and damages would not be an adequate remedy and each of the Parties (at its sole discretion) shall be entitled to an injunction, restraining order, right for recovery, suit for specific performance or such other equitable relief as a court or arbitral forum of competent jurisdiction may deem necessary or appropriate to restrain the other Party from committing any violation or enforce the performance of the covenants, representations and obligations contained in this Agreement. These injunctive remedies are cumulative and are in addition to any other rights and remedies the Parties may have at law or in equity, including without limitation a right for damages.

19.18 INTEREST AND RIGHT OF SET OFF

The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 15 (fifteen) days of receiving a demand along with the necessary particulars.

Any sum which is due and payable under any of the provisions of this Agreement by one party to the other shall, if the same is not paid within the time allowed for payment thereof, be deemed to be a debt owed by the Party responsible for such payment to the Party entitled to receive the same. Such sum shall until payment thereof carry interest at the rate specified herein, and if not specified at the rate of 18 % per annum, from the due date and until the date of payment or otherwise realisation thereof by the Party entitled to receive the same. Without prejudice to any other right or remedy available under this Agreement or under law, the Party entitled to receive such amount shall also have the right of set off.

Provided this provision for payment of interest for delayed payment shall not be deemed or construed to (i) authorise any delay in payment of any amount due by a party or (ii) be a waiver of the underlying breach of the payment obligations.

19.19 WAIVER OF IMMUNITY

Each Party unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction;

19.20 THIRD PARTIES

This Agreement is intended solely for the benefit of the Parties, and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement, unless expressly provided in this Agreement.

19.21 SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon, and inure to the benefit of the Parties and their lawful successors, as per the provisions of this Agreement.

19.22 VALIDITY

This Agreement shall be valid for the entire Concession Period.

IN WITNESS WHEREOF the Parties have executed and delivered this Agreement by their duly authorised representative on the date first above written:

<p>SIGNED ON BEHALF OF DMA</p> <p>_____ (Signature)</p> <p>_____ (Name)</p> <p>_____ (Designation)</p>	<p>SIGNED, SEALED AND DELIVERED</p> <p>Developer by the hand of its authorized representative</p> <p>_____ (Signature)</p> <p>_____ (Name)</p> <p>_____ (Designation)</p>
---	--

	pursuant to Resolution dated..... of its board of directors.
--	--

Witnesses:

(i)

(ii)

Date:

Place:

Part II

Schedules

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SCHEDULE 1: PROJECT SITE

Project locations will be situated in the following cities (*Urban Local Bodies*)

Sl. No	ULBs
1	Adityapur
2	Basukinath
3	Bishrampur
4	Bundu
5	Chaibasa
6	Chakardharpur
7	Chakulia
8	Chas (Bokaro)
9	Chatra
10	Chirkunda
11	Deoghar
12	Dhanbad
13	Dumka
14	Garhwa
15	Giridih
16	Godda
17	Gumla
18	Hazaribagh
19	Hussainabad
20	Jamshedpur
21	Jamtara
22	Jhumriteliya
23	Jugsalai
24	Khunti
25	Koderma
26	Latehar

27	Lohardaga
28	Madhupur
29	Mango
30	Manjhiaon
31	Medininagar
32	Mihijam
33	Nagar Uttari
34	Pakur
35	Phusro
36	Rajmahal
37	Ramgarh
38	Ranchi
39	Sahibganj
40	Seraikela
41	Simdega

* ULBs notified by the state government in future will also be considered as part of this project

Note:

DMA may also award additional sites apart from the Site mentioned below for development/ redevelopment to the Developer subject to maximum 25% of the Estimated Project Cost in the RFQP.

