

Loan Agreement

dated 01/12/2017

between

**KfW, Frankfurt am Main
("KfW")**

and

**INDIA
acting by its President
("Borrower")**

for

EUR 55,000,000.00

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



CONTENTS

PREAMBLE..... 3

1. Loan..... 4

2. Disbursement..... 5

3. Fees..... 8

4. Interest..... 9

5. Repayment and prepayment..... 10

6. Calculations and payments in general 13

7. Guarantee from the Federal Republic of Germany 21

8. Illegality 21

9. Costs and public charges..... 22

10. Special obligations 23

11. Termination of the Agreement..... 26

12. Representation and statements 27

13. Publication and transfer of project-related information..... 28

14. General provisions 30

Annex 1 Disbursement schedule..... 33

Annex 2 Form of Legal Opinion of the Legal Adviser to the Borrower
(State)..... 34

PREAMBLE

The Government of the Federal Republic of Germany and the Government of India have agreed to support the refinancing of a credit line for urban infrastructure measures in the state of Odisha under Phase II of the Odisha Urban Infrastructure Fund (OUIDF).

For this purpose KfW and the Borrower have agreed to enter into a loan agreement ("**Agreement**" or "**Loan Agreement**") which provides the means to fund the project (as defined below), and a financing agreement for accompanying measures ("**Financing Agreement**"). On the basis of the Loan Agreement and Financing Agreement a project agreement ("**Project Agreement**"), to which the Borrower hereby agrees, shall be concluded between KfW, the State of Odisha and the Odisha Urban Infrastructure Fund (OUIDF) (the "**Project-Executing Agency**"). The channelling of the Loan in full through the State of Odisha to the Project-Executing Agency will be laid down in the Project Agreement.

The basis for this Loan Agreement between KfW and the Borrower are 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 (FC) ("**Government Agreement**").

KfW will refinance the Loan granted in accordance with the conditions of this Agreement with interest subsidies from low-interest budget funds provided by the Federal Republic of Germany for projects that meet development-policy eligibility criteria. The terms and conditions of the Loan comply with the OECD requirements applicable on the date of signing of the Agreement for recognition as Official Development Assistance (ODA).

On this basis and under the condition that the Federal Republic of Germany extends a guarantee for the Loan, KfW will grant a Loan in accordance with the terms and conditions of this Loan Agreement.

1. **Loan**

1.1 *Amount.* KfW will extend to the Borrower a Loan not exceeding a total of

EUR 55,000,000.00 ("Loan").

1.2 *Purpose.* The Borrower shall channel the Loan in full in accordance with the back-to-back on-lending guidelines of the Indian Ministry of Finance, Department of Economic Affairs (DEA), and at the same terms and conditions of this Loan Agreement through the State of Odisha to the Project-Executing Agency. The Borrower shall ensure that the Project-Executing Agency uses the Loan exclusively to refinance urban infrastructure measures in the state of Odisha under Phase II of the Odisha Urban Infrastructure Development Fund ("**Project**") with a positive environmental impact by providing loans to environment-related urban infrastructure sub-projects ("**Sub-Projects**"), and to support the Sub-Projects with viability gap funding where necessary. The Project-Executing Agency and KfW shall determine the details of the Project as well as the Sub-Projects to be financed from the Loan in a separate agreement ("**Separate Agreement**").

1.3 *Taxes, charges, customs duties.* Taxes and other public charges owed by the Borrower or the Project-Executing Agency as well as customs duties will not be financed from the Loan.



2. Disbursement

- 2.1 *Requesting disbursements.* As soon as all conditions precedent to disbursement pursuant to Article 2.4 hereof are fulfilled, KfW will disburse the Loan in accordance with the progress of the Project and upon request of the Project-Executing Agency. Disbursements will be made in accordance with the disbursement schedule contained in Annex 1 to this Loan Agreement. KfW will make disbursements only up to the maximum amounts determined for each half-year. To the extent the Project-Executing Agency requests disbursement of lower amounts within any half-year the undisbursed amounts may be requested in any of the next ensuing half-year periods.
- 2.2 KfW shall not be obligated to effect more than one disbursement per quarter and not amounts of less than Euro 2,500,000.00 except for the last disbursement.
- 2.3 *Deadline for requesting disbursements.* KfW has the right to refuse to make disbursements after December 30, 2023.
- 2.4 *Conditions precedent to disbursement.* KfW is obligated to make disbursements under this Agreement only if the following conditions precedent have been fulfilled in a manner satisfactory to KfW in form and substance:
- a) The Borrower will have demonstrated to the satisfaction of KfW, by presenting a legal opinion the content of which is essentially in conformity with the specimen in Annex 2 hereof and by presenting certified copies (each with an official translation into the language of this Agreement) of all documents to which such Legal Opinion refers, that the Loan Agreement is legally effective and enforceable and, in particular, that
 - (a) the Borrower has met all requirements under its constitutional law and other applicable legal provisions for the valid assumption of all its obligations under this Agreement, and
 - (b) KfW is exempted from all taxes on income from interest earnings and all levies, commissions and similar costs in India when granting the Loan;



