

SECTION - 7

**STANDARD FORM OF
CONTRACT**

**Name of Assignment:
Selection of Project Consultant (PC) for
Bhubaneswar City Bus Modernization
Plan, Bhubaneswar**

CONTRACT

For Consulting Services

dated

[•]

between

[Bhubaneswar Puri Transport Services Ltd.]

- hereinafter referred to as the "Employer" -

[•]

- hereinafter referred to as the "Consultant" -

Project "[Bhubaneswar City Bus Modernization Project]"

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Preamble

The Employer desires consulting services to be rendered for the Project designated in the Special Conditions. The Consultant has submitted a technical and a financial bid for these services. The parties to this Contract therefore hereby agree on the following:

General Conditions

Paragraph 1 General Provisions

1.1 DEFINITIONS

The words and expressions used in this Contract shall have the following meanings assigned to them, unless the context requires otherwise.

The “**Commission**” means the performance of the Services pursuant to this Contract.

The “**Completion Period**” means the period designated for completion of the Services in the Special Conditions.

The “**Consultant**” shall be the professional undertaking or the professional individual named in the Contract who is appointed by the Employer to perform the Services. This shall include the Consultant’s legal successors as approved by the Employer and subject to prior written consent from the Employer.

The “**Contract**”, except where otherwise stated in the Special Conditions, means the conditions of this Contract for consulting services (General Conditions and Special Conditions) together with the following constituent parts of the Contract ¹:

Annex 1 [*Declaration of Undertaking*]

Annex 2 [*Minutes of Negotiations pursuant to the Special Conditions*] ²

¹If one or several of the Annexes should not be necessary in the actual Contract, to preserve the integrity of the references please retain the numbering of the Annexes and insert the words “not applicable” in the relevant Annexes.

² In the interests of clear contractual stipulations, instead of including copious minutes of negotiations it is preferable to incorporate the agreed changes directly into the Special Conditions.

Annex 3 [*Terms of Reference plus Tender Documents*]

Annex 4 [*Guidelines for the Assignment of Consultants in Financial Co-operation with Partner Countries*³], insofar as these Guidelines do not conflict with the Conditions of this Consulting Contract

Annex 5 [*Staffing Schedule*]

Annex 6 [*Equipment and Furnishings to be provided by the Employer and Third-party Services Commissioned by the Employer*]

Annex 7 [*Time Schedule for the Performance of the Services*]

Annex 8 [*Statement of Costs*]

Annex 9 [*The Consultant's Bid – though without the Consultant's terms and conditions of delivery, contract and payment*]

(N.B.: If by way of exception the procurement guidelines are not made an integral component of the Contract, Item 1.1.19 should be supplemented to include the Declaration of Undertaking, as well as the Model Advance Payment Guarantee and the Model Retention Guarantee.)

The “**country**” means the country or region to which the Project (or the majority thereof) relates.

The “**date on which execution shall be commenced**” means the day specified in the Special Conditions.

A “**day**” means one calendar day.

“**Force Majeure**” means any event whereby one party to the Contract has been prevented from performing the Services due to an unavoidable event such as a natural disaster, hostage-taking, war, revolution, terrorism or sabotage, which, with even the best human judgement and experience and utmost care, could not have been reasonably foreseen in the circumstances, prevented or rendered harmless by economically reasonable means unless such event must be accepted by the relevant party due to its regular occurrence, including, except

³ In the version valid on the date the invitation to tender was published.

where otherwise stated in the Special Conditions, circumstances such as crises, war or terror that lead to leave the country or the Project region in response to which the Consultant withdraws all its staff. If an event occurs as a result of the actions of or risks assumed by a party to the Contract, that event shall not constitute Force Majeure.

The “**Local Currency**” means the currency of the country.

A “**notice**” means a notification communicated to one party by the other party.

A “**party**”/the “**parties**” means the Employer and the Consultant.

“**Order Value**” shall have the meaning given to it in A.d. 5.1.1 of the Special Conditions.

The “**Project**” means the project specified in the Special Conditions for which the Services are to be performed.

The “**Services**” means the contractual services described in **Annex 2** [*Minutes of Negotiations*], **Annex 3** [*Terms of Reference plus Tender Documents*], **Annex 9** [*The Consultant’s Bid*] and Paragraph 3.1 [*Scope of Services*], as well as the standard and special services defined in Paragraph 3.2 [*Standard and Special Services*].

A “**third party**” means any other natural and legal person, according to the context.

“**Written**” or “ **in writing**” means written by hand or typed by machine, and produced in a printed or electronic form, the result being a non-editable permanent record.

A “**year**” means 365 days.

1.2 INTERPRETATION

1.2.1 Headings in this Contract shall have no bearing on the interpretation of these Conditions.

- 1.2.2 Words in the singular, insofar as the context allows, shall also include the plural and vice versa.
- 1.2.3 Reference to either sex shall include both sexes.
- 1.2.4 Provisions containing the words “agree”, “agreed” or “agreement” (and all derived grammatical forms thereof) shall require written agreement and signature by both parties ⁴.

1.3 RANKING AND ORDER OF THE INTEGRAL PARTS OF THE CONTRACT

- 1.3.1 For the implementation of this Contract, the parts of the Contract listed below shall take precedence in the order shown below and the Annexes shall take precedence in the order in which they are numbered:

- (a) The agreements of the Contract (General and Special Conditions), without the Annexes.

- (b) The Annexes of the Contract in the order in which they are numbered.

These General Conditions and the Annexes shall remain – except where otherwise stipulated in the parts of the Contract in question – immutable.

- 1.3.2 In case of inconsistencies or ambiguities between parts of the Contract that cannot be resolved through the ranking set out in Clause 1.3.1, the Employer shall interpret the parts of the Contract in line with the intention of the parties based on the purpose and intention of the Contract as a whole, including all Annexes.