SCHEDULE 2: SCOPE OF WORK FOR THE PROJECT

1. The objective of the Agreement is the construction of Dwelling Units on the Project Site/s as per the Approved DPR complete with all the internal plumbing, electrical works, water and sewerage system, drainage system and associated facilities but excluding the External Infrastructure.
2. The number of Dwelling Units to be developed under this Project are approximately ~40,000 on various land parcels as handed over by DMA (refer Schedule 1). The land parcels shall be handed over in different phases over a period of 3 years in various districts of Jharkhand.
3. Estimated number of floors is G+4 subject to local building bye laws.
4. The Developer shall submit inter alia the following documents, along with an implementation plan, specifications proposed to be followed for the Works:
 - (i) A general Architectural note on methodology of construction technology, design, structural design considerations, aesthetical elements, final finishes, safety & security, mechanical, electrical, plumbing and sanitary features and overall serviceability of building under the contemplation of design.
 - (ii) Architectural plan of each floor including terrace.
 - (iii) Working drawings of each floor.
 - (iv) Terrace floor plan showing the locations and sizes of tanks, rain water outlets and any other utility if there.
 - (v) X-Section comprising the complete detail of heights of various building components including rooms, stair cases, sunken slabs, toilets, kitchens, doors & windows.
 - (vi) Drawing of flooring patterns.
 - (vii) Door, window schedules.
 - (viii) Drawings of door window grills and stair case railings.
 - (ix) Schedules of finishes.
 - (x) Schematic diagram route plan of water supply pipe lines for toilets & kitchens.
 - (xi) Detailed drawing of Tanks including roof top water storage tanks, underground tanks, firefighting tanks etc.
 - (xii) External elevations.
 - (xiii) Internal sanitary & Plumbing Plans with elevation of each wall with complete detail.
 - (xiv) Schematic diagram of external drainage of rain water and sanitary pipes and their route plan.
 - (xv) Electrical lay out plan.

- (xvi) Electrical panel & DBs & SDBs drawings.
 - (xvii) Schematic line diagram of electrical circuit wiring and conducting.
 - (xviii) Structural drawings of all building components.
 - (xix) Structural design calculation.
 - (xx) Electrical design calculation.
5. The scope of works shall also include but not limited to the following incidental activities:
- a) All aspects of quality assurance, including testing of materials and other components of the work, as specified or as directed;
 - b) Works shall be executed in good engineering manner keeping especially focusing on safety and structural stability of structures under all weather conditions.
 - c) True and proper setting out and layout of the Works, bench marks and provision of all necessary labour, instruments and appliances in connection therewith as specified or as directed;
 - d) Rectification of the defects in the completed works during the Defects Liability Period of 2 years from the date of issue of Completion Certificate;
 - e) The scope of work includes working under all conditions at site, moisture, water, weather etc., diversion/ pumping/ bailing out of water, if required.
 - f) Identification of utilities & liaison with other government departments regarding shifting of utilities & other matters, whenever required.
 - g) Provision of site laboratory for testing of materials
 - h) All ancillary and incidental facilities required for execution of the work e.g. labour camps, stores, laboratory at site, work shop facilities, watch and ward, temporary structure for plants and machinery, water storage structure, tube wells, electric/ telephone installation and charges, liaison work, protection work during execution not included in the main items. Works to be performed shall also include all general works preparatory to the construction and works of any kind necessary for the due and satisfactory construction and completion of the works to the intent and meaning of the drawings adopted and technical specifications, to best standards and orders that may be issued by the Engineer from time to time, supply of all materials, apparatus, plants, equipment, tools, fuel, water, strutting, timbering, transport, offices, stores, workshop, staff, labour and the provision of proper and sufficient protective works, diversion, temporary fencing, lighting and watching required for the safety of the public and protection of works on adjoining land; first-aid equipment, sanitary accommodation for the staff and workmen, effecting and maintenance of all insurances, the payment of all wages, salaries, fees, royalties, duties or the other charges arising out of the erection of works and the regular clearance of rubbish, clearing up, leaving the site perfect and tidy on completion.
6. The Developer shall prepare proposed construction methodology and phasing in co-ordination with DMA. The Developer shall comply strictly with the approved DPR during construction of works.

