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**DEPARTMENT OF PUBLIC ENTERPRISES**

**GOVERNMENT OF ORISSA**

**Orissa Public Enterprise Reform Project**

**8 Forest Park, Bhubaneswar 751 009**

The Department of Public Enterprises of the Government of Orissa is implementing the Orissa Public Enterprise Reform Project (OPERP) covering the state's public sector units and seeks to utilize the state resources in an optimum manner by reforming the state owned enterprises through restructuring closure or privatisation as appropriate. The project is funded by DFID and is currently in its second phase of implementation. A Project Management Unit (PMU) has been constituted to take up various tasks related to the implementation of OPERP.

The following studies are proposed to be taken up by the PMU:

1. Fiscal Impact Study
2. Post Privatization Study
3. Tracer Study of VRS retirees
4. Survey of *Pani Panchayats*

Detail information on the intended studies, ToRs and procedures for submission of proposals are available on the website <http://www.orissa.gov.in/publicenterprises/index.htm>

Interested firms with related reputation and experience and a minimum Rupees five crore turnover from consulting for FY 2006-07 can submit their proposal **for any one or more** of the abovementioned studies.

The last date for submission of proposals is **20<sup>th</sup> November 2007**.

**FOR THE WEBSITE**

As part of the Orissa Public Enterprise Reform Programme being implemented by the Department of Public Enterprises of the Government of Orissa, - the services of a professional adviser (the Advisers) are required by the Department of Public Enterprises and its supporting Orissa Public Enterprise Reform Project Office (OPERPO) to carry out the following assignment/s :

1. Fiscal Impact Study
2. Post Privatisation Study
3. Tracer Study of VRS retirees
4. Survey of *Pani Panchayats*

To enable submission of appropriate proposals that meet the requirements, the following are enclosed:

- Terms of Reference (Annex A);
- Procedures for submitting proposals (Annex B);
- The draft agreement (Annex C);

Comments on the draft agreement or the Terms of Reference may be included with the proposal but these comments shall not be taken into account in the evaluation of a proposal.

**The duration for the aforesaid studies is 10 weeks.** The final reports along with wrap up presentations should be definitely submitted within 12 weeks from the date of signing the contract. If a firm wishes to take up more than one study and is finally awarded more than one, capacity to carry on with the studies concurrently is expected. This must be clearly brought out in the technical proposal. The studies are expected to be commissioned in December 2007.

While it is not necessary for a firm to be based in Orissa to undertake the study/ studies, since a substantial portion of the work involves field/ local investigations, agencies that have a presence in Bhubaneswar/ Orissa will be preferred. In case a tie up for this purpose is forged, it must be stated in the proposal and also include key information on the local resources that will be deployed.

The Closing Date for submission of proposals is 15:00 hours on 20<sup>th</sup> day of November 2007. Late proposals will be rejected and returned unopened. It is therefore essential that you ensure that bids are delivered on time; delays caused by late delivery by couriers etc will not be entertained as an excuse.

Please direct all queries to the OPERPO office. All information requested in the Request for Proposal is privileged and must be kept confidential. Please note that the response to queries is at the discretion of the DPE/ OPERPO, and in the event such responses are made, it will be circulated to all the parties who would have expressed interest for a particular assignment.

If you wish to enter into a consortium with another organisation and that organisation has also been invited to bid, then you must state this clearly in your proposal. The proposal needs to be submitted by the lead partner of the consortium and all correspondence will be taken up with the lead partner.

The procurement process and contract will be managed on behalf of the DPE by the Orissa Public Enterprise Reform Programme Office (OPERPO). OPERPO will provide technical and administrative oversight and input to the study.

### *Administrative arrangements*

The bidders may be invited to make a presentation if a need is felt prior to award of the work.

DPE & OPERPO will facilitate access to related information and from various government sources including other administrative departments and at the enterprise level. Reference material and background briefs to the extent available will be provided to the successful bidder.

Government officials from line departments, PSU representatives, independent experts and donors may be invited to attend the presentations in an advisory capacity and for information purposes and to provide necessary inputs to the studies at any stage including to finalise which of the firms is most technically qualified to undertake the assignment.

The studies will be funded out of the grant from DFID to DPE under OPERP II.

