

[to be executed on a stamp paper of appropriate value]

PROJECT DEVELOPMENT AGREEMENT

This Project Development Agreement is entered into this ___ day of ___ 2010 at Thiruvananthapuram, Kerala, India by and between:

The National Games Secretariat, formed for the effective monitoring of the projects for the conduct of 35th National Games, to be held in Kerala, registered as a society under Travancore – Cochin Literary Scientific and Charitable Societies Act – 1955 and having its principal office at Chandrasekharan Nair Stadium, Palayam, Thiruvananthapuram-695033, Kerala, India (hereinafter referred to as “NGS”, which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors, legal representatives and assigns) through its duly authorized representative, [•];

The Kerala State Housing Board, having its registered office at Santhi Nagar, Thiruvananthapuram-695001, Kerala, India (hereinafter referred to as “KSHB”, which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors, legal representatives and assigns) through its duly authorized representative [•];

AND

[•], a company incorporated under the Companies Act, 1956 having its registered office at [•] (hereinafter referred to as “**Project Developer**”, which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors, legal representatives and permitted assigns) through its Officer [•] authorized vide Power of Attorney dated [•].

Whereas

- A. NGS has been mandated by the Government of Kerala for arranging accommodation for the participants of 35th National Games, to be held in Kerala.
- B. NGS and KSHB identified a site at Aakkulam, Thiruvananthapuram, Kerala, India comprising three parcels of land totaling approximately 18 acres.
- C. NGS undertook a competitive bidding process for selecting a private entity to undertake the implementation of the Project for the development of Residential Facility in Thiruvananthapuram, Kerala, India that would be used for the purpose of providing accommodation to the participants of the 35th National Games.
- D. NGS has selected the Project Developer for undertaking the implementation of the Project.
- E. NGS & KSHB, as the owner of the Project Site, has further agreed to grant to the Project Developer and the Project Developer has agreed to accept from NGS & KSHB exclusive Development Rights to the development of the Project on the Project Site as per the terms and conditions contained herein.

NOW THEREFORE THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. Definitions And Interpretation

1.1 Definitions

In this Agreement unless the context otherwise requires:

- 1.1.1 “**Affiliate**” means in relation to any company, any other company which directly or indirectly is in control of, is controlled by, or is under common control with that company.
- 1.1.2 “**Agreement**” shall mean this Agreement, and include any amendments hereto made in accordance with the provisions hereof.
- 1.1.3 “**Clearance**” means, as on the date of execution of this Agreement, any consent, license, approval, permit, ruling, exemption or other authorisation of whatsoever nature which is required to be granted by, or any registration or filing with, any Competent Authority as may be necessary in connection with the Project.
- 1.1.4 “**Commencement Date**” means the day of execution of this Agreement.
- 1.1.5 “**Common Facilities**” means the facilities developed by the Project Developer on the Project Site for the common use/ benefit of all the owners, directly or indirectly, of the Residential Apartments.
- 1.1.6 “**Development Rights**” means the right granted by NGS & KSHB to the Project Developer under this Agreement to design, engineer, finance, procure, construct, operate and maintain the Project.
- 1.1.7 “**Financing Documents**” or “**Financing Agreements**” means collectively the agreements entered into for providing the debt financing for the implementation of the Project and shall include the security documents creating the relevant security (such as charges or liens) on the receivables of the sale of Residential Apartments and for securing the debt provided.
- 1.1.8 “**Games**” means the 35th National Games of India which will be held in Kerala, India in 2010-11.
- 1.1.9 “**Games Period**” means a period of around one (1) month, comprising around eight (8) days prior to the Games, fourteen (14) days as the period of the Games and around eight (8) days post-Games.
- 1.1.10 “**Good Industry Practice**” means the exercise of that degree of skill, diligence, prudence and foresight in compliance with the undertakings and obligations under this Agreement which would reasonably and ordinarily be expected of a skilled and an

experienced person engaged in the implementation, operation and maintenance or supervision or monitoring thereof or any of them of facilities similar to the Project to be constructed, operated and maintained pursuant to the Agreement.

- 1.1.11 “**Lenders**” means the Persons that provide the financing for the Project to the Project Developer pursuant to Financing Agreements.
- 1.1.12 “**Material Adverse Effect**” means a material adverse effect on (a) the ability of either Party to exercise any of the rights to perform / discharge any of its duties/ obligations under and in accordance with the provisions of this Agreement; and/or (b) the legality, validity, binding nature or enforceability of this Agreement.
- 1.1.13 “**Material Breach**” shall mean a breach by either Party of any of its obligations under this Agreement which has or is likely to have a Material Adverse Effect on the Project and which such Party shall have failed to cure within the stipulated time period for curing such breach, if any.
- 1.1.14 “**Material Contract**” shall mean a contract entered into by the Project Developer in relation to the Project wherein the aggregate payments to be made to or by or the value of the services or commitments to be rendered or received have a value in excess of Rs.5,00,00,000/- (Rupees Five Crores Only).
- 1.1.15 “**Mock Unit**” shall mean a Unit to be developed by the Project Developer within 100 days of signing this Agreement, with a purpose to finalize the specifications for the Residential Apartments.
- 1.1.16 “**Monitoring Committee**” means a committee consisting of one (1) representative each appointed by NGS & KSHB, two (2) representatives of the Project Developer and an “Independent Engineer”, who would be any person or agency appointed mutually by these representatives for this purpose.
- 1.1.17 “**Performance Guarantee**” means the bank guarantee of Rs.50,00,00,000/- (Rupees Four Fifty Crores Only) to be provided by the Project Developer to NGS.
- 1.1.18 “**Preliminary Notice**” means the notice of intended Termination by the Party entitled to terminate this Agreement to the other Party setting out, inter alia, the underlying Event of Default.
- 1.1.19 “**Project**” means complete construction and development of the ready-to-use Residential Facility at the Project Site under a public private partnership model wherein the Project Developer pays an upfront bid amount to NGS and KSHB transfers the ninety percent (90%) of the Residential Apartments along with the rights in the undivided underlying land for onward transfer to the individual buyers identified by the Project Developer.
- 1.1.20 “**Project Completion Date**” means the date when all Residential Facility is

completely developed in all respects (including landscaping), technically fit to be occupied and ready-to-use/ livable, with no pending construction, unfinished work, construction equipments, debris, construction material, etc. on the Project Site and certified in writing by the Monitoring Committee.

- 1.1.21 “**Project Milestones**” means defined level/ stage of Project Development which the Project Developer has to achieve by the prescribed dates.
- 1.1.22 “**Residential Apartments**” means all types of Units and includes all associated facilities/ amenities with the Unit, like parking, kitchen garden. It further includes rights to use the Common Facilities.
- 1.1.23 “**Residential Facility**” means all Units, building blocks, common areas, parking bays, roads, parks, landscaping etc. and other associated facilities like sewerage, water, power, internet, telephone arrangements etc. at the Project Site.
- 1.1.24 “**Residents’ Welfare Association**” means a Committee comprising of representatives from the owners of all the Residential Apartments, initially including the Project Developer’s and KSHB’s one representative each.
- 1.1.25 “**Schedule**” means any appendix to this Agreement.
- 1.1.26 “**Subcontractor**” means any person to whom any part of the construction and/or marketing activity related to the Project has been subcontracted by the Project Developer.
- 1.1.27 “**Termination**” means the termination of this Agreement pursuant to Termination Notice given by either Party to the other Party or otherwise in accordance with the provisions of this Agreement but shall not, unless otherwise required, include expiry of this Agreement due to the fulfillment of all the rights and obligations of the Parties.
- 1.1.28 “**Termination Notice**” means the termination notice given pursuant to Clause 19.2(b).
- 1.1.29 “**Termination Date**” means the date specified in the Termination Notice as the date on which Termination occurs.
- 1.1.30 “**Unit**” means a separate/ independent arrangement of bedrooms, drawing/ dining room(s), bathroom(s), kitchen(s), common area etc.
- 1.1.31 “**Working Day**” means any day of the week when NGS is fully functional.

