

Project Agreement

dated 19/12/2017

between

KfW, Frankfurt am Main
("KfW")

and

State of Odisha
acting by its Governor

and

Odisha Urban Infrastructure Development Fund
("Project-Executing Agency")

for

EUR 55,000,000.00 (Loan)

and

EUR 2,000,000.00 (Financial Contribution)

**- Sustainable Urban Infrastructure Development Odisha - Phase II /
Odisha Urban Infrastructure Fund**

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On the basis of the agreements dated February 02, 2011 and May 29, 2017 between the Government of the Federal Republic of Germany and the Government of India on Financial Cooperation ("**Government Agreement**") it was agreed to promote environment related urban infrastructure development in Odisha (the "**Project**").

For this purpose KfW and India acting by its President (the "**Borrower**" or the "**Recipient**") decided to enter into two complementary agreements: a loan agreement on a loan amount of EUR 55,000,000.00 (the "**Loan Agreement**") and a financing agreement on a financial contribution of EUR 2,000,000.00 (the "**Financing Agreement**").

By the Loan Agreement dated 11/12/2017 KfW agreed to extend to the Borrower a loan (the "**Loan**") not exceeding a total of

EUR 55,000,000.00

and by the Financing Agreement dated 11/12/2017 a financial contribution (the "**Financial Contribution**") not exceeding

EUR 2,000,000.00.

On the basis of the Loan Agreement and the Financing Agreement, the State of Odisha, represented by its Governor, the Project-Executing Agency Odisha Urban Infrastructure Development Fund and KfW conclude the following project agreement ("**Project Agreement**" or "**Agreement**"). Except as provided otherwise herein, terms defined in the Loan Agreement and the Financing Agreement shall have the same meaning in this Project Agreement.

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Article 1

Purpose of the Loan and the Financial Contribution

- 1.1 The Loan and the Financial Contribution shall be channelled by the Borrower in full and on a back to back basis to the State of Odisha. The Government of Odisha shall pass the Loan to the Odisha Urban Infrastructure Development Fund (OUIDF) (the "**Project-Executing Agency**") in accordance to the conditions set forth in Article 2. The Project-Executing Agency shall use the Loan and the Financial Contribution (partial amounts of both being hereinafter also referred to as "Amounts") exclusively to finance the Project and, specifically, shall use the Loan to finance projects with a positive environmental impact by providing loans to environment related urban infrastructure sub-projects and to support sub-projects with viability gap funding where necessary. The Project-Executing Agency shall use the Financial Contribution exclusively for financing of technical assistance to support project preparation activities necessary for creating a shelf of bankable sub-projects including preparation of Urban Development Plans/City Development Plans, preparation of Feasibility Studies and Detailed Project Reports, Tender Documents and implementation consultancy and support for urban infrastructure projects supporting the creation of the Odisha Urban Infrastructure Development Fund (OUIDF). The Project-Executing Agency and KfW shall determine the details of the Project and the goods and services to be financed from the Loan by a separate agreement ("**Separate Agreement**").
- 1.2 Taxes and other public charges to be borne by the Project-Executing Agency as well as import duties shall not be financed from the Loan and the Financial Contribution.

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Article 2

Channelling of the Loan and the Financial Contribution to the Project-Executing Agency

- 2.1 According to Article 1.2 of the Loan Agreement the Borrower shall channel the Loan through the State of Odisha to the Project-Executing Agency in accordance with the Borrower's standard arrangements for developmental assistance to the States of India. The Borrower shall pass the Loan to the State of Odisha in full in accordance with the back-to-back on lending guidelines of the Indian Ministry of Finance, Department of Economic Affairs (DEA), at the same terms and conditions as set forth in Articles 4.5 and 5.1 of the Loan Agreement. The Government of Odisha shall pass 50% of the funds as a capital grant for ULBs to the Grant Fund of the Project-Executing Agency. The remaining 50% of the funds will be passed as a local currency loan (loan component) to the Loan Fund of the Project-Executing Agency. The currency risk for this loan component will be borne by the State of Odisha.

The State of Odisha will confirm KfW the terms and conditions under which the funds are passed on to the Project-Executing Agency and of any subsequent change in these arrangements.

- 2.2 Prior to the first disbursement from the Loan, the Borrower and the State of Odisha shall send KfW the confirmation of the on-lending terms specified in Article 2.1.
- 2.3 The channelling of the Loan shall not constitute any liability of the Project-Executing Agency to KfW for payment obligations under the Project Agreement.
- 2.4 According to Article 2 of the Financing Agreement the Borrower shall channel the Financial Contribution to the Project-Executing Agency as a non-repayable grant and free of charge.