The Firms will report to DPE, and the Advisers tendering for this work should note that neither DPE nor OPERP will provide any office facilities, transport or other services in connection with this assignment.

**Please note that we expect proposals to be submitted to be of the very highest both in terms of their technical content and in terms of their overall presentation and layout.**

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**ANNEX A - TERMS OF REFERENCE**

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**1. Terms of Reference for Fiscal Impact of Orissa SLPE Sector**

The objective of the Government of Orissa's study of the fiscal impact of its state level enterprises (SLPEs) is to provide accurate baseline data on the outflow of funds from the Government of Orissa and other Government agencies to the SPLE sector.

The data and analysis from this study will form a basis from which the Government and other stakeholders (including donors such as the World Bank and DFID) can draw to:

- Take informed decisions about the sequencing and pace of OPERP II, particularly with regard to critical issues such as VRS/VSS vis-à-vis asset sales;
- Provide data to inform any new policy direction and documentation as required;
- Review strategies advanced for restructuring of enterprises;
- Provide a baseline data set against which likely and actual fiscal impact of OPERP II can be assessed;
- Provide data on the losses of GoO's SLPE Sector which can be used to support and inform decision-making and which can provide a platform of facts and figures on which to base a programme of communication and PR activities in support of the Government's programme.

The study will need to establish, as far as is possible<sup>1</sup>, the following:

- Government of Orissa's committed resources including:
  - Yearly and accumulated losses;
  - Equity investments;
  - Outstanding loans and interest; and waivers if any;
  - Grants and subsidies;
  - Guarantees.

Analysis of the data will include, at a minimum, the following:

1. A historical view on the performance of the SLPE sector since the initiation of reforms dating to the BISWAL Committee report of 1995/1996.
2. Analysis on the Return on Investment over the period 1996 – 2006;

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<sup>1</sup> It is expected that accurate accounts will not have been filed for all SLPEs. The fiscal impact study is not expected to seek to update or produce accounts where these are not extant or available and the level of detail required on an enterprise by enterprise basis should be confirmed by the government and interested donors at the time of the submission of the inception report.

3. Analysis of loans/grants/subsidies/guarantees over the period 1996-2006;
4. Estimated savings to the state of the closures/disinvestments to-date;
5. Estimated fiscal savings to the Government of the VRS/VSS programme to-date and indicative pay-back period of investment in VRS/VSS payments;
6. the indicative effect of application of both Indian and international accounting standards to the accounts of three selected SLPEs;
7. Projections of the impact on GoO finances if reforms were to cease over 1, 3 and 5 year horizon.
8. The opportunity costs to the government of maintaining the SLPE sector at current level of spending.

### **Staffing**

The agency should provide - at a minimum - a technical team leader, a legal expert, a financial expert and might be expected, for example, to avail the short term services of a corporate governance expert and a social expert.

## 2. Terms of Reference for Post Privatisation Study

The objective of this study is to assess the impact of privatisation in the state of Orissa for the units privatized during the period 2000 – 2005 i.e OPERP phase I in line with the Government of Orissa's White Paper on State Level Public Enterprise (SLPE) published in 2002.

The DPE will appoint an agency to conduct a series of post privatisation studies on the following enterprises:

1. IDCOL Cement
2. IDCOL Re-rolling Mill
3. Nayagarh Sugar Mill
4. Baramba Sugar Mill
5. Hirakud Industrial Works

The impact assessment study will be commissioned in order to achieve the following:

- To inform the approach and provide direction to SOE reform for the future;
- To provide empirical data on which to assess the success, or otherwise, of the policy and transactions to date;
- To provide data on which to build a programme of communications and PR activities about the impact of privatisation in the state of Orissa;
- To look at the impact of privatisation from a number of angles including:
  - an assessment of the impact of the transaction on the workers, their families and the communities within which they are operating
  - the impact of the transaction from the perspective of both customers and suppliers;
  - to look at effects on financial and operational performance of the enterprise;
  - to consider the impact of the transaction on government finances by looking at sale proceeds, and taxation revenues and well as to assess the savings as a result of any cessation of subsidies or transfers from government to the enterprise;
- To look at the relationship between the vendor and the purchaser to identify areas of friction or dispute.