1.2 Interpretation

- (i) Unless the context otherwise requires reference in the Agreement to the Project Developer includes reference to its subcontractors and their respective Affiliates, agents and employees.
- (ii) In this Agreement, unless the context otherwise requires:

- a. words denoting the singular shall include the plural and vice versa;
- b. heading and bold type face are only for convenience and shall be ignored for the purposes of interpretation;
- c. reference to any legislation or law or rules 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;
- d. references to the word “include” or “including” shall be construed without limitation;
- e. references to this Agreement or to any other agreement or deed or other instrument shall be construed as a reference to such agreement, deed, or other instrument as the same may from time to time be amended, varied, supplemented or novated;
- f. a reference to a Clause or Schedule is, unless indicated to the contrary, a reference to a Clause or Schedule to this Agreement; and
- g. the Schedules to this Agreement form 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.

1.3 Priority of Documents

The documents forming this Agreement are to be taken as mutually explanatory of one another. They shall have priority in the following order:

- (a) this Agreement (including the Schedules);
- (b) Letter of Intent issued by NGS to the Project Developer pursuant to the evaluation of the Project Developer’s Technical Proposal and Financial Bid submitted in response to the Request For Proposal (RFP) issued by NGS;
- (c) RFP issued by NGS;
- (d) the Project Developer’s Technical Proposal and Financial Bid submitted in response to the RFP issued by NGS; and
- (e) Request For Qualification issued by NGS.

If there is any inconsistency or discrepancy between this Agreement and any of the documents set out in Clause 1.3 (b) to (e), then the Project Developer shall identify the same and bring the inconsistency or discrepancy to the attention of NGS. NGS may, on becoming aware of any such inconsistency or discrepancy issue instructions resolving the inconsistency or discrepancy and directing the Project Developer as to how to proceed. The Project Developer shall comply with the instructions and directions issued by NGS in this respect.

1.4 Hidden Treasure

If during the excavation of the Project Site, the Project Developer discovers any coins or any articles of value or of public interest or any fossils, mines, minerals, gold mines, and quarries the same shall belong to the President of India and shall be handed over to the officer nominated by the President of India or KSHB.

2. Project Site

- 2.1 NGS & KSHB, the owner of the Project Site, hereby grants to the Project Developer, Development Rights for the Project Site, described in greater detail in **Schedule I** to this Agreement and the Project Developer shall develop the same with the Final Technical Project Requirements as explained in the RFP document and specified in **Schedule II** to this Agreement, for the purposes of housing the Games participants during the Games Period. The Parties expressly agree that 90% of the built-up developed area of non-Common Facilities and right to use the Common Facilities at the Project Site shall belong to the Project Developer and the balance shall belong to KSHB.
- 2.2 KSHB hereby declares that they have not entered into with any person or person agreement to sell or lease or created any third party rights/ interest in favour of any person or persons in respect of the Project Site.

3. Project Development

- 3.1 The Project Developer shall undertake to develop the Project Site and construct such capacity of residential accommodation, meeting such specifications and requirements as are specified in greater detail in Schedule II to this Agreement. The Project Developer shall develop the Residential Facility at the Project Site within the Project Milestones as set out in greater detail in **Schedule III** to this Agreement.
- 3.2 The Parties expressly agree that during the course of the development of the Project Site, NGS may ask the Project Developer to carry out certain additions to the specifications for the Residential Apartments. The cost for undertaking such additional requirements shall be borne by NGS. The Project Developer shall undertake such additional requirements on mutually agreed terms and conditions. In the event the Project Developer refuses to construct such additional requirement, then NGS shall be entitled to construct such additional requirements on its own or through any third party.
- 3.3 The Project Developer shall adhere to the Project Milestones within the timelines as specified in Schedule III to this Agreement. It will submit monthly progress reports to the Monitoring Committee & NGS to apprise of the development of the Project in line with the specifications and said Project Milestones. The Project Developer shall not amend the Project Milestones as prescribed in Schedule III without the prior written consent of NGS. In the event the Project Developer fails to adhere to the Project Milestones, as identified in Schedule III then NGS may in its sole discretion exercise any of the options as set out in this Agreement.
- 3.4 The Monitoring Committee and/ or NGS will monitor the progress of the Project vis-à-vis the prescribed Project Milestones as specified in Schedule III to this Agreement.
- 3.5 The first monthly report shall cover the period up to the end of the calendar month after the calendar month in which the Commencement Date occurred. Reports shall be submitted monthly thereafter, each within seven (7) days of the last day of the month to

which it relates. Reporting shall continue until the Monitoring Committee issues the completion certificate for the Project. Each report shall include:

- (a) an executive summary;
- (b) charts showing the status of construction;
- (c) for the construction of each main part of the Project, the extent of progress (both quantity and percentage of the whole), the actual or expected dates of commencement, anticipated completion date of the activity;
- (d) safety statistics, including details of any hazardous incidents, accidents and activities relating to environmental aspects and public relations;
- (e) comparisons of actual and planned progress, with details of any aspects which may jeopardise the completion in accordance with the Agreement, and the measures being (or to be) adopted to overcome such aspects;
- (f) details of any unresolved disputes and claims; and
- (g)** such other reports as may be required by the Monitoring Committee or NGS, as the case may be.

- 3.6 In the event an accident occurs at the Project Site on account of undertaking the development of the Project, the Project Developer shall forthwith take all remedial actions, at his risk and cost, so as to undertake the development of the Project without any delay. The Project Developer shall report to NGS details of any accident as soon as possible. Provided always in the event a fatal or serious injury occurs at the Project Site, the Project Developer shall notify NGS about the same within 7 days of such injury. The entire civil and criminal liability and responsibility for such accident will be of the Project Developer and not of NGS.
- 3.7 In case the Project Developer is unable to achieve the Project Milestones within the stipulated time, the Project Developer will be required to pay liquidated damages as provided in Schedule III. These liquidated damages shall be cumulative for each day of delay in each Project Milestone. The Project Developer shall deposit the liquidated damages within 7 days from the date of notification by NGS of such delay, failing which NGS shall encash the Performance Guarantee for the amount of liquidated damages. In case the Project Developer is able to achieve any of the subsequent Project Milestones within the time period as stipulated in Schedule III, NGS shall refund the amount of liquidated damages paid by the Project Developer for the delay in achieving any prior Project Milestone.
- 3.8 In the event, the periodical compliance report of the Independent Engineer/ Monitoring Committee/ NGS indicates non-compliance or persistent delay or delay of 1 month or more in achieving any Project Milestone by the Project Developer or if the Project Developer fails to rectify the defects in the Project as identified by the Independent Engineer/ Monitoring Committee/ NGS within the prescribed time frames during the Defect Liability Period, NGS shall have the following recourse:
- i. levy liquidated damages at the rate as specified in Schedule III for each day of delay from the specified Project Milestones; and/or
 - ii. complete the Project with assets on the Project Site and recover the costs from the Project Developer; and/or

- iii. invoke the Performance Guarantee; and/or
- iv. terminate the Project Development Agreement and complete the Project on its own in any manner it may deem fit..

NGS may at its sole and absolute discretion exercise any one or more of the options set out in this clause.

- 3.9 In case of any sub-contracting by the Project Developer, the Project Developer is liable to notify the same to NGS in writing within 7 days of such sub-contracting. In case of any objection to such sub-contracting by NGS, NGS shall intimate the Project Developer within 7 days of such notification. The Project Developer then needs to give effect to NGS's objections, which may include change of sub-contractor, modification of terms and conditions of sub-contracting etc., within 30 days of such intimation.

3.10 Any such sub-contracting shall not however, relieve the Project Developer from any liability or obligation under the Project Development Agreement and the Project Developer shall be fully responsible for the acts, defaults and neglects of Sub-Contractor, its agents, servants or workmen as fully as if they were the acts, defaults or neglects of the Project Developer itself.

