
LOAN NUMBER 3084-MYA (SF)

LOAN AGREEMENT
(Special Operations)

(Power Distribution Improvement Project)

between

REPUBLIC OF THE UNION OF MYANMAR

and

ASIAN DEVELOPMENT BANK

DATED 28 January 2014

MYA 46390

**LOAN AGREEMENT
(Special Operations)**

LOAN AGREEMENT dated 28 January 2014 between REPUBLIC OF THE UNION OF MYANMAR ("Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) the Borrower has applied to ADB for a loan for the purposes of the Project described in Schedule 1 to this Loan Agreement; and

(B) the Project will be carried out by the Ministry of Electric Power, Yangon City Electricity Supply Board and Electricity Supply Enterprise, and for this purpose the Borrower will make available to the Ministry of Electric Power the proceeds of the loan provided for herein upon terms and conditions satisfactory to ADB.

NOW THEREFORE the parties agree as follows:

ARTICLE I

Loan Regulations; Definitions

Section 1.01. All provisions of the Special Operations Loan Regulations of ADB, dated 1 January 2006 ("Loan Regulations"), are hereby made applicable to this Loan Agreement with the same force and effect as if they were fully set forth herein:

Section 1.02. Wherever used in this Loan Agreement, the several terms defined in the Loan Regulations have the respective meanings therein set forth unless modified herein or the context otherwise requires. Additional terms used in this Loan Agreement have the following meanings:

(a) "Component" means (i) for YESB, Component 1 of the Project, as described in paragraph 2(a) of Schedule 1 to this Loan Agreement; and (ii) for ESE, Component 2 to Component 4 (inclusive) of the Project, as described in paragraphs 2(b) to 2(d) (inclusive) of Schedule 1 to this Loan Agreement;

(b) "Consulting Guidelines" means the Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers (2013, as amended from time to time);

(c) "Consulting Services" means the services to be financed out of the proceeds of the Loan as referred to in paragraph 3 of Schedule 1 to this Loan Agreement;

(d) "Environmental Management Plan" or "EMP" means the environmental management plan for the Project, including any update thereto, incorporated in the IEE;

(e) “Environmental Safeguards” means the principles and requirements set forth in Chapter V, Appendix 1, and Appendix 4 (as applicable) of the SPS;

(f) “ESE” means the Electricity Supply Enterprise established in MOEP, or any successor thereto acceptable to ADB;

(g) “Goods” means equipment and materials to be financed out of the proceeds of the Loan, including related services such as transportation, insurance, installation, commissioning, training, and initial maintenance, but excluding Consulting Services;

(h) “Initial Environmental Examination” or “IEE” means the initial environmental examination for the Project, including any update thereto, prepared and submitted by the Borrower and cleared by ADB;

(i) “Laws” means any law, rule, regulation, by-law, notification, order, directive, procedure: (i) which governs or regulates the power sector or the electricity sector including the Electricity Law of 1984 and any associated implementing regulations (such as the proposed electricity regulation) and including any transmission and distribution grid code; and (ii) under which MOEP, YESB and ESE were established or operationalized including but not limited to the Board of Yangon City Electricity Supply Law of 22 November 2005, the Electricity Law of 1984 and other relevant law, rule, regulation, by-law, notification, order, directive, procedure which may from time to time govern, control or regulate the operations of any of MOEP, YESB or ESE;

(j) “Loan Disbursement Handbook” means ADB’s Loan Disbursement Handbook (2012, as amended from time to time);

(k) “Material Recovery Plan” means a material recovery plan for replaced materials that is to be developed by each PMU for each Project Area, and as further described in the PAM;

(l) “Ministry of Finance” means the Borrower’s Ministry of Finance, or any successor thereto;

(m) “MOEP” means the Borrower’s Ministry of Electric Power, or any successor thereto;

(n) “O&M” means operation and maintenance;

(o) “PAM” means the project administration manual for the Project dated 8 November 2013 and agreed between the Borrower and ADB, as updated from time to time in accordance with the respective administrative procedures of the Borrower and ADB;

(p) “PIU” means a Project implementation unit established by MOEP through ESE in each of the Project Regions, and “PIUs” means all of them, with each PIU to include an Engineer and a Finance Officer from ESE, and as further described in the PAM;