1.4 COMMUNICATION

- 1.4.1 Except where otherwise stipulated, notices, instructions and messages must be communicated between the parties in writing and in the language specified in the Special Conditions, and any such notice, instruction or message may not be unreasonably refused or delayed.

1.5 NOTICES

- 1.5.1 Except where otherwise stipulated in the Special

⁴ N.B.: This shall not include any purely electronic agreements.

Conditions, the notices to be served pursuant to this Contract shall take effect upon receipt at the addresses specified in the Special Conditions. The notice may be served in person, by a courier service, by fax (with written confirmation of receipt), by registered letter or by email (only if this is sent in an encrypted and certified form (e.g. S/MIME certificate)).

**1.6
LAW AND LANGUAGE**

1.6.1 The Special Conditions shall contain the language or languages of the Contract, the prevailing contractual language and the law governing this Contract.

**1.7
ENTRY INTO FORCE OF THE
CONTRACT**

1.7.1 This Contract enters into force upon execution by both parties, subject to notification by the Employer that all conditions precedent to disbursement under the Financing Agreement have been satisfied in a form and substance satisfactory to the Employer.

**1.8
MEASUREMENTS AND
STANDARDS**

1.8.1 Drawings, plans and calculations shall be based on the metric system and internationally recognised standards that are at least equivalent to those published by ISO or IEC are the standards to be applied to the Services performed under the Contract.

**1.9
ASSIGNMENT AND SUB-
CONTRACTING**

1.9.1 The Consultant shall not have the right to assign or transfer all or any of its rights under this Contract without the prior written consent of the Employer. The Employer's consent shall not be required for the assignment of any amounts due or which shall become due under this Contract.

1.9.2 The Consultant may conclude, terminate or cancel sub-contracts for the performance of a part of the Services that are the subject of this Contract only upon prior written approval by the Employer, in cases where the

⁵ ISO = International Organization for Standardization, EN = European Norm, DIN = Deutsches Institut für Normung, IEC = International Electrotechnical Commission.

Services are sub-contracted, the Consultant's obligations to fulfil the Contract shall remain unaffected.

1.10

RIGHTS TO THE RESULTS OF WORK, COPYRIGHT

1.10.1 Except where otherwise stated in the Special Conditions of this Contract, the Consultant shall transfer to the Employer all transferrable rights to the Services performed under this Contract on the date any such rights arise, and in any event at the latest, on the date they are acquired. Insofar as a transfer of such rights is not possible, the Consultant shall irrevocably grant the Employer unrestricted, transferrable, licensable and exclusive rights of use and exploitation that are unlimited with respect to time and place of use. Such transfer shall include the right to adapt any transferred rights. The Consultant shall ensure that any relevant creator of such transferrable rights waives its exercise of any such relevant rights.

1.10.2 If the Consultant employs third parties (e.g. employees) to perform the Services, it shall ensure that these parties allow him to transfer and/or grant the rights in full. The Consultant shall ensure that third parties waive the exercise of any relevant rights.

1.10.3 The Consultant shall issue all information requested by the Employer in connection with this Contract, and shall make available free of charge all requested records, documents and information. This obligation shall remain effective after termination of the Contract for a period of 24 months.

1.11

OWNERSHIP OF DOCUMENTS AND EQUIPMENT

1.11.1 All studies, reports and pertinent data and documents such as diagrams, plans, statistics and annexes that are made available to the Consultant in the performance of the Commission, as well as software (including the respective source codes) produced or adapted for consideration as part of the Commission, shall become the property of the Employer. The Consultant shall not be entitled to exercise a right of retention with respect to these materials.

1.11.2 Not Applicable

**1.12
CONFIDENTIALITY AND
PUBLICATION**

1.12.1 The Consultant shall, and shall ensure that its employees, keep confidential all documents passed on to it by the Employer, as well as all information exchanged and knowledge acquired concerning this Contract and its implementation, even if such documents have not been expressly designated as confidential. This obligation of confidentiality upon the Consultant and its employees shall remain effective after termination of the Contract. It shall not apply to disclosure to a court or to a public authority, insofar as this disclosure is made on the basis of legal obligations or by order of a court or a public authority. It shall also not apply to those materials, information and knowledge acquired for which and insofar as the Employer has given written consent for publication.

1.12.2 The obligation of confidentiality set out in Clause 1.12.1 shall not apply to information which:

(a) was demonstrably already known to the recipient when the Contract was concluded, or thereafter was made known by a third party, without this having constituted any violation of a confidentiality agreement, legal regulations or official orders; or

(b) is publicly known upon conclusion of the Contract or is made publicly known thereafter, insofar as this is not based on a violation of this Contract.

**1.13
CONDUCT**

1.13.1 During the term of this Contract, the Consultant shall not interfere with the political or religious affairs of the country.

**1.14
CORRUPTION AND FRAUD**

1.14.1 When discharging their obligations under this Contract, the Consultant, its representatives and its employees shall comply with all applicable

laws, rules, regulations and provisions of the relevant legal systems, including the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

- 1.14.2 The Consultant shall not offer or grant either directly or indirectly any improper advantages to public officials (as defined below) or other individuals in connection with its bid in the tendering process. In addition, it shall not offer or grant any such incentives or conditions when implementing the Contract. The Consultant shall be obliged to notify the Employer in detail immediately in writing if the Consultant is prompted by a public official or any other persons to make illegal payments.
- 1.14.3 The Consultant will inform its members of staff of their respective obligations as well as their obligation to comply with the Declaration of Undertaking and to obey the laws of the country.
- 1.14.4 A public official shall be:
- (a) any official or employee of a public authority or an enterprise under the ownership and control of a government;
 - (b) any person who performs a public function;
 - (c) any official or staff member of a public international organisation, such as the World Bank;
 - (d) any candidate for a political office, or
 - (e) any political party or official of a political party.