- The study should consist of – at a minimum - the following sections for each of the enterprises:
  1. A **narrative of the privatisation process** with key information:
    - a. dates when VRS was offered to workers;
    - b. detail of the steps to prepare the enterprise for sale (due diligence, accounts upgradation etc)
    - c. date of approvals and the level of cooperation from various authorities;
    - d. milestones in the process of privatisation such as date of advertisement, date of submission of bids, date of the decision on successful bidder, detail of the negotiations, detail of the finalisation of the transaction, date of the payment of consideration;
    - e. description of legal issues etc concerning the transfer;
  2. A survey of **business practices** with detail of how current practices differ from those under state ownership;
  3. A **survey of financial reporting** and the extent to there have been improvements in the preparation and filing of accurate financial statements in line with Indian law;
  4. A review of the **financial performance** of the company and a comparison with the situation prior to the sale;
  5. A report on **tax revenues** paid to the government by the new owners and a description of the extent to which **fiscal savings** have been achieved by the state government in light of a cessation of subsidies, transfers etc;
  6. A **survey of workers** and detail of their current remuneration and employment status (proportion of temporary workers) and comparison with remuneration received under state ownership;
  7. A **survey of industrial relations** and the extent to which organised labour is permitted and/or active;
  8. A **survey of health and safety issues** and a comparison of current practices with those in existence prior to the sale;
  9. A survey of the impact – if any – of the transfer of ownership on the **local community**. This might include a view on new businesses being established to serve the community or to act as suppliers to the enterprise; it should also consider the employment status of former employees who

availed VRS prior to the transaction and any workers who have been laid off by the new investors after the transaction.

10. **Detail of investment** in the plant and machinery subsequent to the sale along with future expansion plans if any;
11. An evaluation of **current capacity levels** and description of the overall condition and maintenance of plant;
12. Detail of **customer satisfaction, the forward order book and/or market position** subsequent to sale and a comparison with the situation prior to sale;
13. A review of **environmental issues** at the plant and the extent to which State Pollution Control Board guidelines are being adhered to and the extent to which any earlier or outstanding remediation issues have been addressed;

### **Staffing**

At the very least, the team deployed will need to have a financial analyst with public sector or corporate experience and a social expert. The team will need to travel within the state of Orissa to the location of the enterprises.

### 3. Terms of Reference for Tracer Survey for Social Safety Net Programme

The objective of the study is to evaluate the impact of job separation through VRS, VSS and retrenchment implemented in the state owned enterprises through OPERP. The data collected will be used to map patterns of post VRS life among retirees by age, gender, community, income levels, education, geographical location and PSU. Factors such as the trend of post VRS life over a period of time, amount of severance compensation and the period of employment in the PSU are also expected to influence the present status, which will need to be captured in the study.

The tracer study will *inter alia* include factors:

- reasons for opting for VRS;
- Occupational mobility and change in financial status after taking VRS;
- Changes in lifestyle and household expenditure with regard to pre and post VRS
- Amount received as severance compensation and utilisation of the amount
- the time it took for them to receive the VRS payment;
- the role of SSNP – and why they availed or did not avail the facilities;
- coping mechanisms adopted by the retiree and family
- identifying factors that help reduce job loss trauma
- Current earnings vis-à-vis pre VRS incomes in notional and real terms. The current economic status assessed with reference to the following parameters:
  - a. present occupational profile and earnings of the retiree
  - b. occupational profile and income of the family members
  - c. savings including insurance benefits accessed during the period
  - d. the change in nature of expenditure and family budgeting
  - e. nature of utilisation of compensation money including investments made
  - f. long term planning for money, health and other securities

- emotional stability in terms of overcoming from trauma of job loss, rational attribution of cause for the events and health issues;
- the role of the families and other social networks including other retirees, trade unions and PSU management;
- The survey will be conducted through qualitative and quantitative tools including interviews of at least 5% of the separated employees. The total number of employees who have exited in phase I & II of OPERP is about 35,000 so far.
- In depth interviews for success stories and case studies will also be required to be conducted as a part of this study.
- The data collected during the present assignment may form the basis of a subsequent longitudinal study, to be decided at a later date.

### 3. Terms of Reference for Survey of *Pani Panchayats*

The objective of the study is to assess the functioning of the Water Users Associations (*Pani Panchayats*) in the Lift Irrigation Sector, and to identify the impact of the withdrawal of Orissa Lift Irrigation Corporation (OLIC) from the operation and maintenance role. The impact assessment needs to be undertaken at a) the macro level b) at the *Pani Panchayat* level and c) at the farmer household level.

