DRAFT

AGREEMENT TO DESIGN, BUILD, FINANCE, OPERATE AND TRANSFER
WORLD CLASS AMENITY CENTER

This AGREEMENT TO DESIGN, BUILD, FINANCE, OPERATE AND TRANSFER (DBFOT) A WORLD CLASS AMENITY CENTER AT SIRUSERI, NEAR CHENNAI ("this Agreement") is made on [________ ], 2010 by and between the following parties:

TAMIL NADU ROAD DEVELOPMENT COMPANY LIMITED, a company within the meaning of the Companies Act, 1956 with its Registered Office, situated at Sindur Panthion Plaza, 2nd Floor, 346, Pantheon Road, Egmore, Chennai – 600 008 represented by its ………………. Mr. ………………………………

AND

[________] a company [_______] with its registered office at [_______] ("________"), represented by its ………………. Mr. ………………………………

WITNESSETH:

Whereas under a Memorandum of Lease deed dated 21st September 2005 and registered as document no. 6285 of 2005 and a Deed of Surrender of Lease deed dated 31st January 2008 and registered as document no.506 in the office of the Sub-Registrar of Tiruporur, TNRDC has secured, upon the terms and conditions contained in the lease deed, from the State Industries Promotion Corporation of Tamilnadu (SIPCOT), a 99 (ninety nine) years lease hold right in the property situated at Plot no. …………. admeasuring 4.90 (in words four point nine zero) acres ("the Plot");

Whereas the conditions, among others, for allotment of the Plot is that TNRDC shall use, or cause to be used, the Plot for the purpose of locating a World Class Amenity Center;
Whereas TNRDC proposes to develop a World Class Amenity Center on a 90 [ninety] years lease structure under a DESIGN, BUILD, FINANCE, OPERATE AND TRANSFER (DBFOT) arrangement (hereinafter referred to as “the Project”) and for such purposes, TNRDC has selected [________] through an International Competitive Bidding Process for implementation of the Project.

AND WHEREAS the parties hereto are desirous of recording the terms and conditions agreed by and between them for this purpose.

NOW THIS DEED WITNESSETH and the parties do hereby agree and declare as under.

1. Responsibilities of [________] are as follows:
   (a)                     
   (b)                     

1.1 Project Implementation

(a) [________] shall be solely responsible to Design, Build, Finance, Operate and Transfer World Class Amenity Center according to the Techno Business Proposal approved by TNRDC and for the supervision, operation and maintenance of the Project to world class standards during the term of this Agreement.

(b) [________] shall achieve or cause to achieve Financial Close within a period of 360 (three hundred and sixty) days from the date of Letter of Intent issued by TNRDC or any other extended date as may be agreed by TNRDC. For this purpose, “Financial Close” means the date on which the Financing Documents providing funding by the lenders have become effective and [________] has immediate and unconditional access to such funding under Financing Documents and “Financing Documents” means, collectively, the loan agreements, hire purchase agreements, notes, indentures, security agreements or arrangements, guarantees, acceptable letters of credit and other agreements evidencing any obligation of the [________], and other necessary undertakings required pursuant to the respective terms thereof, relating to the Financing or any refinancing for the Project.
(c) [________] shall complete or cause completion of the design, construction, erection, completion and development of the Project within 24 [twenty four] months from the Date of the Letter of Intent in accordance with the Detailed Project Report (DPR) and Design and Drawings. [________] shall ensure that the Project shall be performed / implemented in its entirety as per the Techno Business Proposal approved by TNRDC and shall not be truncated, abridged or severed or varied as to be below the Techno Business Proposal approved by TNRDC prescribed in the tender documents for any reason whatsoever. Subject to achieving the Techno Business Proposal approved by TNRDC, [________] is permitted to create additional facilities, amenities and capacities on a deferred basis and in multiple phases.

(d) [________] shall make, or cause to be made, the necessary applications to the relevant Competent Authority for all Clearances and Approvals and following the grant of any such Clearances and Approvals, maintain such Clearance and Approvals in full force and effect so long as it is necessary in order for [________] to perform its obligations relating to the implementation and operation of the Project.

(e) [________] shall or shall cause to organize the supervision, monitoring and control of the construction of the Project and operation and maintenance of the Project facilities, as may be necessary to ensure the proper performance of the Project.

