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LOAN NUMBER 3188-IND

PROGRAM AGREEMENT

(Supporting Kerala's Additional Skill Acquisition Program in Post-Basic Education  
– Results-Based Lending)

between

ASIAN DEVELOPMENT BANK

and

STATE OF KERALA

DATED 27 NOVEMBER 2014

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IND 47334

## **PROGRAM AGREEMENT**

PROGRAM AGREEMENT dated 27 November 2014 between ASIAN DEVELOPMENT BANK (“ADB”) and the STATE OF KERALA acting by its Governor (“State”).

### **WHEREAS**

(A) by a Loan Agreement of even date herewith between INDIA (“Borrower”) and ADB, ADB has agreed to make to the Borrower a loan of one hundred million Dollars (\$100,000,000) on the terms and conditions set forth in the Loan Agreement, but only on the condition that the proceeds of the loan be made available to the State and that the State agrees to undertake certain obligations towards ADB set forth herein; and

(B) the State, in consideration of ADB entering into the Loan Agreement with the Borrower, has agreed to undertake the obligations set forth herein;

NOW THEREFORE the parties hereto agree as follows:

## **ARTICLE I**

### **Definitions**

Section 1.01. Wherever used in this Program Agreement, unless the context otherwise requires, the several terms defined in the Loan Agreement and in the Loan Regulations (as so defined) have the respective meanings therein set forth.

## **ARTICLE II**

### **Particular Covenants**

Section 2.01. (a) The State shall carry out the Program with due diligence and efficiency, and in conformity with sound applicable technical, financial, business, and development practices.

(b) In the carrying out of the Program and operation of the Program facilities, the State shall perform all obligations set forth in the Loan Agreement to the extent that they are applicable to the State.

Section 2.02. The State shall make available, promptly as needed, and on terms and conditions mutually acceptable to ADB and the Borrower, the funds, facilities, services, and other resources as required, in addition to the proceeds of the Loan, for the carrying out of the Program.

Section 2.03. In the carrying out of the Program, the State shall employ competent and qualified consultants and contractors, acceptable to ADB, to an extent and upon terms and conditions mutually satisfactory to ADB and the Borrower.

Section 2.04. The State shall carry out the Program in accordance with plans, design standards, specifications, work schedules and construction methods mutually acceptable to ADB and the Borrower. The State shall furnish, or cause to be furnished, to ADB, promptly after their preparation, such plans, design standards, specifications and work schedules, and any material modifications subsequently made therein, in such detail as ADB shall reasonably request.

Section 2.05. (a) The State, as appropriate, shall take out and maintain with responsible insurers, or make other arrangements satisfactory to ADB for, insurance of Program facilities to such extent and against such risks and in such amounts as shall be consistent with sound practice.

(b) Without limiting the generality of the foregoing, the State, as appropriate, undertakes to insure, or cause to be insured, the Goods to be procured, including imported for the Program against hazards incident to the acquisition, transportation and delivery thereof to the place of use or installation, and for such insurance any indemnity shall be payable in a currency freely usable to replace or repair such Goods.

Section 2.06. The State shall maintain, or cause to be maintained, records and accounts adequate to identify the Eligible Expenditures financed out of the proceeds of the Loan, to disclose the use thereof in the Program, to record the progress of the Program (including the cost thereof) and to reflect, in accordance with consistently maintained sound accounting principles, its operations and financial condition.

Section 2.07. (a) ADB and the State shall cooperate fully to ensure that the purposes of the Loan will be accomplished.

(b) The State shall promptly inform ADB through the Borrower of any condition which interferes with, or threatens to interfere with, the progress of the Program, the performance of its obligations under this Program Agreement, or the accomplishment of the purposes of the Loan.

(c) ADB and the State shall from time to time, at the request of either party, exchange views through their representatives with regard to any matters relating to the Program, the State and the Loan.

Section 2.08. (a) In so far as it relates to the Program, the State shall furnish to ADB all such reports and information as ADB shall reasonably request concerning (i) the Loan and the expenditure of the proceeds thereof; (ii) the items of expenditure financed out of such proceeds; (iii) the Program; and (iv) any other matters relating to the purposes of the Loan.

(b) Without limiting the generality of the foregoing, the State shall furnish to ADB periodic reports on the execution of the Program and on the operation and management of the Program facilities. Such reports shall be submitted in such form and in such detail and within such a period as ADB shall reasonably request, and shall indicate,

among other things, progress made and problems encountered during the period under review, steps taken or proposed to be taken to remedy these problems, and proposed program of activities and expected progress during the following period.

(c) Promptly after physical completion of the Program, but in any event not later than 3 months thereafter or such later date as ADB may agree for this purpose, the State shall prepare and furnish to ADB a report, in such form and in such detail as ADB shall reasonably request, on the execution and initial operation of the Program, including its cost, the performance by the State of its obligations under this Program Agreement and the accomplishment of the purposes of the Loan.