The study will also identify general and typical problems being faced by the PPs and also suggest ways and means to overcome them. The post restructuring change in the perception of farmers about OLIC will be a part of the survey. Such tasks will throw light on the future course of action with a view to strengthen PPs.

It may be noted here that Orissa has been pioneering in handing over the operations and maintenance of irrigation facilities to PPs that now cover nearly one million hectares of irrigated area. Nearly two thirds of the total number of *Pani Panchayats* in the state have been formed and are operational the Lift Irrigation Sector. These have been turned over to farmer groups by OLIC. OLIC is one of the core enterprises identified for restructuring under OPERP and by far remains the single largest recipient of monies under VRS. The success of the restructuring of OLIC is intrinsically linked to the smooth functioning of the PPs.

The assessment is to be under taken by an agency through an exploration of the PP's structure and participatory analysis of users. The assessment will be carried out across the state and will cover a 5% sample of the about 6,500 PPs set up for OLICs irrigation projects. The impact of PPs on the financial status of its member households and the increase or decrease in the coverage (*ayacut*) of the schemes are key aspects that the study will probe into.

For each selected project an initial participatory assessment will be conducted to identify the users groups of the PP assessment. The analysis will describe the needs, demand, absorptive capacity, skill participation in agricultural activities, PP's and decision making.

The assessment study shall be conducted taking into account the following relevant data:

- Regarding formation and administrative aspects of PPs covering their election process, voting procedure, membership, assets, fund management and other related aspects.
- Physical description of area of their operation covering all the physical details like source of irrigation, number of fields, number of farmers,

- command area, area irrigated in different seasons, cropping pattern, distribution system etc.
- Aspects related to operation of system under jurisdiction of PP covering details like water requirement, water budgeting, decision making, water distribution among different stakeholders, O&M Decisions, water rates, revenue collection, transparency in operation, maintenance and fund management, etc.
  - Social issues of water management including water availability to different sections of society, equity issues, conflicts and their resolutions, relationship between different office bearers, relationship with concerned line department officials and respective competent authorities, gender participation and empowerment issues, dealings with other PPs affecting their water availability, general acceptance of role of PP in irrigation water management etc.
  - Monitoring and evaluation aspects covering approach and methodology for M & E, organization structures for M & E, desired standards of functioning, quality of works, deviation if any from hydraulic parameters, transparency in fund management, financial and social audit provisions, internal mechanism like regular meeting, participation in meetings, level of discussions and other related information.
  - Major problems / hurdles being faced in effective functioning of PPs e.g. in operation, maintenance, rehabilitation, finances, revenue collection, fund management, conflict resolution, departmental support, etc in participatory frame work and effective consultation strategy.
  - Assessment of training and capacity building needs for improving the functioning of *Pani Panchayats*.
  - Suggest appropriate solutions/ measures for improving the situation in the light of existing provisions. In case provisions are felt to be inadequate, suitable changes may also be suggested.

The study team should be a multidisciplinary team with PIM / WUA experts, Irrigation Experts, Economists, Agriculture Expert etc. The field investigators should have the knowledge about local language.

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## **ANNEX B: PROCEDURES FOR SUBMISSION OF PROPOSALS**

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### ***Submission of proposals***

1 All proposals must be submitted at the due time as set out in this advertisement i.e 15:00 hrs of 20<sup>th</sup> November 2007. Late proposals will be rejected and returned unopened. It is the responsibility of the bidders to ensure that the proposals arrive on time.

### ***Contents of proposals.***

2 All proposals should contain the following information:

- A general capability statement of the firm which also states the turnover achieved from consulting services during the last FY 2006-07;
- the Advisers comments or suggestions on the Terms of Reference;
- description of the way in which the Advisers would plan to execute the Terms of Reference;
- the composition of the team of personnel which the Adviser would provide and the tasks assigned to each of them;
- the proposed fixed fee for carrying out the work including expenses.

3 The Adviser's proposal should show why the Adviser is particularly suited to carrying out the tasks set out in the terms of reference.