(f) [________] shall operate and maintain or cause to be operated and maintained the Project facilities / amenities or cause the Project facilities to be operated and maintained in accordance with the conditions of all clearances, prudent utility practices and industry standards. The expression 'maintain' shall mean and include necessary upgrades of the Project facilities / amenities, from time to time, to meet or surpass prevalent worldwide industry standards for similar facilities.

(g) [________] shall, at its cost and expense, purchase and maintain or cause to be purchased and maintained such insurances as are necessary.
(h) [________] shall be generally responsible for finalising all matters relating to the Project including obtaining all authorizations and approvals from the Government of India, Government of Tamil Nadu and includes any collaboration, franchise arrangements for operation of the Project, as are required and necessary in the name of [________]. [________] shall also be responsible to negotiate and obtain all necessary finance for the timely and effective implementation of the Project and its efficient operation and maintenance.

(i) [________] shall always ensure that the Project is operated and maintained to the highest world wide industry standards during the entire Term.

(j) The Plot for the Project will be sub-leased to [________] for a period of 90 (ninety) years. [________] shall have the right only to sub-let/rent the built-up space/area up to the period of the lease of the lands granted to [________] and no sale or transfer is permitted.

(k) At the end of the Project Term which shall be co-terminus with the lease, [________] shall handover the Project operation, maintenance including all assets, either movable or immovable created by [________] in the Plot for the Project to TNRDC and [________] hereby agree that [________] shall not be entitled to be paid any compensation therefor. Two (2) years before the sub-lease expiry date [________], should start making suitable arrangements for handing over all the assets to TNRDC. [________] also agrees that no notice shall be given, or any application made, by TNRDC for the handing over of the Project by [__________].

(l) In the event, [________] fails to complete or cause completion of the design, construction, erection, completion and development of the Project within [________] [________] months from the Date of the Letter of Intent due to reasons attributable to itself, however, subject to the provisions of the Memorandum of Lease Deed entered between TNRDC and SIPCOT, TNRDC may, in its sole discretion, grant an extension of time for the completion, subject to the condition that [________] shall pay TNRDC liquidated damages
for each day of delay. [________] agrees that a sum of Rs. [________] [________] for each day delay without any ceiling on the amount is a reasonable and genuine pre-estimate of damages that TNRDC will suffer because of the delay. Decision/s of TNRDC shall be final and binding in this regard.

1.2 Reports

(a) [________] shall submit or cause to be submitted periodical reports to TNRDC during the Construction Period and the Operations Period on the progress of construction and operations respectively. Such reports will be in a form acceptable to TNRDC and contain such information as TNRDC may reasonably require to be properly informed of material matters relating to the construction, operation and maintenance of the Project.

(b) [________] shall provide or cause to be provided to TNRDC within 30 days of the construction commencement date, a copy of the construction schedule.

(c) [________] shall provide or cause to be provided to TNRDC details of any changes to the proposed date of completion of construction and the reasons for such changes;

(d) [________] shall provide or cause to be provided to TNRDC a written confirmation that all Clearances then required are in full force and effect including a list of such Clearances.

(e) [________] agrees to provide or cause to be provided to TNRDC such further information as TNRDC may reasonably request in order for them to monitor the progress and performance of the Project.

1.3 [________] represents and warrant that:

(i) it is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its incorporation;
(ii) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby.

(iii) [_________] shall have an obligation to disclose to TNRDC as and when any of these representations ceased to be true and valid representations.

(iv) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement.

(v) the execution, delivery and performance of its obligations under this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required under the terms of any covenant, agreement, understanding, decree or order to which it is a party or by, which it or any of its properties or assets is bound or affected and does not result in a violation of any applicable law.

(vi) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any relevant authority which may result in any Material Adverse Effect on its ability to perform its obligations under this Agreement.

(vii) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate has or may have a Material Adverse Effect on its ability to perform its obligations under this Agreement.

(viii) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in a breach of the conditions of this Agreement or which individually or in the aggregate may result in any
material impairment of its ability to perform its obligations under this Agreement.

RELATED MATTERS

2. It shall be open to [________] to execute the Project by issue of further share capital to such person(s) as may be willing to be bound by the terms of this Agreement. [________] shall procure suitable letters from such persons agreeing thereby to be bound by the terms of this Agreement and the said letters shall be immediately forwarded to TNRDC, who may thereafter approve or reject the issue of shares to any such person or all the persons. The decision of TNRDC in this regard will be final.