- b) KfW is in possession of an original of this Agreement, the Project Agreement and the Separate Agreement, each signed with legally binding force;
- c) the specimen signatures mentioned in Article 12.1 hereof have been received by KfW;
- d) confirmation of the Borrower and of the State of Odisha on the terms of the channelling of the Loan to the Project-Executing Agency as further set out in Article 2.1 of the Project Agreement;
- e) the Guarantee from the Federal Republic of Germany mentioned in Article 7 is in force and effect without any restriction;
- f) no reason for termination has occurred, nor has an incident occurred that would become a cause for termination by notification or expiration or ascertainment or fulfilment of a condition (potential reason for termination); and
- g) no extraordinary circumstances have arisen that preclude or seriously jeopardise the implementation, the operation, or the purpose of the Project, or the performance of the payment obligations assumed by the Borrower under this Agreement.

KfW has the right prior to any disbursement from the Loan to demand such further documents and evidence as it deems necessary at its discretion to ascertain the conditions precedent for disbursement specified in this section.

2.5 *Details of the disbursement procedure.* The Project-Executing Agency and KfW will determine the details of the disbursement procedure by the Separate Agreement and, in particular, the evidence that has to be furnished by the Project-Executing Agency documenting that the requested Loan amounts are being used for the agreed purpose.



- 2.6 *Right to cancel disbursements.* Subject to the fulfilment of its obligations under Article 10 hereof the Borrower may waive the disbursement of undisbursed Loan amounts with the prior consent of KfW against payment of a **Non-acceptance Compensation** pursuant to and as defined in Article 2.7 hereof.
- 2.7 *Non-acceptance Compensation.* If the Borrower cancels the disbursement of a Loan amount for which an interest rate has already been determined pursuant to Article 2.6 hereof, or if such Loan amount is not disbursed at all or is not disbursed by the deadline stated in Article 2.3 hereof, the Borrower will promptly pay to KfW upon its request such amount as is necessary to compensate KfW for any losses, expenses or costs incurred by KfW as a result of the non-disbursement of the Loan amount i.e. the excess (if any) of (i) the interest for a Loan amount, which KfW would have been entitled to claim until the end of the Fixed Interest Rate period applying to the Loan amount had the Borrower not dispensed with or waived the disbursement of the Loan amount, over (ii) the interest which KfW could receive by reinvesting the respective Loan amount until the end of the Fixed Interest Rate period applicable to that Loan amount taking into consideration the repayment of principal as agreed in the Loan Agreement, provided that such excess amount must be discounted by the reinvestment interest rate curve thus determined by KfW ("**Non-acceptance Compensation**"), unless such non-disbursement constitutes a breach of this Agreement by KfW.. KfW will calculate the amount of the Non-acceptance Compensation and communicate it to the Borrower.



3. Fees

- 3.1 *Commitment Fee.* The Borrower will pay a non-refundable commitment fee ("**Commitment Fee**") of 0.20% p. a. on undisbursed Loan amounts.

The Commitment Fee is due for payment semi-annually in arrears on each Payment Date as defined in Article 4.3. The first payment of the Commitment Fee is due on the first Payment Date following the elapse of six months from the date of signing of this Loan Agreement.

The Commitment Fee will be charged for the period beginning nine months after the signing of this Agreement and lasting until the date of disbursement of the Loan in full or, if applicable, until the date of definitive termination of disbursements from the Loan.

- 3.2 *Management Fee.* If by the date falling one year after the date of signing of this Loan Agreement the Borrower has requested disbursements of less than EUR 10,000,000.00 from the Loan, the Borrower will upon request of KfW pay to KfW a non-refundable one-time management fee ("**Management Fee**") of 0.25% flat on the Loan amount mentioned in Article 1.1.



4. **Interest**

The Borrower will pay interest to KfW as follows:

4.1 *Interest (Fixed Interest Rate set upon commitment of the Loan).* The Borrower will pay interest on the Loan at a rate of 1.40 % p. a. ("**Fixed Interest Rate**") until the last repayment instalment has been received in accordance with the repayment schedule set out in Article 5.1 hereof.

4.2 *Interest calculation.* Interest on a disbursed Loan amount will be charged from the date (exclusively) on which the respective Loan amount is disbursed from the Loan account held with KfW for the Borrower until the date (inclusively) on which the respective repayments are credited to KfW's account specified in Article 6.3 hereof. Interest will be calculated in accordance with Article 6.1 hereof.

