



OPERATIONAL GUIDELINES

ON

DEVELOPMENT OF EWS HOUSING ON PRIVATE LAND IN PPP MODE UNDER AHP VERTICAL OF PMAY-HFA(U)

**UD & MA DEPARTMENT
GOVT. OF WEST BENGAL**

1 INTRODUCTION

Pradhan Mantri Awas Yojana (Urban) (PMAY(U)), a flagship scheme of Government of India (GoI) launched in June 2015 with an objective of Housing for All by 2022.

The programme has been envisaged to be implemented through four verticals viz. 'In-situ' Slum Re-development, Affordable Housing through Credit Linked Subsidy, Affordable Housing in Partnership, Subsidy for Beneficiary led individual house Construction.

In West Bengal, areas under the jurisdiction of all Urban Local Bodies, Development Authorities and Census Towns have been considered for coverage under this programme. State Urban Development Agency (SUDA), is the Nodal Agency for overseeing implementation of this time bound programme with Director, SUDA as the State Mission Director.

Ministry of Housing and Urban Affairs (MoHUA) has issued Public Private Partnership (PPP) Draft Models for Affordable Housing Policy (AHP) dated September 2017 under Pradhan Mantri Awas Yojana (Urban). Under this draft, eight generic PPP structure models have been constituted (Six for projects on government land and two for projects on private land).

2 DETAILS OF PRIVATE LAND BASED MODEL UNDER AHP SCHEME

Under this model, private developer shall provide land as well as be responsible and accountable for designing, building and financing of affordable housing stock and associated services of pre-determined standards, at a pre-determined cost and within a pre-determined time. The private developer shall take actions to recover the costs involved in satisfactory completion of housing stock and handing over of the units as per prescribed standards. Thus, the responsibility and risk for cost recovery rests on the private developer. The developer may form a Special Purpose Vehicle (SPV) for this purpose only.

The project under this PPP will adhere to National Building Code (NBC), IS codes, Development Control Rules (DCR), Development Plan (DP) and all other Rules, Acts, Regulations, Guidelines as applicable. The projects shall be registered with Housing Industry Regulatory Authority, established under section 20 of West Bengal Housing Industry Regulatory Act, 2017, at the earliest.

2.1 DESIGN, BUILD & FINANCE BY THE DEVELOPER

The Developer shall be responsible for designing, planning, construction and financing of affordable housing stock on his land and associated services of predetermined standards at the time and cost mentioned while preparing the Detailed Project Report (DPR).

The developer will have to complete and handover the units in the project within the specified period as articulated in the approved Detailed Project Report (DPR) from the date of award of the project under the scheme by the State's Nodal Agency.

The beneficiary will not be able to sell/rent/lease the unit for a period of 10 years (lock-in period) from the date of signing the sale/assignment agreement.

The Developer, apart from adhering to this Operational Guidelines shall also follow and adhere to the provisions as made in West Bengal Housing Industry Regulation Act – 2017 or any of its subsequent amendments etc.

2.2 INSTITUTIONAL MECHANISM TO OVERSEE THE PROJECT

The Developer shall prepare the Detailed Project Report (DPR) and submit to State Level Nodal Agency (SLNA). Making all the required compliance, the DPR will be presented in State Level Appraisal Committee (SLAC), post its approval it will be presented in the State Level Sanctioning and Monitoring Committee (SLSMC) and then finally with Central Sanctioning and Monitoring Committee (CSMC). After the approval of CSMC, the Developer will be given a Project Award Letter by the State's Nodal Agency. The Nodal Agency may enter into a Project Agreement with the Developer post award of the project.

SLNA will monitor activities related to physical & financial progress of the project along with the quality of construction conforming to all prevalent rules, acts and guidelines. SLNA shall have the prerogative in appointing Third Party Quality Monitoring Agency or any other Agency/Departments etc as agencies to supplement / compliment this activity and to certify the project progress for releasing the financial assistance amount.

2.3 ELIGIBILITY CRITERIA FOR EWS (ECONOMICALLY WEAKER SECTION) BENEFICIARIES

- The applicants' annual family income should be up to Rs. 3,00,000/- and this is applicable for AHP projects only.
- The applicant/his/her family/household should not own a pucca house in any parts of the country either in his / her name or any of his / her family member's name
- The property should be primarily owned/co-owned by a female member of the family. In case of absence of a female member in the family it may be owned by male member.
- Here, family means husband, wife, unmarried sons and/or unmarried daughters.
- The carpet area of the house under these schemes should up to 30 sq. mts.

2.4 ELIGIBILITY FOR FINANCIAL ASSISTANCE FROM GOVT. OF INDIA & GOVT. OF WEST BENGAL

For deciding the eligibility criteria, PMAY (U) guidelines will be followed.

An affordable housing project can be a mix of Dwelling Units (DUs) for different income categories but it shall be eligible for central assistance, if at least 35% of the DUs in the project are for EWS category & the project has at least 250 DUs. However, state may relax the criteria as per individual project requirement. There is no upper

limit on the percentage of EWS DUs and hence a project may host entirely 100% EWS DUs.