(q) “PMU” means the Project management unit established in each of YESB and ESE for the purposes of the Project and staffed by a Project Director, an Engineer and a Finance Officer, and as further described in the PAM;

(r) “Procurement Guidelines” means ADB’s Procurement Guidelines (2013, as amended from time to time);

(s) “Procurement Plan” means the procurement plan for the Project dated 8 November 2013 and agreed between the Borrower and ADB, as updated from time to time in accordance with the Procurement Guidelines, the Consulting Guidelines, and other arrangements agreed with ADB;

(t) “Project Area” means: (i) each Yangon Project Township; and (ii) each Project Region, and “Project Areas” means all of them;

(u) “Project Executing Agency” for the purposes of, and within the meaning of, the Loan Regulations means MOEP or any successor thereto acceptable to ADB, which is responsible for carrying out of the Project;

(v) “Project facilities” means facilities to be installed, constructed, reconstructed, developed or operationalized under the Project;

(w) “Project Region” means each of the following regions: Mandalay, Magway and Sagaing, and “Project Regions” means all of them;

(x) “Project Steering Committee” means a steering committee established for the Project and comprising of the following members: the Deputy Minister of MOEP (the Chair), the Chairman of YESB, the Managing Director of ESE and the Director General of the Department of Electric Power, MOEP;

(y) “Safeguard Policy Statement” or “SPS” means ADB’s Safeguard Policy Statement (2009);

(z) “Safeguards Monitoring Report” means each report prepared and submitted by the Borrower to ADB that describes progress with implementation of and compliance with the EMP, including any corrective and preventative actions;

(aa) “Works” means installation or other rehabilitation works for the Project to be financed by the Borrower, including installation of Goods and services, and project related services that are provided as part of a single responsibility or turnkey contract.

(bb) “Yangon Project Township” means each of the following townships of the city of Yangon: Hlaingthaya, Insein, Kamayut, Mayangone and Mingaladon, and “Yangon Project Townships” means all of them;

(cc) “YESB” means the Yangon City Electricity Supply Board established under The Board of Yangon City Electric Power Supply Law enacted by The State Peace and Development Council of the Borrower on 22 November 2005, or any successor thereto acceptable to ADB; and

(dd) “YESB Letter” means the letter from YESB to the Project Executing Agency as described in Section 4.04 of this Loan Agreement.

ARTICLE II

The Loan

Section 2.01. ADB agrees to lend to the Borrower from ADB's Special Funds resources an amount in various currencies equivalent to thirty-eight million eight hundred and seventy-nine thousand Special Drawing Rights (SDR38,879,000).

Section 2.02. (a) The Borrower shall pay to ADB an interest charge at the rate of 1% per annum during the grace period, and 1.5% per annum thereafter, on the amount of the Loan withdrawn from the Loan Account and outstanding from time to time.

(b) The term "grace period" as used in subsection (a) hereinabove means the period prior to the first Principal Payment Date in accordance with the amortization schedule set forth in Schedule 2 to this Loan Agreement.

Section 2.03. The interest charge and any other charge on the Loan shall be payable semiannually on 1 June and 1 December in each year.

Section 2.04. The Borrower shall repay the principal amount of the Loan withdrawn from the Loan Account in accordance with the amortization schedule set forth in Schedule 2 to this Loan Agreement.

Section 2.05. The currency of repayment of the principal amount of the Loan and the currency of payment of the interest charge for the purposes of Sections 4.03(a) and 4.04 of the Loan Regulations shall be the Dollar.

ARTICLE III

Use of Proceeds of the Loan

Section 3.01. The Borrower shall make the proceeds of the Loan available to the Project Executing Agency upon terms and conditions satisfactory to ADB and shall cause the Project Executing Agency to apply such proceeds to the financing of expenditures on the Project in accordance with the provisions of this Loan Agreement.

Section 3.02. The proceeds of the Loan shall be allocated and withdrawn in accordance with the provisions of Schedule 3 to this Loan Agreement, as such Schedule may be amended from time to time by agreement between the Borrower and ADB.