3. No issue of any further shares in [________] shall be made without the prior approval of TNRDC. Upon issue of the further shares to any such person or persons as above, such person or person(s) shall thereafter be deemed to be associates or nominees of [________]. In the case of associates or nominees holding more than 2% (two per cent) of the total equity share capital of [________], [________] shall obtain suitable power of attorney from such associates or nominees empowering [________] to act on behalf of such associates or nominees in matters relating to this agreement. The details of the associates and nominees of [________] who have contributed towards the equity share capital of [________] shall be furnished to TNRDC, from time to time.

4. Six (6) months after the Commercial Operation Date (COD) the composition of the [________] and/or shareholding of the member/s of the [________] or shareholding/s in the [________] may be changed or modified only with the prior written approval of TNRDC and only after execution of such supplemental agreement/s or deed/s as may be required and stipulated by TNRDC along with its letter of approval, in this regard. TNRDC will evaluate such proposal/s, if and only if, the proposed modification/ altered composition/shareholding/s of the [________] will be, prima facie, not prejudicial to the interest of TNRDC and shall be acceptable to TNRDC and such changes/revised shareholdings will not affect the Operation and Maintenance of Amenity Center. The evaluation criteria specified in the Request for Proposal would be used by TNRDC as one of the guiding tools to ascertain the
strengths of the Consortium or reconstitution of [________], after the proposed modifications/alterations/changes as aforesaid. TNRDC reserves the right to reject any proposal/s, in its sole discretion, without ascribing any reason whatsoever and the decision/s of TNRDC, in this regard, shall be final and binding.

5. [________] agrees and undertakes that it shall cause the Third Party/ies to be bound by the terms of this agreement and arrange for execution of similar agreement by the transferees/third parties with TNRDC.

6. No guarantee or counter guarantee will be furnished by the TNRDC to any Banks/Financial Institutions for term loans, bridge finance, etc., granted to [________] by them.

7. The parties hereby agree that the rights and obligations arising out of the lease agreement dated [________] entered into by the TNRDC with SIPCOT relating to and in furtherance of the implementation of the Project shall be binding on [________].

TERMINATION

8. This Agreement shall be terminated, -

a. On any material breach committed by [________] of the terms of this Agreement or RFP or the Deed of Sub-lease. In case either party commits a breach of any of the terms, conditions and stipulations herein contained and to be observed and performed on its part, then the other party shall be at liberty to give a notice in writing to the defaulting party to set right or rectify such breach and in case of non-compliance on the part of the defaulting party within two months on receipt of such notice, this Agreement may at the option of the other party be terminated.

b. On any winding up order passed against [________].
GENERAL

9. This Agreement is exclusive to the parties hereto and neither of them shall assign its rights or benefits there under except as otherwise agreed to herein.

10. Each of the parties hereto agrees that it shall not divulge any commercial, trade or technical secrets of each other to third parties.

11. Any and all notices to be given hereunder shall be deemed to have been validly given if reduced in writing signed by the party so giving the same, enclosed in an envelope addressed to the party for which such notice may be intended at the respective address of the registered office of such party and mailed by registered post with postage pre-paid.

12. For the purpose of this Agreement, Mr. ............ shall be the sole representative of [_______] and the constituents of [_______] shall jointly, severally and irrevocably constitute and authorize Mr. ............ to do on their behalf all such acts and deeds as are necessary to implement and comply with the provisions of this Agreement and he shall have the absolute authority to represent them including the authority to sue and be sued on their behalf for the purpose of this Agreement.

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

14. [_______] agrees to perform its obligations under this Agreement in conformity to the provisions of this Agreement and the provisions of the RFP and which provisions are deemed to be incorporated by reference herein. In the case of any conflict between the provisions of this Agreement and the RFP, then the provisions of the RFP shall prevail over the provisions of this Agreement.
15. The words and expressions used herein shall have the meanings ascribed to them in the Request for Proposal documents.

