

**Housing and Urban Development Department**

**GOVERNMENT OF ODISHA**

**TENDER NOTICE NO. HUD-13/REFM/65/SCH/17/0062/2013**  
dated 26.10.2013

**Request for Proposal**

**Selection of Partner for setting up a Project Development Agency  
(PDA) to manage Odisha Urban Infrastructure Development  
Fund (OUIDF)**

**Volume II – Draft Management Agreement**

This section provides the Draft Management Agreement between OUIDF and the PDA

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## NOTE

The Government of Odisha (GoO), through its Housing and Urban Development Department (HUDD) has set up an Urban Infrastructure Development Fund (OUIDF) with assistance from KfW in the form of a Line of Credit and Technical Assistance support to develop and finance urban infrastructure projects in the state of Odisha. Under the OUIDF, three Funds namely an Urban Loan Fund (ULF), a Grant Support Fund (GSF) and a Project Development Fund (PDF) are sought to be managed by an Project Development Agency (PDA) set up by a partner organisation / consortium that would be competitively selected through this bid process.

HUDD hereby invites **Proposals** from interested organizations as per norms laid out in the Request for Proposal document (**RFP**). The RFP will be available for download, free of cost, at [www.urbanorissa.gov.in](http://www.urbanorissa.gov.in) between **25.10.2013 and 25.11.2013**. All bidders must submit a sum of Rupees Fifty Thousand only (Rs.50,000/-) as the Bidding Fee and Rupees Three Lakh (Rs. 3,00,000/-) as Bid Security along with their Proposal as per the conditions outlined in this RFP.

The RFP is organized in two volumes as given below:

1. **VOLUME-I** : **INSTRUCTION TO BIDDERS (ITB)**
2. **VOLUME-II** : **DRAFT MANAGEMENT AGREEMENT (OUIDF AND PDA)**

Prospective Bidders are advised to read the above volumes in conjunction with each other and are advised to comply with the terms and conditions for submission of their Proposal as defined in this RFP document.

A Preferred Bidder would be selected through a single-stage three-part competitive bidding process based on evaluation of Proposals submitted by all bidders. Bidders are expected to submit their Proposals in three parts as described below, in accordance with the instructions provided in the RFP.

1. **PART I** : **RESPONSE TO PRE-QUALIFICATION REQUIREMENT**
2. **PART II** : **TECHNICAL OFFER**
3. **PART III** : **FINANCIAL OFFER**

All queries regarding the Project may be submitted in writing to:

Name : **Special Secretary to Government & Secretary, OUIDF,**  
Housing and Urban Development Department, Government of Odisha  
Address : 1st Floor, State Secretariat,  
Annex - B, Bhubaneswar - 751001  
Phone : 0674-291395  
Fax number : 0674-2394984  
E-mail : [hudsec.or@nic.in](mailto:hudsec.or@nic.in)/[sshudd.odisha@gmail.com](mailto:sshudd.odisha@gmail.com)

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## **Disclaimer**

This Request for Proposal (RFP) is issued by Government of Odisha (GoO) through its Housing and Urban Development Department (HUDD). The intent of this Request for Proposal (RFP) is to solicit Proposals from parties (Bidders) who are interested in setting up a Project Development Agency (PDA) to provide services in fund management, project development and financing in the urban sector in Odisha, in line with the terms and conditions described in this RFP.

This RFP is not an agreement and is neither an offer nor invitation by HUDD to the prospective Bidders or any other person. The issue of this RFP does not imply that the HUDD is bound to select a Bidder or to appoint the Preferred Bidder, as the case may be, for the Project. The HUDD reserves the right to reject all or any of the Bidders or Proposals without assigning any reason whatsoever.

Whilst the information in this RFP has been prepared in good faith, it is not and does not purport to be comprehensive or to have been independently verified. It does not, and does not purport to, contain all the information that a recipient may require. The information contained in this RFP is selective and HUDD may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this RFP.

Neither HUDD nor any of its officers or employees, nor any of their advisors nor consultants accept any liability or responsibility for the accuracy, reasonableness or completeness of, or for any errors, omissions or misstatements, negligent or otherwise, relating to the proposed Project, or makes any representation or warranty, express or implied, with respect to the information contained in this RFP or on which this RFP is based or with respect to any written or oral information made or to be made available to any of the recipients or their professional advisors and, so far as permitted by law and except in the case of fraudulent misrepresentation by the party concerned, and liability therefore is hereby expressly disclaimed. Neither HUDD nor any of its officers, employees nor any of its advisors nor consultants undertakes to provide any recipient with access to any additional information or to update the information in this RFP or to correct any inaccuracies therein which may become apparent.

This RFP may not be appropriate for all entities, and it is not possible for HUDD, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFP. Each recipient must conduct its own analysis of the information contained in this RFP or to correct any inaccuracies therein that may appear in this RFP and is advised to carry out its own investigation into the proposed Project, the legislative and regulatory regime which applies thereto and by and all matters pertinent to the proposed Project and to seek its own professional advice on the legal, financial, regulatory and taxation consequences of entering into any agreement or arrangement relating to the proposed Project. In considering an investment, if any, in the proposed Project, each recipient should make its own independent assessment and seek its own professional, technical, financial and legal advice.

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Information provided in this RFP to the Bidder(s) is on a wide range of matters, some of which depends upon interpretation of law. The information given is not an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. HUDD accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.

This RFP includes certain statements, estimates, projections, targets and forecasts with respect to the Project. Such statements estimates, projections, targets and forecasts reflect various assumptions made by the management, officers and employees of HUDD may or may not be provided or prove to be correct. No representation or warranty is given as to the reasonableness of forecasts or the assumptions on which they may be based and nothing in this RFP is, or should be relied upon as, a promise, representation or warranty. HUDD accepts no responsibility for statements made in any advertisement or other material, and any entity placing reliance on any other source of information for the Project would be doing so at his own risk and responsibility.

The Bidder shall bear all its costs associated with or relating to the preparation and submission of its Proposal including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by HUDD or any other costs incurred in connection with or relating to its Proposal. All such costs and expenses will remain with the Bidder and HUDD shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a Bidder in preparation or submission of the Proposal, regardless of the conduct or outcome of the bidding process.

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**Volume II – Draft Agreements**

*This section provides the Draft Management Agreement between OUIDF and the PDA*

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This Agreement is made this [insert] day of [insert] 20\_\_ at [insert].

BY AND BETWEEN

1. Odisha Urban Infrastructure Development Fund (OUIDF), a Trust formed and incorporated under the Indian Trusts Act, 1882 and having its registered office at [insert] (hereinafter referred to as 'OUIDF, which expression shall include its successors and permitted assigns), of the FIRST PART;

AND

2. [insert name of company], incorporated under the Indian Companies Act, 1956, having its registered office at [insert address] (hereinafter referred to as the 'Project Development Agency or 'PDA', which expression shall, unless contrary to the context hereof be deemed to include its successors and permitted assigns), of the SECOND PART, (OUIDF and PDA are hereinafter collectively referred to as 'Parties' and severally as 'Party')

WHEREAS:

(A) OUIDF has been set up by Government of Odisha as a Trust under the Indian Trusts Act, 1882, inter alia, to contribute to the urban sector vision of the Government of Odisha of providing adequate, efficient, affordable, sustainable and modern urban infrastructure services to the people of Odisha through public, private and community sector initiatives.

(B) OUIDF thus seeks to encourage and facilitate investment in and implementation of urban infrastructure facilities in the State of Odisha by providing financial assistance to Urban Local Bodies and Public Private Partnership projects for project development, Line of Credit for on-lending to Urban projects, raising of finance from financial institutions or capital markets in the State of Odisha

(C) In order to ensure that the OUIDF receives relevant professional and experienced project development advice, and management services, the OUIDF now wishes to appoint a PDA for the purpose of identifying and advising on the development and financing of urban infrastructure projects in Odisha and to monitor and supervise projects during implementation.

(D) The PDA has expressed its willingness to perform the services required by OUIDF as detailed in this Agreement.

(E) The Parties are desirous of putting the terms and conditions of their understanding to writing.