- 3.11 The Project Developer shall ensure that all subcontracts are made in writing. For the avoidance of doubt, it is hereby clarified that notwithstanding the appointment of a contractor by the Project Developer for any of the aforesaid purposes, the Project Developer shall be liable for the performance of its duties and for the discharge of all its obligations and responsibilities which it shall have towards NGS under this Agreement and the appointment of contractor(s) for any of the aforesaid purposes shall neither release nor exonerate the Project Developer from its obligations hereunder, including full and timely compliance with the terms of this Agreement. The Project Developer does hereby also agree and acknowledge that it shall remain responsible for obligations performed or to be performed by the contractor to the same extent as if such obligations were to be always performed by the Project Developer. The Project Developer shall obtain, co-ordinate and submit to the Independent Engineer for his information all details (including details of work to be carried out off the Project Site) from Subcontractors. The Project Developer shall be responsible for the locations of their work or materials, in order to ensure that there is no conflict with the work of other Subcontractors, Developer or other contractors. The Project Developer further undertakes and covenants that it shall be solely responsible for all payments to be made to the contractors and shall indemnify and keep NGS indemnified and harmless from and against any and all losses, claims, damages, liabilities, costs (including legal fees and disbursements) and expenses that NGS may incur, insofar as such losses directly arise out of, in any way relate to, or result from the non-performance by the Project Developer of its obligations to the contractors, sub-contractors, their labor, employees, servants including compensation, cost or damages to them and non-payment of any monies to such parties.

- 3.12 The Project Developer acknowledges and undertakes to ensure that the terms of any contract between the Project Developer and the contractors and/or any Material

Contracts shall be in conformity with the provisions of this Agreement. The Project Developer shall latest within 7 days of executing any Material Contract in relation to the Project, notify and provide NGS with a copy of such Material Contract for its review. In the event of any conflict between such Material Contract and this Agreement, the provisions of this Agreement shall prevail. In case NGS has any objection to such Material Contract, NGS shall intimate the Project Developer within 7 days of such notification. The Project Developer then needs to give effect to NGS's objections, which may include modification of terms and conditions of the contract etc, within 30 days of such intimation.

3.13 Assuming the Games will be held during or after December 2011, the Project Completion Date shall be no later than September 8, 2011. However, in case of any postponement of the Games, the revised Project Completion Date shall be communicated to the Project Developer within 7 days of official declaration on the postponement. In that case, the number of days by which the Games are postponed from December 31, 2011 will be added to this date to reach at the revised Project Completion Date. The date of completion of the Project will be deemed to be the date when all Residential Apartments are completely developed and are technically fit to be occupied including all other associated facilities and amenities and a completion/ occupancy certificate in this regard has been obtained from KSHB and NGS.

3.14 The Residential Apartments and all other facilities on the Project Site including all the open areas shall be used by NGS/ Indian Olympics Association (IOA) during the Games Period. Except as permitted by the Monitoring Committee, no activity by the Project Developer or any of its subcontractors shall be allowed at the Project Site during the Games Period.

3.15 The Project Developer shall handover the Residential Facility to NGS at the commencement of the Games Period. Furnishing, fixtures and furniture specified in **Schedule IV** shall be provided by NGS at their own expense and risk and these will be removed/ disposed by them after the Games. The Project Developer will allow/ coordinate with NGS in installing & removing such furnishings, fixtures and fitting and provide all assistance to NGS in this regard.

3.16 Certain facilities, like team offices, service centres such as retail centre, casual dining and polyclinic etc. may be required for the Games, which would be erected as temporary structures by NGS or an agency nominated by NGS in the common areas like lobbies, parking and the open space including the area for landscaping. The Project Developer shall be required to plan/ coordinate/ assist in the same, including but not limited to providing connectivity for water, electricity, telephone, internet, etc. The Project Developer shall provide for such connectivity with appropriate capacity/ load till the point from where final distribution to the independent temporary units begins.

3.17 The Project Developer shall provide NGS with all the detailed drawings, designs and layout plans as soon as the same are available in hand and the soft copy (Auto Computer Aided Design application) format. All the drawings, designs and

layout plans prepared by the Project Developer will be the property of NGS & KSHB and the intellectual property rights of the same shall rest with NGS. The Project Developer shall submit to NGS “As Built Drawings” in hard and the soft copy format within 30 days of the Project Completion Date.

3.18 The Project Developer shall ensure full compliance with the provisions under all labour laws and regulations such as Payment of Wages Act, 1936, Minimum Wages Act, 1948, Owner’s Liability Act, 1938, Payment of Gratuity Act, Provident Fund Act, Workmen’s Compensation Act, 1923, Industrial Disputes Act, 1947, Maternity Benefit Act, 1961, Contract Labour (Regulation and Abolition) Act, 1970, Factories Act, 1948, Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, Child Labour (Prohibition and Regulation) Act, 1986 and Model Rules framed by the Government of local bodies from time to time. The Project Developer shall assume responsibility for an indemnity to the Authority against all expenses, liability or payment by reason of the application of any Labour Laws, Acts, Rules or Regulations existing or which may be introduced at a future date during the currency of the Agreement.

4. Project Roles and Responsibilities

Notwithstanding anything contained in this document, following are the roles and responsibilities of the three Parties, NGS, KSHB and the Project Developer in addition to the roles and responsibilities mentioned elsewhere in this document:

a. Project Developer’s Roles and Responsibilities –

- i. The Project Developer shall make an Upfront Payment to NGS as quoted in the Financial Bid, for which the Reserve Price is Rs.10,00,00,000/- (Rupees Ten Crores Only). The payment shall be divided in the following 3 (three) components:
 - Bid Security paid by the Project Developer along with the Technical Proposal.
 - Earnest Money Deposit, equivalent to Rs.2,50,00,000/- (Rupees Two Crores Fifty Lakhs Only) paid, by the Project Developer.
 - Balance (Financial Bid – Bid Security – Earnest Money Deposit) Upfront Amount paid by the Project Developer.
 - The Financial Bid of the Bidder is to be based upon a Total Floor Area of 17.22 lacs square feet. The amount for the difference between this figure and the actual Total Floor Area achieved, & as certified by the appropriate authority, shall be paid by the Project Developer to KSHB, or vice versa, as the case may be, within 30 days of the Project Completion Date.All the payments shall be made by way of a crossed demand draft which should be drawn in favour of ‘National Games Secretariat’, payable on any nationalized/ scheduled bank at Thiruvananthapuram.
- ii. The Project Developer provided a Performance Guarantee of Rs.50,00,00,000/- (Rupees Fifty Crores Only).

- iii. The Project Developer shall prepare a Mock Unit and get it approved by NGS & a Monitoring Committee and finalise the specifications to be used in all the Residential Apartments.
- iv. The Project Developer shall develop the Project within the timelines mentioned in this RFP and make it suitable & available for the accommodation of the Games participants during the Games Period.
- v. The Project Developer may extend/ expand/ enhance the Residential Facility beyond the minimum requirement as given in this RFP post-Games. However, this extension should be completed, as certified by KSHB, within 15 months from the end of the Games Period.

b. NGS's/ KSHB's Roles and Responsibilities – After the complete development of the Residential Facility by the Project Developer to the satisfaction of NGS and KSHB and after obtaining completion certificate from NGS and KSHB, KSHB shall transfer the undivided right for the Project Developer's 90% share, for onward transfer to the individual buyers by the Project Developer. This transfer shall be in accordance with the terms, conditions and covenants contained in this RFP document, the Project Development Agreement and the Conveyance Deed, to be executed by KSHB after completion of the Project and post the Games Period. NGS shall allocate the Project Developer's share floor-wise/ block-wise/ location-wise of the Residential Apartments on the basis of lottery drawn by the Monitoring Committee in the presence of representatives of NGS, KSHB and the Project Developer within 2 months from the date of signing of Project Development Agreement, subject to the achievement of all the Project Milestones in this period. The lottery shall be drawn on the basis of ten equal lots of the Residential Apartments, including the Units, underground (if any) as well as surface parking, kitchen garden etc., as proposed by the Project Developer. The identification of equal lots should be, to the extent possible, such that each lot is physically separate with separate access, like a separate tower. In case the lots do not have equal floor area, the excess/ shortage in the floor area of the lot retained by KSHB shall be paid for/ received by KSHB at the rate of Upfront Amount.