A large project may be developed in phases. Central Assistance at the rate of Rs. 1.5 Lakh & State Assistance of Rs. 2.79 Lakh per EWS DU would be available for all EWS houses in the sanctioned eligible projects. Though the Central subsidy is fixed to be Rs. 1.5 Lakh per DU, State Subsidy may vary in project to project basis depending on the requirement.

As per the guideline, there shall be no capital subsidy in DUs other than EWS. However, in a mixed housing development, eligible LIG & MIG allottees can avail the interest subsidy as per CLSS vertical of PMAY(U). State shall facilitate such allottees to avail loan from financial institutions through awareness creation, knowledge dissemination and helping in linkages.

Eligible EWS housing allottees availing benefit of AHP, may also opt for availing normal housing loans for covering their buying price, though they will not be eligible for interest subsidy under CLSS or any other benefit under PMAY(U) in accordance with the guideline of the scheme. State may facilitate such allottees to avail a lower rate of interest from financial institutions through awareness creation, knowledge dissemination and helping in linkages.

2.5 FIXING OF SALE PRICE OF DWELLING UNIT (DU)

The cost of the EWS DUs may be proposed by the developer considering the construction and other input cost, recovery period, all subsidies and nil/minimum profit and the same shall have to be approved by the Government of West Bengal on case to case basis.

Government of West Bengal may decide on a location specific upper ceiling on the sale price of EWS DUs in rupees per square meter of carpet area with an objective to make EWS housing affordable and accessible to the intended beneficiaries. For that purpose, State Government and Local Authorities may extend other concessions such as their State subsidy, stamp duty exemption, higher FAR, TDR, single window clearance, etc.

In an AHP project, only the cost & sale price of EWS DUs shall be vetted and approved by the State Government. In case of a mixed category cross subsidised project, developer shall have the freedom to fix the sale price of all categories excepting EWS DUs according to the feasibility of the project subject to any applicable policy guidelines, rules, statutes etc.

2.6 CHANGE REQUEST

After the project is under implementation and partial fund has been released by the State Government through State level Nodal Agency, no changes in any form (except the number of DUs and its corresponding effect) of the project shall be allowed. In case any changes is made by the Developer, the State level Nodal Agency shall be eligible to cancel the project and recover the full amount disbursed in terms of Central & State Share as well as the Beneficiary's share from the Developer.

However, if change is sought before starting implementation & fund release by State Government, then the same may be allowed with proper justification & record in the SLNA. Modalities of such change shall be mutually decided between the developer and State Government. State Government may accept the changes at its own discretion.

If change is sought in favour of reduction in number of EWS DUs, after receiving subsidy whether full/partial, the fund release shall be put on hold until revision of the project. State Government shall recover the excess central and state subsidy released in respect of the project (if any) along with any applicable Beneficiary share from the private entity as per the extant provisions. If the project is not revised even after six months of such request the project will be considered to be terminated and full cost recovery shall be made by State Government.

2.7 BENEFICIARY IDENTIFICATION & SELECTION

The identification of EWS beneficiaries in AHP projects shall be made following the guidelines of PMAY HFA(U) and adopting a transparent procedure as approved by SLSMC. The beneficiaries shall be selected from the HFAPoA of any of the ULBs/Development Authorities either having jurisdiction of the project site or adjacent to the project site or is situated within the state of West Bengal. Preference in allotment may be given to differently-abled persons, senior citizens, Scheduled Castes, Scheduled Tribes, Other Backward Classes, minority, single women, transgender and other weaker and vulnerable sections of the society. While making the allotment, the families with differently-abled persons and senior citizens may be allotted house preferably on the ground floor or lower floors.

The establishment of the eligibility of EWS beneficiaries shall be the prerogative of the State Government in line with PMAY-HFA(U) guidelines based on the estimation of HFAPoA. The list of eligible beneficiaries as per HFAPoA shall be provided to the developer immediately upon project approval by the SLNA. However, in absence of any prior list of eligible beneficiaries in newly included urban areas, the list of beneficiaries shall be compiled by the ULBs/Development Authorities/Competent Authorities with the required logistic & co-ordination support provided by the Developer. The State Level Nodal Agency shall duly incorporate the list of beneficiaries within the overall State's HFAPoA subject to the approval of Government of India. Additionally, the selection of beneficiaries from approved/proposed HFAPoA shall be cross-checked with SECC-2011 data to establish the beneficiaries' claim of not owing a pucca house in the State of West Bengal.

The Developer shall advertise in open market about the AHP project and seek application from eligible beneficiaries. Upon receiving the application for allotment from potential beneficiaries, the Developer shall match the applicants with HFAPoA of the area specified. Only those applicants who are found to be eligible beneficiaries having their names in the HFAPoA shall be shortlisted by the Developer. If the number of shortlisted applicants is equal to or less than the total available EWS units in the project, then all the applicants will become eligible for allotment subject to meeting the eligibility criteria.

However, in case if the number of shortlisted applicants is more than the total number of EWS units in the project, the developer shall carry out a draw through a lottery system in a transparent manner to identify the potential list of beneficiaries including an additional 15%-20% back up list.

At least advertisement in the three newspapers will have to be made inviting the applicants to attend the lottery draw indicating the date, time, venue of the proposed draw to identify the potential beneficiary. At least two (2) representatives from the state government will have to be invited for the proposed draw. The state government will nominate such persons to attend the lottery draw at its own discretion.