Section 2.09. (a) The State as applicable shall (i) maintain separate accounts and records for the Program; (ii) prepare annual financial statements for the Program in accordance with accounting principles acceptable to ADB; (iii) have such financial statements for the Program audited annually by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB, in accordance with international standards for auditing or the national equivalent acceptable to ADB; (iv) as part of each such audit, have the auditors prepare a report (which includes the auditors' opinion on the financial statements, use of the Loan proceeds and compliance with the financial covenants of the Loan Agreement) and a management letter (which sets out the deficiencies in the internal control of the Program that were identified in the course of the audit, if any); and (v) furnish to ADB, no later than 6 months after the close of the fiscal year to which they relate, copies of such audited financial statements, audit report and management letter, all in the English language, and such other information concerning these documents and the audit thereof as ADB shall from time to time reasonably request.

(b) ADB shall disclose the annual audited financial statements for the Program and the opinion of the auditors on the financial statements within 30 days of the date of their receipt by posting them on ADB's website.

(c) The State shall enable ADB, upon ADB's request, to discuss the financial statements for the Program and the State and its financial affairs where they relate to the Program with the auditors appointed by the State pursuant to subsection (a)(iii) hereinabove, and shall authorize and require any representative of such auditors to participate in any such discussions requested by ADB. This is provided that such discussions shall be conducted only in the presence of an authorized officer of the State, unless the State shall otherwise agree.

Section 2.10. The State shall enable ADB's representatives to inspect the Program, the Goods and Works and any relevant records and documents.

Section 2.11. (a) The State, shall, promptly as required, take all action within its powers to maintain its existence, to carry on its operations, and to acquire, maintain and renew all rights, properties, powers, privileges and franchises which are necessary in the carrying out of the Program or in the conduct of its operations.

(b) In relation to the Program, the State shall at all times conduct its operations in accordance with sound applicable technical, financial, business, development and operational practices, and under the supervision of competent and experienced management and personnel.

(c) In relation to the Program, the State shall at all times operate and maintain its plants, equipment and other property, and from time to time, promptly as needed, make all necessary repairs and renewals thereof, all in accordance with sound applicable technical, financial, business, development, operational and maintenance practices.

Section 2.12. Except as ADB may otherwise agree, the State shall not sell, lease or otherwise dispose of any of its assets which shall be required for the efficient carrying on of its operations or the disposal of which may prejudice its ability to perform satisfactorily any of its obligations under this Program Agreement.

Section 2.13. Except as ADB may otherwise agree, in relation to the Program, the State shall apply the proceeds of the Loan to the financing of expenditures on the Program in accordance with the provisions of the Loan Agreement and this Program Agreement, and shall ensure that all items of expenditures financed out of such proceeds are used exclusively in the carrying out of the Program.

Section 2.14. The State shall promptly notify ADB of any proposal that may impact the Program or alter its status under the Constitution of India.

### **ARTICLE III**

#### **Effective Date; Termination**

Section 3.01. This Program Agreement shall come into force and effect on the date on which the Loan Agreement comes into force and effect. ADB shall promptly notify the State of such date.

Section 3.02. (a) This Program Agreement and all obligations of the parties hereunder shall terminate on the date on which the Loan Agreement shall terminate in accordance with its terms.

(b) If the Loan Agreement terminates in accordance with its terms before the date specified in subsection (a) hereinabove, ADB shall promptly notify the State of this event.

Section 3.03. All the provisions of this Program Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the Loan Agreement.

**ARTICLE IV****Miscellaneous**

Section 4.01. Any notice or request required or permitted to be given or made under this Program Agreement and any agreement between the parties contemplated by this Program Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand, mail or facsimile to the party to which it is required or permitted to be given or made at its address hereinafter specified, or at such other address as such party shall have designated by notice to the party giving such notice or making such request. The addresses so specified are:

For ADB

Asian Development Bank  
6 ADB Avenue  
Mandaluyong City  
1550 Metro Manila  
Philippines

Facsimile Numbers:

+63 2 636-2444  
+63 2 636-2449.

For the State of Kerala

Additional Chief Secretary  
Higher Education  
Government Secretariat Annexe  
3<sup>rd</sup> Floor  
Thiruvananthapuram  
Kerala

Facsimile Number:

+91 471 233-2245.

Section 4.02. (a) Any action required or permitted to be taken, and any documents required or permitted to be executed, under this Program Agreement by or on behalf of the State may be taken or executed by its Additional Chief Secretary, Higher Education or by such other person or persons as he or she shall so designate in writing notified to ADB.

(b) The State shall furnish to ADB sufficient evidence of the authority of each person who will act under subsection (a) hereinabove, together with the authenticated specimen signature of each such person.


Section 4.03. No delay in exercising, or omission to exercise, any right, power or remedy accruing to either party under this Program Agreement upon any default shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence in such default; nor shall the action of such party in respect of any default, or any acquiescence in any default, affect or impair any right, power or remedy of such party in respect of any other or subsequent default.

IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Program Agreement to be signed in their respective names as of the day and year first above written, and to be delivered at the principal office of ADB.

ASIAN DEVELOPMENT BANK

By  \_\_\_\_\_  
M. TERESA KHO  
Country Director

STATE OF KERALA

By  \_\_\_\_\_  
M.T. REJU  
CEO, ASAP  
Higher Education Department