4.3 *Payment Dates.* Interest will be due in arrears for payment on the dates specified below (each a "**Payment Date**"):

- a) prior to the due date of the first repayment instalment, on 15 June and 15 December of each year, for the first time on 15 June 2018.
- b) on the due date of the first repayment instalment pursuant to Article 5.1 hereof together with such instalment;
- c) thereafter on the due dates of the repayment instalments pursuant to Article 5.1 hereof.



5. Repayment and prepayment

5.1 *Repayment schedule.* The Borrower will repay the Loan as follows:

Instalment	Date		Amount	
1	December 15,	2022	2,619,000.00	EUR
2	June 15,	2023	2,619,000.00	EUR
3	December 15,	2023	2,619,000.00	EUR
4	June 15,	2024	2,619,000.00	EUR
5	December 15,	2024	2,619,000.00	EUR
6	June 15,	2025	2,619,000.00	EUR
7	December 15,	2025	2,619,000.00	EUR
8	June 15,	2026	2,619,000.00	EUR
9	December 15,	2026	2,619,000.00	EUR
10	June 15,	2027	2,619,000.00	EUR
11	December 15,	2027	2,619,000.00	EUR
12	June 15,	2028	2,619,000.00	EUR
13	December 15,	2028	2,619,000.00	EUR
14	June 15,	2029	2,619,000.00	EUR
15	December 15,	2029	2,619,000.00	EUR
16	June 15,	2030	2,619,000.00	EUR
17	December 15,	2030	2,619,000.00	EUR
18	June 15,	2031	2,619,000.00	EUR
19	December 15,	2031	2,619,000.00	EUR
20	June 15,	2032	2,619,000.00	EUR
21	December 15,	2032	2,620,000.00	EUR
Total			55,000,000.00	EUR

5.2 *Undisbursed Loan amounts.* Undisbursed Loan amounts will be offset against the respective last repayment instalment due pursuant to the repayment schedule set forth in Article 5.1 hereof unless KfW at its own discretion chooses another offsetting alternative in individual cases.

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5.3 *Repayments in case of incomplete disbursement.* If a repayment instalment is due before the Loan has been disbursed in full, this will not affect the repayment schedule pursuant to Article 5.1 hereof as long as the repayment instalment due under the repayment schedule is lower than the Loan amount disbursed and not yet repaid ("**Outstanding Loan Amount**"). If the repayment instalment due in accordance with Article 5.1 hereof exceeds the Outstanding Loan Amount, such repayment instalment will be reduced to the level of the Outstanding Loan Amount and the difference will be allocated evenly to the repayment instalments still outstanding. In computing the Outstanding Loan Amount KfW reserves the right to consider disbursements from the Loan that are made within a period of 45 or fewer days before a Payment Date to determine the Outstanding Loan Amount only for the next ensuing Payment Date.

5.4 *Prepayment.* The following will apply to prepayments:

- a) *Right to prepayment.* Subject to the following paragraphs 5.4 b) to 5.4 e) hereof, the Borrower has the right to repay Loan amounts before the scheduled due date if this prepayment is at least EUR 5,000,000.00 (in words: five million Euros).
- b) *Notification.* Prepayment of a Loan amount pursuant to Article 5.4 a) hereof is subject to notification of the prepayment by the Borrower to KfW no later than on the fifteenth **Banking Day** (as defined in Article 14.1 hereof) prior to the intended prepayment date. Such notice is irrevocable; it must specify the date and the amount of the prepayment and obligates the Borrower to pay to KfW the stated amount on the stated date.



c) *Prepayment Compensation*. If the Borrower prepays

a fixed interest Loan amount;

the Borrower will immediately pay to KfW on demand such amount as is necessary to compensate for any losses, expenses or costs incurred by KfW as a result of such prepayment i.e. the excess (if any) of (i) the interest for a Loan amount, which KfW would have been entitled to claim until the end of the Fixed Interest Rate period applying to the Loan amount had the Borrower not prepaid the Loan amount, over (ii) the interest which KfW could receive by reinvesting the respective Loan amount until the end of the Fixed Interest Rate period applicable to that Loan amount taking into consideration the repayment of principal as agreed in the Loan Agreement, provided that such excess amount must be discounted by the reinvestment interest rate curve thus determined by KfW ("**Prepayment Compensation**"). KfW will determine the amount of the Prepayment Compensation and communicate it to the Borrower. At the request of the Borrower KfW will provide the Borrower with an indication of the amount of the Prepayment Compensation prior to the required irrevocable notification of the repayment pursuant to Article 5.4 b) hereof.

d) *Amounts due*. Together with the prepayment pursuant to Article 5.4 a) hereof, the Borrower will pay the following amounts:

- (i) any Prepayment Compensation due as a result of the prepayment pursuant to Article 5.4 c) hereof; and
- (ii) all interest accrued on the prepaid Loan amount and any other payments still outstanding under this Agreement that have accrued until the date of the prepayment.

e) *Offsetting*. Article 5.2 hereof will apply *mutatis mutandis* to the offsetting of prepayments.