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Article 3

Disbursement

- 3.1 After all conditions precedent to disbursement according to Article 2.4 of the Loan Agreement have been met KfW shall disburse the Loan in accordance with Article 2.1 of the Loan Agreement and the progress of the Project and upon request of the Project-Executing Agency via the Government of India. By the Separate Agreement, the Project-Executing Agency and KfW shall agree on the disbursement procedure, in particular the evidence proving that the requested loan and contribution amounts are used for the purpose stipulated in this Agreement.
- 3.2 KfW may refuse to make disbursements after December 30, 2023.

Article 4

Validity of this Agreement and Representation

- 4.1 The Secretary to the Government of Odisha and such persons as designated by him or her to KfW and authorized by specimen signatures authenticated by him or her shall represent the State of Odisha in the execution of this Agreement. The Chairperson of the Board of Trustees of the Project-Executing Agency and such persons as designated by him or her to KfW and authorized by specimen signatures authenticated by him or her shall represent the Project-Executing Agency in the execution of this Agreement. The powers of representation shall not expire until their express revocation by the representatives authorized at the time has been received by KfW.

- 4.2 Amendments or addenda to this Agreement and any notices and statements delivered by the contracting parties under this Agreement shall be in writing. Any such notice or statement shall have been received once it has arrived at the following address of the corresponding contracting party or at such other address of the corresponding contracting party as notified to the other contracting party:

For KfW:

KfW
Attn: LEb2
Postfach 11 11 41
60046 Frankfurt am Main
Federal Republic of Germany
Phone: +49 69 7431-0
Fax: +49 69 7431-2944

For the State of
Odisha:

Government of Odisha *Odisha*
Secretary to the Government of ~~Orissa~~
Finance Department
Phone: +91 674 2536950
Fax: +91 674 2536908, +91 674 2395755
E-mail: finsec.or@nic.in

For the Project-
Executing Agency:

Odisha Urban Infrastructure Development Fund.
Secretary to the Government of ~~Orissa~~ *Odisha*
Housing and Urban Development Department
Phone: +91 674 2536903
Fax: +91 674 2394984
E-mail: hudsec.or@nic.in

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Article 5

The Project

5.1 The Project-Executing Agency

- a) will prepare, implement, operate and maintain the Project in conformity with sound financial and technical practices, in compliance with environmental and social standards and substantially in accordance with the Project conception agreed upon between KfW and the Project-Executing Agency;
- b) will assign the preparation and supervision of the sub-projects to independent, qualified consulting engineers or consultants, and the implementation of the Project to qualified firms;
- c) will award the contracts for the goods and services to be financed from the Loan according to the Odisha procurement guidelines and the contracts for the accompanying measures financed from the Financial Contribution upon prior international competitive bidding save as provided for otherwise in the Separate Agreement;
- d) will maintain, or cause to be maintained, books and records unequivocally showing all costs of goods and services required for the Project and clearly identifying the goods and services financed from this Loan;
- e) will enable KfW and its representatives at any time to inspect such books and records as well as any and all other documentation relevant to the implementation and operation of the Project, and to visit the Project and all the installations related thereto;
- f) acknowledges that it is aware of the content of the Loan Agreement and its role as Project-Executing Agency thereunder and that it will comply with all its obligations thereunder and hereunder and that it will furnish to KfW any and all such information and records on the Project and its further progress as KfW may request.
- g) will furnish to KfW any and all such information on its financial situation as KfW may request;

- h) will send its audited financial statements with the balance sheet and profit and loss accounts and relevant notes as well as the Project-Executing Agency's annual reports to KfW as soon as possible but in any case within six months after the end of each financial year;
- i) will enable KfW and its agents at any time to inspect its books and records, which must reflect the Project-Executing Agency's business activity and financial situation in conformity with standard accounting principles;
- j) will of its own accord promptly inform KfW of any and all modifications of its name, legal form, control or supervision, corporate or shareholder structure, modifications of articles of association or founding acts and of other regulations applicable to the Project-Executing Agency as well as of any changes in its management;
- k) represents that it does not maintain any business relationship or has not engaged in any other activity (i) with or in favor of persons, organisations or entities which are listed on a sanctions list issued by the European Union, the United Nations Security Council or the Federal Republic of Germany ("**Sanctions List**"), or (ii) which would constitute a breach of embargoes regulating foreign trade or of so-called financial sanctions of the aforementioned institutions (together the "**Sanctions**");
- l) will not enter into or continue any business relationship with persons, organisations or entities listed on a Sanctions List and will not engage in any other activity that would constitute a breach of Sanctions; and
- m) will inform KfW, promptly and of its own accord, of the occurrence of any event which results in any of the Project-Executing Agency, any member of its management bodies or other governing bodies or any of its shareholders, being listed on a Sanctions List.