NOW THEREFORE THIS AGREEMENT WITNESSETH AND THE PARTIES AGREE TO AS UNDER:



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## 1. DEFINITIONS AND INTERPRETATION

### 1.1. Definitions

- 1.1.1. Unless the context otherwise requires, the following terms shall carry the meaning assigned to them herein below.
- a. “Accrual Period” means a financial year beginning April 1st and ending March 31st of the following year or part period thereof ending on March 31st.
  - b. “Auditors” means any independent auditor(s) appointed by the Trustee Board
  - c. “Business Day” means a day other than Saturday and Sunday on which banks are open for normal banking business in Bhubaneswar.
  - d. “Consents” means all authorizations, consents, licenses, permits, waivers, privileges, acknowledgements, agreements, concessions, approvals from and filings with or applications submitted to any Government Agency or any Person.
  - e. “Directives” means any present or future policy, requirement, instruction, direction, order, regulation or rule of any Government Agency which is legally binding or which would customarily be observed by a reasonable and prudent person, and any modification, extension or replacement thereof from time to time in force.
  - f. “Government Agency” means the Government of India, the Government of Odisha or any regional or municipal authority thereof, or other legislature, ministry, department, Commission, Board, Authority, instrumentality, agency, political sub-division, Corporation or Commission under the direct or indirect control of the Government of India or Government of Odisha or any political sub-division of either of them, as to matters of policy or otherwise, owned or controlled by the Government of India or the Government of Odisha or any of their sub-divisions.
  - g. “Government Authorizations” means all laws, ordinances, statutes, rules, orders, decrees, injections, licenses, permits, approvals, authorizations, consents, waivers, privileges, agreements and regulations of any Government Agency, as may be applicable, including Consents and Directives as such are in effect as of the date hereof or as may be amended, modified, enacted or revoked from time to time hereafter.
  - h. "GoO" means the Governor of Odisha, represented by Secretary, Housing and Urban Development Department, Government of Odisha, and its successors and assigns
  - i. “Infrastructure Projects” includes
    - i. Water Supply and Water Supply Improvement Schemes (WSIS)
    - ii. Underground Sewerage Schemes
    - iii. Solid Waste Management (including landfill sites, waste-to-energy, segregation, recycling and reuse, compost yards/dump areas)
    - iv. Climate Adaptation Measures (e.g storm water and flood drains)
    - v. Slum development, rehabilitation and provision of basic urban infrastructure and civic amenities to the informal settlements of the urban areas

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- j. "Investments" includes monies placed by the Trust in instruments such as Government Promissory Notes or other Government Security as defined in Sec.2 of the Public Debt Act, 1944, stock or shares in any banking company or other public company, or stocks, funds, shares, debenture, debenture stock, commercial papers, financial papers, short term or long term corporate deposits, securitised debt, mortgage, bonds, obligations and securities of any description whatsoever.
  - k. "Lender" means any person/s who has given monies to the Trust, by way of loan.
  - l. "Loan" means the monies lent to the Trust and includes debentures and bonds.
  - m. "Management Agreement/s" means this Agreement
  - n. "Property" shall mean money and includes both initial as well as additional property hereto comprising of real, personal, movable or immovable property of any description and wheresoever situated and in relation to rights and interests includes those rights and interests whether vested, contingent, defeasible or future.
  - o. "Trust" means the OUIDF, a trust within the meaning of the Indian Trusts Act, 1882 (Act II of 1882), duly constituted by the Deed of Trust dated [20th March 2012] registered as document no. [41081207180] in the Office of the [Sub Registrar Office, Khurda].
  - p. "Trust Fund" means and includes the aggregate of
    - i. Initial Settlement
    - ii. Contribution Fund
    - iii. Investments
    - iv. Loans; and
    - v. all other properties of the Trust
  - q. "Trust Period" means the period as mentioned in the Deed of Trust

## **1.2. Interpretations**

### **1.2.1. In this Agreement, unless otherwise specified:**

- a. the terms "hereof", "herein", "hereby", "hereto" and similar words shall refer to this entire Agreement and not to any particular clause, sub-clause or Schedule or any other sub-division of this Agreement;
- b. use of any gender shall include the other genders;
- c. references to a 'company' shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;
- d. references to a 'person' shall be construed so as to include any individual, firm, company, government, State or agency of a State, or government body or any joint venture, association or partnership (whether or not having separate legal personality);
- e. a reference to any Statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended or modified;
- f. a reference to any other document referred to in this Agreement is a reference to that other document as amended, varied, notated or supplemented at any time;
- g. words using the singular or plural number also include the plural or singular number, respectively;

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- h. any capitalized words, terms, phrases and abbreviations used specifically in any Schedule shall have the meanings set forth in such Schedule;
  - i. all headings and titles are inserted for convenience only. They are to be ignored in the interpretation of this Agreement.
  - j. the words "include" or "including" shall be deemed to be followed by "without limitation" or "but not limited to" whether or not they are followed by such phrases or words of like import;
  - k. any approval, consent, approval or waiver to be given by a Party hereunder may be given in part, rather than only in relation to the whole of the document, issue or matter under consideration;
  - l. references to "equipping" shall include investigation, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and any other activities incidental to equipping the Project Hospital.
  - m. all periods of time shall be based on, and computed according to, the Gregorian calendar and Indian Standard Time;
  - n. any reference to a 'day' (including within the phrase 'Business Day') shall mean a period of 24 hours running from midnight to midnight;
  - o. reference to an individual shall include his legal representatives, successors, legal heirs, executor and administrator;
  - p. the Schedules appended to this Agreement form an integral part of this Agreement and shall be in full force and effect as if they are expressly set out in the body of this Agreement.
  - q. references to "Clause", "sub-clause", "Schedule" shall mean a reference to Clause, sub-clause and Schedule respectively of this Agreement;
  - r. references to "this Agreement" or any other agreement or document shall be construed as a reference to such agreement or document as amended, modified or supplemented and in effect from time to time and shall include a reference to any document which amends, modifies or supplements it, or is entered into, made or given pursuant to or in accordance with its terms;
  - s. any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid or effectual only if it is in writing under the hands of duly authorised representative of such Party, in this behalf and not otherwise;
  - t. if the PDA discovers any ambiguity, discrepancy or inconsistency between any of the provisions of this Agreement or any other document or standard expressly incorporated into this Agreement, the PDA shall notify in writing about the same to the Government of this in writing and the Government shall direct the PDA as to the interpretation to be followed by the PDA in performing its obligations under this Agreement, without prejudice to either Party's right to refer the content of such interpretation, or the meaning of the ambiguity, discrepancy or inconsistency, for resolution in accordance with Clause

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12.1 Dispute Resolution. The PDA is not entitled to any compensation by reason of the Government's direction here above.

### **1.3. Measurements and Arithmetic Conventions**

1.3.1. All measurements and calculations shall be in metric system and calculations done to 2 (two) decimal places, with the third digit of 5 (five) or above being rounded up and below 5 (five) being rounded down except in money calculation which shall be rounded off to nearest Indian National Rupees ("INR").

### **1.4. Ambiguities within Agreement**

- 1.4.1. In case of ambiguities or discrepancies within this Agreement, the following shall apply:
- a. between two Clauses of this Agreement, the provisions of specific Clause relevant to the issue under consideration shall prevail over those in the other Clause;
  - b. between the provisions of this Agreement and the Schedules, the provisions of this Agreement shall prevail, save and except as expressly provided in the Agreement or the Schedules; and
  - c. between any value written in numerals and that in words, the latter shall prevail.

### **1.5. Priority of Documents**

- 1.5.1. The documents leading to this Agreement shall be relied upon and interpreted in the following descending order of priority:
- a. OUIDF Trust Deed
  - b. This Agreement read with its Schedules
  - c. Letter of Award issued to the Private Service Provider
  - d. Written addendum to the RFP, if any
  - e. Written clarifications to the RFP, if any
  - f. The RFP (Volume I and Volume II)
  - g. Proposal submitted by the Preferred Bidder

## **2. TERM, EFFECTIVE DATE AND CONDITIONS PRECEDENT**

### **2.1. Term of the Agreement and Extension**

2.1.1. This Agreement shall survive for a term of five years from the Effective Date.

### **2.2. Effective Date**

- 2.2.1. "Effective Date" means the date on which all the Conditions Precedent are satisfied or waived in writing by both the Parties.
- 2.2.2. The rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of their respective Conditions Precedent as specified in Clause 2.2.2 and 2.2.4 herein below (the "Conditions Precedent").