SCHEDULE 3: INDICATIVE TECHNICAL SPECIFICATIONS & STANDARDS

1. General Requirements

The technical specifications, in accordance with which the construction works of the Project as per the plan to be executed by the Developer, shall comprise of the following:

- (a) General Technical Specifications
- (b) Supplementary Technical Specifications

2. Proposed Technologies

2.1. The following technologies can be used for the construction of the Project

- a. Monolithic Concrete Construction System using Plastic - Aluminum Formwork
- b. Monolithic Concrete Construction System using Aluminum Formwork
- c. Expanded Polystyrene Core Panel System
- d. Industrialized 3-S System using Precast RCC Columns, Beams & Cellular Light Weight
- e. Concrete Precast RCC Slabs
- f. Speed Floor System
- g. Glass Fiber Reinforced Gypsum (GFRG) Panel Building System
- h. Factory Made Fast Track Modular Building System
- i. Light Gauge Steel Framed Structures (LGSF)

2.2. Apart from the above, a construction technology certified/ approved by any of the following institutes can also be used:

- i. Building Material and Technology Promotion Council (BMTPC) under its Performance Appraisal Certification Scheme
- ii. Central Building Research Institute (CBRI), Roorkee
- iii. CSIR-Structural Engineering Research Centre(SERC), Chennai
- iv. Any Indian Institute of Technology / National Institute of Technology
- v. Any other national/ international institute of reputed / duly recognized by the concerned National Government/ competent authority

2.3. The Developer shall submit a certified copy of such certification. The certification should include:

- i. Structural safety (Strength & Serviceability) of the system against vertical and lateral load (wind & seismic loads as applicable) as per relevant Indian Standards, including performance of joints, as applicable.
 - ii. Fire safety as per National Building Code (latest version) and / or provisions in the local Bye-laws.
 - iii. Resistance against water and moisture penetration.- As per any recognised international standard/practice like ASTM/Agreement South Africa.
 - iv. Thermal behaviour–Comparing the thermal rans mission loss of the system with that of traditional construction (refer IS 3792:1978) Thermal Performance should there be comparable or better than conventional.
 - v. Acoustic behaviour – Minimum sound transmission loss of 40 dB as per IS 1950:1962
 - vi. Durability –to be evaluated considering
 - Expected service life of the system compared to conventional
 - Evidence of building(s) sustained for at least 10 years.
 - Performance under accelerated tests like alternate wetting and drying, salts pry test etc.
- 2.4. The proposed alternate technology/system shall be suitable to geo-climatic and hazard conditions of the region, having design compatibility & flexibility to suit the requirements of the structure to be built and minimum design life of 50 years.
All the materials used shall conform to Indian/International Standards and must be accepted by the agency providing certification for performance criteria.
- 2.5. All the walls/roof in the Dwelling Units shall be with outer concrete finish.
- 2.6. The DPR shall also contain a Structural Stability Certificate from any of the institutes mentioned in this Clause.

3. General Technical Specifications

All the items of work shall be executed as per Jharkhand PWD B&R Specifications. National Building Code shall also be followed. Any item or part of the item not covered in such specifications shall be executed as per relevant IS Codes or Central Public Works Department (CPWD) Specifications or as per the directions of DMA. Fly ash as per directives of the Central / State Government to be used wherever applicable.

These codes and specifications shall deem to be bound in this document. The technical specifications for civil, mechanical and electrical installations works are detailed in the subsequent sections.

In case of proprietary technology, the specifications and standards as approved by

DMA shall be applicable.

4. Supplementary Technical Specifications

This part shall comprise various amendments/modifications/additions to the relevant codes and standards.

When an Amended/Modified/Added clause supersedes a clause or part thereof in the said specifications, then any reference to the superseded clause shall be deemed to refer to the Amended/Modified clause or part thereof.

In so far as any Amended/Modified/Added clause may come in conflict or be inconsistent with any of the provisions of the said specifications under reference, the Amended/Modified/Added clause shall always prevail. While carrying out any work the Developer shall ensure that any requirements specific to the site and similar factors are kept in view.