1.15 REIMBURSEMENTS

- 1.15.1 All reimbursements, insurance payments, guarantee payments or similar payments, if any, shall be made for the account of the Employer. If such payments are made in Local Currency, they shall be made to a special account of the Employer specified in the Special Conditions.

1.16

PARTIAL INVALIDITY

- 1.16.1 The invalidity or unenforceability of one or more provisions of this Contract will not affect the validity or enforceability of any other provisions of this Contract. Any invalid or unenforceable provision shall be replaced by a valid and enforceable provision which approximates as closely as possible the economic purpose of the invalid or unenforceable provision. The same shall apply accordingly in cases of omissions.

Paragraph 2 The Employer

2.1 INFORMATION

2.1.1 During the term of this Contract, the Employer, within a reasonable period of time, shall, free of charge, place at the disposal of the Consultant, all data, documentation and information concerning the Services covered by the Commission that are available to it.

2.2 DECISIONS/ COOPERATION

2.2.1 Subject to the Consultant having provided the Employer with all the necessary information including, but not limited to, drawings, studies and replacement staff, the Employer shall make its decisions pursuant to this Contract as soon as possible after the Consultant requests such duty to be performed in writing and, in any event, no later than the end of the expiry period specified in the Special Conditions.

2.3 SUPPORT

2.3.1 The Employer will support, as far as reasonably possible, the Consultant in discharging its obligations pursuant to this Contract. The Employer shall make available to the Consultant in good time and in full all the services necessary for the performance of its tasks as detailed in **Annex 3** [*Terms of Reference plus Tender Documents*].

2.3.2 In addition, the Employer shall support the Consultant, the Consultant's staff and where applicable relatives of the Consultant in:

- (a) obtaining in good time any documents necessary for entering, residing in, working in and leaving the country (visa, work permit etc.);
- (b) granting and/or obtaining unrestricted access to the Project where necessary for the performance of the Services;

- (c) the import, export and customs clearance of personal items and of goods and commodities required for performance of the Services;
- (d) securing return transport in cases of emergency;
- (e) obtaining permission to export the money paid by the Employer to the Consultant under this Contract; and
- (f) providing access to other organisations for the purpose of obtaining information to be procured by the Consultant.

2.4 TAXES

The Consultant and Personnel are responsible for meeting any and all Tax liabilities arising out of the Contract in India or elsewhere, unless it is stated otherwise in the SCC

2.4.1

All payments made by the Client to the Contractor shall be subject to deductions and withholding of applicable Taxes in accordance with Applicable laws

2.4.2

If it is impossible to meet the obligations arising from Paragraph 2.4.1 [*Taxes*] due to contrary legal provisions, the Employer shall, provided it is legally permissible and except where otherwise stipulated in the Special Conditions of

this Contract, upon submission of proof of the payments made, reimburse the Consultant all the amounts paid without delay.

2.5 EQUIPMENT AND OFFICES

- 2.5.1 For the purposes of performing the Services, the Employer shall make available to the Consultant, free of charge, adequate office space with installation of fans. The electricity charges shall be paid by the Client to the extent described in **Annex 6**
[Equipment and Furnishings shall not be provided by the Employer and Third-party Services commissioned by the Employer. The Consultant has to bear the cost for all project related utilities on its own].

2.6 CONTACT PERSONS OF THE EMPLOYER

- 2.6.1 The Employer shall appoint two natural persons to act as the Employer's contact person and deputy to the Consultant under this Contract, and the Employer further undertakes always to appoint another contact person without delay should either of the two individuals appointed no longer be available.

2.7 THIRD-PARTY SERVICES

- 2.7.1 Not Applicable

2.8 PAYMENT FOR SERVICES

- 2.8.1 The Consultant shall receive from the Employer remuneration for the Services performed under this Contract in accordance with Article 5 *[Remuneration]*.

Paragraph 3 The Consultant

3.1

SCOPE OF SERVICES

- 3.1.1 The Consultant shall deliver the Services in full and on time.
- 3.1.2 The Services to be performed by the Consultant encompass all the part services described and explained in this Contract and its Annexes, in particular in Annex 2 [Minutes of Negotiations] Annex 3 [Terms of Reference plus Tender Documents] and Annex 9 [The Consultant's bid]. Furthermore, the Consultant must deliver all the standard and special services as defined in Paragraph 3.2.1.[Standard and Special Services].
- 3.1.3 Not Applicable.

3.2

STANDARD AND SPECIAL SERVICES

- 3.2.1 In addition to the Services specified explicitly in the Contract, the Consultant shall also perform all other services, if necessary, that are not listed under the contractual services, but are customarily required in order to properly discharge the contractual obligations (“**standard services**”). The standard services shall be fully compensated through the Agreed Remuneration.
- 3.2.2 “**Special Services**” are services that are not included under the contractual or standard services, but must necessarily be delivered by the Consultant in order to properly perform its duties under the Contract, because the external circumstances of service delivery have changed unexpectedly, or because the Employer has suspended the Services pursuant to Paragraph 4.5 [*Force majeure*], or because the Employer, requires services that were not included in the invitation to tender but are necessary.

3.3

DUE DILIGENCE

3.3.1 Except where otherwise stipulated in this Contract, or otherwise legally stipulated within the country or within another legal system (including the legal system in the Consultant's jurisdiction) by provisions that impose higher demands than this Contract, when performing its obligations under this Contract the Consultant shall exercise due diligence and provide the Services in compliance with professional practice and to the recognised quality standards, in accordance with current scientific and generally accepted engineering standards. The Consultant must document its work, the progress of the Project and the decisions it takes in an appropriate form that is acceptable to the Employer, bearing in mind the requirements arising from Paragraph 5.7 [*Auditing*].