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- 2.2.3. The PDA shall fulfil the following Conditions Precedent within 30 Business Days from the Agreement Date (collectively known as PDA's Conditions Precedent)
- a. Mobilization of personnel in Bhubaneswar as per Schedule I.
- 2.2.4. Both Parties to this Agreement may by written consent agree to extend the date for fulfilment of any of the Conditions Precedent of the other Party up to an additional sixty (60) Business Days or such other period, from the date of expiry of the original period ('**Long Stop Date**').
- 2.2.5. Upon fulfilment of the Conditions Precedent by a Party the other Party shall forthwith issue a letter confirming full and complete satisfaction of the Conditions Precedent to such Party and pursuant to which the obligations of the Parties under this Agreement shall commence.

### **2.3. Non-Fulfilment of Conditions Precedent:**

- 2.3.1. If the PDA's Conditions Precedent has not been fulfilled by the Long Stop Date, other than for reason of Force Majeure or the OUIDF's waiver of the PDA's obligations, the Government shall have the right to encash the Performance Security at a rate of 1 % (one per cent) per week or part thereof for the period of delay.
- 2.3.2. If the PDA's Conditions Precedent have not been fulfilled by the Long Stop Date, other than for reason of Force Majeure or Waiver of the PDA's obligation, OUIDF shall be entitled to immediately terminate this Agreement and forfeit the entire Performance Security.
- 2.3.3. If the OUIDF's Conditions Precedent have not been fulfilled by the Long Stop Date, other than for reason of Force Majeure or the PDA's waiver of the Government's obligation in accordance with Clause 13.11 - Waiver, the PDA shall have the right to terminate this Agreement after serving a 30 day notice period and thereafter claim refund of its Performance Security.

### **3. PERFORMANCE SECURITY**

- 3.1.1. The PDA shall, on or before the Agreement Date, provide the Government with an irrevocable and unconditional Performance Security comprising of an irrevocable Bank Guarantee for an amount of Rs. 15,00,000 /- (Rupees Fifteen Lakh only). The Bank Guarantee from a Scheduled Commercial Bank in India shall be subject to the verification and satisfaction of the Government.
- 3.1.2. The Performance Security in the form of a Bank Guarantee shall be valid and remain in full force and effect for the entire Concession Period.
- 3.1.3. In the event of appropriation of the Performance Security by the OUIDF in accordance with the terms of this Agreement, the PDA shall, within 15 Business Days thereof, in case of partial appropriation, replenish the Performance Security to its original value and in case of appropriation of the entire Performance Security, as the case may be, failing which the Government shall be entitled to terminate this Agreement.

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- 3.1.4. The Performance Security in the form of Bank Guarantee shall remain with the OUIDF for the entire Contract Term or termination of this Agreement whichever is earlier. OUIDF shall be entitled to deduct from the Performance Security amounts towards any outstanding, damages/compensation, fees, etc. if any, due from the PDA under this Agreement and discharge and release the balance amount to the PDA. In case of the extension of Contract Period, the validity of the Performance Security shall also be extended for such extended Contract Period.
- 3.1.5. The OUIDF shall be entitled to make a demand under the PDA's Performance Security for:
- a. any breach by the PDA of the terms of this Agreement on the performance with respect to its scope of services and performance indicators and milestones specified in Schedule II; and / or
  - b. any neglect or failure by the PDA in any way to observe, carry out, fulfil or discharge any of its obligations under this Agreement, or if any representation or warranty by the Operator under this Agreement is or becomes untrue or incorrect or is breached in any way.

## **4. OBLIGATIONS OF PDA**

### **4.1. Role and objectives of PDA**

- 4.1.1. The core role of the PDA shall be to facilitate project development and financing using the Funds (ULF, GSF and PDF) under its management. The key functions envisaged include the following:
- a. **Initiate Project Development** using the PDF to create a shelf of bankable projects. The PDA and its Associates will not be allowed to participate in downstream project development activities undertaken with funding from PDF.
  - b. **Undertake Project Appraisal** to identify risks, viability gaps and service requirements to the urban poor and address them through **innovative structuring** of bankable projects.
  - c. **Facilitate sustainable Urban Infrastructure financing** in Odisha through on-lending of Line of Credit from OUIDF to urban projects supplemented by Capital Grants from GSF. The allocation of the Line of Credit will initially be kept equally between the ULF and GSF. However, if the PDA is able to develop projects with lower viability gap funding requirement than the limit of 50% proposed, the remaining amounts in the GSF will be transferred for loan funding from the ULF.
  - d. **Mobilise external financing** for urban projects through Public Private Partnerships, access to capital markets and other innovative financing mechanisms
  - e. Provide support to GoO and its agencies in capacity building initiatives.
  - f. Continuously **develop organisational capabilities and processes** towards innovative project development, project financing and raising private capital and sustainable asset creation and service delivery in the urban sector in Odisha.

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## **4.2. Setting up the PDA's Operating Framework**

- 4.2.1. The PDA should complete the roll-out of its Operating Framework within the first six months of this Agreement as evidenced by completion of the following milestones:
- a. Within **75 Business Days** of signing this Agreement
    - i. Submission and Approval of Strategy and Business Plan for OUIDF by Trustees Board of OUIDF
    - ii. Submission and Approval of Project Preparation and Development plan by Trustees Board of OUIDF
    - iii. Deployment of staff for expert positions indicated in Schedule I of this Agreement.
  - b. Within **150 Business Days** of signing this Agreement
    - i. Approval of Operating Manual for managing OUIDF, GSF and PDF by Trustees Board of OUIDF and HUDD
    - ii. Lending Policy for the OUIDF and Standard Loan Agreements
    - iii. Empanelment of Consultants for Project preparation activities

## **4.3. Services of the PDA**

- 4.3.1. The PDA should perform services envisaged under the following heads and detailed in Schedule II of this Agreement:
- a. Project Development
  - b. Project Appraisal, Risk assessment, Sanction of Loans / Grants
  - c. Project Contracting, Loan and Grant disbursements and Project Monitoring
  - d. Collection of Loan and Interest Repayments
  - e. Mobilisation of External Finance and Treasury Management. The raising of such external funds beyond the Line of Credit shall be done with the prior approval of OUIDF, HUDD and Department of Finance Government of Odisha.
  - f. Support to Capacity Building and reform initiatives of GoO

## **4.4. Staffing**

- 4.4.1. The PDA shall comprise an appropriately sized team that would have adequate experience and expertise commensurate with its role and objectives, services to be performed and its obligations under this Agreement
- 4.4.2. The PDA shall provide the Board of OUIDF with full information concerning the team and any changes thereto and shall comply with and adhere to any reasonable requirements of OUIDF regarding the strength, expertise and qualifications of the team.
- 4.4.3. The team of the PDA shall be based in Bhubaneswar, capital city of Odisha.
- 4.4.4. Except as otherwise agreed to in writing, it is agreed that:
- a. PDA shall be solely responsible for the employment of workers and other personnel employed by it and for discharging all obligations to or in connection with such

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employees or workers whether utilised for the purposes of this agreement or otherwise. PDA shall have absolute freedom to regulate their manpower requirements, their working hours, working days, discipline, control and supervision, rate and payment of wages, terms of employment, providing amenities and benefits that may be required under the law for the time being and from time to time in force.

- b. The personnel of the PDA shall continue to be the personnel of the PDA and work under its directions and shall not become or claim any employment from OUIDF by virtue of providing the Services, irrespective of the location of their work and nothing herein shall be deemed to constitute said workmen and staff as employees of OUIDF and vice versa.
- c. That PDA shall comply with all statutory obligations under existing and future labour laws as owner and occupier of its establishment and shall hold OUIDF indemnified against any liability and responsibility arising out of employment, non-employment, accidents or any disability suffered by such employees in the course of his employment, payment of wages and other statutory benefits and vice versa.