The developer will have to share the potential list along with the copy of the applications with SLNA. SLNA directly or through its nominated agency will then certify the eligibility of the applicants and confirm the final list of allottees. Upon receiving such confirmation and opening of Escrow account, the developer may proceed with providing provisional allotment to the potential beneficiaries and collect 10% of the sale price as a token booking amount. It will be imperative upon the Developer to secure written approval of SLNA regarding the beneficiaries' payment schedule before collection of any amount in lieu of beneficiaries' share. Subsequently, the developer may go ahead and process the sale / assignment agreements etc with the allottees.

In case if the allotment has to be cancelled in future due to any reason like non-payment, issues related to eligibility, defaults, etc. the developer will do so in joint consultation with the SLNA.

In such cases,

- If the cancellation is made due to any issues related to eligibility criteria and/or false representation made by the allottee, the entire amount as paid by the beneficiary shall be forfeited by the Developer.
- If the cancellation is done for any other reason as stated above, the developer will refund the amount paid by the allottee after deducting up to a maximum of 25% of such paid amount paid by the allottee as cancellation charges.
- The developer will offer such cancelled allotment to a new beneficiary from the potential wait listed beneficiaries or through a fresh application (in case of less applicants) adhering to all the guidelines as mentioned above for selection and identification of beneficiaries.
- The beneficiary list with the financial institution managing the escrow account will be modified to reflect the cancellation and the new allottee name will be added to the same unit as soon as the re-allotment has been carried out.
- The forfeited amount shall be kept in the Escrow Account / Specific project account till the project's financial reconciliation is done upon completion. SLNA shall decide about the usage of the forfeited amount as per its policy and requirement.

2.8 COST RECOVERY

The private developer shall undertake to recover the cost of affordable housing directly from allottee. This recovery may take the form of a lump-sum payment at the

time of transfer of housing unit to allottee or in the form of equated monthly instalment (EMI) for a fixed period of time leading to the transfer of unit to the allottee. The private developer shall also make part of the cost recovery through the Central & State subsidy, stamp duty exemption and other concessions provided by the State Government.

In case any project under AHP is abandoned/terminated or held up due to any unforeseen circumstances, State Government shall recover the central and state subsidy released along with the applicable beneficiary contribution in respect of the project from the private entity as per the extant provisions and as per the applicable rules, guidelines, statutes etc.

2.9 MANDATORY PRE-REQUISITE FOR FUND RELEASE BY STATE GOVERNMENT

- i. Creation of final certified list of allottees by SLNA from the potential beneficiary list submitted by the developer after running the selection process.
- ii. Enlisting the project with WB HIRA.
- iii. Formation of Escrow Account.
- iv. Entry of details of the final allottees in the PMAY MIS to ensure no change at a later stage (except for re-allotment due to cancellation) and also to prevent the allottees from availing any other subsidy in PMAY(U). SLNA may facilitate the entry and attachment through ULB/Development Authority/Other competent authorities, if required.
- v. Geotagging of housing will be required to be done at appropriate construction phase. Since in apartment style construction of AHP, multiple beneficiary will have same construction stage at nearly same co-ordinate, a simultaneous geotagging of multiple beneficiaries may be done and the same shall be notified through SLNA to the appropriate authorities at applicable stages.

2.10 SUBSIDISATION & TRANSACTION MECHANISM

- i. For transparency in the mechanism of receiving the subsidy from Government of India, State Government & the Beneficiary's contribution, and carrying out expenditure during construction, an Escrow account has to be formed among the Developer, SLNA and the Escrow Bank.

2.10.1 ESCROW MODALITIES

- a) An escrow account to be opened with an agreed escrow agent, to be operated under joint instruction of SLNA and the developer.
- b) The escrow banker shall be selected by State Urban Development Agency (SUDA), West Bengal
- c) The parties to the escrow agreement will be SLNA, Developer and the escrow agent.
- d) The certified list of beneficiary will be submitted by the developer to the escrow agent.
- e) The beneficiary will not be a party to the escrow account but all contribution from the beneficiary shall be hosted in the escrow account.

- f) Necessary authorization as required to be taken from the beneficiary while executing the sale deed / assignment deed agreement between the developer and the beneficiary.
- g) Upon the receipt of the each financial assistance amount along with the credit details from SLNA as well as beneficiary's contribution, as and when disbursed / deposited in the escrow account, the escrow agent will notify both SLNA and the developer about the receipt of such funds.
- h) Escrow agent will release the financial assistance amount against the copy of the demand raised by the developer on the beneficiary, with a copy to escrow agent subject to approval of SLNA.
- i) The modalities and specific operational modules of the Escrow Account shall be worked out by the SLNA in consultation with the Developer and the Escrow Agent identified by SLNA.
- j) The Standard Operating Procedure (SOP) for Escrow Management is provided in Annexure I.
- k) A Standard Escrow Agreement is attached as Annexure II.