5.5 *Revised repayment schedule*. In the event that Article 5.3 or Article 5.4 hereof applies, KfW will send the Borrower a revised repayment schedule that will become an integral part of this Agreement and will replace the repayment schedule valid until such time.



6. Calculations and payments in general


- 6.1 *Calculation.* Interest, the Commitment Fee, default interest pursuant to Article 6.5 hereof, lump-sum compensation payments for overdue amounts pursuant to Article 6.6 hereof, Non-acceptance Compensation and Prepayment Compensation will be calculated on the basis of a 360-day year with thirty-day months.
- 6.2 *Due date.* If a payment to be made in connection with this Agreement falls due on a date that is not a Banking Day, the Borrower must make such payment on the following Banking Day. If the following Banking Day falls within the next calendar month, such payment must be made on the last Banking Day of the current calendar month.
- 6.3 *Account number, time of crediting.* The Borrower will be released from its payment obligations in connection with this Agreement if and to the extent that the respective amounts have been credited to KfW at its free disposal without any deductions in euros and no later than at 10.00 a.m. in Frankfurt am Main, Federal Republic of Germany, to KfW's account in Frankfurt am Main, Federal Republic of Germany, number IBAN DE 16 50020400 3100 0872 03, stating the due date as an additional reference ("Ref. YYYYMMDD").
- 6.4 *Counterclaims of the Borrower.* The Borrower is not entitled to assert any rights of retention or set-off or comparable rights against payment obligations under this Agreement unless such rights are recognised by declaratory judgment or are not being contested by KfW.
- 6.5 *Default interest.* If any repayment instalments or prepayments pursuant to Article 5.4 hereof are not at the disposal of KfW when due, KfW may without prior reminder charge default interest at the rate of 200 basis points above the interest rate *per annum* set out in Article 4.1 hereof for the period beginning on the due date and ending on the date on which such payments are credited to the account of KfW specified in Article 6.3 hereof. Such default interest must be paid immediately upon KfW's first demand.



- 6.6 *Lump-sum compensation.* KfW may without prior reminder request lump-sum compensation on overdue amounts (with the exception of the repayment instalments and prepayments mentioned in Article 6.5 hereof) from the due date until the date of payment at a rate of 200 basis points above the Fixed Interest Rate *per annum* pursuant to Article 4.1 hereof. If the Variable Interest Rate was changed to a Fixed Interest Rate pursuant to Article 4.1 c) hereof, KfW may alternatively demand payment of a lump sum compensation on the overdue amounts from the due date until the date of payment at a rate of 200 basis points above this Fixed Interest Rate *per annum*. The lump-sum compensation must be paid immediately upon KfW's first demand. The Borrower is free to demonstrate that no damages have occurred or that the damages were less than the lump-sum compensation.
- 6.7 *Offsetting.* KfW may offset payments received against payments due under this Agreement or under other loan agreements concluded between KfW and the Borrower.
- 6.8 *Calculations made by KfW.* Absent manifest errors, the values calculated by KfW and calculations performed by KfW of amounts due in connection with this Loan Agreement constitute *prima-facie* evidence.

7. Guarantee from the Federal Republic of Germany

KfW will have payment claims under this Agreement guaranteed by the Federal Republic of Germany prior to the first disbursement.



8. Illegality

If, under German law or – if applicable – Indian law, it becomes unlawful for KfW to perform any of its obligations as contemplated by this Agreement or to fund or maintain the Loan, upon KfW notifying the Borrower

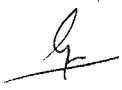
- (a) the commitment of KfW will be immediately cancelled, and
- (b) the Borrower shall repay the Loan in full on the date specified by KfW in the notice delivered to the Borrower (being no earlier than the last day of any applicable grace period permitted by law)

9. Costs and public charges

9.1 *No deductions or withholdings.* The Borrower will make all payments under this Agreement without any deductions for taxes, other public charges or other costs. In the event that the Borrower is obligated by law or for other reasons to make any such deductions or withholdings on payments, the payments made by the Borrower will increase by such amount as necessary for KfW to receive in full the amounts due under this Agreement after deduction of taxes and charges.

9.2 *Costs.* The Borrower will bear all costs and expenses accruing in connection with the disbursement and repayment of the Loan, in particular remittance and transfer costs (including conversion fees), as well as all costs and expenses accruing in connection with the maintenance or enforcement of this Agreement and of any other document related to this Agreement as well as of all rights resulting therefrom.

9.3 *Taxes and other charges.* The Borrower will bear all taxes and other public charges accruing outside the Federal Republic of Germany in connection with the conclusion and execution of this Agreement. If any such taxes and charges accrue within the Federal Republic of Germany, the Borrower will pay them only to the extent that they accrued at the Borrower's initiative. If KfW advances such taxes or charges, the Borrower will transfer them without delay upon request to KfW's account specified in Article 6.3 hereof or to such other account as specified by KfW.