#### **4.5. Reporting to OUIDF and GoO**

- 4.5.1. Without prejudice to the obligations of the PDA in terms of this Agreement, the PDA shall submit monthly reports and MIS on its operational and financial performance to the Board of Trustees of OUIDF and GoO
- 4.5.2. Upon request of OUIDF and GoO, the PDA shall provide such further information or such additional/more frequent reports as may be deemed fit by OUIDF and GoO.
- 4.5.3. For the purpose of abundant caution, it is clarified that the provision of the information/reports or the failure to do so shall not amount to provision of notice under this Agreement nor shall failure of OUIDF to take action on any such information amount to waiver of any default of the PDA.
- 4.5.4. The HUDD and OUIDF shall be entitled to review the progress made by the PDA and the performance of the Services by the PDA. In the event that the GoO and OUIDF are not satisfied by the levels of performance by the PDA, they shall be entitled to:
  - a. Communicate the deficiencies or areas of improvement.
  - b. Provide a time period within which the same shall be complied with.
- 4.5.5. The PDA shall comply with the requirements as notified to it by the Trustees Board within the time frame, if any, specified and shall, from time to time, intimate the steps taken by it to address the issues raised or the suggestions made.

### **5. OBLIGATIONS OF GOO**

- 5.1.1. The obligations of GoO under this Agreement shall cover the following



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- a. Make available outlays under the various funds (ULF, PDF and GSF) under management and support in the form of other GoO / GoI grants to projects developed by the PDA in accordance with the guidelines stipulated.
  - b. Provide rent-free space of 3000 square feet for the PDA to set up their office and operate from. The PDA shall be responsible for all capital and operating expenditure necessary to operate an Office.
  - c. Review and accord approvals for requests for mobilisation of external financing in a timely manner and work with PDA on best efforts to liaise with GoI and other Government agencies for seeking concessions including tax concessions for Municipal Bonds under PFDF and other such schemes of GoI / GoO as available.

## **6. COMPENSATION FOR SERVICES RENDERED**

### **6.1. Payments to PDA**

- 6.1.1. The PDA shall be paid fees for its services in accordance with the terms and conditions outlined in Schedule III.

### **6.2. Service Tax**

- 6.2.1. In the event that any service tax is required by the Applicable Laws ("Service Tax") to be paid on or in respect of any sums payable to the PDA under this Agreement, any such Service Tax shall be borne by OUIDF, provided that the Concessionaire renders a tax invoice to the OUIDF for such sums in accordance with the Applicable Laws.
- 6.2.2. The obligation to make such payment on or before its due date is subject to the provision of a tax invoice as described above.

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### **6.3. Withholding Tax**

- 6.3.1. The OUIDF and GoO shall not be liable to the PDA and the PDA shall have no claim whatsoever against the OUIDF or GoO in respect of any sum which would otherwise be payable to the PDA as under:
- a. which the OUIDF has withheld from payment in connection any taxes, duties or fees in accordance with the provisions of any Applicable Law, until it is released from, or relieved from all liability pursuant to the relevant Applicable Law in respect of the amount so withheld and is lawfully entitled to pay the sum to the PDA; or
  - b. which the OUIDF has paid in connection with any taxes, duties and fees in accordance with the provisions of any Applicable Law to the Governmental Instrumentality legally entitled to accept payment.

## **7. REPRESENTATIONS, WARRANTIES AND INDEMNITIES**

- 7.1.1. The PDA hereby undertakes, affirms, represents, warrants and agrees that:
- a. The PDA is in good standing under the laws of the PDA's incorporation or in the jurisdiction in which the PDA is a resident and/or does business and that the PDA has full authority to enter into this Agreement and to perform all the obligations hereunder according to the terms hereof.
  - b. The PDA has obtained all regulatory approvals/licences to perform the Services covered by this Agreement and shall keep the same valid throughout the currency of this Agreement and shall bring to the notice of OUIDF any expiry, modification, or suspension of any such approvals/licenses and the initiation of any adverse action by the relevant authority concerned in relation thereto. The PDA shall obtain and furnish such approvals as may be required in connection with the transactions contemplated under this Agreement.
  - c. The PDA has full power and authority to enter into this Agreement and to take any action and execute any documents required by the terms hereof; and this Agreement has been duly authorized, has been duly and validly executed and delivered, and is legal, valid, and binding obligation of the PDA, enforceable in accordance with the terms hereof; and the persons executing this Agreement on behalf of the PDA are duly empowered and authorised to execute this Agreement and to perform all its obligations in accordance with the terms herein. The PDA will forthwith furnish satisfactory evidence of the above upon request.
  - d. No consent, approval, authorisation, order, registration or qualification of, or with, any court or regulatory authority or other governmental body having jurisdiction over the PDA, the absence of which would adversely affect the legal and valid execution, delivery and performance of this Agreement or the documents and instruments contemplated hereby, is required.
  - e. Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, or the fulfilment of or compliance with the terms and

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conditions of this Agreement, conflict with or result in a breach of or a default under any of the terms, conditions or provisions of any legal restriction (including, without limitation, any judgment, order, injunction, decree or ruling of any court or governmental authority, or any federal, state, local or other law, statute, rule or regulation) or any covenant or agreement or instrument to which it is a party, or by which the PDA or any of the property of the PDA is bound, nor does such execution, delivery, consummation or compliance violate or result in the violation of its constitutional documents.

- f. The PDA shall provide such suitably qualified, experienced and competent personnel as may be required for the performance of the Services. If so requested by OUIDF, the PDA shall provide evidence of the previous experience, qualifications and competence of any personnel engaged in the performance of the Services.
- g. The PDA shall ensure that it has properly trained personnel to handle the requirements of OUIDF.
- h. The PDA shall withdraw or not permit any of the PDA's personnel from providing the Services if, in the sole opinion of OUIDF:
  - i. The quality of service rendered by the personnel is not in accordance with the quality specifications stipulated by OUIDF; and
  - ii. It is not in the interest of OUIDF that such personnel of the PDA continue to be involved in the provision of Services.
- i. The PDA shall, subject to the terms of this Agreement, be responsible for the selection, hiring, assigning and supervising of sub-contractors and the personnel and shall employ sufficient number of personnel to provide the Services in a prompt and efficient manner. The PDA agrees that the personnel shall work under the supervision, control and direction of the PDA. The PDA shall be solely responsible for all negotiations with personnel relating to salaries and benefits, and shall be responsible for assessments and monitoring of performance and for all disciplinary matters. The PDA agrees that the personnel shall work under the supervision, control and direction of the PDA. Under no circumstances shall OUIDF be liable for any payment or claim or compensation (including but not limited to compensation on account of injury/death/ termination) of any nature to the employees and personnel of the PDA. The PDA shall be responsible for all negotiations with its personnel relating to salaries, benefits, and shall be responsible for assessments and monitoring of performance and for all disciplinary matters. The PDA shall furnish such records and information as may be required by OUIDF in relation to the above and at such periodicity as may be specified by OUIDF.
- j. The PDA warrants that there are no criminal proceedings instituted against the PDA. The PDA shall verify the antecedents of the employees it desires to engage for provision of Services hereunder and shall ensure that it does not engage or continue to engage any person with a criminal record/conviction and shall bar any such person from participating directly or indirectly in the provision of Services under this Agreement.
- k. The PDA shall at all times use all reasonable efforts to maintain discipline and good order amongst its personnel and ensure that all its personnel are aware of the code of conduct

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governing the Services and resultant disciplinary actions in case of breach of code of conduct by them during the course of their engagement for provision of Services.