3.4

REPORTING

3.4.1 The Consultant shall report to the Employer on the progress of the Services in accordance with the Special Conditions. Except where otherwise stipulated in the Special Conditions, in case of longer assignments such as construction management, training or operational support, the Consultant shall draw up quarterly reports, and following the conclusion of the Services draw up a final report covering the entire Completion Period. The reports shall include a comparison of targeted and actual values for the planned activities; the progress of construction; developments in the time frame; financial developments; and information on any problems and identification of possible solutions.

3.4.2 The Consultant shall inform the Employer promptly of all extraordinary circumstances that arise during the performance of the services and of all matters.

3.4.3 Furthermore, the Consultant shall, upon request, supply the Employer with information in connection with the Services.

3.5

STAFFING

- 3.5.1 The Consultant shall employ the staff specified in Annex 5 [Staffing Schedule] to implement performance of the Services. The list of designated key staff and any changes to it shall require the prior written approval of the Employer.
- 3.5.2 The Employer may require the Consultant to terminate the contract of, or replace, any staff member who fails to meet the requirements or violates Paragraph 1.13 [Conduct]. Any such demand must be submitted in writing to the Consultant stating the reasons for it.
- 3.5.3 If staff employed by the Consultant need to be replaced, the Consultant shall ensure that the staff member in question is replaced promptly by an individual who possesses at least equivalent qualifications.
- 3.5.4 If any one of the Consultant's staff falls ill for more than one month and this jeopardises the performance of this Contract by the Consultant, the Consultant shall replace this staff member with another staff member who possesses at least equivalent qualifications.
- 3.5.5 Staff shall only be replaced after prior approval by the Employer, such approval not to be unreasonably withheld. The exchange, replacement, or planned dispensation of replacement (as exception to existing rules) of key expert specified by name shall require the prior approval of the employer.
- 3.5.6 If the Consultant must terminate the contract of, or replace, any staff during the Contract period, the costs thus accrued shall be borne by the Consultant, except where staff are removed or replaced at the Employer's request. In this case, the Employer shall meet the costs of replacing the staff member, unless the staff member in question does not meet the requirements or has violated Paragraph 1.13 [Conduct].

3.6

CONTACT PERSON OF THE CONSULTANT

- 3.6.1 The Consultant shall appoint for the exercise of all rights and obligations arising from this Contract a natural person as its contact person for the Employer under this Contract.

3.7

INDEPENDENCE OF THE CONSULTANT

- 3.6.2 The Consultant shall specify and provide respective contact data to the Employer for an individual at the Consultant's place of business who can be reached at any time in cases of emergency or crisis as well as a deputy of the Consultant. The Consultant shall notify the Employer without delay of any change of elected person or their contact data.
- 3.7.1 The Consultant undertakes that neither the Consultant nor any enterprise associated with the Consultant shall bid for the Project as manufacturer, supplier, or building contractor. This prohibition also applies to any bidding for any further consulting services, insofar as such consulting services might lead to a restriction of competition or a conflict of interests. Any violation of this stipulation may lead to the immediate cancellation of this Contract and require the reimbursement of any and all costs incurred by the Employer up to the time of such violation as well as compensation for any and all losses and damages incurred by the Employer as a result of such cancellation.

Paragraph 4 Commencement, Completion, Amendment and Termination of the Services

4.1

COMMENCEMENT AND COMPLETION

- 4.1.1 The Consultant shall begin performing the Services on the prescribed date on which execution of the Contract shall take place, but not earlier than and without undue delay after the Contract has come into force. The Consultant shall deliver the Services in accordance with the time schedule in Annex 7 [Time Schedule for the Performance of the Services], and shall complete the Services within the Completion Period, subject to any further extensions to this Contract.
- 4.1.2 In relation to optional services (if any), the Consultant shall commence delivery of the optional services not earlier than upon receipt of notification from the Employer.
- 4.1.3 Any change to the time schedule in **Annex 7** [*Time Schedule for the Performance of the Services*] due to a reasonable request by either party shall be mutually agreed upon in writing.

4.2

PENALTIES FOR DELAY

- 4.2.1 If the Consultant fails to perform any of the Services under this Contract within the requisite time period, for reasons he must warrant, the Employer shall, unless the Special Conditions include derogation, be authorised to inflict a penalty of 0.5% of the Order Value for every week of delay, subject to a cap of 8% of the Order Value. Beyond such penalty, the Employer may not bring any further claims arising from the delay in the performance of the Services. The right of termination shall remain unaffected.

4.3

AMENDED SERVICES

- 4.3.1 The Employer shall be entitled to require an amendment of the Contract (amended or additional services or amended deadlines/periods for execution – “**amended services**”).

4.3.2 In this case, the Agreed Remuneration and the Completion Period shall be adjusted accordingly by mutual agreement of the parties. The Consultant shall submit proposals for performance of and remuneration for the amended services.

4.3.3 The Consultant shall execute the amended services if the Employer agrees, in writing, to the remuneration proposal. If the parties do not agree on the remuneration proposal within three months of the Consultant commencing delivery of the Services, the entitlement to remuneration shall be treated as a dispute under Article 8 [*Disputes and Arbitration Procedure*].

4.4 IMPEDIMENT

4.4.1 If the performance of the Services is impeded or delayed by the Employer or the Employer's contractual partners ("impediment") such that the impediment leads to an increase in the costs, the scope or the duration of the Services, the Consultant shall immediately notify the Employer of the circumstances and the possible consequences.