Section 3.03. Except as ADB may otherwise agree, the Borrower shall procure, or cause to be procured, the items of expenditure to be financed out of the proceeds of the Loan in accordance with the provisions of Schedule 4 to this Loan Agreement.

Section 3.04. Except as ADB may otherwise agree, the Borrower shall cause all items of expenditure financed out of the proceeds of the Loan to be used exclusively in the carrying out of the Project.

Section 3.05. Withdrawals from the Loan Account in respect of Goods and Consulting Services shall be made only on account of expenditures relating to:

- (a) Goods which are produced in and supplied from and Consulting Services which are supplied from such member countries of ADB as shall have been specified by ADB from time to time as eligible sources for procurement; and
- (b) Goods and Consulting Services which meet such other eligibility requirements as shall have been specified by ADB from time to time.

Section 3.06. The Loan Closing Date for the purposes of Section 8.02 of the Loan Regulations shall be 31 December 2018 or such other date as may from time to time be agreed between the Borrower and ADB.

ARTICLE IV

Particular Covenants

Section 4.01. (a) In the carrying out of the Project and operation of the Project facilities, the Borrower shall perform, or cause to be performed, all obligations set forth in Schedule 5 to this Loan Agreement.

(b) The Borrower shall ensure that each of YESB and ESE carry out their respective Components and operation of their respective associated Project facilities and that they do so with due diligence and efficiency, and in conformity with sound applicable technical, financial, business and development practices.

Section 4.02. (a) The Borrower shall ensure that YESB and ESE shall each: (i) maintain separate financial statements and records for their respective Components; (ii) prepare annual financial statements for their respective Components in accordance with accounting principles acceptable to ADB; (iii) have such financial statements for their respective Components 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 this Loan Agreement) and a management letter (which sets out the deficiencies in the internal control of the Project and/or their respective Components 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 each Component 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) In addition to annual audited financial statements referred to in subsection (a) hereinabove, the Borrower shall ensure that YESB and ESE shall each: (i) provide their respective annual financial statements prepared in accordance with national accrual-based financing reporting standards acceptable to ADB; (ii) have their respective financial statements 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; and (iii) furnish to ADB, no later than 1 month after approval by the relevant authority, copies of such audited financial statements, together with the auditors' report in the English language and such other information concerning these documents and the audit thereof as ADB shall from time to time reasonably request.

(d) The Borrower shall ensure that YESB and ESE shall each enable ADB, upon ADB's request, to discuss the financial statements for their respective Components and their respective financial affairs where they relate to the Project or their respective Components with the auditors appointed pursuant to subsections (a)(iii) and (c) 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 YESB and ESE (as applicable), unless they shall otherwise agree.

(e) The Borrower shall ensure that the Head of the Internal Audit Unit at YESB and ESE reports to the highest level of management in their respective institutions, in order to ensure the independence of internal audits and consistent with international best practices.

Section 4.03. The Borrower shall enable ADB's representatives associated with the Project to inspect the Project, the Goods and Works, and any relevant records and documents.

Section 4.04. The Borrower shall ensure that YESB signs a YESB Letter addressed to the Project Executing Agency, providing inter alia for an undertaking from YESB to carry out its Component, to do all such acts and execute all such documents as the Project Executing Agency considers may be necessary or desirable to enable the Borrower to perform or cause to be performed, all its obligations set forth in this Loan Agreement. Such YESB Letter shall be in form and on terms and conditions acceptable to ADB, and shall be without prejudice to, and without limitation on, the obligations of the Borrower under this Loan Agreement.

ARTICLE V**Effectiveness**

Section 5.01. The following are specified as additional conditions to the effectiveness of this Loan Agreement for the purposes of Section 9.01(f) of the Loan Regulations:

(a) the Chief Engineer from YESB and the Chief Engineer for Distribution Systems from ESE shall have been appointed as the Project Director of their respective PMUs and all necessary internal approvals shall have been granted to authorize the Chairman of YESB and the Managing Director of ESE to sign all contracts on behalf of MOEP for the procurement of Goods and Consulting Services under the Project at the maximum dollar value specified in the Procurement Plan;

(b) each PMU shall have been established and staffed as required under the Project;

(c) each of the PIUs shall have been established and staffed as required under the Project; and

(d) the Project Steering Committee shall have been established and staffed as required under the Project.