- l. The PDA shall not exercise any lien or right of set off or appropriation on any of the assets, properties, documents, instruments or material belonging to OUIDF and in the custody of the PDA for any amount due or claimed to be due by the PDA from OUIDF.
  - m. The PDA shall regularly provide updates to OUIDF with respect to the provision of the Services and shall meet with the officials designated by OUIDF to discuss and review the performance of the PDA at such intervals as may be agreed between the Parties.
  - n. The PDA shall not violate any proprietary and intellectual property rights of any third party, including without limitation, confidential relationships, patent, trade secrets, copyright and any other proprietary rights.
  - o. No officer of OUIDF, trustee, employee or immediate family member thereof has received or will be induced to receive anything of value of any kind from the PDA or its personnel in connection with this Agreement and that none of them has a business relationship of any kind with the PDA or its personnel.
  - p. The PDA shall adhere to fair practice in performance of the Services.
  - q. The PDA shall segregate and keep separately all information, documents and records pertaining to the Services as also hold the same in trust for OUIDF.
  - r. OUIDF or its nominee shall be entitled to review and monitor the security practices and control processes of the PDA on a regular basis and require the PDA to disclose security breaches.
  - s. The PDA shall immediately notify OUIDF of any breach of security and leakage of confidential customer related information. In such eventualities, the PDA shall be liable for all damages.
  - t. OUIDF shall at all times during the tenure of this Agreement, be entitled to monitor and assess the performance of the Services by the PDA.
  - u. The rights available to OUIDF under this Agreement may be exercised by OUIDF either by itself or through such other person/s as it may nominate /designate/specify from time to time.
  - v. The PDA shall not issue any communication/letter on behalf of OUIDF in its own name in relation to the Services.
- 7.1.2. In the event that OUIDF is subject to any claim, liability, disability, fine or penalty on account of any non-performance or breach of the Services or on any other account connected therewith, the PDA shall fully and completely indemnify and hold harmless OUIDF to the complete extent and without any restrictions.
- 7.1.3. PDA shall hold OUIDF fully and completely indemnified from any liability, loss, cost, damage or expense of any kind or nature arising out of any damage or any violation of law in which it is alleged that such injury, damage or violation was caused by or attributable to any performance of the Services by PDA.

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- 7.1.4. In the event that OUIDF is subject to any third party claims related to PDA's services or in connection with the performance of PDA, PDA shall fully and completely indemnify and hold harmless OUIDF from the same.
- 7.1.5. In the event that OUIDF suffers or incurs any loss, damage, fine, liability or disability on account of any action or claim by any workmen, staff and employees engaged by PDA whether during the subsistence of this Agreement or after termination, the PDA shall fully and completely indemnify and hold harmless OUIDF from the same.
- 7.1.6. PDA shall hold OUIDF fully and completely indemnified against any liability and responsibility arising out of employment, non-employment, accidents or any disability suffered by employees engaged by the PDA as provided in the course of his employment, payment of wages and other statutory benefits.

## **8. FORCE MAJEURE**

### **8.1. Force Majeure**

- 8.1.1. The PDA or OUIDF, as the case may be, shall be entitled to suspend or excuse performance of its respective obligations under this Agreement to the extent that such performance is impeded by an event of force majeure (*'Force Majeure'*).

### **8.2. Events of Force Majeure**

- 8.2.1. An Event of Force Majeure means any event or circumstance or a combination of events and circumstances referred to in this Clause, which:
- a. is beyond the reasonable control of the Party affected by the Event of Force Majeure (the "Affected Party");
  - b. such Party could not have prevented or reasonably overcome with the exercise of reasonable skill and care;
  - c. does not result from the negligence of such Party or the failure of such Party to perform its obligations under this Agreement;
  - d. is of an incapacitating nature and prevents or causes a delay or impediment in performance; and
- 8.2.2. An Event of Force Majeure may be classified inter alia as all or any of the events listed under
- a. Non-Political Events
    - i. act of God, including earthquake, flood, inundation, landslide, exceptionally adverse weather conditions, storm, tempest, hurricane, cyclone, lightning, thunder, volcanic eruption, fire or other extreme atmospheric conditions;
    - ii. radioactive contamination or ionising radiation or biological contamination, except as may be attributable to the PDA's use of radiation or radio-activity or biologically contaminating material;

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- iii. strikes, lockouts, boycotts, labour disruptions or any other industrial disturbances within the State of Odisha not arising on account of the acts or omissions of the PDA and which affect the timely implementation and continued operation of the Project; or
  - iv. any event or circumstances of a nature analogous to any of the foregoing.
- b. Political Events
- i. Change in Law, other than any Change in Law for which relief is provided under this Agreement;
  - ii. expropriation or compulsory acquisition by GoO or its agencies of any material assets or rights of the PDA;
  - iii. unlawful or unauthorised revocation of, or refusal by GoO, OUIDF or any of its agencies to renew or grant any clearance or Consents required by PDA to perform its obligations without valid cause, provided that such delay, modification, denial, refusal or revocation did not result from the PDA's inability or failure to comply with any condition relating to grant, maintenance or renewal of such Consents applied on a non-discriminatory basis;
  - iv. any judgment or order of any court of competent jurisdiction or statutory authority in India made against the PDA in any proceedings for reasons other than failure of the PDA to comply with the Applicable Laws or Consents or on account of breach thereof, or of any contract, or enforcement of this Agreement or exercise of any of its rights under this Agreement; or
  - v. any requisition of the Project by the Government, the Government of Odisha, OUIDF, any of their agencies or any other Governmental Instrumentality, and for the avoidance of doubt, suspension of the Project in accordance with the provisions of this Agreement shall not be considered a requisition for the purposes of an Event of Force Majeure.
- c. Other Event of Force Majeure
- i. an act of war (whether declared or undeclared), hostilities, invasion, armed conflict or act of foreign enemy, blockade, embargo, prolonged riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage, for a continuous period exceeding seven (7) Days.

### **8.3. Exceptions to Force Majeure**

- 8.3.1. OUIDF shall not have the right to consider any of the following circumstances to be an Event of Force Majeure:
- a. any delay or difficulty that is not attributable to Events of Force Majeure; or
  - b. strikes, lockouts or other industrial actions or labour disputes by employees of GoO, OUIDF or its agencies.
- 8.3.2. The PDA shall not have the right to consider any of the following circumstances to be an Event of Force Majeure:

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- a. late delivery of activities where such is not attributable to an Event of Force Majeure;
  - b. non-performance by the PDA or any of its Sub-contractors or the PDA's failure to hire an adequate number of staff or personnel;
  - c. economic hardship including insufficiency of funds; or
  - d. general economic slowdown.

#### **8.4. Responsibilities of Parties during Force Majeure**

- 8.4.1. An Affected Party must advise the Party not affected by the Event of Force Majeure (the "**Non-Affected Party**") in writing ("**Force Majeure Notice**") of:
  - a. the date of commencement of the Event of Force Majeure;
  - b. the nature and expected duration of the Event of Force Majeure;
  - c. the anticipated effect of the Event of Force Majeure on the performance of the obligations by the Affected Party; and
  - d. the actions to be taken in order to comply with requirements of Force Majeure
- 8.4.2. The Force Majeure Notice must be sent by the Affected Party not later than eight (8) Days after the date on which the Affected Party first had knowledge of the effect of the Event of Force Majeure. If the Affected Party does not deliver the Force Majeure Notice in accordance with this paragraph, then the Affected Party is not entitled to invoke the benefits of Force Majeure for the time prior to the late Force Majeure Notice.
- 8.4.3. The Affected Party must:
  - a. make all reasonable efforts to prevent and reduce to a minimum and mitigate the effect of any delay occasioned by any Event of Force Majeure and to have recourse to alternate sources of services, equipment and materials and construction equipment; and
  - b. use its best efforts to ensure resumption of normal performance of this Agreement after the cessation of any Event of Force Majeure as promptly as possible and otherwise perform its obligations as herein agreed to the maximum of its ability.
- 8.4.4. Within eight (8) Days following the cessation of any Event of Force Majeure, the Affected Party must submit to the other Party reasonable proof of the nature of the delay and its effect upon the performance of the obligations of the Affected Party under this Agreement.

#### **8.5. Effect of Events of Force Majeure**

- 8.5.1. The Affected Party shall be excused from performance and shall not be construed to be in default in respect of any obligation under this Agreement for so long as, and to the extent that, the failure to perform such obligation is due to an Event of Force Majeure as defined. The Affected Party must continue to perform all of its obligations under this Agreement which are not affected by the Event of Force Majeure.