5. Performance Guarantee by Project Developer

The Project Developer has submitted a Performance Guarantee by way of a Bank Guarantee for Rs.50,00,00,000/- (Rupees Fifty Crores only) in accordance with the provisions of the Project Development Agreement as a condition precedent to signing of the same.

- (a) The said Performance Guarantee has been submitted in the form of a Bank Guarantee from a nationalized/ scheduled bank in India.
- (b) The Performance Guarantee shall be
 - a. Returned as per following schedule:
 - i. In case the Project Developer meets the first three (3) Project Milestones as mentioned in Schedule III without any delay to the satisfaction of NGS - Rs.28,00,00,000/- (Rupees Twenty Eight Crores Only) less any amount of Performance Guarantee encashed till that date;

- ii. On the Project Completion Date - Rs.20,00,00,000/- (Rupees Twenty Crores Only) less any amount of Performance Guarantee encashed till that date and not adjusted earlier;
 - iii. In case the Project Developer fulfils its obligation mentioned under the Residents' Welfare Association clause – Rs.50,00,000/- (Rupees Fifty Lakhs Only);
 - iv. In case the Project Developer fulfils its obligations mentioned as and on completion of Defects Liability Period – Rs.50,00,000/- (Rupees Fifty Lakhs Only) as per sub-clause a and Rs.1,00,00,000/- (Rupees One Crore Only) as per sub-clause b of the relevant Clause.
- b. Invoked as per following
- i. In case the Project Developer fails to sign the Project Development Agreement within the time period stipulated in this RFP Document;
 - ii. In case the Project Developer is unable to deposit the liquidated damages for delay in achieving any Project Milestone the said Performance Guarantee shall be forfeited for an amount as computed under Schedule III;
 - iii. In case of default by the Project Developer in meeting its obligations mentioned under Residents' Welfare Association clause – Rs.50,00,000/- (Rupees Fifty Lakhs Only);
 - iv. In case of default by the Project Developer in meeting the obligations mentioned under the Defects Liability Period clause – Rs.50,00,000/- (Rupees Fifty Lakhs Only) as per sub-clause a and Rs.1,00,00,000/- (Rupees One Crore Only) as per sub-clause b;
 - v. In case of Termination of the Project Development Agreement;
 - vi. In case of any other default by the Project Developer as per the terms of the Project Development Agreement.

6. Defects Liability Period

6.1 The Defects Liability Period shall, in regard to

- a. water-proofing defects be 1 year and
 - b. other defects be 6 months,
- after the completion of the Games Period.

6.2 The Project Developer shall, at his own risk and cost, make good, any defects, complete left over work as required by the Monitoring Committee.

6.3 In the event the Project Developer is unable to remedy the defect within the timelines specified by the Monitoring Committee, penalty computed as per Schedule III for each day of delay shall be levied by NGS. The Project Developer shall deposit this amount of penalty within 7 days from the date of notification by NGS of such default, failing which NGS has the right to invoke the Performance Guarantee to the extent of the penalty.

7. Monitoring Committee

7.1 The Monitoring Committee shall consist of one representative each appointed by NGS & KSHB, two representatives of the Project Developer and an “Independent Engineer”, who would be any person or agency appointed with mutual consent within the representatives of NGS, KSHB and the Project Developer in the Monitoring Committee for the purposes mentioned in this RFP and the Project Development Agreement.

7.2 Progress review meetings shall be held from time to time and at such venue as may be decided by the Monitoring Committee. The Progress Reports, as submitted in accordance with Clause 3.3, and other matters needing clarifications/ decisions will be discussed during these meetings. The Monitoring Committee shall record the minutes of these meetings, which shall be accepted and signed by authorized representatives of the Project Developer.

7.3 The Monitoring Committee may assign its right of providing approval/ rejecting on various matters after review of respective submissions by the Project Developer, to an agency nominated by the Monitoring Committee for that purpose.

7.4 The expenses for appointment and monitoring by the Monitoring Committee shall be borne by the individual parties for their representatives (i.e. NGS, KSHB shall bear the expenses for its representative and the Project Developer shall bear the expenses for its representative). All expenses related to the appointment and monitoring by the Independent Engineer and all other common expenses incurred by the Monitoring Committee shall be shared equally between NGS and the Project Developer.

8. Insurance by Project Developer

8.1 The Project Developer shall at its cost and expense, obtain and maintain, during the construction period of the Project, all such insurances (in addition to those mandated by applicable laws) as may be required by the Lenders of the Project Developer in relation to the Project as per Good Industry Practices.

8.2 Subject to the provisions of the Financing Documents and unless otherwise provided herein, the proceeds of all insurance policies received shall be promptly applied by Developer towards repair, renovation, restoration or re-instatement of the Residential Apartments or any part thereof which may have been damaged or destroyed. The Project Developer may designate the Lenders as the loss payees under the insurance policies or assign the insurance policies in their favour as security for the financial assistance provided by them to the Project.

8.3 Without prejudice to the aforesaid, the Project Developer shall at its own cost and expense, take out and maintain, the following insurance:

(a) Within 30 days of signing of this Agreement, for a period commencing from immediate effect and ending on the date of Completion of the Project:

- Professional Indemnity Insurance for Construction Design (Rs.10,00,00,000)
- Professional Indemnity Insurance for Construction Supervisors (Rs.2,00,00,000)
- Employer's Liability Insurance (Rs.1,00,000 per person)
- Construction Performance Bond (5% of the amount of the work contracting contract)
- Freight Transportation Insurance (110% of the purchase price of insured goods)
- Completion Delay Insurance (under Freight Transportation Insurance)
- All-risk Insurance for Construction and Installation Projects (Value of construction contract)
- Completion Delay Insurance (under All-risk Insurance for Construction and Installation Project)
- Third-party Liability Insurance (Rs.5,00,00,000)
- Construction Machinery and Equipment Insurance (115% of replacement value of construction machinery and equipment)
- Other customary, reasonable insurances or those requested by creditors

(b) Within 30 days of the date of Completion of the Project:

- All Risks Property Insurance
- Equipment Failure and Damage Insurance
- Third-Party Liability Insurance (Rs.5,00,00,000)
- Employer's Liability Insurance (Rs.1,00,000 per person)
- Other customary, reasonable insurances or those requested by creditors

8.4 The Project Developer shall ensure that each policy taken out under the Project Development Agreement shall be through such Insurers/ Underwriters as approved by NGS specific to that purpose. The Project Developer shall submit a Certificate of Insurance/ Policy Modification to NGS within 5 days of the Insurers/ Underwriters placement/ renewal/ policy modification, evidencing the policies and endorsements. Failure by the Project Developer to obtain the insurance coverage shall not reduce or otherwise affect the Project Developer's obligations in respect of this Agreement. The Project Developer shall notify, accompanying full details of the incident giving rise to the claim, NGS within 3 days upon receipt of any claim in excess of Rs.50,00,000 (Rupees Fifty Lakhs Only) in respect of any insurance policies referred above.

9. Development Norms and Clearances

9.1 The Project Developer is responsible for obtaining all Clearances, permits, authorisations, consents, registrations and approvals required to be obtained or maintained by the Project Developer under Applicable Law, in connection with the construction, operation and maintenance of the Project during the subsistence of this Agreement.