LEASE RELATED MATTERS

16. [________] agrees and understands that the Plot belongs to SIPCOT and is sub-leased upon terms and conditions stated in the lease deed [________] between TNRDC and SIPCOT, which deed [________] has inspected and understood. [________] accordingly agrees that:-

a. It shall be open to TNRDC during the currency of the lease to take possession of the Plot together with the Amenity Center and other buildings and fixtures located on the same, for any violation of any conditions of the sub-lease between TNRDC and [________] [the Lessee]. In such event, [________] shall not be entitled for any compensation for any of the structures on the allotted plot or any refund of any amount that may have been paid by [________] to TNRDC by virtue of the Sub-lease.

b. The interest of [________] in the Plot shall not be sold or attached and sold in satisfaction of attachment of any debt(s) and if it so happens or is likely to happen, SIPCOT / TNRDC shall be entitled to determine the lease and take possession of the Plot with all the consequences mentioned above.

c. It shall be open to the TNRDC to initiate proceedings under the provisions of the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975 or under any Statute for the time being in force for eviction as well as for the recovery of any amounts due under the Sub-lease from [________] without prejudice to resort to any other mode of recovery that may be available.

d. It shall be open to the TNRDC to deal with the Plot taken by it under the rights conferred on it as per clauses [_____] and [_____] in any manner it likes either by retaining or by leasing it to any other person, without any let or any
hindrance or claim whatsoever from [_______] to compensation and [_______] has no right to interdict the same.

e. [_______] will take possession of the plot in “as is where is” condition and no further demand for any development, such as earth filling, raising the level, etc., shall be entertained. Any other improvement or developments inside the allotted plot is purely at the discretion of [_______].

f. [_______] shall utilize the allotted plot only for the purpose for which it was allotted.

g. [_______] shall commence functioning of the Project within 24 (twenty four) months from the date of Letter of Intent. Failure will entail cancellation of the Sub-lease and forfeiture of all amounts paid towards the Project.

h. [_______] shall have to commence construction of buildings within six months from the date of the Letter of Intent and be completed within 24 months from the date of the Letter of Intent. Before commencing such construction of works on the Plot, [_______] should strictly follow the following building regulations prescribed by SIPCOT, among others.

(i) A strip of not less than five meters shall be left open to the sky, within the periphery of the plot on all sides.

(ii) Before obtaining any plan sanction from concerned authorities consent should be obtained from Project Officer of SIPCOT for the building plan and plans for all structures to be constructed on the Plot for the limited purpose of ensuring that a strip of not less than 5 (five) metres is left open to sky within the periphery of the plot on all the sides.

(iii) The provision of any culvert across common drains must be got approved by the SIPCOT.
(iv) Sewer lines and water lines should be designed in such a way that they are connected to the common lines of SIPCOT which will serve the Plot.

(v) [_______] should make its own arrangements to drain the rainwater from its plot into the common road drain provided by the SIPCOT.

(vi) [_______] has to make its own arrangements to treat the effluents solid / liquid to the required standards of the Tamilnadu Pollution Control Board and to regulate dust, smoke, gas, noise, vibrations and prevent fire hazards and comply with the regulations in this regard.

(vii) [_______] shall treat the Industrial effluents to relevant ISI/BIS specifications as applicable to the area / Inland waterways and start construction only after obtaining clearance from the Tamilnadu Pollution Control Board.

(viii) SIPCOT will permit the units to connect the collecting system of the SIPCOT only the effluents treated to the standard of Inland water ways as prescribed by the Pollution Control Board. Before application for the connection is made, [_______] shall produce such clearance from the Pollution Control Board.

(ix) [_______] shall preserve the manholes constructed if any in the 5 (five) metre corridor and raise the same atleast 45 (forty five) cms above the formation level in case the natural ground level is raised by the formation at their own cost with prior intimation and approval from SIPCOT.

(x) [_______] shall, at its own cost, construct and maintain access roads leading from the Industrial Park to the said plot in strict accordance with the specifications and details prescribed by the SIPCOT.

i. [_______] shall keep TNRDC / SIPCOT indemnified against any and all claims for damages, which may be caused to any adjoining buildings or other premises as a consequence of the erection of the buildings for amenity Center
by [________]. [________] shall also keep TNRDC indemnified against all payments whatsoever which, during the progress of work, may become payable or be demanded by the Local Authority in respect of the said works, or of anything done under the authority herein contained.

j. With the consent of [________], SIPCOT shall have the right of access into and utilizing any portion of the Plot, as required at all times, for the purpose of laying pipe lines, cables, underground drainages, channels, or providing such other common facilities. SIPCOT shall have further right within the area of the allotted plot including the building standing thereon as and when felt necessary by SIPCOT, to lay down, place maintain, alter, remove or repair any pipes, pipe lines, conduits for service lines, posts, or other appliances or apparatus in, on, under, over, along or across the land in such area for the purposes of providing any common amenities or services for the Industrial Park and the same may be done either directly by any person either generally or specially authorised by SIPCOT in this behalf and [________] agrees for the same.