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## **8.6. Costs during an Event of Force Majeure**

- 8.6.1. Upon the occurrence of an Event of Force Majeure prior to the Effective Date, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.
- 8.6.2. Neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, costs, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Event of Force Majeure or exercise of any right pursuant hereof.

## **9. EVENTS OF DEFAULT, CURE PERIOD AND TERMINATION**

### **9.1. Events of Default**

#### **A. PDA Events of Default**

- 9.1.1. Each of the following events shall be an PDA event of default ("**PDA Event of Default**"):
- a. the deliberate and unexcused failure by the PDA to operate the Project and / or provide the Services in accordance with the provisions of this Agreement for more than three (3) consecutive months without the prior written permission of OUIDF.
  - b. the PDA has offered or given or agreed to give to any Person, any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of this Agreement, or for showing or forbearing to show favour or disfavour to any Person in relation to this Agreement;
  - c. the passing of a resolution for the bankruptcy, insolvency, winding up, liquidation of, or other similar proceeding relating to the PDA;
  - d. the appointment of a trustee, liquidator, custodian, or similar Person in a proceeding referred to it sub-clause (c) above, which appointment has not been set aside or stayed within thirty (30) Days of such appointment;
  - e. the making by a court having jurisdiction over the PDA of an order winding up or otherwise confirming the bankruptcy or insolvency of the PDA, which order has not been set aside or stayed within thirty (30) Days;
  - f. the breach by the PDA of any of its material obligations under this Agreement (not otherwise here listed);
  - g. OUIDF discovering that any of the information provided by the PDA during negotiations between the Parties prior to the execution of this Agreement is materially false or misleading;
  - h. a breach by the PDA of its obligations to procure and maintain Performance Security.
- 9.1.2. The PDA shall notify OUIDF of the occurrence and details of any PDA Event of Default and of any event or circumstance which is likely, with the passage of time or otherwise, to constitute or give rise to an PDA Event of Default, in either case promptly on the PDA becoming aware of its occurrence.



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9.1.3. On the occurrence of an PDA Event of Default, or within a reasonable time after the PDA becomes aware of the same, and while the same is subsisting:

- a. in the case of the PDA Events of Default referred to in clause 9.1.1 (a) (b), (c), (d), (e),(f),(g) and (h), OUIDF may terminate this Agreement with immediate effect and in its entirety by notice in writing to the PDA;

## **B. OUIDF Events of Default**

9.1.4. Each of the following events shall be an OUIDF event of default:

- a. the failure of OUIDF to pay the Payment in accordance within 90 days of submission of bills/invoices in *Schedule III*;
- b. the breach by OUIDF of any of its material obligations under this Agreement (not otherwise here listed) which is not remedied within thirty (30) Days after notice from the PDA to OUIDF stating that such a breach has occurred, identifying the breach in question in reasonable detail, and demanding remedy thereof.

## **9.2. Cure Period**

9.2.1. Upon the occurrence of an PDA Event of Default or an Owner Event of Default (each an "**Event of Default**"), the non-defaulting Party may give notice to the other Party of such default (the "**Default Notice**"), which notice shall specify the date on which the non-defaulting Party proposes to terminate this Agreement (such date not to be less than 30 Days after the date of the notice, the intervening period the "**Cure Period**"). During the Cure Period the Parties shall consult as to what steps shall be taken with a view to:

- a. mitigating the consequences of such Event of Default; and
- b. curing such Event of Default.

9.2.2. At the expiry of the Cure Period, if the applicable Event of Default has not been cured and the Parties have not agreed to extend the Cure Period, then the Party that issued the Default Notice may terminate this Agreement by giving a Termination Notice to the other Party, whereupon this Agreement shall terminate on the date specified in the Termination Notice, or on such later date as the Parties may agree.

## **9.3. Termination**

### **A. Consequences in case of PDA Event of Default**

9.3.1. Without prejudice to the rights of OUIDF to call on or make a demand under the PDA's Performance Security, where termination of this Agreement occurs following an PDA Event of Default, the PDA shall be liable to pay to the OUIDF an amount equivalent to the Fees paid by the OUIDF to the PDA for a period of six (6) months preceding the date of termination of this Agreement.

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## **B. Consequences of Termination in case of OUIDF Event of Default**

9.3.2. Where termination of this Agreement occurs following OUIDF Event of Default, the OUIDF shall be liable to pay to the PDA an amount equivalent to the Fees paid by the OUIDF to the PDA for a period of six (6) months preceding the date of termination of this Agreement

## **C. Consequences of Termination in case of Force Majeure Termination**

9.3.3. Where termination of this Agreement occurs as a result of Force Majeure Termination, OUIDF shall be liable to pay to the PDA otherwise owed to the PDA at the time of termination and Debt Due.

## **10. NON-COMPETE**

10.1.1. The PDA will not offer similar services to any other client or any other person in the State of Odisha or performing activities within the State of Odisha.

## **11. LIMITATION OF LIABILITY**

11.1.1. Notwithstanding anything contained in this Agreement or in any other document:

- a. Under no circumstances shall OUIDF be liable to the PDA for direct, indirect, incidental, consequential, special or exemplary damages arising from termination of this Agreement, even if OUIDF has been advised of the possibility of such damages, such as, but not limited to, loss of revenue or anticipated profits or lost business.
- b. OUIDF shall not have any liability whatsoever in case of any third party claims, demands, suit, actions, or other proceedings against the PDA or its personnel or any other person engaged by the PDA in the course of performance of the PDA's obligations under this Agreement.

## **12. DISPUTE RESOLUTION**

### **12.1. Amicable resolution**

12.1.1. The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

### **12.2. Arbitration**

12.2.1. Any Dispute which is not resolved amicably, as provided in Clause 12.1.1 shall be finally decided by reference to Arbitration. Such arbitration shall be subject to the provisions of the Arbitration and Conciliation Act 1996. The venue of such arbitration shall be Bhubaneswar and the language of arbitration proceedings shall be English.

12.2.2. There shall be a board of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected. and in the event of

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disagreement between the two arbitrators, the arbitration shall be carried out by the neutral arbitrator from OUIDF Side..

- 12.2.3. The Arbitrator(s) appointed shall be qualified in Finance and have working knowledge of Applicable Law.
- 12.2.4. The arbitrators shall make a reasoned award (the '*Award*'). Any Award made in any arbitration held pursuant to this clause shall be final and binding on the Parties as from the date it is made, and the OUIDF and PDA agree and undertake to carry out such Award without delay.
- 12.2.5. The OUIDF and PDA agree that an Award may be enforced against the OUIDF and/or PDA, as the case may be, and their respective assets wherever situated.
- 12.2.6. This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

## **13. MISCELLANEOUS**

### **13.1. Confidentiality**

- 13.1.1. Each Party shall keep confidential all information and other materials passing between it and the other Party in relation to the transactions contemplated by this Agreement, which was either designated as confidential or which was by its nature confidential (the "Information"), and shall not without the prior written consent of the other Party divulge such information to any other person or use such Confidential Information other than for carrying out the purposes of this Agreement. Notwithstanding anything in this clause, OUIDF may communicate with any officer of OUIDF or GoO or any elected representative information concerning the Information.
- 13.1.2. Nothing in clause 13.1.1 shall restrict any Party from disclosing information for the following purposes:
- a. to the extent that such Information is in the public domain other than by breach of this Agreement;
  - b. to the extent that such Information is required to be disclosed by any applicable law or by any governmental authority to whose jurisdiction the relevant Party is subject or with whose instructions it is customary to comply, including, where applicable under the Right to Information Act, 2005;
  - c. insofar as it is disclosed to the employees, directors or professional advisers of any Party, provided that such Party shall procure that such persons treat such Information as confidential;
  - d. to the extent that any of such Information is later acquired by a Party from a source not obligated to any other Party hereto to keep such Information confidential;
  - e. to the extent that any of such Information was previously known or already in the lawful possession of a Party, prior to disclosure by any other Party hereto; and

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f. to the extent that any information, materially similar to the Information, shall have been independently developed by a Party without reference to any Information furnished by any other Party hereto.