4.4.2 If an impediment falls within the sphere of risk of the Employer or if the impediment is caused by the Employer through intent or gross negligence, the Consultant shall be entitled to reimbursement of the costs incurred by it as a result of the impediment, subject to these costs being evidenced.

4.5 FORCE MAJEURE

4.5.1 In the event of Force Majeure, the contractual obligations, as far as affected by such event, shall be suspended for as long as performance remains impossible due to the Force Majeure, provided that one party to the Contract receives notification of the Force Majeure event from the other party within two weeks after its occurrence. Any and all liability of the Consultant for damages arising due to its absence caused by the Force Majeure is excluded.

4.5.2 In the event of Force Majeure, the Consultant shall be entitled to an extension of the Contract equal to the delay caused by such Force Majeure. If the performance of the Services is rendered permanently impossible by the Force Majeure, or if the Force Majeure event lasts for longer than 180 days, both parties to this Contract shall be entitled to terminate the Contract.

4.6 SUSPENSION OR TERMINATION

- 4.5.3 In case of suspension or termination of the Contract due to Force Majeure, the Services performed up to the time of the Force Majeure and all necessary expenditure (which is evidenced) of the Consultant arising from the discontinuing of the Services shall be invoiced on the basis of contractual prices. Neither party shall make any further claims.
- 4.6.1 The Employer may fully or partially suspend the Services or terminate this Contract after serving written notice of at least 30 days. In this event, the Consultant must immediately take all measures necessary to ensure that the Services are discontinued and the expenditure minimised. The Consultant shall hand over all reports, drafts and documents to be drawn up by the date in question to the Employer. If the suspension lasts longer than 180 days the Consultant may terminate the Contract. In case of termination Paragraph 4.5.3 [Force majeure] shall apply mutatis mutandis.
- 4.6.2 If the Consultant fails to meet its contractual obligations without sufficient reason; in accordance with the Contract; or on time, the Employer may serve a notice upon the Consultant and request it to duly perform its Services. If the Consultant fails to remedy the performance deficit within a period of 21 days of having been called upon to do so by the Employer, the Employer shall be entitled, after this period has elapsed, to terminate the Contract by written notice.
- 4.6.3 The Consultant may terminate this Contract if any amounts due and payable to it under this Contract have not been paid within 60 days after the receipt of the corresponding invoice, as long as the Consultant has given the Employer a written reminder within a period of 30 days after the initial 60 day deadline has passed and the Employer does not pay the due amounts within a further period of 30 days after this notice.
- 4.6.4 If the termination of the Contract is not due to a default on the part of the Consultant, the Consultant shall be entitled to demand the

agreed payment. The Consultant must, however, mitigate its loss and deduct any proceeds of such mitigation, which shall include

(i) any remuneration paid to the Consultant working on other projects during the time the Consultant was scheduled to work on the Project

(ii) any remuneration that the Consultant would have earned working on other projects during the time the Consultant was scheduled to work on the Project, but which the Consultant has not received as a result of the Consultant's wilful actions or omissions.

4.6.5 If the termination of the Contract is due to a default on the part of the Consultant, the Consultant shall be entitled to demand the Agreed Remuneration for the Services performed until the date of termination but not yet remunerated. The Employer shall be entitled to demand compensation for the direct damages caused by the default.

4.7

CORRUPTION AND FRAUD

4.7.1 If it is proven that the Consultant has breached Paragraph 1.14 [*Corruption and fraud*], the Employer may, notwithstanding the various punishments or other sanctions to which the Consultant is subject according to the law of the country or any other legal system, terminate this Contract in writing. The Employer may also terminate this Contract in writing if the Declaration of Undertaking submitted by the Consultant in conjunction with its bid is untrue.

4.8

RIGHTS AND OBLIGATIONS OF THE PARTIES IN CASE OF TERMINATION

4.8.1 Termination of the Contract shall not prejudice or affect the rights, claims or obligations of the parties until the date on which the cancellation takes effect.

Paragraph 5 Remuneration

5.1

REMUNERATION OF THE CONSULTANT

- 5.1.1 The Consultant shall receive the remuneration agreed in the Special Conditions for performing the Services owed under this Contract, subject to the conditions listed therein and the conditions below. **Annex 8** [*Statement of Costs*] contains a detailed list of conditions.

5.2

TERMS OF PAYMENT

- 5.2.1 Except where otherwise agreed in the Special Conditions, the Employer shall pay the Consultant's remuneration as follows:

(a) **Not Applicable.**

(b) The **instalments** shall be paid upon presentation of corresponding invoices with a maximum of one payment per quarter. The first invoice for the first instalment shall be presented, at the earliest, 3 months after the contractually agreed commencement of the Services. The Employer shall have the right to suspend payment of instalments at any stage in the event of substantial deviations from the time schedule and/or insufficient performance on the part of the Consultant. This right shall also apply to payments which are not based on output-related evidence of performance. If the payment of instalments is suspended, the Employer must proceed in accordance with Paragraph 5.6 [*Objections to Invoices*].

(c) The **final payment** shall be made after the Services have been performed in full and confirmation had been provided by the Employer to that Consultant.

- 5.2.2 Only in cases of agency contracts: the Consultant's invoices shall be addressed to the Employer "C/o BPTSL". original invoice. A copy of the invoice shall be sent to the Employer directly.

5.2.3 Any guarantees shall be in the form set out in Annexes 10 and 11 and shall always be provided as bank guarantees made out to the Employer as beneficiary. They must be acceptable to the Employer. The original of the guarantee shall be sent to the Employer, with a copy, together with a confirmation of delivery of the original, to be sent to the Employer.

**5.3
METHOD OF PAYMENT**

5.3.1 Payment shall be made according to the conditions set out in the Special Conditions.

**5.4
PRICE ADJUSTMENT**

5.4.1 Not Applicable.

5.4.2 Except where otherwise agreed in writing, the Consultant shall only be entitled to payment for special services if the services are amended pursuant to Paragraph 4.3 [*Amended Services*].