### ***Evaluation of proposals***

4 Evaluation be done, by taking into account the following criteria:

- the Adviser's understanding of the Terms of Reference;
- the experience and qualifications of the Advisers' staff being utilised; and
- the experience of the Advisers in carrying out similar tasks.

The indicative relative weightings used to evaluate bids shall be as follows:

<i>Experience of bidder in undertaking similar work</i>	25
<i>Quality of Personnel</i>	25
<i>Quality of the technical proposal and specifically the approach and methodology section and the accompanying work plan</i>	20
<i>Price</i>	20
<i>Quality of the presentation and professionalism of the proposal</i>	10
<b>Total</b>	<b>100</b>

The above weightings are indicative. DPE reserves the right not to accept any or all proposals, and the right to negotiate with bidders in order to obtain better value for money.

OPERPO reserves the right to call short listed companies to a presentation in the event that two or more short listed firms are close to one another in terms of quality and cost.

#### ***Award and contract***

5 Advisers that are selected to be awarded the assignment/s will be informed of the results and invited to undertake the work as soon as practicable by OPERPO.

6 The selected adviser shall be provided with a Letter of Agreement, setting out the terms and conditions of the assignment, the Terms of Reference and fees and expenses. A draft Letter of Agreement is set out in Attachment C.

7 The selected adviser is expected to sign and return the Letter of Agreement as provided for in the agreement and to commence provision of the services as set out in the agreement.

#### ***Technical Proposal***

The Technical Proposal should at the least have sections on the following:

- i. Your understanding of the key issues involved;
- ii. The proposed approach;
- iii. Proposed methodology;
- iv. Team you will deploy;
- v. Work plan which shows clearly who will do what, and when;
- vi. Any comments or qualification on the Terms of Reference;
- vii. A statement of experience of your organisation

An optional section may be included which contains details of relevant reports which your organisation has undertaken, in order to demonstrate your capability relevant to this proposal.

**In total technical proposal should not exceed 20 pages A4 printed out in legible font size and line spacing. CVs attached may be over and above this, but should be restricted to two A4 page per team member.**

**Please note carefully**

Particular attention should be given to the approach and methodology sections of the proposal:

The **approach section** should be no more than five pages in length and should highlight the sorts of issues and current thinking on best practice that will inform the manner in which the team approaches this project.

The **methodology section** should be no more than five pages in length and should provide insight to and consideration of each of the main task areas specified in the terms of reference. The section should for each of the main task areas specify what activities will be undertaken, by whom, at what stage in the project and should clearly set out the specific deliverables (reports, presentations, training workshops etc) that will be delivered against this task area.

The **work plan** should show the methodology graphically in Microsoft project or by means of a Gantt chart or other recognised project management tool. Showing by task area the activities to be undertaken and the timing of deliverables.

DPE/ OPERPO reserves the right to adjudge proposals that do not meet or follow – at a minimum – any of the requirements set out above for the approach, methodology or work plans to be non-compliant and to reject them on grounds of non-compliance.

***Financial Proposal***

The financial proposal **sets out a single price** for each of the studies.

You are advised to state the break up of the single price quoted for purposes of **reference only** in the format given below, and:

- Provides fees for each individual consultant showing the rate and the break up of days in Orissa and from remote;
- All expenses (including transport, accommodation, per diem allowances/subsistence, report production etc.)

The break up is required to assess the fees component of the offer. The total indicated at (T) in the specified format will only be considered and should be made **in a separate sealed cover** quoting the price in a format as:

<b>Name of the Study:</b>						
<b>Fees</b>						
Name of the Consultant	Role in the study	Location	Number of days		Fee per day	Total
			Orissa	Remote		
Sub Total Fees						
<b>Expenses</b>						
Item of expenditure	Description	Units		Rate	Total	
Sub Total Expenses						
Taxes						
<b>Total</b>						
<b>(T) Total in words:</b>						

### *Proposal Requirements*

Your proposal should comprise three separate items:

- A covering letter in a standard format (*one copy only*);
- A technical proposal (*five copies and CD*);
- A financial proposal in a separate sealed cover (*one copy only*).

**The Covering letter must state clearly the name, job title and contact details including mobile phone number and email ID.**

**Five hard copies** of the technical proposal along with a **soft copy of the technical proposal only** in a CD should be submitted to the Project Manager, Orissa Public Enterprise Reform Project Office located at 8 Forest Park, Bhubaneswar 751 009 for evaluation of the proposals leading on to award of the assignment/s.