13.1.3. Unless otherwise agreed to by the Parties in writing, none of the Parties to this Agreement shall make or permit or authorise the making of any press release or other public statement or disclosure concerning this Agreement or any of the transactions contemplated in it without the prior written consent of the other Parties.

13.1.4. The obligations contained in this clause shall continue to apply for a period of two years from the date of the termination of this Agreement.

### **13.2. Right to Information**

13.2.1. OUIDF shall be entitled to receive such information and documents as is reasonably requested by OUIDF, unless prohibited by Applicable Law.

### **13.3. Notices**

13.3.1. Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall be given by hand delivery, recognised courier, registered post or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below:

If to PDA:

[●]

Phone: [●]

Fax No. [●]

Attn: [●]

If to OUIDF:

**Special Secretary to Government & Secretary, OUIDF,**

**Housing and Urban Development Department, Government of Odisha.**

**Address:** 1st Floor, State Secretariat,  
Annex - B, Bhubaneswar - 751001

Phone: 0674-2391395

Fax No. 0674-2394984

Attn: Shri Sisir Kumar Ratho,

**Special Secretary to Government & Secretary, OUIDF**

### **13.4. No Partnership**

13.4.1. The Parties expressly do not intend hereby to form a partnership, either general or limited, under any jurisdiction's partnership law. The Parties do not intend to be partners to one another or partners as to any third party, or create any fiduciary relationship among themselves. To the extent that any Party, by word or action, represents to another person that any other Party is a partner or that the company is a partnership, the Party making such

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representation shall be liable to any other Parties that incur any losses, claims, damages, liabilities, judgments, fines, obligations, expenses and liabilities of any kind or nature whatsoever (including but not limited to any investigative, legal or other expenses incurred in connection with, and any amount paid in settlement of, any pending or threatened legal action or proceeding) arising out of or relating to such representation.

### **13.5. No Agency**

13.5.1. No Party shall act as an agent of the other Parties or have any authority to act for or to bind the other Parties. Any Party that takes any action or binds any other Parties in violation of this clause shall be solely responsible for, and shall indemnify the other Party against, any losses, claims, damages, liabilities, judgments, fines, obligations, expenses and liabilities of any kind or nature whatsoever (including but not limited to any investigative, legal and other expenses incurred in connection with, and any amounts paid in settlement of any pending or threatened legal action or proceeding) that such other Party may at any time become subject to or liable for by reason of such violation.

### **13.6. Entire Agreement**

13.6.1. This Agreement (including the Schedules) contains the entire Agreement among the parties with respect to matters covered by this Agreement, and supersedes all prior agreements, written or oral, with respect thereto.

13.6.2. Changes in or additions to this Agreement may be made only upon prior written consent of the Parties. None of the terms of this Agreement shall be deemed to have been waived or altered unless such waiver or alteration is in writing and is signed by all the Parties.

### **13.7. Severability**

13.7.1. In the event that any one or more of the provisions contained in this Agreement shall be invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby and the Parties agree to attempt to renegotiate such provisions in good faith. In the event that the Parties cannot renegotiate such provisions, this Agreement may, at the discretion of the OUIDF, terminate. In the event that the Parties cannot renegotiate such provisions but OUIDF does not terminate the Agreement then:

- a. Such provisions shall be excluded from the Agreement;
- b. The remainder of the Agreement shall be interpreted as if the provisions were so excluded; and
- c. The remainder of the Agreement shall be enforced in accordance with its terms.

### **13.8. Binding Effect**

13.8.1. All covenants, agreements, representations, warranties and undertakings contained in this Agreement by and on behalf of any of the Parties hereto shall bind and inure to the benefit of the respective successors and assigns of the Parties hereto, whether so expressed or not. This

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Agreement shall inure to the benefit of and be binding upon the Parties, their successors-in interest and permitted assigns, but shall not be assigned by any Party without the prior written consent of the other Parties.

### **13.9. Costs And Expenses**

13.9.1. Each Party agrees that it shall bear by itself all costs and expenses incurred by it in connection with any discussions, negotiations and investigations undertaken in connection with the subject matter hereof, including costs and expenses associated with retention of financial, legal, tax and other professional advisers.

13.9.2. All costs and expenses in relation to and for the consummation of the transaction including the expenses relating to issue of the shares, stamp duty and other charges payable in respect of the execution of this Agreement shall be paid by the PDA.

### **13.10. Amendments**

13.10.1. No amendment, modification or variation of this Agreement shall be binding on any Party unless such amendment, modification or variation is recorded in a written document and executed by the Parties, but where any such document exists and is so signed, no Party shall allege that such document is not binding by virtue of an absence of consideration.

### **13.11. Waiver**

13.11.1. A waiver by a Party of a provision or of a right under this Agreement is binding on the Party granting the waiver only if it is given in writing and is signed on behalf of the Party granting the waiver. No delay in exercising or omission to exercise any right, power or remedy shall impair any such right or constitute a waiver thereof or any acquiescence by the holder thereof in respect of any default, nor shall it affect or impair any right, power or remedy of either party in respect of any other default. If at any time any Party shall waive its rights accruing to it under this Agreement due to breach of any of the provisions of this Agreement, such waiver shall not be construed as constituting waiver of the rights accruing to it under this Agreement as regards other breaches or other provisions of this Agreement.

### **13.12. Counterparts**

13.12.1. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, and all of which, when taken together, shall constitute one and the same instrument.

### **13.13. Survival of Indemnity Obligations**

13.13.1. All indemnification obligations contained in this Agreement, or made pursuant hereto, shall survive the termination of this Agreement.

### **13.14. Deductions**

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13.14.1. The PDA agrees that any payment required to be made by it to OUIDF under this Agreement or any other agreement may, at the option of OUIDF, be deducted from the amounts/consideration payable by OUIDF to the PDA.

IN WITNESSETH WHEREOF, THE PARTIES HAVE SIGNED AND EXECUTED THIS AGREEMENT IN TWO PARTS, EACH OF WHICH SHALL BE DEEMED TO BE ORIGINAL AND AUTHENTIC, ON THE DATE AND PLACE FIRST MENTIONED:

**For and on behalf of**

Odisha Urban Infrastructure Development Fund

Project Development Agency

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### Schedule I List of Experts that need to be mandatorily deployed by the PDA

Towards the staffing of the PDA, a core team of seven (7) full-time experts and an earmarked resource pool of will be envisaged for drawdown support to respond to project needs as identified by OUIDF.

#### a) Core Team (full-time expert)

Sl. No	Position	No of persons	Qualifications	Experience
1	<b>Team Leader and Urban Expert</b>	1	Post-Graduation in Management / Finance / Economics / Urban Planning or Equivalent.	10 years. Experience in Urban Transaction advisory and project development. Leadership role in managing urban project development would be a plus.
2	<b>Project Development Expert</b>	1	Post-Graduation in Engineering/ Finance/ Management/ Urban Planning	10 years Experience in urban domain, municipal finance and project development / PPPs.
3	<b>Project Appraisal Expert</b>	1	Post-Graduation in Finance / Economics	5 years Experience in project evaluation, feasibility evaluation, Project Appraisals / Credit and Financing.
4	<b>Procurement Expert</b>	1	Post-Graduation in Finance / Economics / Legal	5 years Experience in Government and Infrastructure, Procurement and Contracting
5	<b>Transaction Management Expert</b>	1	Post-Graduation in MBA/ Economist/ Engineering/ Urban Planning or C.A or Equivalent.	5 years Experience in Urban Transaction advisory, project development and Contracting.
6	<b>Project Associates</b>	2	Post-Graduation in Economics/ Urban Planning/ Management	2 years Experience of working for a minimum of two years on relevant areas.



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**Pool of shared back-stopping resources from the Bidder:**

**Apart from the above positions, the PDA** is expected to have a back-stopping resource pool available part-time that the Core team has access to in order to bring to the Bidders' experience and oversight. Bidders are expected to provide a summary (as per table given below) and CVs of select staff for this shared support.