5.2 The Project-Executing Agency and KfW shall set forth the details pertinent to Article 5.1 in the Separate Agreement.

5.3 The State of Odisha and the Project-Executing Agency shall

- a) ensure the full financing of the Project and, upon request, furnish to KfW evidence proving that the costs not paid from the Loan granted under the Loan Agreement are covered;
- b) of their own accord and without delay forward to KfW any queries received from the OECD or its members under the so-called "Agreement for Untied ODA Credits Transparency" following the award of the contracts for the supplies and services to be financed from the Loan and will coordinate the reply to any such queries with KfW; and
- c) of their own accord promptly inform KfW of any and all circumstances precluding or seriously jeopardizing the implementation, the operation or the purpose of the Project.

5.4 *Charges.* The Project-Executing Agency will not create or permit to subsist any Charges on the Project assets without KfW's prior consent. In this Agreement, "Charge" means any mortgage, pledge, lien, charge, assignment or transfer by way of security, hypothecation or security interest and any other agreement or arrangement the effect of which is the creation of a security or any right conferring a priority of payment in respect of obligation of any person.

This obligation does not apply:

- a) to Charges existing or already agreed upon when this Agreement was signed and disclosed to KfW before the Agreement was signed,
- b) to Charges that are customarily created in the ordinary course of business under legal or other customary contractual regulations to secure obligations (with the exception of loan liabilities) towards suppliers or other providers of services (e.g. retention of title rights customary in the industry and legal liens),
- c) to Charges that already existed at the time an asset was acquired, provided such Charges are removed within three months after acquisition.

5.5 *Sale of assets.* Without KfW's prior consent, the Project-Executing Agency will not sell any of the Project Assets.

Article 6

Miscellaneous Provisions

- 6.1 The State of Odisha and the Project-Executing Agency shall ensure that the persons charged with the preparation and implementation of the Project, the award of any contract for the supplies and services to be financed, and with requesting the loan amounts do not demand, accept, make, grant, promise or obtain a promise of unlawful payments or other advantages in connection with these tasks.
- 6.2 a) *Publication of project-related information by KfW.* To comply with internationally accepted principles of utmost transparency and efficiency in the development cooperation, KfW publishes selected information (including evaluation reports) about the Project and how it is financed during pre-contractual negotiations, while the Project-related agreement(s) is (are) being implemented and in the post-contractual stage (hereinafter referred to as the "**Entire Period**").

The information is published regularly on the website of KfW Development Bank (<http://transparenz.kfw-entwicklungsbank.de/en>).

The publication of information (either by KfW or third parties in accordance with Article 6.2 c) below) about the Project and how it is financed does not include any contractual documentation or any sensitive financial or business-related detailed information about the parties involved in the Project or its financing, such as

- i. information about internal financial data;
- ii. business strategies;
- iii. internal corporate guidelines and reports;
- iv. personal data of natural persons;
- v. KfW's internal rating of the parties' financial position.

- 6.2 b) *Transfer of project-related information to third parties.* KfW shares selected information about the Project and how it is financed during the Entire Period with the entities mentioned below, particularly to ensure transparency and efficiency:
- i. subsidiaries of KfW;
 - ii. the Federal Republic of Germany and its competent bodies, authorities, institutions, agencies or entities;
 - iii. other implementing organisations involved in German bilateral development cooperation, particularly the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH;
 - iv. international organisations involved in collecting statistical data and their members, especially the Organisation for Economic Cooperation and Development (OECD) and its members
- 6.2 c) *Transfer of project-related information to third parties and publication by these.* Furthermore, the Federal Republic of Germany has requested KfW to share selected information about the Project and how it is financed throughout the Entire Period with the following entities, which publish the sections relevant to the purpose:
- i. Federal Republic of Germany for the purposes of the International Aid Transparency Initiative
(http://www.bmz.de/de/was_wir_machen/wege/transparenz-fuer-mehr-Wirksamkeit/index.html);
 - ii. Germany Trade & Invest (GTAI) for the purposes of market information
(<http://www.gtai.de/GTAI/Navigation/DE/trade.FOO>)
 - iii. OECD for the purpose of reporting financial flows in the framework of development cooperation (<http://stats.oecd.org/>);
 - iv. German Institute for Development Evaluation (DEVal) for the purposes of evaluating the overall German development cooperation to ensure transparency and efficiency (<http://www.deval.org/de/>).