k. [________] shall not, at any time during the currency of the lease, cause or permit any nuisance in or upon the said land and in particular shall not use or permit the said land to be used for any purpose, which may be obnoxious or injurious or offensive by reason of deposits of solid matter or omission of odour, liquid, dust, smoke, gas, noise vibrations or fire hazards or which may cause permanent damage to the land. TNRDC / SIPCOT shall have full right to prohibit or regulate these matters at all times.

l. During the period of lease and thereafter [________] at its expense will keep the buildings, premises and other structures clean, free from defect and in good condition.

m. The Party of the Second Part shall bear all expenses in connection with the drawing of power from the main lines to the Plot and for the supply of electricity.
n. [_________] shall execute an agreement for water supply at the time of taking possession of the Plot and comply with all terms and conditions of that agreement.

o. [_________] along with the allottees of the other plots shall bear the maintenance charges for the common amenities and facilities like roads, drainage, sewerage, street lighting etc, at the rates which may be fixed by SIPCOT from time to time.

p. [_________] shall not dump debris or any waste harmful or harmless materials within SIPCOT premises.

q. SIPCOT shall have the powers to direct removal or alteration of any building or structure erected or used contrary to the conditions of the plan or cause the same to be carried out at the cost of [_________].

r. [_________] shall not sink any well, bore well or tube well within the site allotted except with the prior permission of SIPCOT, subject to the conditions as applicable. If any such well exists already in the plot it shall be closed when SIPCOT supplies water from a common source. If any bore well exists already it shall be kept under the control of SIPCOT.

s. [_________] shall not draw water from their own bore well / open well / tube well sunk in private lands adjacent to SIPCOT Industrial Park through pipe line unauthorisedly trespassing into SIPCOT premises. If at any time such trespass is found by SIPCOT water supply will be disconnected besides severing the trespassed water line.

t. Ten percent of the jobs in the Industrial units coming up in the Industrial Park, shall be reserved to the members of the families of land owners whose lands have been acquired for the Industrial Park, subject to eligibility as per qualifications prescribed for the jobs.
u. The Constitution of [_________] in case of Proprietary concern / Partnership firm / Board of Directors of Private Limited company shall not be changed without prior approval of the TNRDC. For a public limited company as and when the constitution of the Board of Directors (Professionals) gets changed the same shall be informed to the TNRDC and acknowledgement obtained within 30 days.

v. During the currency of the lease, any question of dispute or difference in relation to or in connection with the terms of the Sub-lease as relatable to the Lease Deed dated 21.09.2005 between TNRDC and SIPCOT shall not be raised by [_________] and, if at all raised, such question of dispute or difference shall be referred to an arbitrator appointed by Government of Tamil Nadu.

w. SIPCOT has the right to impose any further conditions and stipulations, or alternations in the regulations which are reasonably justified and necessary at any time for the establishment of Industrial Park, to implement the conditions of this deed and for the benefit of the Industrial Park as a whole.

x. During the currency of the lease, the ownership of the leased property which is vested with the SIPCOT shall not be liable to be questioned in any manner and if at all any such question is raised by [________], the lease will be terminated forthwith and the SIPCOT will enter the land including the buildings and other appurtenances situated thereon and resume possession of the plot at any time.

**ARBITRATION**

17. If any dispute and/or difference shall at any time arise between the parties hereto touching or concerning or arising out of these presents or the interpretation of any clause hereof or the respective rights, claims or liabilities hereunder or otherwise however of the parties hereto, such dispute and/or difference shall be referred to arbitration. Each party shall nominate an arbitrator and the two arbitrators so nominated shall nominate the third arbitrator. The Arbitration and Conciliation Act, 1996 as amended from time to time shall apply.
18. The venue of the arbitration shall be the City of Chennai only. The language of the arbitration proceedings shall be in English.

19. Except as above, the courts in Chennai alone shall have jurisdiction in all matters arising out of or relating to this Agreement.

20. This Agreement is subject to additions and / or variations and / or deletions with the mutual consent in writing of both the parties hereto in respect of any of the foregoing provisions of this Agreement or any further provisions to be incorporated in the said Agreement by mutual consent in writing or arrangements that may be actually agreed upon between the parties hereto pursuant to the foregoing provisions of this Agreement or otherwise.

IN WITNESS WHEREOF THE PARTIES HERETO HAVE SET THEIR HANDS THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN.

For Tamil Nadu Road Development Company Limited

For [____________]

WITNESSES

1.

2.