<b>Sl. No</b>	<b>Positions</b> (Illustrative. Bidders expected to fill in the extent of shared support they would bring to the project team)
1	Capacity Building Expert (1 Nos.)
2	Legal (urban sector) expert (1 Nos.)
3	Water and Sanitation Expert (1 Nos.)
4	Environmental and social Expert (1 Nos.)
5	Transportation Expert (1 Nos.)

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## **Schedule II Details of Services to be rendered by Private service provider through PDA**

### **Services to be provided by the PDA:**

#### **1. Project Development**

- a. Developing a strategy for Project development and getting the Project Development Plan approved.
- b. Continuous Project identification in consultation with the ULBs and GoO and working with ULBs, HUDD and PDF Trust Board to take up specific project preparation exercises and studies.
- c. Empanelment of Consultants for carrying out Project Preparation studies.
- d. Consultative preparation of a shelf of bankable projects through a series of project preparation studies including pre-feasibility/feasibility studies and preparation of bankable DPRs including crystallizing desired service outcomes, assessment of social and environment impacts, project costs (capital and maintenance), project structuring including determination of financing mix, revenue potential and project viability, possible debt servicing capacity of the project, given the revenue capital costs, revenue potential and O&M costs, implementation approach (EPC or PPP) and Plan.

#### **2. Project Appraisal, Risk assessment, Sanction of Loans / Grants**

- a. Assessment of risks, financials and viability assessment for projects that are being developed.
- b. Assessment of borrowing capacity of Implementation Agencies (ULB, PHED, Private Service provider in case of PPP projects) that are responsible for developing and maintaining various projects
- c. Determination of Financing mix (Loans, Grants, ULB funds) and recommendations on structuring including required Credit Enhancement measures.
- d. Loan Sanctions and Disbursement plan in accordance with the Lending policy and guidelines of the OUIDF and GSF.
- e. Entering into appropriate documentation with Implementation Agencies including Loan Agreements and Grant release schedules.

#### **3. Project Contracting, Loan and Grant disbursements and Project Monitoring**

- a. Preparation of model RFQs, RFPs Bid documents
- b. Preparation of project bid documents and assisting implementation agencies in procurement / contracting for both EPC and PPP projects in compliance with KfW and GoO requirements.
- c. Putting in place project implementation monitoring mechanisms including Project Monitoring Units (PDAs) for larger projects.
- d. Release of Loans and Grants in accordance with Sanctions and implementation schedule.
- e. Assist Implementation Agency in ensuring timely completion of projects and achievement of service delivery outcomes.

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#### **4. Collection of Loan and Interest Repayments**

- a. Implement mechanisms for timely collection of Loan and Interest Repayments from various projects / implementation agencies
- b. Implement mechanisms for monitoring loan recovery, periodic reporting of loan performance and providing for Non Performing/Doubtful Assets in accordance with RBI guidelines and managing / mitigating Non-Performing Assets.

#### **5. Mobilization of External Finance and Treasury Management**

- a. Exploring avenues for raising external financing (including PPPs, Bond programs, Lines of Credit from other investors) depending on financing needs to augment available Line of Credit under the OUIDF for financing of urban infrastructure projects beyond the Line of Credit.
- b. Efficient Cash management and deployment of surplus cash under the various funds including OUIDF, GSF and PDF in safe but income-yielding securities / instruments in accordance with guidelines of the OUIDF.

#### **6. Support to Capacity Building and reform initiatives of GoO**

- a. Work with GoO and support GoO and its agencies in initiating and implementing specific reform measures to enable improved credit worthiness and project implementation capacity of Implementation Agencies including ULBs and PHED.

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**Performance indicators and milestones**

<b>Deliverables and Performance Parameters</b>	<b>Timelines from signing of Agreement</b>
<b>Preparatory activities</b>	
Finalization of an approved Strategy and Business Plan document for OUIDF and PDA	75 days
Finalization of an approved Project Development Plan to prepare and develop a shelf of Projects of Project Cost equivalent to 100 million Euro	75 days
Deployment of initial staff as given in Schedule I of this Agreement	60 days
Finalization of an Approved Operating Manual on the basis of guidelines provided in Schedule IV of this RFP	150 days
Finalization of an Approved Lending Policy and Standard Loan Agreement Templates on the basis of guidelines provided in Schedule IV of this RFP	150 days
Empanelment of Consultants for undertaking Project Preparation Activities.	150 days
<b>Performance Benchmarks</b>	
<b>Loan Disbursements</b>	
Year 1	<b>Euro 3 million</b>
Year 2	<b>Euro 7 million</b>
Year 3	<b>Euro 8 million</b>
Year 4	<b>Euro 4 million</b>
Year 5	<b>Euro 3 million</b>

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### Schedule III Payments to PDA for services rendered

The compensation to the PDA for the services rendered shall be made from funds available in OUIDF. The compensation to the PDA shall include the following components:

1. **Fixed Service Fee**

2. **Success Fee**

**LESS:**

3. **Deduction charge for NPA of OUIDF**

4. **Deduction charge for non-compliance with disbursement performance targets**

**WHERE:**

1. the **Fixed Service Fee** is INR 8,00,000/- per month (Rupees Eight Lakh per month), as invoiced and payable from the Effective Date at the end of every month up for a period of three years. For the avoidance of doubt, the Fixed Service Fee shall only be payable for the first three years from the Effective date of this Agreement. .
2. the **Success Fee** (x%)<sup>1</sup> will be payable on following heads as computed, invoiced and payable upon the milestone indicated.
  - a. **Existing Lines of Credit:** Funds disbursed on Projects from the KfW Line of Credit committed under the OUIDF. Here the Success Fee would be payable at the time of disbursement of funds to the Project(s).
  - b. **New Lines of Credit:** Funds disbursed from new Lines of Credit raised by the PDA under the OUIDF. Here the Success Fee would be payable at the time of disbursement to the Project(s).
  - c. **External financing of Projects:** Other External Funds raised directly by PDA (with the exception of Funds accessed from Grant schemes of Government of India and Government of Odisha or any of its agencies and deposits from Users of the Projects developed) from Bond Issues, Commercial Loans by external lenders, and other external investments in projects developed by the PDA. Here the Success Fee would be payable at the time of Financial Closure, as evidenced by signing of appropriate agreements and documentation that connote commitment of resources.

The Success Fee is payable during the entire term of this Agreement: The Success Fee is inclusive of all taxes, except for Service Tax which would be charged and recovered by the PDA as applicable. Success Fee would not be payable on Grants made available by Government of India and Government of Odisha and would be payable only on finances raised from external sources.

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<sup>1</sup> where x% is the value of the bid as quoted by the Successful Bidder

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3. **Deduction charge for NPA of OUIDF** would be computed at 5% of the Net Non-Performing Assets or Net NPAs (as per prudential norms issued and revised by Reserve Bank of India on Income recognition, Asset Classification and Provisioning) on the audited OUIDF Balance Sheet at the end of every Financial Year. The Deduction charge would be computed and adjusted against payments to be made to the AMC.
  4. **Deduction charge for non-compliance with disbursement performance targets** for the first five years shall be computed as a % of annual revenue due to PDA during a full financial year as per the table below. The deduction shall be computed and charged to the PDA at the end of every Financial Year. The Deduction will be made from payments due to the PDA in the following year. For years beyond the first 5 years, the Disbursement Targets shall be jointly fixed by the OUIDF and the PDA.

<b>Contract Year (from Effective Date)</b>	<b>Loan Disbursement Target</b>	<b>% of Annual Revenue deducted</b>		
		<b>&lt; 70% of Target</b>	<b>80%-90% of Target</b>	<b>&gt;90% of Target</b>
Year 1	<b>Euro 3 million</b>	<b>5%</b>	<b>2%</b>	<b>0.5%</b>
Year 2	<b>Euro 7 million</b>	<b>5%</b>	<b>2%</b>	<b>0.5%</b>
Year 3	<b>Euro 8 million</b>	<b>5%</b>	<b>2%</b>	<b>0.5%</b>
Year 4	<b>Euro 4 million</b>	<b>5%</b>	<b>2%</b>	<b>0.5%</b>
Year 5	<b>Euro 3 million</b>	<b>5%</b>	<b>2%</b>	<b>0.5%</b>