All measurements shall be made in the metric system. The measurements and computations unless/otherwise indicated shall be carried nearest to the following limits.

Length and breadth	:	5 mm
Height, Depth or thickness	:	1 mm
Area	:	0.01 sq.m.
Cubic Contents	:	0.01 cu.m.

SCHEDULE 4: VESTING CERTIFICATE

DMA, Jharkhand, having its office at _____, Jharkhand, (the "DMA") refers to the Agreement dated _____ (the "**Agreement**") entered into between the DMA and _____ (the "Developer") for Construction of 40000 E.W.S. Dwelling Units on Hybrid Annuity Model on PPP basis under Vertical-3 of PMAY – Housing For All 2022 (Urban) in urban areas in Jharkhand (the "**Project**") on design, build, finance and transfer basis.

1. The DMA hereby acknowledges compliance and fulfilment by the Developer of the divestment requirements set forth in Clause 14.6 of the Agreement on the basis that upon issue of this Vesting Certificate, the DMA shall be deemed to have acquired, and all title and interest of the Developer in or about the Project shall be deemed to have vested unto the DMA, free from any encumbrances, charges and liens whatsoever.
2. Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Developer to rectify and remedy any defect or deficiency in any of the divestment requirements and/or relieving the Developer in any manner of the same.

Signed this ____ day of _____, 20__ at [_____].

AGREED, ACCEPTED AND SIGNED

SIGNED, SEALED AND DELIVERED

For and on behalf of

For and on behalf of

DEVELOPER by:

Directorate of Municipal Administration by:

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

In the presence of:

1.

2.

SCHEDULE 5: IMPLEMENTATION SCHEDULE

1. Project Implementation Schedule

The Developer shall comply with the requirements during the construction period (Construction Period) for each of the Project Milestones (the "Project Implementation Schedule") as set forth in this Schedule. Within 15 (fifteen) days of the date of each Project Milestone, the Developer shall notify DMA of such compliance along with necessary particulars thereof.

Project Milestones for each Project Site

Project Milestone	Timelines (from the Compliance Date or 60 days from the handover of the land parcel, whichever is later)	Requirement
Project Milestone -1	3 months	Expended more than 15% of the Total Project Cost set forth in the Approved DPR
Project Milestone -2	6 months	Expended more than 30% of the Total Project Cost set forth in the Approved DPR
Project Milestone -3	12 months	Expended more than 60% of the Total Project Cost set forth in the Approved DPR
Project Milestone -4	15 months	Expended more than 80% of the Total Project Cost set forth in the Approved DPR
Project Milestone -5 (Scheduled Construction Completion Date)	18 months	Issue of Completion Certificate

2. Extension of period

The Scheduled Construction Completion Date may be extended in terms of this Agreement upon written request to the DMA. Upon extension of any or all of the aforesaid Project Milestones or the Scheduled Construction Completion Date, under and in accordance with the provisions of this Agreement, the Construction Period shall be deemed to have been amended accordingly.

SCHEDULE 6: LIQUIDATED DAMAGES

Amount of Liquidated Damages:

Amount of Liquidated damages for non-performance	Rs. 100,000 (Rupees One lakh only) per event of default as identified by DMA/ Independent Engineer subject to a maximum Rs 1.0 Cr (Rupees one crore only) per annum.
--	--

Occurrences for Invoking Liquidated Damages: Non-Conformance to Approved DPR or Developmental Standards.

In case of more the cumulative liquidate damages is more than Rs. 1.0 crore in any continues period of (12) twelve months shall be deemed to be Developer Event of Default.

SCHEDULE 7: TERMS OF REFERENCE FOR INDEPENDENT ENGINEER

1. Objectives

- 1.1. Act independently on behalf of the DMA to review and approve all activities associated with planning and construction and operationalization of Development Agreement.
- 1.2. To ensure that requisite quality of Construction is achieved and that the construction of the Project is carried out in full compliance with the Approved DPR, the RFQP documents consisting of Instructions to Bidders, Development Agreement along with the Schedules, Scope of Works.
- 1.3. Assist DMA on the Technical, Financial and Legal aspects of the Project and the Concession.
- 1.4. Assist in arriving at an amicable settlement of any dispute.
- 1.5. To fulfil all certification and reporting requirements of the Development Agreement.