2.10.2 MODALITY OF RELEASING THE FINANCIAL ASSISTANCE BY CENTRAL AND STATE GOVERNMENT

Sl No	Milestone for release of Central & State Assistance	Deposits made by SLNA (as % of total central & state share)	Deposits made by Beneficiary (as % of his/her total share)	Documents required prior to release of funds by State Government
i.	Opening of Escrow Account	10%	Nil	Signing of Escrow Agreement and enlistment of the project in WBHIRA-2017
ii.	Finalization of allottees along with provisional allotment	30%	10%	1. Copy of building plan sanctioned 2. List of approved beneficiaries
3.	At least 70% utilisation of the previously received cumulative fund, i.e. 70% of 40% fund	40%	As per payment schedule agreed between Developer & Beneficiary [Subject to approval by SLNA]	Duly self certified utilisation certificate (UC) by the developer as per prescribed format (GFR19A & SR330A) duly approved by competent Authority.
4.	Completion of the project along with handing over of DUs to each allottees	20%		1. Duly self certified utilisation certificate (UC) by the developer as per prescribed format (GFR19A & SR330A) duly approved by competent Authority. 2. Copy of Completion / Occupancy Certificate issued by competent Authority

A separate MoU/MoA shall be signed between State through SLNA and the developer detailing all legal implications and mechanism of implementation.

2.11 OPERATION & MAINTENANCE

The housing stock shall be transferred by the developer directly to the beneficiaries on completion & 100% receipt of payment by allottees and receipt of 80% of the Central and State's financial assistance. All AHP projects have to be registered under WBHIRA. Developers have to comply with all the conditions laid down by WBHIRA for the execution of AHP projects.

There is no involvement of developer and public authority for the maintenance of the units after the transfer of units to allottees. However, a defect liability period may be observed as per WBHIRA norms. Maintenance, therefore, is the responsibility of the beneficiaries. A separate Resident Welfare Association (RWA) for the EWS housing, inclusive of all the EWS dwelling unit owners shall be constituted for upkeep of common areas and public spaces and the same will be transferred to the RWA within a period of 3 months from the date of receipt of Occupation Certificate, which may be done in phases for big projects. The constitution of the RWA shall be facilitated by the Developer and the Developer shall maintain the common areas of the project till it is handed over to the RWA at appropriate costs recovered from the allottees.

2.12 OTHER INCENTIVES

In addition to the financial assistance extended by the State Government, the state may consider additional incentive on case to case basis like:

- i. Stamp duty exemption for the first registration
- ii. Additional FAR/FSI/TDR
- iii. For usage of innovative/alternate/prefab technologies and materials as well as for Green Buildings, incentive could be in the form of reduced fees and charges.
- iv. Provision of single window clearance and fast track approval/ deemed approval to project under Ease of Doing Business.
- v. Or any other incentive that the State may decide.

Annexure I: Standard Operating Procedure (SOP) for Escrow Account

1. OPENING OF ESCROW ACCOUNT

- a. For opening of the New Bank Account (Escrow Account) prior approval of Finance Department (Group-T) has to be obtained vide G.O No. 2603-F(Y) dated 30.04.2019.
- b. State Urban Development Agency (SUDA), West Bengal shall have the sole right to select the Escrow Bank.
- c. SUDA shall select the type of Escrow Account on its own discretion following RBI Guidelines.
- d. Once selected, SUDA shall inform the Developer about the Escrow Bank and the Developer in turn, shall undertake all necessary formalities on behalf of SUDA to open the Escrow Account in any Kolkata Branch of the selected Bank.
- e. The Developer shall follow the selected Bank's procedure for the same.
- f. The standard Escrow Agreement (appended as Annexure II hereof) shall be followed. If any deviation is required, the same shall be first ratified by SUDA / UD&MA Department, Government of West Bengal in writing.
- g. The Developer shall obtain all details of the signatory on behalf of SUDA who shall be entitled to sign the Escrow Agreement.
- h. The Developer shall be responsible for maintaining the Escrow Account once the account is made operational

2. APPLICABLE DEPOSITS IN ESCROW ACCOUNT

The Developer agrees and undertakes that it shall deposit into and/or credit the Escrow Account with:

- a. all monies received in relation to the Project from any source, including the Lenders and lenders of Subordinated Debt;
- b. all applicable grant as payable by the Authority
- c. all funds received by the Developer from its share-holders, in any manner or form for this specific project for which this escrow account is applicable;
- d. all applicable beneficiaries contribution;
- e. all revenues levied and collected by the Developer including booking/advance amount;
- f. any other revenues, rentals, deposits or capital receipts, as the case may be, from or in respect of the Project; and
- g. all proceeds received pursuant to any insurance claims.
- h. All applicable interest on deposits as applicable;

3. APPLICABLE WITHDRAWALS FROM ESCROW ACCOUNT

The pecking order in accordance to decreasing priority is as follows:

- i. all taxes due and payable by the Developer for and in respect of the Project;
- ii. all payments relating to construction of the Project Facilities, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements, if any;
- iii. O&M Expenses as applicable;
- iv. monthly proportionate provision of Debt Service due in an Accounting Year;
- v. all payments and Damages certified by the Authority as due and payable to it by the Developer;
- vi. monthly proportionate provision of debt service payments due in an Accounting Year in respect of Subordinated Debt, if applicable;
- vii. any reserve requirements set forth in the Financing Agreements; and balance, if any, in accordance with the instructions of the Developer;