Section 5.02. A date 90 days after the date of this Loan Agreement is specified for the effectiveness of this Loan Agreement for the purposes of Section 9.04 of the Loan Regulations.

ARTICLE VI**Miscellaneous**

Section 6.01. The Ministry of Finance of the Borrower is designated as representative of the Borrower for the purposes of Section 11.02 of the Loan Regulations.

Section 6.02. The following addresses are specified for the purposes of Section 11.01 of the Loan Regulations:

For the Borrower

Ministry of Finance
Building No. 26 Nay Pyi Taw
Republic of the Union of Myanmar

Facsimile Number:

+95-67-410198.

For ADB

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

Facsimile Numbers:

(632) 636-2444
(632) 636-2336.

IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Loan 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.

REPUBLIC OF THE UNION OF
MYANMAR



By _____
U MAUNG MAUNG WIN
Authorized Representative

ASIAN DEVELOPMENT BANK



By _____
PUTU M. KAMAYANA
Advisor
Southeast Asia Department

SCHEDULE 1

Description of the Project

1. The objective of the Project is to reduce losses in the Borrower's power distribution system.
2. The Project shall comprise:
 - (a) Component 1: rehabilitation of the power distribution network in each of the Yangon Project Townships, including through: (i) the upgrading of four existing 66/11 kV and four existing 33/11 kV substations; (ii) replacement of existing 33 kV and 11 kV distribution lines and replacement of existing bare low voltage distribution lines with aerial bundled conductor distribution; and (iii) replacement of existing 11/0.4 kV transformers;
 - (b) Component 2: rehabilitation of the power distribution network in the Mandalay Project Region, including through: (i) the upgrading of two existing 66/11 kV and twenty existing 33/11 kV substations; (ii) replacement of existing 11 kV distribution lines and replacement of existing bare low voltage distribution lines with aerial bundled conductor distribution; (iii) replacement of existing 11/0.4 kV transformers; and (iv) replacement of existing revenue meters with digital meters;
 - (c) Component 3: rehabilitation of the power distribution network in the Sagaing Project Region, including through: (i) the upgrading of three existing 33/11 kV substations; (ii) replacement of existing 11 kV distribution lines and replacement of existing bare low voltage distribution lines with aerial bundled conductor distribution; (iii) replacement of existing 11/0.4 kV transformers; and (iv) replacement of existing revenue meters with digital meters; and
 - (d) Component 4: rehabilitation of the power distribution network in the Magway Project Region, including through: (i) the upgrading of one existing 66/11 kV substation; (ii) replacement of existing 33 kV and 11 kV distribution lines and replacement of existing bare low voltage distribution lines with aerial bundled conductor distribution; (iii) replacement of existing 11/0.4 kV transformers; and (iv) replacement of existing revenue meters with digital meters.
3. The Project includes Consulting Services to support Project implementation and capacity development.
4. The Project is expected to be completed by 31 December 2016.

SCHEDULE 2**Amortization Schedule****(Power Distribution Improvement Project)**

<u>Date Payment Due</u>	Payment of Principal (expressed in Special Drawing Rights)*
1 June 2022	809,979
1 December 2022	809,979
1 June 2023	809,979
1 December 2023	809,979
1 June 2024	809,979
1 December 2024	809,979
1 June 2025	809,979
1 December 2025	809,979
1 June 2026	809,979
1 December 2026	809,979
1 June 2027	809,979
1 December 2027	809,979
1 June 2028	809,979
1 December 2028	809,979
1 June 2029	809,979
1 December 2029	809,979
1 June 2030	809,979
1 December 2030	809,979
1 June 2031	809,979
1 December 2031	809,979
1 June 2032	809,979
1 December 2032	809,979
1 June 2033	809,979
1 December 2033	809,979
1 June 2034	809,979
1 December 2034	809,979
1 June 2035	809,979
1 December 2035	809,979
1 June 2036	809,979
1 December 2036	809,979
1 June 2037	809,979
1 December 2037	809,979
1 June 2038	809,979
1 December 2038	809,979
1 June 2039	809,979
1 December 2039	809,979
1 June 2040	809,979
1 December 2040	809,979
1 June 2041	809,979
1 December 2041	809,979

<u>Date Payment Due</u>	Payment of Principal (expressed in Special Drawing Rights)*
1 June 2042	809,979
1 December 2042	809,979
1 June 2043	809,979
1 December 2043	809,979
1 June 2044	809,979
1 December 2044	809,979
1 June 2045	809,979
1 December 2045	809,987
Total	38,879,000

* The **arrangements** for payment are subject to the provisions of Sections 3.04 and 4.03 of the Loan Regulations.