- 9.2 The Project Developer shall obtain all necessary approvals from Municipal and other local bodies including Kerala Water Authority (KWA), Kerala State Electricity Board (KSEB), Kerala State Pollution Control Board, Kerala Public Works Department, Town Planning Department and Revenue Department, as the case may be.
- 9.3 NGS may, at its discretion and on a written request from the Project Developer assist in getting the necessary approvals. NGS shall provide the Project Developer with all approvals/ disapprovals within 7 Working Days of the Project Developer submitting the application, or information/ clarification sought by NGS.
- 9.4 NGS for the purpose of providing all the approvals and clearances to the Project Developer may nominate an agency. NGS shall propose a panel of at least 3 names for this purpose to the Project Developer. The Project Developer shall select one agency of its choice out of the above list of names provided by NGS. The Project Developer shall not reject all the agencies panelled by NGS. NGS shall intimate the Project Developer within 7 Working Days of nominating the agency as chosen by the Project Developer.
- 9.5 The Project Developer shall make the structural design of the Residential Facility based on latest Indian Statistical Institute (ISI)/ Bureau of Indian Standards (BIS) Codes with provisions for earthquake resistant measures.
- 9.6 The Project Developer shall get the structural design proof checked by an external Proof Consultant at the Project Developer's own expense and submit the same for approval to NGS and KSHB with the detailed design. The Proof Consultant shall carry out the calculations ab-initio and give the structural calculations supporting the proof checking. The Proof Consultant appointed by the Project Developers shall be one of the following agencies or as may be agreed in writing by NGS:
- Indian Institutes of Technology
 - Central Building Research Institute
 - Structural Engineering Research Centre
- 9.7 The Project Developer shall construct and complete the Residential Facility and the parking complex/ landscape area simultaneously for KSHB's as well as its own share of Residential Apartments. The landscape area should clearly define the soft core and hard core landscape areas. The scope of work in the field of landscape should also include the Project Site planning viz-a-viz the services and aesthetics of the Project Site. The landscape component should include the street furniture, lighting and also landscape engineering or the Project Site, the soft core landscape to identify areas for tree plantation and other ornamental plantation of shrubs, ground covers and flowering species.
- 9.8 Any delay in submission of applications, drawings, construction plans and compliance of the observations shall be the responsibility of the Project Developer, and any delay in grant of approvals by the aforesaid Government bodies shall not relieve the Project Developer of any of its responsibilities under the Project Development Agreement.

- 9.9 In case the Project Developer violates any of the development norms, including building bye-laws and master plan controls, the Project Developer shall be liable to pay penalty to the concerned government authority/ agency/ NGS/ KSHB as determined under the relevant laws.
- 9.10 The Project Developer shall also be responsible to obtain a No Objection Certificate from the Southern Air Command on the various site restrictions, including height.

10. Common Facilities

10.1 The Project Developer shall also develop Common Facilities for the residents of the Residential Facility.

10.2 The capital costs incurred by the Project Developer for such development shall be completely borne by the Project Developer only. These costs shall not be adjusted against the interest free security deposits received from the owners of the Residential Apartments.

10.3 All the Common Facilities shall be handed-over by the Project Developer to the Residents' Welfare Association post-games. The Residents' Welfare Association shall subsequently transfer the requisite facilities to the concerned statutory body in due course of time. Deficiency charges, relating to such transfer, shall be paid by the Project Developer to the concerned statutory body at the time of such transfer. In case of default by the Project Developer, NGS shall have the right to invoke the Performance Guarantee.

10.4 Terms and conditions for sale/ transfer/ usage/ charges like Interest free security deposits, maintenance charges etc. for the Common Facilities shall be same for all the owners of the Residential Apartments and also as agreed with NGS/ KSHB.

11. Operation and Maintenance

11.1 The Project Developer shall be responsible for maintenance and related operations of the Residential Apartments, and the Common Facilities as determined solely by NGS, during development of the Residential Facility and during the Games Period. All operation and maintenance by the Project Developer will be in accordance with the guidelines given by NGS/ KSHB, which will be established in conjunction with IOA. The Project Developer may do so through its own workforce subject to clearance from the security agencies and the workforce conforming to the requirements of NGS and IOA.

11.2 Such costs of operation and maintenance shall be borne by the Project Developer only. These costs shall not be adjusted against the interest free security deposits received from the owners of the Residential Apartments.

11.3 However, electricity consumption charges levied by KSEB, water consumption charges levied by KWA and fuel expenses for running generators/ DG sets shall be reimbursed on actual basis by NGS.

11.4 In case the Monitoring Committee decides so, the Project Developer, at its own cost, shall refurbish the Residential Facility once within 15 days prior to the beginning of the Games Period with two or more coats of paint/ distemper/ finish and also again within 15 days after the end of the Games Period with one coat of paint/ distemper/ finish.

11.5 After the Games Period, the entire developed Residential Facility will be operated and managed by a Residents' Welfare Association. However, till KSHB's share of Residential Apartments are disposed-off by KSHB or the end of 6 months, whichever is earlier, the Project Developer shall bear the cost of operation and maintenance of the whole Residential Facility.

12. Residents' Welfare Association

12.1 The Residents' Welfare Association shall be a Committee comprising of representatives from the owners of all the Residential Apartments including KSHB's share of Residential Apartments. Initially this committee shall comprise of the representatives of the Project Developer and KSHB until a Residents' Welfare Association is formed by the residents of the Residential Apartment by an election process.

12.2 As an initial contribution to the operation and maintenance fund to be kept by the Residents' Welfare Association for the purposes of operation and maintenance of the Residential Facility, the Project Developer shall contribute Rs.50,00,000/- (Rupees Fifty Lakhs Only). In case of default on this payment by the Project Developer, NGS shall have the right to invoke the Performance Guarantee. This fund shall form a part of, and be named as, the Residents' Welfare Association Corpus. Interest free security deposits from the Residential Apartment owners shall form a part of this Corpus. This Corpus shall be used by the Residents' Welfare Association only for post-games day-to-day operation and maintenance costs.

13. Parking

13.1 The Project Developer shall develop minimum parking bays in accordance with the development norms.

13.2 The parking bays should be allocated to KSHB's share of Residential Apartments proportionate to the bays for Project Developer's share of Residential Apartments. The Project Developer shall sell the parking bays associated to the Project Developer's share of Apartments to the Residential Apartment owners only and not to any outside person/ agency. KSHB shall also sell the car parks allocated to its share along with the Residential Apartments.

14. Damages to Residential Facility

- 14.1 NGS would bear all the costs of any damages caused to the Residential Facility during the Games Period.
- 14.2 To facilitate the assessment of damages by the Monitoring Committee, the Project Developer shall provide to and get approved from the Monitoring Committee a list of all the furnishings/ fixtures/ equipment in the Residential Facility verified and certified by the Monitoring Committee before the commencement of the Games Period and within 15 days of the end of the Games Period.
- 14.3 The decision of the Monitoring Committee with respect to the damages shall be final.
- 14.4 The Project Developer shall be required to carry out the repair work promptly and within the time as specified by the Monitoring Committee in this respect.
- 14.5 Payment for the damages shall be made by NGS to the Project Developer within 30 days of successful completion of the repair work. The successful completion of the repair work shall be certified by the Monitoring Committee.

15. Disposal by Project Developer

- 15.1 The Project Developer will be entitled to identify potential buyers and receive consideration its share of Residential Apartments before the Games Period. However, the possession of the Residential Apartments to the purchasers shall be handed over only after the Games Period. The Project Developer shall have the total and exclusive rights for marketing of its share of the Residential Apartments that are made as part of the Project to both domestic and/or overseas parties either by itself or through agencies without any restrictions or interference from any parties or any organizations or any governmental bodies or otherwise. The terms of sale of built-up areas shall be at the sole and exclusive discretion of the Project Developer, subject always to the terms, conditions and covenants of this Agreement, the Conveyance Deed provided by KSHB and applicable laws.
- 15.2 KSHB shall transfer the undivided right of the Project Developer's 90% share for onward transfer to the individual buyers by the Project Developer within three years or as mutually agreed by KSHB and the Project Developer in accordance with the terms, conditions and covenants contained in this RFP document, the Project Development Agreement and the Conveyance Deed, to be executed by KSHB after completion of the Project and post the Games Period. The Project Developer shall agree to sign the Conveyance Deed in the format provided by KSHB.
- 15.3 KSHB will sell-off, if not retained, its share of Residential Apartments to any third party only after the Games Period.