4. WITHDRAWAL LIMITS AND AUTHORIZATION

- I. The Developer shall have the right to withdraw Rs. 10,00,000/- (Rupees Ten lacs only) and above in each withdrawal. No withdrawal below this limit can be made by the Developer under any circumstances;
- II. Any withdrawal shall require concurrence of SUDA in writing. The Developer shall intimate such requirements to the Bank.
- III. SUDA shall have the right to review all withdrawals happening in each quarter and if it deems fit, may issue suitable limits/permission requirement for any amount of further withdrawal by the Developer;
- IV. SUDA shall appoint a Nodal Person who shall have the authority to provide concurrence to any applicable withdrawals.
- V. Permission of withdrawal by SUDA shall be in writing which shall be provided to the Bank with a copy to the Developer in response to the specific request as received from the Developer.
- VI. The Developer also shall appoint a person who shall be authorised for operating the Escrow Account on behalf of the Developer. The name of the authorized person along with his/her specimen signature, name, address, designation and Aadhar and PAN number shall be communicated to the Bank as well as SUDA. SUDA shall have the right to ask for change of authorized person of the Developer at any point of time which shall be obliged by the Developer within 07(seven) days.

5. OTHERS

This Standard Operating Procedure (SOP) shall be in line with all applicable laws of Republic of India and all applicable guidelines of Reserve Bank of India (RBI)

Annexure II: Escrow Agreement

THIS ESCROW AGREEMENT is entered into on this the day of 20....

AMONGST

1. LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at and represented by _____ being the authorized signatory for and on behalf of the said company (hereinafter referred to as the “**Developer**” which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);
2.name and particulars of Lenders’ Representative and having its registered office atacting for and on behalf of the Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the “**Lenders’ Representative**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);
3.name and particulars of the Escrow Bank and having its registered office at(hereinafter referred to as the “**Escrow Bank**” which expression shall, unless repugnant to the context or meaning thereof, include its successors, assigns and substitutes); and
4. Director,, having its principal office at

_____ (hereinafter referred to as the “**Authority**” which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns)

WHEREAS

- A. The Authority has entered into a Development Agreement dated with the Developer (the “**Development Agreement**”) to develop Project Facilities (more particularly described in the said Development Agreement and hereinafter referred to as the “**Project**”) through Public Private Partnership (PPP) mode on design, build, finance, construct and handover (DBFCH) basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- B. Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.

C. The Development Agreement requires the Developer to establish an Escrow Account, inter alia, on the terms and conditions stated therein.

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1 Definitions and interpretation

1.1 Definitions

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

“Agreement” means this Escrow Agreement and any amendment thereto made in accordance with the provisions contained herein;

“Cure Period” means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Developer, and shall commence from the date on which a notice is delivered by the Authority or the Lenders’ Representative, as the case may be, to the Developer asking the later to cure the breach or default specified in such notice;

“Development Agreement” means the Development Agreement referred to in Recital (A) of this Agreement and annexed hereto as Annex-A, and shall include all of its Recitals and Schedules and any amendments made thereto;

“Escrow Account” means an escrow account established in terms of and under this Agreement, and shall include the Sub-Accounts;

“Escrow Default” shall have the meaning ascribed thereto in Clause 6.1 of this Agreement;

“Lenders’ Representative” means the person referred to as the Lenders’ Representative in the foregoing Recitals;

“Parties” means the parties to this Agreement collectively and **“Party”** shall mean any of the Parties to this Agreement individually;

“Payment Date” means, in relation to any payment specified in Clause 4.1 of this Agreement, the date(s) specified for such payment; and

“Sub-Accounts” means the respective Sub-Accounts of the Escrow Account, into which the monies specified in Clause 3.1 of this Agreement would be credited every month and paid out if due, and if not due in a month then appropriated proportionately in such month and retained in the respective Sub Accounts and paid out therefrom on the Payment Date(s).

“Subordinated Debt” shall mean the aggregate of the following sums expressed in Indian Rupees or in the currency of debt, as the case may be, outstanding as on the Transfer Date:

- a. the principal amount of debt provided by Lenders or the Developer’s shareholders for meeting the Total Project Cost and subordinated to the financial assistance provided by the Lenders; and
- b. all accrued interest on the debt referred to in sub-clause (a) above but restricted to the lesser of actual interest rate and a rate equal to 5% (five per cent) above the Bank Rate in case of loans expressed in Indian Rupees and lesser of the actual interest rate and six-month LIBOR (London Inter-Bank Offer Rate) plus 2% (two per cent) in case of loans expressed in foreign currency, but does not include any interest that had fallen due one year prior to the Transfer Date;

Provided that if all or any part of the Subordinated Debt is convertible into Equity at the option of the Lenders and/or the Developer’s shareholders, it shall for the purposes of this Agreement be deemed to be Subordinated Debt even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken.

1.2 Interpretation

1.2.1 References to Lenders’ Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders’ Representative, acting for and on behalf of Lenders.

1.2.2 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Development Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Development Agreement.

1.2.3 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.

1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Development Agreement shall apply, mutatis mutandis, to this Agreement.

2 Escrow Account

2.1 Appointment of Escrow Bank

2.1.1 The Developer hereby appoints the Escrow Bank to act as the nodal bank wherein the Escrow Account shall be maintained for the Authority, the Lenders' Representative and the Developer in connection herewith and authorizes the Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof.