SCHEDULE 3**Allocation and Withdrawal of Loan Proceeds**General

1. The table attached to this Schedule sets forth the Categories of items of expenditure to be financed out of the proceeds of the Loan and the allocation of the Loan proceeds to each such Category ("Table"). (Reference to "Category" in this Schedule is to a Category or Subcategory of the Table.)

Basis for Withdrawal from the Loan Account

2. Except as ADB may otherwise agree, the proceeds of the Loan shall be disbursed on the basis of the withdrawal percentage for each item of expenditure set forth in the Table.

Interest Charge

3. The amount allocated to Category 3 is for financing the interest charge on the Loan during the implementation period of the Project.

Reallocation

4. Notwithstanding the allocation of Loan proceeds and the withdrawal percentages set forth in the Table,

(a) if the amount of the Loan allocated to any Category appears to be insufficient to finance all agreed expenditures in that Category, ADB may, by notice to the Borrower, (i) reallocate to such Category, to the extent required to meet the estimated shortfall, amounts of the Loan which have been allocated to another Category but, in the opinion of ADB, are not needed to meet other expenditures, and (ii) if such reallocation cannot fully meet the estimated shortfall, reduce the withdrawal percentage applicable to such expenditures in order that further withdrawals under such Category may continue until all expenditures thereunder shall have been made; and

(b) if the amount of the Loan allocated to any Category appears to exceed all agreed expenditures in that Category, ADB may, by notice to the Borrower, reallocate such excess amount to any other Category.

Disbursement Procedures

5. Except as ADB may otherwise agree, the Loan proceeds shall be disbursed in accordance with the Loan Disbursement Handbook.

Condition for Withdrawals from Loan Account

6. Notwithstanding any other provision of this Loan Agreement, no withdrawals shall be made from the Loan Account until a YESB Letter, in form and substance satisfactory to ADB, shall have been duly executed and delivered on behalf of YESB.

TABLE

ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (Power Distribution Improvement Project)			
Number	Item	Total Amount Allocated for ADB Financing (SDR) Category	Basis for Withdrawal from the Loan Account
1	Equipment and Materials**	31,297,000	100% of total expenditure claimed*
2	Consulting Services**	2,203,000	100% of total expenditure claimed*
3	Interest Charges	648,000	100% of amounts due
4	Unallocated***	4,731,000	
	Total	38,879,000	

* Exclusive of taxes and duties imposed within the territory of the Borrower.

** Subject to the condition for withdrawal described in paragraph 6 of Schedule 3.

*** May be used for physical and price contingencies

SCHEDULE 4

Procurement of Goods and Consulting Services

General

1. The procurement of Goods and Consulting Services shall be subject to and governed by the Procurement Guidelines, and the Consulting Guidelines, respectively.
2. All terms used in this Schedule and not otherwise defined in this Loan Agreement have the meanings provided in the Procurement Guidelines and/or the Consulting Guidelines, as applicable.

Goods

3. Except as ADB may otherwise agree, Goods shall only be procured on the basis of the method of procurement set forth below:
 - (a) International Competitive Bidding.
4. The method of procurement is subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. The Borrower may only modify the method of procurement or threshold values with the prior agreement of ADB, and modifications must be set out in updates to the Procurement Plan.

Domestic Preference

5. The Borrower may grant a margin of preference in the evaluation of bids under international competitive bidding in accordance with paragraphs 2.55(a) and 2.56 of the Procurement Guidelines for domestically manufactured Goods.