9.4 *Additional costs.* Within five (5) Banking Days of receiving a request from KfW, the Borrower shall pay to KfW all additional costs, including any reduction by KfW of net income generated by the Loan Agreement or any reduction of an amount due and payable under the Loan Agreement, as a result of the introduction of or change in any legal or regulatory provisions, or any change in the application or interpretation whether made by a German or foreign competent authority, of a law or regulation, following the signing date of this Agreement.

10. **Special obligations**

10.1 *Project implementation and special information.* The Borrower will itself and shall ensure that the Project-Executing Agency

- a) will prepare, implement, operate and maintain the Project in conformity with sound financial and technical practices, in compliance with the provisions laid down in the Project Agreement, respectively with the provisions laid down in the Separate Agreement concluded between KfW and the Project-Executing Agency, as well as in compliance with environmental and social standards. The Borrower shall assist the Project-Executing Agency in conformity with sound financial and technical practices in the implementation of the Project and in the performance of the Project-Executing Agency's obligations under the Project Agreement and in particular, grant the Project-Executing Agency any and all permissions necessary for the implementation of the Project;
- b) will assign the preparation and supervision of construction of the Project 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 (Article 10.1 b) hereof) as further regulated in the Project Agreement;



- d) will ensure the full financing of the Project and furnish to KfW upon its request evidence proving that the costs not paid from this Loan are covered;
- e) will keep books and records or have books and records kept that unequivocally show all costs of goods and services required for the Project and clearly identify the goods and services financed from this Loan;
- f) will of its own accord promptly inform KfW of any and all modifications of the Project-Executing Agency's name, legal form, control or supervision, corporate or shareholder structure, modifications of its Articles of Association and of other regulations applicable to the Project-Executing Agency, as well as of any changes in the Project-Executing Agency's management;
- g) will ensure that the Project-Executing Agency will submit , its audited financial statements with the balance sheet and profit and loss accounts together with the relevant explanatory notes to KfW as soon as possible but in any case within 6 (six) months after the end of each financial year;
- h) will enable KfW and its agents at any time to inspect such books and records and all other documentation relevant to the implementation and operation of the Project as well as any and all auditor's and accountant's reports prepared on this Loan by the Borrower's, respectively by the Project-Executing Agency's own departments and statutory auditors; and to visit the Project and all the installations related thereto;
- i) will furnish to KfW any and all such information on the Project-Executing Agency's financial situation as KfW may reasonably request;
- j) will furnish to KfW any and all such information and records on the Project and its further progress as KfW may request;



- k) will, immediately and on its own initiative,
 - (i) forward to KfW any queries received by the Borrower or the Project-Executing Agency 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
 - (ii) notify KfW of any and all circumstances that preclude or seriously jeopardise the implementation, the operation or the purpose of the Project; and
- (l) will not enter into any transactions or engage in any other activities in relation to the Project that would constitute a breach of embargoes regulating foreign trade or of so-called financial sanctions of the United Nations Security Council, the European Union or the Federal Republic of Germany.

10.2 *Details of Project implementation.* The Project-Executing Agency and KfW will determine the details pertaining to Article 10.1 hereof by the Separate Agreement.

10.3 *Compliance.* The Borrower will itself and will ensure that the Project-Executing Agency ensures that the persons entrusted with preparing and implementing the Project, awarding contracts for the supplies and services to be financed and requesting the Loan amounts do not demand, accept, make, grant, promise or accept the promise of unlawful payments or other advantages in connection with these tasks.

10.4 *Transport of supplies.* The provisions set forth in the Government Agreement, which are known to the Borrower, will apply to the transport of the supplies to be financed from the Loan.

10.5 *Pari passu ranking.* The Borrower warrants and represents that its obligations under this Agreement rank and will be serviced at least *pari passu* with all other unsecured and not subordinated External Debts, and the Borrower will ensure to the extent permitted by law that this ranking is also assured for all future unsecured and not subordinated External Debt. In this Agreement, "**External Debt**" means an obligation of the Borrower which is: (i) governed by a system of law other than the law of the Borrower; or (ii) payable in a currency other than the currency of the Borrower's country; or (iii) payable to a person incorporated, domiciled, resident or with its head office or principal place of business outside the Borrower's country.