***Draft covering letter printed out on official stationery of the firm***

Day/Name/Year

Name and Address of Firm

Dear Sir

Please find enclosed the proposal from [name of firm] in response to the advertisement dated \_\_\_\_\_.

In making these proposals we should like to confirm that we have not colluded or reached any sort of understanding with any other parties to the bid. We should further state that no fees have been paid or promised by us in connected with this bid or project.

The bid and the prices set out in this proposal are valid for a period of three months [or to a specified date]. The prices are full and complete and inclusive of all taxes etc.

Further information on all aspects of this proposal may be sought from ***[Name and Contact Details]***

Regards

Yours Sincerely

\_\_\_\_\_

**Annex C****AGREEMENT FOR CONSULTING AND RELATED SERVICES**

This Agreement is executed on this \_\_\_\_ day of \_\_\_\_\_, 2007 by and between:

The Project Management Unit, established and organised by the Government of Orissa under its Resolution (being No. Cor. – X(D)-2/06/765 /PE, Bhubaneswar, dated 28.2.2006) having its office at 8, Forest Park , through Shri. S.N. Mishra, O.A.S, Deputy Secretary, Department of Public Enterprises and Chairman, PMU (herein referred to as the “PMU”, which expressions shall mean and include its successors and permitted assigns).

And

The [Full Name of Selected Firm] having its office at [Address of Office], through Mr. [Name of Authorized Signatory] (herein referred to as the “[Abbreviated name of Firm]”, which expressions shall mean and include its successors and permitted assigns)

**Whereas:**

- A. The Government of Orissa is engaged in the Orissa Public Enterprises Reforms Project (herein “OPERP”). In this context, the Government of Orissa, through the OPERP office has been engaging professional consulting organisation for rendering consulting services, compatible with the objects of OPERP.
- B. The Government of Orissa, through the OPERP Office, issued and advertisement seeking appointment of adviser to undertake “[Name of Study/ Studies] (herein the “Project”)”. Pursuant thereto, [xxx] by its cover letter dated xx, 2007 submitted a two-part proposal containing technical and financial offers.
- C. The Government of Orissa thereafter invited [xxx] to come forward for further discussion. [xxx] leading to selection of [xxx] to undertake the Project in a time bound manner as per expectations of the Department of Public Enterprises (herein “the DPE”).

- D. Keeping in view the aforesaid, the parties have now agreed to provide the final terms and conditions of engagement, in the manner herein set out and agreed.

**Now, the Parties herein, agree as follows:**

### **Appointment**

1. The PMU, on terms and conditions herein agreed, hereby appoints [xxx] to provide services specified in Schedule A of this Agreement (herein the "Services"), including any other service incidental thereto and / or connected therewith as may be specified from time to time.
2. It is agreed and understood that [xxx] will carry out the Services in accordance with Schedule A to this Agreement, with all due diligence, efficiency and economy and in accordance with internationally accepted professional techniques and practices, taking into account factors peculiar to Orissa and other local conditions.

### **Term of the Agreement**

3. This Agreement shall come into force and effect on the date of its execution (herein the "Effective Date"). Unless terminated earlier under Clause 12 herein, this Agreement shall continue till the completion of the Services, in the manner specified in Schedule A. The Parties however agree that the indicative time line for completion of Services shall be [months] from the date of Effective Date.
4. Notwithstanding termination of this Agreement, any provision intended to operate thereafter including the payments of fees and expenses shall continue to bind the parties herein.

### **Payments for Services**

5. In consideration of the Services rendered by [xxx] in terms of this Agreement, to the satisfaction of the PMU, PMU shall make payments of fees and expenses thereto (herein "Payments") on a "milestone" basis in the manner and to the extent set-out in Schedule C of this Agreement. It is agreed and understood that the PMU shall make such deductions and withholdings as may be applicable under the laws of India / Orissa.
6. Further, it is agreed that [xxx] shall alone be responsible for the payment of all taxes, duties, fees or other impositions under the applicable for themselves and any agreed sub-contractors.
7. It is agreed and understood that the consolidated Payments payable by PMU to [xxx] in terms of Schedule C is inclusive of all taxation and other liabilities. Any change of taxation rates or new impositions shall be entirely to the account of [xxx].