5.5

PAYMENT DEADLINE

- 5.5.1 Except in relation to advance payment and where otherwise stated in the Special conditions, payment shall be made within 60 days of presentation of a verifiable invoice by the Consultant to the Employer.
- 5.5.2 If the Employer does not make the payment within the period set out in Paragraph 5.5 [*Payment Deadline*], except where the Employer has raised an objection pursuant to Paragraph 5.6 [*Objection to Invoices*], the Consultant shall be paid compensation at the rate agreed in the Special Conditions. This shall be calculated on a daily basis from the date on which the invoice fell due in the currency agreed. The agreed compensation shall satisfy all the Consultant's claims arising from the Employer's delay.

5.6

OBJECTION TO INVOICES

- 5.6.1 Should the Employer object to the whole or part of an invoice of the Consultant, the Employer shall notify the Consultant of its intention to withhold payment and shall state the reasons why. If the Employer objects only to a part of the invoice, it shall pay that part of the invoice to which it has not objected within the period specified in Paragraph 5.5 [*Payment Deadline*].

5.7

AUDITING

- 5.7.1 For services or part services that are not remunerated on a lump-sum basis, the Consultant shall be obliged to maintain up-to-date records that meet professional standards and that clearly and systematically indicate the services provided and the time and expense involved. The Consultant shall permit the Employer to audit these records at any time and make copies of them during the term of the Contract.

5.8

CURRENCY

- 5.8.1 The Special Conditions shall indicate the currency applicable to the Contract.

Paragraph 6 Liability

6.1

LIABILITY OF THE CONSULTANT FOR BREACHES OF CONTRACT FOR WHICH HE IS RESPONSIBLE

- 6.1.1 The Consultant shall be liable to the Employer for verifiably culpable breaches of its contractual obligations, particularly breaches of Article 3 [*The Consultant*]. The liability of the Consultant shall be limited to the respective insurance sum, insofar as this is higher than the Order Value. Otherwise the liability of the Consultant shall be limited to the Order Value. This shall not affect the liability for premeditation and gross negligence.

6.2

LIABILITY OF THE CONSULTANT FOR SUB-CONTRACTORS

- 6.2.1 The Consultant shall also be liable for the Services provided by a sub-contractor pursuant to Paragraph 1.9 [*Assignment and Sub-contracting*].

6.3

PERIOD OF LIABILITY

- 6.3.1 The Consultant's liability shall terminate on the date of the acceptance of the Services and in the event the Contract does not provide for acceptance of the Services, on the date of performance of the contractually agreed Services in full, unless a different point of time is provided in the Special Conditions.

6.4

LIABILITY FOR CONSEQUENTIAL DAMAGE

- 6.4.1 Liability for consequential damage is excluded.

6.5

LIABILITY OF THE EMPLOYER

- 6.5.1 The Employer shall be liable for verifiably culpable breaches of its contractual obligations, particularly breaches of Paragraph 2 [*The Employer*].

Paragraph 7 Insurance

7.1

INSURANCE AGAINST LIABILITY AND DAMAGES

7.1.1 Not Applicable.

7.1.2 Not Applicable.

Paragraph 8 Disputes and Arbitration Procedure

8.1

AMICABLE SETTLEMENT

- 8.1.1 Should a dispute arise from or in connection with this Contract, the representatives of the parties authorised to settle disputes shall, within 21 days of one party submitting a written request to the other party, endeavour in good faith to settle the dispute amicably.

8.2

MEDIATION

- 8.2.1 If an amicable settlement cannot be reached within a period of 3 months after the written request pursuant to Paragraph 8.1 [*Amicable Settlement*], the parties may, insofar as both sides agree, attempt to settle the dispute in accordance with the Special Conditions by way of mediation prior to initiating arbitral proceedings. Notwithstanding this, the parties may agree to begin mediation immediately. Unless the parties agree otherwise within a period of 14 days, either party may require that the mediator is appointed by the institution named in the Special Conditions.

Mediation shall begin no later than 21 days after the mediator has been appointed. The mediation process shall be implemented in accordance with the procedure selected by the appointed mediator.

All negotiations and talks held in the course of mediation shall be treated confidentially, unless they are concluded in a written, legally binding contract.

If the parties accept the recommendations of the mediator or agree to settle the dispute another way, the agreement reached shall be recorded in writing and signed by the representatives of the parties.

- 8.2.2 If the dispute is not settled within 3 months after the mediator has been appointed, the dispute shall be settled by way of the arbitration procedure pursuant to Paragraph 8.3 [*Arbitration Procedure*].

8.3

ARBITRATION PROCEDURE

- 8.3.1 If the parties do not reach amicable agreement pursuant to Paragraph 8.1 [*Amicable settlement*] or by way of mediation pursuant to Paragraph 8.2 [*Mediation*], the dispute shall finally and exclusively be settled – except where otherwise stipulated in the Special Conditions – in accordance with the Rules of Conciliation and Arbitration of the law governing the country's by one or several arbitrators appointed in accordance with the Rules. The place of arbitration and the language of the arbitration procedure shall be stipulated in the Special Conditions.

Special Conditions

Ad Article 1: General Provisions

Ad 1.1: Definitions

“Completion Period”: The completion period shall be [Six Months].

“Force majeure”: Force majeure

[•]

“Project”: The consulting services shall be performed for [•], BMZ no. [•]
(the “Project”).

“Date on which execution shall be commenced”: The date on which execution shall be commenced is [DD.MM.YYYY] / The date on which execution shall be commenced lies [•] weeks after the day on which the contract comes into force⁶.