2. The details of Scope of Work are as follows:

2.1. Design Stage

- (1) To review, check, verify and further detail the Project Implementation Schedule of engineering, design, procurement, construction including final reconciliation upto handover of the Project.
- (2) The Independent Engineer shall review and approve the detailed design of the of the Project, prepared by Developer, pursuant to which the Developer shall proceed ahead with construction of the Project.
 - a) Project / Design Briefs and changes thereof
 - b) Site Plan & Architectural Review
 - c) Civil Services – PHE (Water Supply, Drainage, Sewer) – Proof Checking
 - d) Proof Checking – Structural design and adequacy
 - e) M & E Services – Design Adequacy
- (3) Review, check and verify the adequacy of all field and site investigation including geo-technical, Soil investigations, hydrological Investigation and the topographical Survey
 - a) Study of the Design & Detail Engineering Drawings
 - b) Site Reconnaissance Survey
 - c) TOR for these works based on Design and Site Reconnaissance survey.
 - d) Site Survey Drawings for adequacy in terms of no. of bore-holes,

- locations and type of tests including specifications
- (4) Review, check and verify the Working drawings, Specifications, Analysis of rates and Bill of Quantities (BoQ)
- (5) Review, check and verify the procurement procedures

2.2. Construction Stage

- (1) Review, check & verify
 - a) The periodic project report prepared by the Developer.
 - b) Technical Guide for Construction Management
 - c) Construction Control Manual and various Quality Tools including Works Control Formats and Check Lists
 - d) All Project Contracts/ Agreements including Detailed Engineering and Design Consultancy Contract, EPC contract
 - e) Quality Assurance Plan and Quality Control (QAQC) provisions during the construction Stages
 - f) Cost Monitoring / Control / Value Management Criteria
 - g) Variations
- (2) Supervision of various Tests (as per the provision of Agreement) and their Certification
- (3) Examine and approve any change in Scope of Work or Variations, as per provisions of Concession
- (4) Scrutinise GFC drawings including variations thereof, supervise the setting out of the works
- (5) Audit the safety of the Project both during Construction stages
- (6) Periodic review of the Project Works as per agreed Project Programme in terms of Quality, Completion Stage and changes and corrective actions thereof
- (7) Examining the works and accordingly issue Provisional Completion Stage and Final Completion Stage Certificate
- (8) Issue Provisional Certificate duly appended with a list of outstanding items established after joint inspection

2.3. All through the tenure of Construction and Development Phase

- (1) Assist DMA in operational aspects of Development Agreement, especially with Change in Scope of Work, in terms of facilities to be provided from existing Development Agreement
- (2) Regard to Commercial / Financial and Legal issues of the Agreement.
- (3) Notice Event of Default by either party as per Development Agreement
- (4) To mediate and assist in resolving Disputes between DMA and Developer.
- (5) Determine any extension of the Project Completion Schedule, to which the Developer has requested and shall notify it to the DMA accordingly.
- (6) Administration of Development Agreement

- (7) Assist in Providing Management Information System to DMA

3. **Reporting Requirements**

The Independent Engineer will prepare and submit to the DMA two copies of each of the following reports:

a) Monthly Reports

The Independent Engineer will, no later than the 10th of each month, prepare a brief progress report summarizing the work accomplished for the preceding month. The report will outline any problems encountered (administrative, technical or financial) and give recommendations on how these problems may be overcome. Brief work progress summaries will be included for ongoing Works, outlining problems encountered and recommending solutions. The report should indicate, among other things, actions required of government and parastatal agencies to permit unconstrained works implementation

(b) Quarterly and Periodic Reports

The Independent Engineer will prepare a comprehensive report summarizing all activities under the services at the end of each quarter, and also at other times when considered warranted by the DMA because of delay of the construction works or because of the occurrence of technical or contractual difficulties. Such reports shall summarize not only the activities of the Independent Engineer but also the progress of the contract, all contract variations, brief descriptions of the technical and contractual problems being encountered and other relevant information.