- 6.2 d) *Transfer of project-related information to other third parties (including publication by these).* KfW further reserves the right to transfer (including for the purposes of publication) information about the Project and how it is financed during the Entire Period to other third parties so as to safeguard legitimate interests.

The information is not transferred by KfW to other third parties if the legitimate interests of the State of Odisha and the Project-Executing Agency in the information not being transferred outweigh KfW's interests in it being transferred. The legitimate interests of the State of Odisha and the Project-Executing Agency particularly include the confidentiality of the sensitive information mentioned in Article 6.2 a), which is excluded from publication.

Furthermore, KfW is entitled to transfer information to third parties if this is necessary due to statutory or regulatory requirements or to assert or defend claims or other legal rights in court or administrative proceedings.

- 6.3 For the transport of the goods to be financed from the Loan the provisions of the Government Agreement, which are known to the Government of Odisha, respectively to the Project-Executing Agency shall apply.
- 6.4 The Project-Executing Agency shall promptly make available to KfW on demand all information and documents which KfW requires to fulfil its obligations to prevent money laundering and terrorism financing as well as for the continuous monitoring of the business relationship with the Project-Executing Agency, which is necessary for this purpose.

In entering into and implementing this Project Agreement the Project-Executing Agency acts in its own name and for its own account. With regard to German law or Indian law

- aa) the Project-Executing Agency's own resources or the amounts invested in the financing of the Project will not be of illicit origins and, in particular, this list being non-exhaustive, will not be linked to drug trafficking, corruption, organised criminal activity or terrorism;

bb) the shareholder capital of the Project-Executing Agency will not at any time be of illicit origins and, in particular, this list being non-exhaustive, will not at any time be related to drug trafficking, corruption, organised crime or terrorism;

cc) the Project-Executing Agency will not be engaged in the acquisition, possession or use of property that is of illicit origins and, in particular, this list being non-exhaustive, will not at any time be related to drug trafficking, corruption, organised crime or terrorism; and

dd) the Project-Executing Agency will not be engaged in financing terrorism.

- 6.5 A change of ownership or other status of the Project-Executing Agency will not release the State of Odisha of its obligation vis-à-vis the Project and its implementation.
- 6.6 If any provision of this Project Agreement is or becomes invalid, or if there is a gap in any of the provisions of this Project Agreement, this shall not affect the validity of the remaining provisions hereof. The parties to this Project Agreement shall replace any invalid provision by a legally valid one which comes as close as possible to the spirit and purpose of the invalid provision. The parties shall fill any gap in the provisions with a legally valid provision which comes as close as possible to the spirit and purpose of this Project Agreement.
- 6.7 Amendments and supplements to this Project Agreement must be in writing to be effective. Any waiver of this requirement of written form must be declared by the parties in writing.
- 6.8 Neither the State of Odisha nor the Project-Executing Agency may assign or transfer, pledge or mortgage any claims from this Project Agreement.
- 6.9 All claims of KfW under this Project Agreement expire after five years from the end of the year in which any such claim has accrued and in which KfW has become aware of the circumstances constituting such claim or could have become aware of them without gross negligence.
- 6.10 This Project Agreement shall be governed and construed in accordance with the laws of the Federal Republic of Germany. The place of performance shall be Frankfurt am Main.

6.11 All disputes arising out of or in connection with this Project Agreement shall be settled exclusively and finally by an arbitration tribunal. In this regard, the following shall apply:

- a) The arbitration tribunal shall consist of one or three arbitrators who shall be appointed and shall act in accordance with the Arbitration Rules of the International Chamber of Commerce (ICC) applicable from time to time.
- b) The arbitration proceedings shall be conducted in Frankfurt am Main. The proceedings shall be held in the English language.

Done in three originals in the English language.

BUBANESHWAR
this 19/12/ 2017

KfW

Arca
[Signature]

BUBANESHWAR
this 19/12/ 2017

Mandy
STATE OF ODISHA
represented by its Government
acting by its Governor

[Signature]
**Odisha Urban Infrastructure
Development Fund**