2.1.2 The Developer hereby declares that all rights, title and interest in and to the Escrow Account shall be vested in Authority, the Lenders' Representative and the Developer, and applied in accordance with the terms of this Agreement. No person other than the Authority, the Lenders' Representative and the Developer shall have any rights hereunder as the beneficiaries of or as third party beneficiaries under this Agreement.

Acceptance of Escrow Bank

The Escrow Bank hereby agrees to act as such and to accept all payments and other amounts to be delivered to and held by the Escrow Bank pursuant to the provisions of this Agreement. The Escrow Bank shall hold and safeguard the Escrow Account during the term of this Agreement and shall treat the amount in the Escrow Account as monies deposited by the Developer, Lenders or the Authority with the Escrow Bank. In performing its functions and duties under this Agreement, the Escrow Bank shall act as an agent for, the Authority, the Lenders' Representative and the Developer or their nominees, successors or assigns, in accordance with the provisions of this Agreement.

2.3 Establishment and operation of Escrow Account

2.3.1 Within 30 (thirty) days from the date of this Agreement, and in any case prior to the Construction Commencement Date, the Developer shall open and establish the Escrow Account, in consultation with the Authority, with the (name of Branch) Branch of the Escrow Bank.

The Escrow Account shall bear the following title and be in the name of “_____ Escrow Account” and shall be denominated in Indian Rupees.

2.3.2 The Escrow Bank shall maintain the Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations, and pay the maximum rate of interest payable, if any, to similar customers on the balance in the said account from time to time.

2.3.3 The Escrow Bank and the Developer shall, after consultation with the Lenders’ Representative and the Authority, agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

2.4 Escrow Bank’s fee

The Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Escrow Bank and the Developer. For the avoidance of doubt, such fee and expenses shall form part of the O&M Expenses/interest on deposits as would be accrued from the Escrow account, if any and shall be appropriated from the Escrow Account in accordance with Clause 4.1 of this Agreement.

2.5 Rights of the parties

The rights of the Authority, the Lenders’ Representative and the Developer in the monies held in the Escrow Account are set forth in their entirety in this Agreement and the Authority, the Lenders’ Representative and the Developer shall have no other rights against or to the monies in the Escrow Account.

3 Deposits into Escrow Account

3.1 Deposits by Developer

The Developer agrees and undertakes that it shall deposit into and/or credit the Escrow Account with:

- a. all monies received in relation to the Project from any source, including the Lenders and lenders of Subordinated Debt;
- b. all applicable grant as payable by the Authority

- c. all funds received by the Developer from its share-holders, in any manner or form;
- d. all revenues levied and collected by the Developer including booking/advance amount;
- e. any other revenues, rentals, deposits or capital receipts, as the case may be, from or in respect of the Project; and
- f. all proceeds received pursuant to any insurance claims.

3.2 Deposits by Authority

The Authority agrees and undertakes that, as and when due and payable, it shall deposit into and/or credit the Escrow Account with:

(a). Termination Payments

Provided that, notwithstanding the provisions of Clause 4.1.1, the Authority shall be entitled to appropriate from the aforesaid amounts, any development fee/premium due and payable to it by the Developer and the balance remaining shall be deposited into the Escrow Account.

(b). Payment of set-off (if any) under Clause 9.4 of the Development Agreement.

3.3 Deposits by Lenders

The Lenders' Representative agrees, confirms and undertakes that the Lenders shall deposit into and/or credit the Escrow Account with all disbursements made by them in relation to or in respect of the Project.

3.4 Interest on deposits

The Escrow Bank agrees and undertakes that all interest accruing, if any, on the balances of the Escrow Account shall be credited to the Escrow Account. Provided that the Escrow Bank shall be entitled to appropriate therefrom the fee and expenses due to it from the Developer in relation to the Escrow Account and credit the balance remaining to the Escrow Account.

4 Withdrawals from Escrow Account

4.1 Withdrawals during Development Period

4.1.1 At the beginning of every month, or at such shorter intervals as the Lenders 'Representative and the Developer, in consultation with the Authority, may by joint written instructions determine, the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in accordance with the said written joint instructions received from Lenders 'Representative and the Developer and the Escrow Bank shall not be liable to ascertain the correctness or propriety of such written joint instructions. The Lenders Representative and Developer agree that the appropriation from the Escrow Account shall occur in the following order by depositing such amounts in the relevant Sub-Accounts for making due payments, and if such payments are not due in any month, then retain such monies in such Sub-Accounts and pay out therefrom on the Payment Date(s):

- (i) all taxes due and payable by the Developer for and in respect of the Project;
- (ii) all payments relating to construction of the Project Facilities, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
- (iii) O&M Expenses as applicable;
- (iv) monthly proportionate provision of Debt Service due in an Accounting Year;
- (v) all payments and Damages certified by the Authority as due and payable to it by the Developer;
- (vi) monthly proportionate provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;
- (vii) any reserve requirements set forth in the Financing Agreements; and balance, if any, in accordance with the instructions of the Developer

4.1.2 No later than 60 (sixty) days prior to the commencement of each Accounting Year, the Developer shall provide to the Escrow Bank, with prior written approval of the Lenders' Representative and the Authority, details of the amounts likely to be required for each of the payment obligations set forth in this Clause 4.1; provided that such amounts may be subsequently modified, with prior written approval of the Lenders' Representative and the Authority, if fresh information received during the course of the year makes such modification necessary.