8. In order to enable PMU to make Payments on a “milestone” basis in terms of Schedule C, [xxx] on achieving a ‘milestone’ will submit to the PMU invoices in the indicative format provided in Schedule D in respect of which such Payments is due and payable, along with sufficient details of the tasks thereto completed. PMU upon receipt of such invoice for Payments in the manner provided in Schedule D, shall endeavour to make Payments within a period of 30 days of receipt of such invoice.
9. Notwithstanding anything contained herein, if the PMU is dissatisfied with the Services or any portion thereof (herein the “Unsatisfactory Services”), pending further inquiry, inputs, analysis or clarification by [xxx], the PMU may withhold the Payments or appropriate portion thereof (herein the “Withheld Payment”). The PMU shall identify the Unsatisfactory Service and the reasons thereto which shall be communicated in writing to [xxx]. Upon [xxx] curing the Unsatisfactory Services to the satisfaction of PMU, the PMU shall release the Withheld Payment.
10. In the event the PMU within a period of one month after Payment for Services identifies any “Unsatisfactory Services”, the PMU shall have the right to withhold Payments of any subsequent invoice(s) and shall notify [xxx] the Unsatisfactory Services and the reasons thereto. Upon [xxx] curing the Unsatisfactory Work to the satisfaction of PMU, the PMU shall release the Withheld Payment.

#### **No Claims by [xxx]**

11. Save and except to the extent provided in Schedule C, [xxx] agrees and undertakes not to make any other claim or claims, directly or indirectly, against the PMU or any other associate or agency including, the Department of Public Enterprises, Government of Orissa, the DFID or OPERP Advisers Adam Smith International Limited in relation to Services rendered under this Agreement.

#### **Personnel Policy**

12. The Services will be carried out by the individuals named in Schedule B of this Agreement and in the manner therein provided. Any changes in the names of individuals or the tasks being carried shall be subject to the prior written approval of the PMU.
13. It is agreed and understood that the employees, servants, agent or associates of [xxx] shall not claim any benefit or employment under this Agreement either with the Government of Orissa or any other agency associated with OPERP.

**No Assignment of Transfer of Contract**

14. [xxx] shall not assign, transfer, sub-contract or in any manner make over to any person any right, benefit or obligation arising under this Agreement.

**Termination on account of breach**

15. In the event of any breach of any term or obligation under this Agreement by [xxx], including the failure of [xxx] to execute or complete Services or any part thereof, within the agreed time frame and to the satisfaction of the PMU, the PMU shall have the right to terminate this Agreement by a notice in writing. In the event of such termination in terms herein, the [xxx] will not be entitled to any further Payments (i.e. fees or expenses).

**Confidentiality**

16. [xxx], its employees or agents shall not disclose orally or in writing or in electronic or other form any proprietary or confidential information relating to the Services, this Letter of Agreement, or any of the enterprises or government departments it works with to any person without the prior written permission of the DPE.

**No Agency of Partnership**

17. The relationship created by this Agreement between the parties is on principal to principal basis and no general or special agency, partnership or, master and servant relationship or any relationship other than that of a principal and consultant on terms contained herein shall be or is intended to be created or implied by or under this Agreement.

**General Indemnity**

18. [xxx] agrees to indemnify and hold harmless the PMU, the DPE, the Government of Orissa and its advisors and associates from and against any and all actions, expenses, claims, losses cost, damages and liabilities arising out of or resulting from the carrying out of the Services.

**Specific Obligations of [xxx]**

19. [xxx], its employees or agents undertake not to engage either directly or indirectly in providing advice or assistance to any person in connection with the reforms being recommended or implemented without the prior written agreement of the PMU. [xxx] shall not to carry out any activities that would represent a potential conflict of interest or could be perceived as a conflict of interest with the provision of the Services.
20. [xxx] shall not derive any direct or indirect benefit or gain from the carrying out the Services other than under the terms of this Agreement.