- 15.4 The possession of the Residential Apartments would be given to any third party, including the allottees/ lessees/ buyers only after the Games Period. The Project Developer hereby agrees and undertakes to inform all the parties interested in purchasing the Residential Apartments upfront that the possession of and freehold rights in the Residential Apartments shall be handed over to them only after the Games Period. In the event, the Project Developer fails to communicate the same to the interested purchasers and consequently any claim or action is initiated by such third party, the same shall be borne by the Project Developer and the Project Developer shall keep NGS fully indemnified against all such claims and costs.

16. Naming Rights

- 16.1 The Residential Facility will be named as ‘National Games Village’ for all purposes.
- 16.2 The Project Developer shall not have any naming rights for the Residential Facility unless expressly approved by NGS and KSHB.
- 16.3 It shall also be the responsibility of the Project Developer to ensure that the names/ brands of its suppliers/ vendors are not used in any manner whatsoever which is in conflict with the branding/ sponsorship rights during the Games Period. The Project Developer shall intimate to NGS latest within 7 days of any such branding/ naming. In case, NGS objects to the same, the Project Developer shall within a period of 7 days of such objection by NGS re-brand/ rename in consultation with NGS.

17. Other Undertakings of Project Developer

- 17.1 The Project Developer shall be responsible for the following:
- i) compliance with the specifications and requirements proposed by the Project Developer in its technical proposal as agreed with NGS, stated in Schedule II to this Agreement;
 - ii) constructing and developing the Project within the time schedules as prescribed in Schedule III;
 - iii) architecture, layout and engineering design of the proposed Residential Apartments;
 - iv) development of all the residential buildings and associated infrastructure facilities including internal roads, sewerage disposal facilities and other internal civic infrastructure;
 - v) supply of all electricity, water, fuel, consumables and any other services required for the purposes of the Project.
 - vi) marketing of its share of the Residential Apartments that are constructed as part of the Project;
 - vii) completion of the entire Project, in accordance with the specifications of this Agreement and applicable laws;

- viii) maintenance of the infrastructure facilities either directly or through any other party and to levy and charge and collect from the owners of the Residential Apartments so constructed, a maintenance charge for such facilities;
 - ix) keeping unauthorised persons off the Site. Authorised persons shall be limited to the employees of The Project Developer, employees of his Subcontractors, the Lenders or their representatives, and persons authorised by NGS or the Independent Engineer.
- 17.2 The Project Developer shall, for the development of the Residential Apartments have requisite organization and designate and appoint suitable officers/ representatives as it may deem appropriate for implementing the Project properly and for carrying out the purposes of this Agreement in accordance with the terms hereof. The Project Developer hereby undertakes that it will not change any member of the project team, which was constituted by the Project Developer for implementing the Project and was mentioned in the Project Developer's technical proposal, as mentioned in Schedule II, without the prior written consent of NGS.
- 17.3 The Project Developer undertakes:
- (a) that, subject to the provisions of this Agreement, it shall undertake to construct, erect, assemble and achieve completion of the Project in a manner so as to enable the completion of the Residential Facility no later than the date mentioned in Clause 3.13.
 - (b) that, no construction work shall be commenced by Project Developer, unless it has appointed the Project Site engineer who has assumed charge;
 - (c) that it will utilize the Project Site only for the purpose of developing Residential Apartments at least 1 day prior to the start of the Games to ensure that such Residential Apartments can be utilized for the participants' accommodation.
- 17.4 The Project Developer shall be deemed to have inspected and examined the Project Site and its surroundings and to have satisfied himself before entering into the Agreement, as to:
- (a) the form and nature of the Project Site (including, inter alia, the surface and sub-surface conditions and geotechnical factors);
 - (b) the hydrological and climatic conditions;
 - (c) the extent and nature of the work and materials necessary for the execution and completion of the Project;
 - (d) the suitability and the adequacy of the Project Site for the execution of the Project;
 - (e) the means of access to the Project Site and the accommodation the Project Developer may require;
 - (f) availability of building materials, water, power; and
 - (g) the requirements of operation and maintenance; all other factors and circumstances affecting the Project Developer's rights and obligations under this Agreement.

- 17.5 Direct sale/ transfer of Project Site without construction of corresponding built-up space/ Residential Apartments or Common Facilities by the Project Developer are not permitted, except as provided in Clause 10.3.
- 17.6 Compliance with Applicable Law
- (a) The Project Developer shall ensure that the Project is carried out in accordance with applicable law, including but not limited to all laws relating to protection and safeguard of the environment and the laws for preventing and monitoring pollution of environment, and obtain and maintain the Applicable Approvals required for the same.
 - (b) The Project Developer shall, apply and procure all Applicable Approvals in respect of the construction, commissioning and development of the Project immediately on the Commencement Date *provided however*, any Applicable Approval that is to be provided by NGS shall be granted by NGS upon the application along with all required information, documents, designs, drawings for the same being made in accordance with applicable law by Developer.
 - (c) The Project Developer shall in all matters arising in the performance of the Agreement and the Project comply with, give all notices under, and pay all fees required by, the provisions of all and any laws or by any applicable competent authority.
 - (d) The Project Developer shall obtain all Clearances in good time before they are required and ensure that they are kept in full force and effect.
 - (e) The Project Developer agrees to conduct his activities in connection with this Agreement in such a manner so as to comply with the applicable law and assumes full responsibility for any non-compliance with such measures and undertakes to implement any corrective measures as required.
- 17.7 The Project Developer shall be solely responsible for arranging all the funds for the construction and development of the Project in accordance with the provisions of this Agreement and in accordance with the Good Industry Practice. NGS confirms that the Project Developer has the full right and authority, without requiring any further consent, authorization or “no-objection” from NGS, to enter into Financing Agreements. In the event, the Project Developer has to enter into Financing Agreements for arranging funds for the development of the Project, the Project Developer shall execute such agreement within 3 months from the Commencement Date and ensure that all conditions precedent under the Financing Agreements has been complied with within the said period.
- 17.8 The quality of the project shall be monitored by a third party appointed by NGS for the purpose. NGS shall appoint such third party within 1 month of the date of this Agreement. The Project Developer shall comply with the suggestions and/or instructions of the third party in this regard. A failure to comply with the suggestions and/or instructions of the said third party shall constitute Project Developer Event of Default.

17.9 The Project Developer, either at Proposal stage or during the development stage shall not employ or attempt to employ any staff from current or past employees including retired employees of NGS in any capacity unless such employee has completed at least two years post retirement/ resignation or had obtained a ‘No Objection Certificate’ specific to this effect from NGS. It will be the responsibility of the Project Developer to collect the ‘No Objection Certificate’ from such employee and submit the same to NGS.

17.10 The Project Developer shall note the requirements as per the minimum specifications for the Project prescribed by the IOA for National Games. The Project Developer needs to work/ coordinate with NGS to make sure that all the Games requirements are met.

18. Covenant Of Non-Interference

18.1 Non-Interference by NGS/ KSHB

(a) NGS & KSHB covenants with the Project Developer that NGS & KSHB or any of their officers, employees or workmen shall not, at any time, during the period of development of the Project interfere with or obstruct in the development of the Project and in any matter in relation to or connected therewith.

(b) NGS agrees that any technology that may be employed by the Project Developer in the development of the Residential Facility would be proprietary technology obtained under specific license and NGS, hereby undertakes that it shall not violate or cause a breach of the license arrangements of the Project Developer for such technology if it is internationally accepted and time tested.

18.2 NGS shall have the right to send duly authorized representatives, including IOA, to visit the Project Site, while the construction is in progress, provided however, these representatives shall not interfere with or prevent Project Developer’s officials from discharging their functions and further NGS representatives will abide by the safety and other regulations (including but not limited to regulations limiting movement of personnel) put in place by the Project Developer at the Project Site.

