

DEVELOPMENT OF INTERNATIONAL LEVEL CRICKET STADIUM AT BATHINDA UNDER PPP FORMAT

**Clarifications to the Queries from prospective bidders**

**ADDENDUM-1**

Sr. No.	Reference	Queries	Clarification
1.	RFP (Section-I)- Clause 2.6 (Development Parameters to be followed)	<p>Under development parameters the total covered area is 40% which means out of 25 acres only 10 acres for building the following three facilities:-</p> <ul style="list-style-type: none"> <li>i) Cricket Stadium including stands, circulations area, pavilion etc.</li> <li>ii) Club House with related facilities</li> <li>iii) Remaining land to be exploited for commercial/ residential/ institutional purposes.</li> </ul> <p>Since the entire capital expenditure on the stadium is to be funded/ subsidized through the sale of the commercial space, after construction of the stadium and Club House there will be hardly any space left. It is estimated that construction of the stadium and club house would be needing ground coverage area of about 15 acres therefore it may be increased to 50%. Since the stadium itself will occupy almost 15 acres of land, there would be hardly</p>	No Change.

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		any space available for parking. It is recommended that maximum of 10 acres additional space may be provided for parking adjacent to the Stadium on the same terms and conditions.	
2.	RFP (section-I)- Clause 2.7(Assignability and Encumbrances)	Clause 2.7.2 bars any sought of mortgage on the property to any lender/financial institution. You will appreciate that in the current economic scenario it is virtually impossible to raise finances even with complete mortgage. Further the marketability of the commercial space presently is in limbo due to excess capacity already created all over the country with no buyers available. Keeping this in mind it will be impossible to raise money from any financial institution by sub-lease.	As per Article 2.1 (d) and Article 11.1 ( c) (i), Concessionaire may assign its rights & benefits under the Concession Agreement and other project related Financial Documents to or in favour of the Lenders as security for seeking financial assistance. However, mortgage of Project Site shall not be allowed.  Article 11.1 (c )(i) of the draft Concession Agreement to be read as follows: "Assignment of Concessionaire's rights, interests and benefits available under this Agreement, such as its lease rights, sub-leases, revenues, building, equipments etc and other Project related Financial Documents to or in favour of the Lenders as security for Financial Assistance provided by them."
3.	Concession Agreement- Article 9.2 (Financing and Lender's Right)	Further RFP also restricts the right of lending institutions in the clause 9.2 wherein case of default the rights of the concessionaire will be ceased and Concessioning authority will undertake the operations and maintenance of the project on its own or through a Third party. You will appreciate that no financial institution will commit money on such a project.	It is clarified that Article 9.2 (Concession Agreement-Section-II) should be read in conjunction with Article 9.1 and the blanket rights given to the Lenders' under Schedule - 5 (Substitution Agreement).  Article 9.1- It says that:- ❖ Concession Authority shall enter into a Tripartite Agreement amongst the Concessioning Authority, Concessionaire and Lenders' Representative. ❖ It shall become operational incase of any Financial

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			<p>Default of the Concessionaire towards the Lenders.</p> <ul style="list-style-type: none"> <li>❖ The Concessioneing Authority confirms and binds itself to this Substitution Agreement (Schedule-5).</li> </ul> <p>Article 9.2- It says that:-</p> <ul style="list-style-type: none"> <li>❖ The Concessioneing Authority, upon the receipt of Notice from the Lenders informing it about the Financial Default of the Concessionaire, shall suspend all the rights / benefits of the Concessionaire.</li> <li>❖ For that limited period of Suspension of rights of the Concessionaire, the Concessioneing Authority has been asked to continue with the operation of the Project Stadium.</li> <li>❖ In meanwhile, the Lenders, as per the rights given to them under Schedule 5 - Substitution Agreement, shall bring in their 'Nominated Company' to replace the original Concessionaire, within a period of 180 days or another extension of 90 days.</li> <li>❖ The 'Nominated Company' means a legal entity, selected by the Lenders' Representative, on behalf of Senior Lenders, and proposed to the Concessioneing Authority for assignment / transfer of the Concession as provided in this Agreement.</li> </ul>
4.	Concession Agreement (Schedule 5) - Substituting Agreement (Clause 3.1.2)	This is compounded by clause 3.1.2 wherein the company nominated by the Lenders would substitute the concessionaire, Where in they would have not right over the project and they or their representative shall not be entitled to operate and maintain the Project. For	Please refer to above clarification.