11. Termination of the Agreement

11.1 *Reasons for termination.* KfW may exercise the rights set out in Article 11.2 hereof (Legal consequences of the occurrence of a cause for termination) if a circumstance arises that constitutes good cause. These include, in particular, the following circumstances:

- a) the Borrower fails to perform payment obligations to KfW when due;
- b) obligations under this Agreement, the Project Agreement or under the Separate Agreement as well as any other legally binding additional agreements to this Agreement are violated;
- c) this Loan Agreement, the Project Agreement or any parts thereof cease to have a binding effect upon the Borrower, respectively upon the State of Odisha or the Project-Executing Agency or cease to be enforceable against the Borrower respectively the State of Odisha or the Project-Executing Agency;
- d) any declaration, confirmation, information, representation or warranty considered by KfW to be essential for the granting and maintaining of the Loan proves to be false, misleading or incomplete;
- e) other extraordinary circumstances (e.g. force majeure) occur which delay or preclude the performance of obligations under this Agreement or the Project Agreement;
- f) the Borrower or the Project-Executing Agency is unable to prove that the Loan amounts have been used for the stipulated purpose;
- g) the Borrower discontinues its payments to creditors, is insolvent or commences negotiations with one or more of the Borrower's creditors on a moratorium, waiver of debts outstanding, deferment of payments or discontinuation of the debt service.



- 11.2 *Legal consequences of the occurrence of a cause for termination.* If one of the events mentioned in Article 11.1 hereof has occurred, KfW may immediately suspend disbursements under this Agreement. If this event is not resolved within a period of five days (in the case of Article 11.1 a) hereof) or in all other cases of Article 11.1 hereof within a period determined by KfW which, however, shall be at least 30 days, KfW may cancel this Agreement in whole or in part with the consequence that its obligations under this Agreement cease and KfW may demand the immediate repayment of all or part of the Outstanding Loan Amount together with the interest accrued and the remaining amounts owed under this Agreement. Articles 6.5 and 6.6 hereof apply to accelerated amounts *mutatis mutandis*.
- 11.3 *Compensation for damages.* If this Agreement is terminated in full or in part the Borrower will pay Non-acceptance Compensation in accordance with Article 2.7 and/or Prepayment Compensation in accordance with Article 5.4 c).



12. Representation and statements

- 12.1 *Representation of the Borrower.* The President of India and the Secretary, Department of Economic Affairs, Ministry of Finance of the Government of India and such persons as designated by him or her to KfW and authorised by specimen signatures authenticated by him or her will represent the Borrower in the execution of this Agreement. The power of representation will not expire until its express revocation by the representative of the Borrower authorised at such time has been received by KfW.
- 12.2 *Addresses:* Declarations or notifications in connection with this Agreement must be in writing. They must be sent as originals or – with the exception of requests for disbursement - via facsimile. Any and all declarations or notifications made in connection with this Agreement must be sent to the following addresses:

For KfW:

KfW

Postfach 11 11 41
60046 Frankfurt am Main
Germany
Fax: +49 69 7431-2944

For the Borrower:

Ministry of Finance
Government of India
Department of Economic Affairs
North Block, New Delhi – 110 001
India
Fax: +91 11 2309 2477



13. Publication and transfer of project-related information

- 13.1 *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 13.3 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

- a) information about internal financial data;
- b) business strategies;
- c) internal corporate guidelines and reports;
- d) personal data of natural persons;
- e) KfW's internal rating of the parties' financial position.

- 13.2 *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:

- a) subsidiaries of KfW;
- b) the Federal Republic of Germany and its competent bodies, authorities, institutions, agencies or entities;
- c) other implementing organisations involved in German bilateral development cooperation, particularly the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH;
- d) international organisations involved in collecting statistical data and their members, especially the Organisation for Economic Cooperation and Development (OECD) and its members.



13.3 *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:

- a) 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);
- b) Germany Trade & Invest (GTAI) for the purposes of market information (<http://www.gtai.de/GTAI/Navigation/DE/trade.FOO>)
- c) OECD for the purpose of reporting financial flows in the framework of development cooperation (<http://stats.oecd.org/>);
- d) 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/>).

13.4 *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 Borrower in the information not being transferred outweigh KfW's interests in it being transferred. The legitimate interests of the Borrower particularly include the confidentiality of the sensitive information mentioned in Article 13.1, 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.



14. General provisions

- 14.1 *Banking Day.* Where reference is made in this Agreement to a "**Banking Day**" this means a day other than a Saturday or Sunday on which commercial banks in Frankfurt am Main, Federal Republic of Germany are open for general business.
- 14.2 *Place of performance.* The place of performance for all obligations under this Agreement is Frankfurt am Main, Federal Republic of Germany.
- 14.3 *Partial invalidity and gaps.* If any provision of this Agreement is or becomes invalid, or if there is a gap in any of the provisions of this Agreement, this will not affect the validity of the remaining provisions hereof. The parties to this Agreement will 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 will fill any gap in the provisions with a legally valid provision which comes as close as possible to the spirit and purpose of this Agreement.
- 14.4 *Written form.* Any addenda and amendments to this Agreement must be in writing. The parties may waive the written form requirement only in writing.
- 14.5 *Assignment.* The Borrower may not assign or transfer, pledge or mortgage any claims from this Loan Agreement.
- 14.6 *Applicable law.* This Agreement is governed by German law.
- 14.7 *Limitation period.* All claims of KfW under this Agreement expire after five years from the end of the year in which such claim has arisen and in which KfW has become aware of the circumstances constituting such claim or could have become aware of them without gross negligence.
- 14.8 *Waiver of immunity.* If and to the extent that the Borrower may now or in future in any jurisdiction claim immunity for itself or its assets and to the extent that a jurisdiction grants immunity to the Borrower and its assets from suit, execution, attachment or other legal process, the Borrower irrevocably agrees to waive such immunity for claims from and in connection with this Loan Agreement to the fullest extent permitted by the laws of such jurisdiction.