4.2 Withdrawals upon Termination

4.2.1 Notwithstanding anything to the contrary contained in this Agreement, all amounts standing to the credit of the Escrow Account shall, upon Termination, be appropriated in the following order upon written instructions of the Authority Lenders' Representative, and the Developer:

- (i) all taxes due and payable by the Developer for and in respect of the Project;

- (ii) all outstanding Payment of Authority including but not limited to Premium Payment upto the Accounting Year in which the Termination has occurred;
- (iii) all payments and Damages certified by the Authority as due and payable to the Authority by the Developer;
- (iv) outstanding Debt Service including the balance of Debt Due;
- (v) outstanding Subordinated Debt;
- (vi) incurred or accrued O&M Expenses;
- (vii) any other payments required to be made under this Agreement; and
- (viii) balance, if any, in accordance with the instructions of the Developer:

Provided that no appropriations shall be made under Sub-clause (viii) of this Clause until a Vesting Certificate has been issued by the Authority under the provisions of Clause 14.3 of the Development Agreement and the Escrow Bank shall not be liable for ascertaining the correctness or propriety of such written joint instructions

4.3 Application of insufficient funds

Funds in the Escrow Account shall be applied in the serial order of priority set forth in Clauses 4.1 and 4.2, as the case may be. If the funds available are not sufficient to meet all the requirements, the Authority Lenders' Representative, and Developers, by issuance of joint written instruction to the Escrow Bank, shall apply such funds in the serial order of priority until exhaustion thereof.

4.4 Application of insurance proceeds

Notwithstanding anything in this Agreement, the proceeds from all insurance claims, except life and injury, shall be deposited into and/or credited to the Escrow Account and utilised for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project Facilities, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

5 Obligations of Escrow Bank

5.1 Segregation of funds

Monies and other property received by the Escrow Bank under this Agreement shall, until used or applied in accordance with this Agreement, be held by the

Escrow Bank for the purposes for which they were received, and shall be segregated from other funds and property of the Escrow Bank.

5.2 Notification of balances

7 (seven) business days prior to each Payment Date (and for this purpose the Escrow Bank shall be entitled to rely on an affirmation by the Developer and/or the Lenders' Representative as to the relevant Payment Dates), the Escrow Bank shall notify the Lenders' Representative and the Authority of the balances in the Escrow Account and Sub-Accounts as at the close of business on the immediately preceding business day.

5.3 Communication and notices

In discharge of its duties and obligations hereunder, the Escrow Bank:

- (a). may, in the absence of bad faith or willful negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Developer upon a certificate signed by or on behalf of the Developer;
- (b). may, in the absence of bad faith or willful negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;
- (c). shall, within 5 (five) business days after receipt, deliver a copy to the Lenders' Representative and the Authority of any notice or document received by it in its capacity as the Escrow Bank from the Developer or any other person hereunder or in connection herewith; and
- (d). shall, within 5 (five) business days after receipt, deliver a copy to the Developer of any notice or document received by it from the Lenders' Representative or the Authority in connection herewith.

5.4 No set off

The Escrow Bank agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the Escrow Account. For the avoidance of doubt, it is hereby acknowledged and agreed by the Escrow Bank that the monies and properties held by the Escrow Bank in the Escrow Account shall not be considered as part of the assets of the Escrow Bank and shall in the case of bankruptcy or liquidation of the Escrow Bank, be wholly excluded from the assets of the Escrow Bank in such bankruptcy or liquidation.

5.5 Regulatory Approvals

The Escrow Bank shall use its best efforts to procure, and thereafter maintain and comply with, all regulatory approvals required for it to establish and operate the Escrow Account. The Escrow Bank represents and warrants that it is not aware of any reason why such regulatory approvals will not ordinarily be granted to the Escrow Bank.

6 Escrow Default

6.1 Following events shall constitute an event of default by the Developer (an "**Escrow Default**") unless such event of default has occurred as a result of Force Majeure or any act or omission of the Authority or the Lenders' Representative:

(a). the Developer commits breach of this Agreement by failing to deposit any receipts into the Escrow Account as provided herein and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of 5 (five) business days;

(b). the Developer causes the Escrow Bank to transfer funds to any account of the Developer in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Escrow Account or any Sub-Account in which such transfer should have been made, within a Cure Period of 5 (five) business days; or

(c). the Developer commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 5 (five) business days.

6.2 Upon occurrence of an Escrow Default, the consequences thereof shall be dealt with under and in accordance with the provisions of the Development Agreement.

7 Termination of Escrow Agreement

7.1 Duration of Escrow Agreement

This Agreement shall remain in full force and effect so long as any sum remains to be advanced or is outstanding from the Developer in respect of the debt, guarantee or financial assistance received by it from the Lenders, or any of its obligations to the Authority remain to be discharged, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement.