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		example if the concessionaire Sub-lease the rights to a hotel for a period of concession and raise money but due to some reason default, the Concessioneing authority will overtake the total project including the sub-leased. Such a clause would discourage the financial institutions / Lenders to invest and lend the money for such a project.	
5.	Concession Agreement (Schedule 7) - Indicative List of Clearances	Schedule-7 enjoins on the concessionaire to obtain all Government clearances. Since the Government itself is the basic promoter of the concept of the project, it may be made obligatory on the part of the State Government to provide all clearances up-front subject to construction bye-laws of the area.	Concessioneing Authority shall facilitate the Concessionaire to obtain requisite clearances/ permissions from the Competent Authorities for development of the Project Facility.
6.		Request for additional period of 15 days to RFP document for enabling to gather relevant information for computation of rate to the work relating to the Project.	The last date for the submission of the RFP document has been extended to 12-02-2009.
7.		Last date of bidding may be postponed to 15 <sup>th</sup> February 2009	The last date for the submission of the RFP document has been extended to 12-02-2009.
8.	Concession Agreement [Art 6.2 (f) (II)] - Termination		<b><u>Article 6.2(f)(II) of draft Concession Agreement shall be read as under:-</u></b> Upon Termination of this Agreement on account of Concessionaire Event of Default, after the Project Construction

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	Payments		<p>Completion Date and during the Operation &amp; Maintenance Phase and/ or on occurrence of event as laid down in Article 5.1.1(c), the Concessioneing Authority shall pay to the Concessionaire by way of Termination Payment an amount equal to 90% (ninety percent) of the Debt Due less pending insurance claims, if any and any amounts then due &amp; payable to Concessioneing Authority by the Concessionaire. Provided, however, that in the event of such insurance claims or any part thereof are not admitted and paid, the Concessionaire shall be entitled to receive from the Concessioneing Authority a further sum equal to 80% (eighty percent) of the amount of such claims not admitted. The Concessionaire shall hand over physical, vacant, unencumbered possession of the Project Site to the Concessioneing Authority.</p>
9.	Article 6.2 (f)(iii) of the draft Concession Agreement		<p><b><u>Article 6.2(f)(iii) of the draft Concession Agreement to be read as under:</u></b></p> <p>“Upon termination of this Agreement on account of Concessioneing Authority Event of Default and on occurrence of event laid down in Article 5.1.1(d), Concessionaire shall be entitled to seek Termination Payments, a sum equal to:-</p> <ul style="list-style-type: none"> <li>i. the total Debt Due, plus</li> <li>ii. 100% (one hundred percent) of the outstanding Subordinated Debt, if any, plus</li> <li>iii. 125% (one hundred and twenty five percent) of the Equity (subscribed in cash and actually spent on the Project) if such Termination occurs at any time during the two years from the Compliance Date and for each successive year thereafter, such amount shall be reduced</li> </ul>