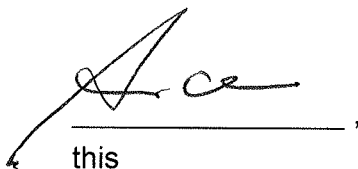


14.9 *Legal disputes.*

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

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

Done in two (2) originals in the English language.



this

KfW





this

India
Ministry of Finance
Department of Economic Affairs
Government of India – New Delhi
for and on behalf of
the President of India

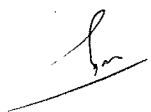
Annex 1

Disbursement schedule

Fastest possible disbursement schedule

Within each Disbursement Period indicated below, the Borrower will have requested disbursement of Loan amounts not exceeding in total the amount indicated below for each Disbursement Period. To the extent the Borrower requests disbursement of lower amounts within any Disbursement Period, undisbursed amounts of each Disbursement Period may be disbursed in subsequent Disbursement Periods.

		Disbursement Period No.	Disbursement Period (months after signing of this Loan Agreement)	Maximum total amount that will have been disbursed within each respective disbursement period (all figures in EUR)
		1	0-6	15,000,000
		2	6-12	
		3	12-18	20,000,000
		4	18-24	
		5	24-30	20,000,000
		6	30-36	
		7	...	
		



Annex 2

Form of Legal Opinion of the Legal Adviser to the Borrower (State)

Note: Please amend "Republic of COUNTRY"/"COUNTRY" appropriately.

[Letterhead of Legal Adviser]


KfW
Department [_____] _____
Attn: [_____] (date)
Palmengartenstrasse 5 - 9
Postfach 11 11 41
60325 Frankfurt am Main/Germany

Federal Republic of Germany

Loan Agreement dated _____ and made between KfW and
[_____] ("Borrower") for an amount not exceeding in
aggregate EUR ___.000.000,--.

Dear Sirs,

I am [Minister of Justice of] [legal adviser to] [head of the legal department of the
_____ (please specify ministry or other authority) of] the Republic of
COUNTRY. I have acted in that capacity in connection with a loan agreement,
dated _____ (the "Loan Agreement"), and made between the Borrower and
yourselves with respect to a loan to be granted by yourselves to the Borrower in
an amount not exceeding in aggregate EUR ___.000.000,--.



1. Documents examined

I have examined:

1.1 an authentic signed original of the Loan Agreement;

1.2 the constitutional documents of the Borrower, in particular:

- (a) the Constitution of the Republic of COUNTRY, dated _____, duly published in _____, No _____, page _____, as amended;
- (b) Law(s) No _____ dated _____, duly published in _____, No _____, page _____, as amended *[please insert here, if existing, laws (e.g. budget laws) concerning the borrowing of money by the Republic of COUNTRY];*
- (c) _____ *[please refer here to other documents, e.g. decrees or resolutions by governmental or administrative bodies of COUNTRY relating to the conclusion of loan agreements by COUNTRY in general or with regard to the conclusion of the Loan Agreement];* and
- (d) the Financial Cooperation Agreement between the Government of the Republic of COUNTRY and the Government of the Federal Republic of Germany dated _____ (the "Cooperation Agreement")

and such other laws, regulations, certificates, records, registrations and documents as I have deemed necessary or desirable to examine. In addition, I have made such investigations as I have deemed necessary or desirable for the purpose of giving this opinion.

2. Opinion

For the purposes of Article _____ of the Loan Agreement, I am of the opinion that under the laws of the Republic of COUNTRY at the date hereof:

2.1 According to Article _____ of the Constitution / Article _____ of the law on _____ *[please specify as appropriate]* the Borrower is entitled to enter into the Loan Agreement and has taken all necessary action to authorise the execution, delivery and performance of the Loan Agreement, in particular by virtue of:

- (a) Law(s) No(s) _____ dated _____ of the parliament of the Republic of COUNTRY, ratifying the Loan Agreement / approving the execution, delivery and performance of the Loan Agreement by the Borrower / _____ *[please insert as appropriate];*
- (b) Resolution(s) No(s) _____ dated _____ of the Cabinet of Ministers / of the state loan committee / _____



[please insert governmental or administrative bodies of COUNTRY as appropriate];

(c) _____ [please refer to other resolutions, decisions etc.].