21. All reports, documents, other materials and information provided to [xxx] or prepared by [xxx] in carrying out the Services shall become and remain the property of the PMU/ Government of Orissa. Such reports, documents, other materials and information prepared by [xxx] shall be submitted to the DPE in the form, in the numbers and within the time periods set out in Schedule A.
22. [xxx] shall be entitled to keep a copy of reports, documents and materials obtained and generated in the course of carrying out the Services but shall not use them for purposes other than the Services without the prior written consent of the PMU.
23. [xxx] shall not make available or permit access to the reports, documents, other materials and information in any form to any person. [xxx] shall not discuss the contents of the reports, documents, other materials and information with any person without the prior written agreement of the PMU.
24. While the PMU / DPE shall provide a letter of authority to assist [xxx] in getting access to information, [xxx] shall be solely responsible for all investigations and gathering of information as necessary and / or appropriate for carrying out the Services.
25. It is clarified that the PMU / DPE will not provide [xxx] with any office or other facilities or services, unless otherwise agreed in writing, in connection with carrying out the Services.
26. [xxx] will co-ordinate all meetings, travels, enterprise visits etc that it undertakes in fulfilling these Services with the PMU / DPE.
27. [xxx] agrees and undertakes to provide details of any expenses paid in terms of this Agreement for scrutiny and / or verification of the PMU, including such record, proof or evidences as may be required to satisfy any query of the PMU and / or its auditors in relation to and / or in connection with such expenses.

#### **Miscellaneous Clauses**

28. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter thereof and supersedes and replaces any and all prior agreements, communications, representations and understandings between the parties and shall be construed in accordance with the laws of India.
29. The parties submit to the exclusive jurisdiction of the Courts at Bhubaneswar, Orissa, hereby waiving all rights to any other jurisdiction or venue to which they might otherwise be entitled.
30. In the event of any part of this Agreement is deemed to be in contravention of law, invalid or unenforceable, said part shall be construed as closely as the law shall permit to accomplish its intent and the legality, validity or enforceability of the remaining provision shall not be affected.

No waiver by a party of a failure or failures by any other party to perform any provision of this Agreement shall operate or be construed as a waiver in respect of any other or further failure whether of a like or different character.

31. Any notice, communication, report pursuant to this Agreement shall be written in English language and signed by (or by some persons duly authorized by) the person giving it and may be served by handing over to the following representatives of the Parties:

**For PMU:**

Name :

Address :

**For [xxx]**

Name :

Address :

32. All disputes arising out of this Agreement shall be settled through Arbitration to be conducted in accordance with the Indian Arbitration and Conciliation Act, 1996 or any statutory modifications thereof. The parties shall bear the costs of arbitration equally in the first instance subject to the final award as to costs that may be passed by the Arbitrator(s). The Principal Secretary, Department of Public Enterprises, Government of Orissa shall be the sole arbitrator, whose award shall be final and binding on the Parties herein.

Signature\_\_\_\_\_

Project Management Unit

Signature of -----

[xxx] Ltd.

Witnesses:

1.

2.

**Schedule A**

[Terms of Reference to be inserted here]

**Schedule B**

Individuals and tasks each are to perform in carrying out the services

Table of roles and organization are as below.

The table below gives the organizational affiliations of the resources:

<b>Sl.No</b>	<b>Name</b>	<b>Experience in years</b>	<b>Role</b>	<b>Number of days</b>

**Schedule C****Fees and Expenses**

- The total fee including expenses and service tax for carrying out the Services is [xxx], to be paid based on the following table:

Sl. No	Name of the Study	Total in Rs
1		
2		
	Total	

- Payment shall be made on the following terms within 30 days of receipt of an invoice from [xxx].
- Fee Payment Schedule
  - 25% of total fee on completion of initial reviews and submission of inception report within two weeks from the date of contracting;
  - 50% of the total fee on presentation (and) the draft final report;
  - Remaining 25% of total fee on acceptance of the final report and presentation.

**Schedule D*****Billing and Invoice***

The invoice should be submitted to PMU in triplicate, after completion of each mile stone as per the payment schedule mentioned in Schedule C. It is desirable to segregate the fees and expenses part in a separate document for details. The invoice should accompany necessary supporting documents for expenses.

The invoice needs to contain the following information and an indicative invoice format is provided below:

Invoice from:	
Bank Details:	
Pan No:	
Service Tax Registration No:	
Agreement Reference:	
Attention:	
Date:	
Invoice No:	
Milestone	<i>Inception Report/ Draft Final Report/ Final Invoice</i>
Amount	
Taxes	
Total amount	
Total amount in words	