Ad 1.4: Communication

The language for notices, instructions, reports and other messages shall be [English].

Ad 1.5: Notices

Address of the Employer

Postal address	Bhubaneswar Puri Transport Services Pvt. Ltd. BMC Campus, Vivekananda Marg, Gautam Nagar, Bhubaneswar -751014
Email:	[bptslbbsr@gmail.com]
Phone:	[0674-2435655/2436655]
Fax:	[0674 – 2436655]

⁶ The date on which execution shall be commenced can be identical with the date on which the contract enters into force or it can lie after the date on which the contract enters into force. The date on which execution shall be commenced can be defined in absolute terms (first option) if the timeline of events is fixed or it can be defined relative to the date on which the contract enters into force (second option) if the date on which the contract enters into force cannot be determined in advance. The option that does not apply shall be erased. Usually, between the date on which the contract enters into force and the date on which execution shall be commenced a mobilization phase is planned for, whose length may be up to four weeks depending on nature and scope of the task.

Article 2: The Employer

Ad 2.2: Decisions/cooperation

Decisions/cooperative actions⁹ of the Employer pursuant to Paragraph 2.2 [Decisions/cooperation] must be taken/performed at the latest within [●] days/weeks.

Ad 2.4: Taxes¹⁰

The contractual parties agree on the following provisions regarding taxes and levies [●] *[Clarification is required for the taxes/levies that may need to be paid or reimbursed (if applicable, differentiated according to e.g. sales/value added tax, corporate tax, other taxes/levies etc.). The applicable provisions should be mentioned in the tender offer.]*

Ad 2.6: Contact person of the Employer

The Employer's contact person shall be [●].

The Employer's deputy shall be [●].

Ad Article 3: The Consultant

Ad 3.3: Due diligence [●]

Ad 3.4: Reporting

[monthly] Indicate nature, scope and frequency of reports, including a final report, throughout the period of the Contract.

Ad 3.6.1: The Consultant's contact person for handling of the Contract

The Consultant's contact person for handling of the Contract shall be [●].

Contact details [●].

The deputy shall be [●].

Contact details [●].

⁹ Distinguish as and where appropriate.

¹⁰ Possible variants:

- a) Consultant, subcontractor, foreign personnel are exempt from taxes/levies in the country of the Employer pursuant to Article 2.4.1
- b) The Employer reimburses paid taxes/levies subsequently upon submission of proof pursuant to Article 2.4.2
- c) The Employer directly pays the taxes/levies due
- d) No exemption from taxes/levies

Ad 3.6.2: The Consultant's contact person for cases of emergency or crisis

The Consultant's contact person for cases of emergency or crisis shall be [●].

Contact details [●]. The

deputy shall be [●].

Contact details [●].

Ad Article 5: Remuneration

Ad 5.1.1: Remuneration

For the services to be rendered by the Consultant under this Contract the Employer shall pay the sum of

[●] in [● currency ¹¹]

("Order Value").

The Order Value is composed of:

Fixed fee: [●] in [● currency]

[The Order Value is exclusive of the following options not commissioned:

Option [●] in [● currency]

Annex 8 [*Statement of Costs*] contains a detailed statement of costs. |

¹¹ The Indian Rupees should be used as the currency.

¹² Ancillary expenses should be paid on a lump-sum basis wherever possible (e.g. monthly amount for office work, motor vehicle maintenance, transport, reports etc.).

¹³ Expenses should be billed at cost only in exceptional cases.

Ad 5.2: Terms of payment

The Consultant's remuneration shall be paid against presentation of an invoice, indicating as follows:

[•] Not applicable¹⁴

[•] INR

[•] INR as instalments¹⁵ the final payment¹⁶

[•] possible stipulation on the retention guarantee¹⁷.

Ad 5.3: Method of payment

[•]

Ad 5.4.1: Price adjustment- Not Applicable

Ad 5.5: Payment deadline

Agreed compensation for overdue payments pursuant to Paragraph 5.5 [*Payment Deadline*]: [•] per cent per year, in relation to the outstanding amount.

Ad 5.8: Currency

The applicable currency for the Contract shall be [•].

¹⁴ The provision of an advance payment guarantee pursuant to **Annex 10** [*Model Advance Payment Guarantee*] is required if the advance payment exceeds 15 % of the Order Value, and in any case if it exceeds EUR 150,000 (or the equivalent value in another currency).

¹⁵ Instalments should be paid in accordance with the progress of the services, with a maximum of one payment per quarter as a general rule. These instalments should not be tied to event-based proof of services rendered (reports, studies, acceptances etc.) until after 70 % of the Order Value has been reached. If parts of the remuneration are to be paid on the basis of results or landmarks or against proof, these payments should be listed separately together with the corresponding proofs to be submitted.

¹⁶ The instalments should be arranged such that with studies and the like a final payment of approximately 10 %, with construction supervision commissions at least 5 % of the Order Value is left over.

¹⁷ If the Consultant's liability extends beyond the acceptance of his services (e.g. in case of construction supervision until final acceptance of the units constructed), the disbursement of the final payment upon acceptance of the Consultant's services may be agreed against provision of a corresponding retention guarantee pursuant to **Annex 11** [*Model Retention Guarantee*].

Ad Article 6: Liability

Ad 6.3: Period of liability

The Consultant's liability shall terminate¹⁸ [●].

Ad Article 7: Not applicable

Ad Article 8: Disputes and Arbitration Procedure

Ad 8.2: Mediation

The mediator shall be appointed by [●] and the appointment shall be binding for the parties¹⁹.

The costs of the mediation and of the mediator's services shall be shared equally between the parties.

Ad 8.3: Arbitration Procedure

The place of arbitration shall be [●].

The language of the arbitration procedure shall be [●].