7.2 Substitution of Escrow Bank

The Developer may, by not less than 45 (forty five) days prior notice to the Escrow Bank, the Authority and the Lenders' Representative, terminate this Agreement and appoint a new Escrow Bank, provided that the new Escrow

Bank is acceptable to the Lenders' Representative and the Authority and arrangements are made satisfactory to the Lenders' Representative and the Authority for transfer of amounts deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Bank. The termination of this Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

7.3 Closure of Escrow Account

The Escrow Bank shall, at the written request of the Developer, the Authority and the Lenders' Representative made on or after the payment by the Developer of all outstanding amounts under the Development Agreement and the Financing Agreements including the payments specified in Clause 4.2, and upon confirmation of receipt of such payments, close the Escrow Account and Sub-Accounts and pay any amount standing to the credit thereof to the Developer. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall be deemed to be terminated subject to the provisions under Clause 11.7 of this Agreement.

8 Supplementary Escrow Agreement:

The Lenders' Representative and the Developer shall be entitled, with prior notice to and approval of the Authority, to enter into a supplementary escrow agreement with the Escrow Bank providing, inter alia, for detailed procedures and documentation for withdrawals from Sub-Accounts pursuant to Clause 4.1.1 and for matters not covered under this Agreement such as the rights and obligations of Lenders and lenders of Subordinated Debt, investment of surplus funds, restrictions on withdrawals by the Developer in the event of breach of this Agreement or upon occurrence of an Escrow Default, procedures relating to operation of the Escrow Account and withdrawal there from, reporting requirements and any matters incidental thereto. Provided that such supplementary escrow agreement shall not contain any provision which is inconsistent with this Agreement and in the event of any conflict or inconsistency between provisions of this Agreement and such supplementary escrow agreement, the provisions of this Agreement shall prevail.

9 Indemnity

9.1 General indemnity

9.1.1 The Developer will indemnify, defend and hold the Authority, Escrow Bank and the Lenders, acting through the Lenders' Representative, harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Developer of any of its obligations under this Agreement or on account of failure of the Developer to comply with Applicable Laws and Applicable Permits.

9.1.2 The Authority will indemnify, defend and hold the Developer harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its

obligations under this Agreement other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.

9.1.3 The Developer will indemnify, defend and hold the Authority, Developer and the Lenders, acting through the Lenders' Representative harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Escrow Bank to fulfil its obligations under this Agreement other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Escrow Bank, its officers, servants and agents. It is agreed that Escrow Bank being the account holding bank and agent of the parties hereto shall not be liable to indemnify any of the Parties hereto in respect any claim, damages etc. which may arise in future.

9.2 Notice and contest of claims

9.2.1 In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 9.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party/ies responsible for indemnifying such claim hereunder (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

10 Dispute Resolution

10.1 Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "**Rules**") or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996 as modified or amended.

10.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be and the language of arbitration shall be English.

11 Miscellaneous Provisions

11.1 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 West Bengal shall have jurisdiction over all matters arising out of or relating to this Agreement.

11.2 Waiver of sovereign immunity

The Authority 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 relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Authority with respect to its assets;
- (c). waives any right of immunity which it or its assets, property or revenues now or, may acquire in the future or which may be attributed to it; and
- (d). consents generally in respect of the enforcement of any judgement or award against it in any such proceedings including the issue of any process in connection with such proceedings.

11.3 Priority of agreements

In the event of any conflict between the Development Agreement and this Agreement, the provisions contained in the Development Agreement shall prevail over this Agreement provided that Escrow Bank shall only be liable to act upon written instructions provided under this agreement and not be required to ascertain validity and/or correctness of such written instructions in terms of the Development Agreement.

11.4 Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

11.5 Waiver

11.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

- (a). shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;

(b). shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and

(c). shall not affect the validity or enforceability of this Agreement in any manner.

11.5.2 Neither the failure by any Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by any Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

11.6 No third party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

11.7 Survival

11.7.1 Termination of this Agreement:

(a). shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and

(b). except as otherwise provided in any provision of this Agreement expressly limiting the liability of a Party, shall not relieve such Party of any obligations or liabilities for loss or damage to the other Party/ies arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

11.7.2 All obligations pertaining to Parties except the Escrow Bank surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of three years following the date of such termination or expiry of this Agreement. It is agreed that the obligations of the Escrow Bank shall not survive the termination of the instant agreement and closure of the Escrow Account.

11.8 Severability

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, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Article 10 of this Escrow Agreement or otherwise.

11.9 Successors and assigns

This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

11.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its e-mail are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

11.11 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

11.12 Authorised representatives

Each of the Parties shall, by notice in writing, designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

11.13 Original Document

This Agreement may be executed in four counterparts, each of which when executed and delivered shall constitute an original of this Agreement.

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

THE COMMON SEAL OF DEVELOPER

has been affixed pursuant to the resolution

passed by the Board of Directors of the

Developer at its meeting held on the

..... day of 20..... hereunto affixed in the presence of, Director, who has signed these presents in token thereof and,

Company / Authorised Officer who has countersigned the same in token thereof \$:

SIGNED, SEALED AND DELIVERED

For and on behalf of

LENDERS by the

Lenders' Representative:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.

(e-mail address)

SIGNED, SEALED AND

DELIVERED

SIGNED, SEALED AND

DELIVERED by _____

For and on behalf of

For and on behalf of

ESCROW BANK by:

.....(Authority):

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

(Fax No.)

(Fax No.)

(e-mail address)

(e-mail address)

In the presence of:

1.

2.

[§]To be affixed in accordance with the articles of association of the Developer