2.2 Ms./Mr. _____ (and Ms./Mr. _____) is (are) duly authorised by _____ [e.g. by law due to her / his position (as Minister of _____ / as _____), by government resolution _____, by power of attorney of _____ dated _____, etc.] to sign solely / jointly the Loan Agreement on behalf of the Borrower. The Loan Agreement as signed by Ms./Mr. _____ (and Ms./Mr. _____) has been duly executed on behalf of the Borrower and constitutes legally binding obligations of the Borrower enforceable against it at law in accordance with its terms.

[Alternative 1 for Section 2.3, to be used if in addition to the documents specified in Section 2.1 and 2.2 certain official authorisations etc. must be obtained under the laws of the Republic of COUNTRY:]

2.3 For the execution and performance of the Loan Agreement by the Borrower (including without limitation the obtaining and transfer to KfW of all amounts due thereunder in the currencies specified therein), the following official approvals, authorisations, licenses, registrations and / or consents have been obtained and are in full force and effect:

(a) Approval of the _____ [Central Bank / National Bank / _____], dated _____, No _____;

(b) Consent of the _____ [Minister / Ministry of _____], dated _____, No _____; and

(c) _____ [please list any other official authorisations, licenses and / or consents].

No other official authorisations, consents, licenses, registrations and / or approvals of any governmental authority or agency (including the Central / National Bank of the Republic of COUNTRY) or court are required or advisable in connection with the execution and performance of the Loan Agreement by the Borrower (including without limitation the obtaining and transfer to KfW of all amounts due thereunder in the currencies specified therein) and the validity and enforceability of the Borrower's obligations under the Loan Agreement.

[Alternative 2 for Section 2.3, to be used only if in addition to the documents specified in Section 2.1 and 2.2 no official authorisations etc. must be obtained under the laws of the Republic of COUNTRY:]

2.3 No official authorisations, consents, licenses, registrations and / or approvals of any governmental authority or agency (including the Central / National Bank of the Republic of COUNTRY) or court are required or advisable in connection with the execution and performance of the Loan Agreement by the Borrower (including without limitation the obtaining and transfer to KfW of

all amounts due thereunder in the currencies specified therein) and the validity and enforceability of the Borrower's obligations under the Loan Agreement.

- 2.4 No stamp tax or similar tax or duty has to be paid in connection with the validity or enforceability of the Loan Agreement.
- 2.5 The choice of German law to govern the Loan Agreement and the submission to arbitration in accordance with Article _____ of the Loan Agreement are valid and binding. Arbitration awards against the Borrower will be recognised and enforceable in the Republic of COUNTRY according to the following rules: _____ *[please insert applicable treaty (if any), e.g. the 1958 New York Convention, and / or the basic principles regarding recognition and enforcement of arbitration awards in COUNTRY].*
- 2.6 The courts of the Republic of COUNTRY are at liberty to give judgment denominated in the currency or currencies specified in the Loan Agreement.
- 2.7 The borrowing by the Borrower under the Loan Agreement and the execution and performance by the Borrower of the Loan Agreement constitute private and commercial acts and not governmental or public acts. Neither the Borrower nor any of its property has any right of immunity from arbitration, suit, execution, attachment or other legal process.
- 2.8 The Cooperation Agreement is in full force and effect under the constitution and laws of the Republic of COUNTRY. [Pursuant to Article 3. of the Cooperation Agreement] [If the Cooperation Agreement has not entered into force but a double-taxation agreement does exist] Pursuant to the _____ *[please specify treaty or applicable laws and regulations]* / the Borrower will not be required to make any deduction or withholding from any payment the Borrower has to make under the Loan Agreement and should any such deduction or withholding be subsequently imposed, the provisions of Article _____ of the Loan Agreement shall operate so as to require the Borrower to indemnify KfW accordingly.
- 2.9 KfW is not and will not be deemed to be resident, domiciled, carrying on business or be subject to taxation in the Republic of COUNTRY by reason only of the execution, performance or enforcement of the Loan Agreement. It is not necessary or advisable that KfW be licensed, qualified or otherwise entitled to carry on business or that KfW appoints agents or representatives in the Republic of COUNTRY.

Consequently, the obligations of the Borrower under the Loan Agreement constitute direct and unconditional, legal, valid and binding obligations of the

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Borrower which are enforceable against the Borrower in accordance with their respective terms.

This legal opinion is limited to the laws of the Republic of *COUNTRY*.

_____, _____
(Place) (Date)

[Signature]

Name: _____

Enclosures:

Note: Please attach certified photocopies of the documents and legal provisions referred to above (with respect to lengthy laws or the Constitution of the Republic of *COUNTRY*, a copy of the relevant provisions would be sufficient) and also provide KfW with an official English or German translation of each of the above documents unless such document is issued in English or German as an official language or unless KfW has indicated that another language is satisfactory.