19. Events Of Default And Termination

19.1 Event of Default

Any of the following events shall constitute an Event of Default by the Project Developer (“Event of Default”) unless such event has occurred as a result of a Force Majeure Event:

(i) The Project Developer has failed to achieve completion within the time period set out in this Agreement.

(ii) The Project Developer is in Material Breach of any of its obligations under this Agreement and the same has not been remedied for more than thirty (30) days.

(iii) A resolution for voluntary winding up has been passed by the shareholders of the Project Developer.

- (iv) Any petition for winding up of the Project Developer has been admitted and liquidator or provisional liquidator has been appointed or Developer has been ordered to be wound up by Court of competent jurisdiction, except for the purpose of amalgamation or reconstruction, provided that, as part of such amalgamation or reconstruction and the amalgamated or reconstructed entity has unconditionally assumed all surviving obligations of the Project Developer under this Agreement.
- (v) The Project Developer has abandoned the Project.
- (vi) The Project Developer has failed to achieve the Project Milestones for a delay of 1 month or more within the time periods as specified in Schedule III.
- (vii) Any representation made or warranty given by the Project Developer under this agreement is found to be false or misleading.
- (viii) The Project Developer failed to adhere to the Final Technical Project Requirements as specified in Schedule II.
- (ix) The Project Developer fails to comply with the suggestions and/ or instructions of the third party appointed by NGS for the purpose of quality monitoring.

19.2 Termination due to Event of Default

(a) Preliminary Notice

- (i) Without prejudice to any other right or remedy which NGS may have in respect thereof under this Agreement including but not limited to invoking the Performance Guarantee, upon the occurrence of a Event of Default, NGS shall be entitled to terminate this Agreement in the manner as set out below.
- (ii) If NGS decides to terminate this Agreement pursuant to preceding Sub-Clause (i), it shall in the first instance issue Preliminary Notice to the Project Developer. Within fifteen (15) days of receipt of the Preliminary Notice, the Project Developer shall submit to NGS in sufficient detail, the manner in which it proposes to cure the underlying Event of Default (“**Project Developer’s Proposal to Rectify**”). In case of non-submission of the Project Developer’s Proposal to Rectify within the said period, or submission if found unsatisfactory by NGS after giving a due chance of being heard to the Project Developer within seven (7) days, NGS shall be entitled to terminate this Agreement by issuing Termination Notice, if subsisting.
- (iii) If the Project Developer’s Proposal to Rectify is submitted within the period stipulated therefore, the Project Developer shall have further period of thirty (30) days to remedy/ cure the underlying Event of Default. If, however the Project Developer fails to remedy/ cure the underlying Event of Default within such further period NGS shall be entitled to terminate this Agreement subject always to the provisions of this Clause, by issue of Termination Notice, if subsisting.

(b) Termination Notice

If NGS having become entitled to do so decides to terminate this Agreement pursuant to the preceding Sub-Clause, it shall issue Termination Notice setting out:

- (i) in sufficient detail the underlying Event of Default;
- (ii) the Termination Date which shall be a date occurring not earlier than thirty(30) days from the date of Termination Notice;

- (iii) the estimated termination payment including the details of computation thereof; and
- (iv) any other relevant information.

The Parties hereby agree that any Termination Notice shall also be sent to all Lenders by registered post/courier.

(c) **Obligation of Parties**

Following issue of Termination Notice by NGS, NGS shall, subject to the provision of the Financing Documents, promptly take all such steps as may be necessary or required to ensure that:

- (i) until Termination the Parties shall, to the fullest extent possible, discharge their respective obligations so as to maintain the continued operation of the Project; and
- (ii) the Project is handed back to NGS by the Project Developer on the Termination Date along with any payment that may be due by the Project Developer to NGS.

(d) **Withdrawal of Termination Notice**

Notwithstanding anything inconsistent contained in this Agreement, if the Project Developer cures the underlying Event of Default to the satisfaction of NGS at any time before the Termination occurs, the Termination Notice shall be withdrawn by NGS. Provided that the Project Developer shall compensate the other Party for any direct costs/ consequences occasioned by the Event of Default which caused the issue of Termination Notice.

(e) **Termination**

Upon Termination of this Agreement on account of Event of Default, NGS shall forfeit the Upfront amount paid by the Project Developer to NGS and shall be entitled to invoke the Performance Guarantee and shall not be liable to pay any termination payment to the Project Developer and the Project Developer shall be obligated to transfer the Project free from all encumbrances.

(f) **Rights of NGS on Termination**

Upon Termination of this Agreement, NGS shall have the power and authority to:

- (i) enter upon and take possession and control of the Project; and
- (ii) prohibit the Project Developer and any person claiming through or under the Project Developer from entering upon/ dealing with the Project.

(g) **Accrued Rights of Parties**

Notwithstanding anything to the contrary contained in this Agreement, any termination of this Agreement shall be without prejudice to accrued rights of either Party including its right to claim and recover money damages and other rights and remedies which it may have in law or contract. The rights and obligations of either Party under this Agreement, including without limitation those relating to the Termination Payment,

shall survive the Termination but only to the extent such survival is necessary for giving effect to such rights and obligations.

20. Representations, Warranties and Covenants

20.1 The Project Developer hereby represents, warrants and covenants to NGS for itself that (“**Project Developer Warranties**”):

20.1.1 The Project Developer has been duly incorporated and organized, and is validly existing and in good standing, under applicable law. The Project Developer has the corporate power and authority to own and operate its assets and properties and to carry on its business as currently conducted and proposed to be conducted.

20.1.2 The copies of the charter documents (having attached thereto copies of all such resolutions as are by applicable law required to be attached thereto and all amendments made to date) that have been delivered to NGS are true, accurate and complete. All legal and procedural requirements and other formalities concerning such charter documents have been duly and properly complied with in all material respects.

20.1.3 The Project Developer has the legal right, power and authority to execute, deliver and perform this Agreement. All action on the part of the Project Developer and all corporate action on the part of the board of directors of the Project Developer for the authorisation, execution, delivery of and the performance of all obligations of the Project Developer have been taken.

20.1.4 There is no change in the shareholding of the Project Developer and that it expressly warrants that the minimum shareholding requirements stipulated in the RFP documents shall be adhered to.

20.1.5 No consent, approval, order or authorisation of, or registration, qualification, designation, declaration or filing with, any Governmental Authority or any other person is required in connection with the execution and delivery of this Agreement.

20.1.6 This Agreement when executed is valid and would constitute the binding obligations of the Project Developer enforceable against the Project Developer in accordance with their respective terms. This Agreement is, and when executed be, the valid and binding obligation of the Project Developer, enforceable against the Project Developer in accordance with its terms except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganisation, moratorium or similar laws affecting creditors’ rights generally. As of date, as regards the Project Developer, there is no applicable bankruptcy, insolvency, reorganisation, moratorium or similar laws affecting creditors’ rights generally.

20.1.7 The execution and delivery by the Project Developer of this Agreement and the performance by the Project Developer of its respective obligations under this Agreement do not and will not:

- (a) Constitute a breach of or a default under any charter document of the Project Developer.
 - (b) Result in a breach of, or constitute a default under, any contract to which The Project Developer is a party or by which it is bound.
 - (c) Result in a violation or breach of or default under any applicable law or regulation or of any order, judgement or decree of any Governmental Authority to which the Project Company is a party or by which the Project Developer is bound.
- 20.1.8 No order has been made and no resolution has been passed for the winding up of the Project Developer or for a provisional liquidator to be appointed in respect of the Project Developer and no petition has been presented and no meeting has been convened for the purpose of winding up the Project Developer. No receiver has been appointed in respect of the Project Developer or all or any of its assets. The Project Developer is not insolvent or unable to pay its debts as they fall due.
- 20.2 NGS represents and warrants to the Project Developer for itself that (“**NGS ‘Warranties’**”):
- 20.2.1 NGS has not entered into any other agreement, contract, transaction, arrangement or understanding in relation to the development of the Project with any third party, or the sale, lease assignment, or other disposition in whole or in part in respect of the Project Site other than the disclosed herein.
 - 20.2.2 The statement contained in the recitals to this agreement is true, correct, and accurate in all respects.
 - 20.2.3 This Agreement when executed shall be valid and would constitute the binding obligations of NGS and would be enforceable against NGS in accordance with respective terms.
 - 20.2.4 The execution, delivery and performance of this Agreement by NGS will not:
 - (a) Violate any provision of the organizational documents of NGS.
 - (b) Conflict with or result in any Material Breach or violation of any of the terms and conditions of, or constitute (or with notice or lapse of time or both constitute) a default under, any agreement to which NGS is a party or by which NGS is bound.
 - (c) Violate any court order, judgment, injunction, award, decree or writ against, or binding upon, NGS or upon its securities, properties or business.
 - (d) Violate any law or regulation of India.