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			<p>by 1.2% (one point two percent) per annum, less</p> <p>iv. Any amounts then due &amp; payable to Concessioneing Authority by the Concessionaire.</p> <p>In addition to this, the Performance Security, if subsisting, shall be returned by the Concessioneing Authority.</p>
10.	Article 5.1.1 of the draft Concession Agreement		<p><b><u>Article 5.1.1 of draft Concession Agreement to be read as under:</u></b></p> <p>5.1.1 For the purpose of this Agreement, Force Majeure Event means any of the Events, set out below including the impact / consequence thereof which:</p> <ul style="list-style-type: none"> <li>(a) is beyond the control of the Party claiming to be affected thereby (the “<b>Affected Party</b>”),</li> <li>(b) causes Material Adverse Effect and prevents the Affected Party from performing or discharging its obligations under this Agreement; and</li> <li>(c) the Affected Party has been unable to overcome or prevent despite exercise of due care and diligence. These events will include: <ul style="list-style-type: none"> <li>i. earthquake, flood, inundation, landslide;</li> <li>ii. storm, tempest, hurricane, cyclone, lightning, thunder or other extreme atmospheric disturbances;</li> <li>iii. fire caused by reasons not attributable to the Concessionaire or any of the employees or agents of the Concessionaire;</li> <li>iv. acts of terrorism;</li> </ul> </li> </ul>

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			<ul style="list-style-type: none"> <li>v. strikes, boycotts, labour disruptions or any other industrial disturbances not arising on account of the acts or omissions of the Concessionaire;</li> <li>vi. war, hostilities (whether war be declared or not);</li> <li>vii. invasion, act of foreign enemy, rebellion, riots, weapon conflict or military actions, civil war;</li> <li>viii. ionising radiation, contamination by radio activity from nuclear fuel, any nuclear waste, radioactive toxic explosion;</li> <li>ix. volcanic eruptions and</li> <li>x. any judgment or order of a court of competent jurisdiction or statutory authority in India made against the Concessionaire in any proceedings reasons other than failure of the Concessionaire to comply with any Applicable Law or Applicable Permits or on account of breach thereof, or of any contract, enforcement of this Agreement or exercise of any of its rights under this Agreement by Concessioning Authority.</li> </ul> <p>(d) action of authorities having Material Adverse Effect including but not limited to :</p> <ul style="list-style-type: none"> <li>i. acts of expropriation, compulsory acquisition or takeover by any</li> </ul>

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			<p>Government Agency of the Project / Project International Level Cricket Stadium or rights of the Concessionaire; or</p> <p>ii. any unlawful, unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid cause any consent or approval required by the Concessionaire or any of the Contractors to perform their respective obligations under the Project Agreement (other than a consent obtaining of which is Condition Precedent) and provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any Contractors inability or failure to comply with any condition relating to grant, maintenance or renewal of such consents or permits.</p>
11.	Article 5.4 (d) of the draft Concession Agreement		<p><b><u>Article 5.4(d) of the draft Concession Agreement to be read as under:</u></b></p> <p><b>(d) Termination Payment in case of Termination due to Force Majeure Event</b></p> <p>Upon Termination of this Agreement due to Force Majeure Events, Concessionaire shall be entitled to receive the Termination Payments as per the provisions laid down in Articles 6.2 (f)(ii) and 6.2 (f)(iii). Performance Security, if subsisting, shall be released.</p>

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			<p>Provided Concessioneing Authority shall be entitled to deduct from such termination Payment any amount due and recoverable by Concessioneing Authority including any outstanding payment from the Concessioneire as on the Termination Date.</p>
12.	Clause 2.7.1 of Section I of the RFP document		<p><b><u>Clause 2.7.1 of Section I of the RFP document to be read as under:</u></b></p> <p>2.7.1 Apart from sub-leasing the use of the built space and facility as per the terms of this Agreement, the Successful Bidder (Concessioneire) shall be entitled to assign any of his rights, or interests in this Agreement in favour of lenders/ Financial Institutions at any time, for raising finance for the Project.</p>
13.		RFP document indicates that all development and demand risk will be transferred to the private sector for this Project. Unfortunately this does not align with our approach to social infrastructure which prefers that the government pay an annuity or availability payment for the Social Infrastructure component with a focus on the social service provision.	No Change
14.	Clause 3.1.1. of Section I of the RFP document		<p><b>3.1.1 <u>Technical and Financial Experience (in the Technical Bids)</u></b></p> <p>The date fixed for making an elaborate Presentation before a High Powered Committee of the State Government has been extended to 16.2.2009. (The time and venue of the Presentation would be intimated later).</p>