(Place, date)

(for the Employer)

(for the Consultant)

¹⁸ In the case of planning and construction management activities the Consultant's liability may extend until the final acceptance of the structures or units planned and supervised by him.

¹⁹ Possible providers of mediation services include: International Chamber of Commerce (ICC), www.iccwbo.org/ / www.icc-deutschland.de, or the Centre for Effective Dispute Resolution (CEDR), www.cedr.com, or the International Mediation Institute (IMI), <http://www.imimmediation.org/about-imi>; Fédération International d'Ingenieurs Conseil (FIDIC) www.fidic.org.

List of Annexes

Annex no.	Title
1	Declaration of Undertaking
2	Minutes of Negotiations
3	Terms of Reference plus Tender Documents
4	Guidelines for the Assignment of Consultants in Financial Co-operation with Developing Countries (in the version valid on the date the bid was submitted)
5	Staffing Schedule
6	Equipment and Furnishings provided by the Employer and Third-party Services Commissioned by the Employer
7	Time Schedule for the Performance of the Services
8	Statement of Costs
9	The Consultant's Bid
10	Advance Payment Guarantee
11	Model Retention Guarantee

If one or several of the Annexes should not be necessary in the actual Contract, to preserve the integrity of the references please retain the numbering of the Annexes and insert the words "not applicable" in the relevant Annexes.

Annex 1

Declaration of Undertaking

We underscore the importance of a free, fair and competitive contracting procedure that precludes abusive practices. In this respect we have neither offered nor granted directly or indirectly any inadmissible incentives to any public servant or other person nor accepted such incentives in connection with our bid, nor will we offer or grant or accept any such incentives or conditions in the present tendering process or, in the event that we are awarded the contract, in the subsequent execution of the contract. We also declare that no conflict of interest exists in the meaning of the kind described in the corresponding Guidelines.

We also underscore the importance of adhering to environmental and social standards in the implementation of the Project. We undertake to comply with applicable labour laws and the Core Labour Standards of the International Labour Organization (ILO) as well as national and applicable international standards of environmental protection and health and safety standards.

We will inform our staff of their respective obligations and of their obligation to fulfil this Declaration of Undertaking and to obey the laws of the country of India]

We acknowledge that, in the event that our company (or a member of the consortium) is added to a list of sanctions that is legally binding on the client, the client shall be entitled to exclude us/the consortium or, if the contract is awarded to our company/the consortium, to immediately cancel such contract if the statements made in the Declaration of Undertaking were objectively false or the reason for exclusion from the tender procedure occurs after the Declaration of Undertaking has been issued.

.....
(Place)

.....
(Date)

.....
(Name of company)

.....
Signature(s)

Annex 2

]

Minutes of Negotiations²⁰

:

]

²⁰ In the interests of clear contractual stipulations, instead of including copious minutes of negotiations it is preferable to incorporate the agreed changes directly into the Special Conditions.

Annex 3

Terms of Reference plus Tender Documents

]

]

Annex 4

Guidelines for the Assignment of Consultants in Financial Co-operation with Partner Countries

(in the version valid on the date the bid was submitted)

NOT APPLICABLE

|

Annex 5

Staffing Schedule

(Pursuant to the Consultant's Bid; where applicable in the version subsequently negotiated)

|

|

Annex 6

Equipment and Furnishings to be provided by the Employer and Third-party Services Commissioned by the Employer

[

Not Applicable

]

Annex 7

Time Schedule for Delivery of the Services

(pursuant to the Consultant's Bid; where applicable in the version subsequently negotiated)

.

Annex 8

Statement of Costs

(pursuant to the Consultant's Bid; where applicable in the version subsequently negotiated)

.

.

|

Annex 9

The Consultant's Bid

[

]

Annex 10

Model Advance Payment Guarantee

[Address of guarantor bank: ...

.....
.....
.....

Address of beneficiary (client):

.....
.....
.....

On you concluded with (name and full address)

.....
.....

..... (“Contractor”) a Contract for
..... (Project, object of the Contract) at a
price of

..... .

According to the provisions of the contract, the Contractor receives an advance payment in
the amount of

.....equalling % of the contract value,
as an advance payment.

We, the undersigned

..... (bank), waiving all objections
and defences under the aforementioned Contract, hereby irrevocably and independently
guarantee to pay on your first written demand any amount advanced to the Contractor up to a
total of

.....
(in words)

against your written declaration that the Contractor has failed to perform the aforementioned
Contract.

This guarantee shall come into force as soon as the advance payment has been credited to the
account of the Contractor. This guarantee shall be automatically reduced pro rata in
accordance with the payments performed.

This guarantee shall expire not later than

by which date we must have received any claims by letter or coded telecommunication.

It is understood that you will return this guarantee to us on expiry or after settlement of the
total amount to be claimed hereunder.

.....
Place, date

.....
Guarantor]

Annex 11

Model Retention Guarantee

Address of guarantor bank: ...

.....
...
.....
...
.....
.....

Address of beneficiary (client):

.....
.....
.....
.....
.....

On you concluded with (name and full address)

.....
..... ("Contractor") a Contract for
..... (Project, object of the Contract) at a price
of

.....

According to the provisions of the Contract, the Contractor receives the amount of

.....
.....equalling % of the Contract
value, as a final payment.

We, the undersigned

..... (bank), waiving all objections and
defences under the aforementioned contract, hereby irrevocably and independently guarantee to
pay on your first written demand an amount up to a total of

.....

(in words)

against your written declaration that the Contractor has failed to perform the aforementioned
contract.

This guarantee shall expire not later than.....

by which date we must have received any claims by letter or coded telecommunication.

It is understood that you will return this guarantee to us on expiry or after settlement of the
total amount to be claimed hereunder.

.....
Place, date

.....
..... Guarantor]