21. Indemnity

- 21.1 The Project Developer agrees to indemnify and hold harmless NGS and its managers, officers, directors and employees (each a “**NGS Indemnified Party**”) promptly upon demand at any time and from time to time, from and against any and all losses, claims,

damages, liabilities, costs (including reasonable attorneys fees and disbursements) and expenses (collectively, “**Losses**”) to which NGS 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 the Project Developer or
- ii. the failure by the Project Developer to fulfill 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 Project Developer or
- iii. any claim or proceeding by any third party against NGS arising out of any act, deed or omission by the Project Developer or
- iv. claim filed by a workmen or employee engaged by the Project Developer or a Sub-Contractor for carrying out any work at the Project Site or
- v. claims for damages which may be caused to any workman, to any adjoining building or property or any other premises or persons as a result of the Project or in consequence of the execution of the Project.

21.2 For the avoidance of doubt, indemnification of Losses pursuant to this Section shall be made in an amount or amounts sufficient to restore each NGS Indemnified Party to the financial position it would have been in had the Losses not occurred.

21.3 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.

22. Force Majeure

22.1 None of the parties hereto shall be liable for any delay or failure to perform any of its obligations set forth herein if such delay or failure has been caused by *force majeure* events.

22.2 If either party considers the event of the force majeure to be of such severity or to be continuing for such period of time that it effectively frustrates the original intent of this Agreement, this Agreement may be terminated thirty days after giving of written notice to the other party.

22.3 However, NGS may provide extension to the extent of 7 Working Days commencing from the end of the force majeure event, to the Project Developer to cover-up the delay/failure or to fulfill its obligations.

23. No Assignment

23.1 Without prior consent in writing of NGS, which NGS shall be entitled to decline without assigning any reason whatsoever, the Project Developer shall not assign this Agreement nor shall the Project Developer create nor permit to subsist any

encumbrance over or otherwise transfer or dispose-off all or any of its rights and benefits under this Agreement.

23.2 However, the restraint under the above clause shall not apply to Liens or encumbrances required/ arising by operation of any applicable law in the ordinary course of business of the Project.

24. Dispute Settlement

Any dispute, controversy, claim or disagreement of any kind whatsoever between or among the Parties in connection with or arising out of this Agreement including breach, termination or invalidity thereof (a dispute) shall be resolved in the following manner.

24.1 A Party may give the other Party notice that a dispute has arisen (a “**Dispute Notice**”) and the Parties shall negotiate to amicably resolve the Dispute within fifteen (15) Days of the Dispute Notice (or such longer period as the Parties may mutually agree) (the “**Resolution Period**”). If the dispute is not so resolved, the Dispute shall be referred to and finally resolved by arbitration irrespective of the amount in Dispute.

24.2 The arbitration shall be governed by the (India) Arbitration and Conciliation Act, 1996 and/ or any statutory modification or re-enactment thereof.

24.3 Matters to be arbitrated upon shall be referred to a sole arbitrator where the total value of claims does not exceed Rs.10,00,000/- (Rupees Ten Lakhs Only). Beyond this claim limit, there shall be three arbitrators. For this purpose NGS will form a panel of experts with the requisite qualification and professional experience relevant to the field to which the contract relates. This panel will be from serving or retired experts of Government Departments or of Public Sector. In case of a single arbitrator, the panel will be of three engineers, out of which the Project Developer will choose one. In case three arbitrators are to be appointed NGS will make out a panel of five. The contractor and NGS will choose one arbitrator each and the two so chosen will choose the third arbitrator. The arbitrator proceeding shall be held in Kerala only. The language of proceedings, that of documents and communication shall be English and the award shall be made in writing. The arbitrators shall be given item wise and reasoned awards in all cases where the value of total claims exceeds Rs.10,00,000/- (Rupees Ten Lakhs Only). Where three arbitrators have been appointed, the award by the majority will prevail.

24.4 In the event of failure to appoint the arbitrator(s) as provided aforesaid, the arbitrator(s) shall be appointed in accordance with the rules of the (India) Arbitration and Conciliation Act, 1996.

25. Governing Law and Jurisdiction

25.1 This Agreement shall be governed, construed, interpreted and given effect to according to the laws of India.

25.2 This Agreement shall be subject to the jurisdiction of the courts of Kerala.

26. Notices

26.1 Unless otherwise stated, all notices, approvals, instructions and other communications for the purposes of this Agreement shall be given in writing and may be given by facsimile, by personal delivery or by sending the same by prepaid registered mail addressed to the Party concerned at its address stated in the title of this Agreement or the fax numbers set out below and/ or any other address subsequently notified to the other Parties for this purpose and shall be deemed to be effective (in the case of registered mail) 10 calendar days after posting, (in the case of facsimile) 2 Working Days after receipt of a transmission report confirming dispatch or (in the case of personal delivery) at the time of delivery:

If to NGS:

Address : Chandrasekharan Nair Stadium, Palayam, Thiruvananthapuram
Telephone : +91 471 2302257
Fax : +91 471 2302267
Attention : Chief Executive Officer/ Secretary

If to KSHB:

Address : Santhi Nagar, Thiruvananthapuram, Kerala, India
Telephone :
Fax :
Attention : Secretary

If to the Project Developer:

Address :
Telephone :
Fax :
Attention :

26.2 Such notices and other communication duly given shall be deemed to be effective if given by personal delivery, upon such delivery; or if sent by facsimile upon the next Working Day after sending thereof, or if sent by certified or registered mail, upon delivery or the twelfth (12) Working Day following the date of dispatch thereof, whichever is earlier. Any change in the address of any Party shall be given in the same manner provided for in this Clause.

27. Expenses

All expenses like stamp duty, registration charges etc., in relation to this Agreement shall be borne by the Project Developer.

IN WITNESS WHEREOF the parties to this Agreement have signed and agreed to deliver on this day of ___ of ___ 2010.

For: NGS KSHB

Signature:

Name:

In the presence of:

Schedule I: Project Site Key Plan and Location

Schedule II: Development Specifications and Requirements as agreed with NGS

- i. Conceptual Design, including
 - a. Broad Project Development Plan
 - b. Environment Compliance Plan
 - c. Area Management Plan
 - d. Indicative Unit Drawings
- ii. Quality Management Plan, including
 - a. PERT chart
 - b. Corporate Quality Policy Document
 - c. Outline Quality Plan
 - d. Quality, technical specifications and type of materials to be used
- iii. Project Control System including Work Breakdown Structure
 - a. Broad Project Development Plan
 - b.** Detailed Activity Chart with proposed Milestones
 - c. PERT/ CPM chart
 - d. Financial planning
 - e. Contingency plan
- iv. Project Team, including
 - a. Architect, including Landscape Architect
 - b. Technical Consultant
 - c. Structural Consultants/ Proof Checking Consultants
 - d. Services Engineer
 - e. Electrical/ Mechanical/ HVAC Consultants
 - f. Plumbing Consultants
 - g. Project Manager
- v. Final Technical Project Requirements

Schedule III: **Project Milestones**

Schedule IV: **Furniture, Fixture and Furnishings to be provided by NGS**