SCHEDULE 8 ENVIRONMENTAL MANAGEMENT PLAN

(To be submitted by the Developer as part of the DPR)

SCHEDULE 9: INDICATIVE LIST OF CLEARANCES

DMA will provide all the necessary support to the Developer to obtain clearances* required for the project, however Developer shall be responsible for obtaining and maintaining all the clearances. An indicative list of clearances required for the project is provided in the table below:

Indicative List of Clearances

Building Construction Permission	Local Authority / Municipal Corporation
Heritage Clearance	Permission from ASI/ relevant Authority
Water & Sewerage Connection	Concerned Authority
Shifting of Services and utilities	Concerned Authority, Local Authority, PWD (B&R) Department
Traffic Management during operation	Traffic Police
Application for PAN, sales tax/Goods and Services Tax (GST) and other tax registrations etc.	Concerned departments of Government of Jharkhand and Government of India (GoI)
Electricity connection	Respective Electricity Board in Jharkhand
Clearance for employing labor-Primary Employer	Labour Commissioner
Clearance for blasting and use of explosives	Commissioner of Explosives and Police Department, GoJ
Employment of migrant labour	Labour Commissioner
Storage of sludge/silt	Jharkhand State Pollution Control Board
Environmental Clearance	MoEF
License for commercial activities	Concerned Authority
Realignment and channelization of Nallas	Concerned Authority, Jharkhand PWD (B&R)
Installation of Lifts	Concerned Authority
Fire safety equipment	Concerned Authority /Police Department
Drains and Sewers	Concerned Authority, Jharkhand PWD (B&R)
Diesel Generator	Jharkhand State Pollution Control Board
Labour Camps	District Health Officer
Working in Night Shifts	Concerned Authority, Police Department
Re-routing of vehicular traffic	Concerned Authority, Traffic Police

*The clearance list is indicative and not exhaustive

SCHEDULE 10: FORMAT OF BANK GUARANTEE FOR PERFORMANCE SECURITY

PROFORMA OF BANK GUARANTEE – I

(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 DMA, Ranchi, hereinafter called DMA (which expression shall include its
successors and assigns);

WHEREAS

- A. By the Development Agreement dated ----- entered into between
DMA and M/s. _____ Limited, a company incorporated under the
Companies Act, 2013 having its registered office at -----
hereinafter called “the **Company**”, (“the **Development Agreement**”) the
Company has been granted the Concession to implement the project
envisaging construction, of ----- on design, build, finance and transfer
basis.
- B. In terms of the Development Agreement, the Company is required to furnish to
DMA, an unconditional and irrevocable bank guarantee for an amount of Rs. ----
----- (Rupees ----- only) as performance security for due and
punctual performance/discharge of its obligations under the Development
Agreement during the Construction Period.
- 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
Development Agreement during the Construction Period.

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 Development Agreement.
2. The Guarantor hereby guarantees the due and punctual performance by the

Company of all its obligations under the Development Agreement during the Construction Period.

3. The Guarantor shall, without demur, pay to DMA sums not exceeding in aggregate Rs. ----- (Rupees ----- only), within five (5) days of receipt of a written demand therefor from DMA stating that the Company has failed to meet its performance obligations under the Development Agreement during the Construction Period. The Guarantor shall have no obligation to go into the veracity of any demand so made by DMA 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 DMA 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 DMA or any indulgence shown by DMA 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 DMA or any indulgence shown by DMA 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.

SCHEDULE 11: BID OF SELECTED BIDDER

Proposal of Selected Bidder.

**SCHEDULE 12: COPIES OF RELEVANT DOCUMENTS
RELATED TO SELECTION PROCESS**

To be added later.