Consulting Services

6. Except as ADB may otherwise agree, the Borrower shall apply quality- and cost-based selection for selecting and engaging Consulting Services.
7. The Borrower shall recruit individual consultants to provide assistance during Project implementation in accordance with procedures acceptable to ADB for recruiting individual consultants.

Industrial or Intellectual Property Rights

8.
 - (a) The Borrower shall ensure that all Goods procured (including without limitation all computer hardware, software and systems, whether separately procured or incorporated within other goods and services procured) do not violate or infringe any industrial property or intellectual property right or claim of any third party.
 - (b) The Borrower shall ensure that all contracts for the procurement of Goods contain appropriate representations, warranties and, if appropriate, indemnities from the contractor or supplier with respect to the matters referred to in subparagraph (a) of this paragraph.

9. The Borrower shall ensure that all ADB-financed contracts with consultants contain appropriate representations, warranties and, if appropriate, indemnities from the consultants to ensure that the Consulting Services provided do not violate or infringe any industrial property or intellectual property right or claim of any third party.

ADB's Review of Procurement Decisions

10. Contracts procured under international competitive bidding procedures and contracts for Consulting Services shall be subject to prior review by ADB, unless otherwise agreed between the Borrower and ADB and set forth in the Procurement Plan.

SCHEDULE 5**Execution of Project; Financial Matters; Operations**Implementation Arrangements

1. The Borrower and the Project Executing Agency shall ensure that the Project is implemented in accordance with the detailed arrangements set forth in the PAM. Any subsequent change to the PAM shall become effective only after approval of such change by the Borrower and ADB. In the event of any discrepancy between the PAM and this Loan Agreement, the provisions of this Loan Agreement shall prevail.
2. The Borrower shall ensure that the Project Executing Agency, each PMU, each PIU, YESB and ESE are equipped with professionally skilled staff, reasonable office space, equipment, and adequate financial resources required for implementation of the Project throughout Project implementation.
3. The Borrower shall ensure that all rehabilitation Works of Project facilities carried out by YESB and ESE under the Project is designed and constructed in accordance with all relevant national and local design codes and standards of the Borrower and that the construction supervision, quality control, contract management, and completion inspection and acceptance procedures shall be in accordance with all applicable national and local laws and regulations of the Borrower.
4. The Borrower shall cause YESB and ESE to: (a) carry out all Works under the Project including installation of Goods; (b) install, equip, operate, maintain and manage the Project facilities in compliance with applicable laws, regulations and standards of the Borrower and international best practices; and (c) ensure that adequate budgetary appropriations or other funding and qualified and experienced staff are made available to enable YESB and ESE to successfully carry out these activities.
5. The Borrower shall insure, or cause to be insured, the Goods to be imported for the Project 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.
6. The Borrower shall ensure that YESB and ESE shall each, promptly as required, take all actions within their powers to carry on their respective operations, and to acquire, maintain and renew all rights, properties, powers, privileges and franchises which are necessary in the carrying out of their respective Components or in the conduct of their respective operations.
7. The Borrower shall ensure that YESB and ESE shall each, at all times, conduct their respective operations in accordance with sound applicable technical, financial, business, development and operational practices, and under the supervision of competent and experienced management and personnel.
8. The Borrower shall ensure that YESB and ESE shall each, at all times, operate and maintain their respective 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.

9. Except as ADB may otherwise agree, the Borrower shall ensure that neither YESB nor ESE shall sell, lease or otherwise dispose of any of their respective assets which shall be required for the efficient carrying on of their respective operations or the disposal of which may prejudice the Borrower's ability to perform satisfactorily any of its obligations under this Loan Agreement.

10. The Borrower shall ensure that YESB and ESE shall each promptly notify ADB of any proposal to amend, suspend or repeal any provision of their respective constitutional documents, which, if implemented, could adversely affect the carrying out of their respective Components or the operation of the Project facilities associated with their respective Components. YESB and ESE shall each afford ADB an adequate opportunity to comment on such proposal prior to taking any affirmative action thereon.

Financial Covenants

11. The Borrower shall ensure that:

(a) except as ADB may otherwise agree the total accounts receivable for each of YESB and ESE shall be maintained at a level that does not exceed the equivalent of 3 months average sales revenue for fiscal years ending 2015 and thereafter during the period of Project implementation;

(b) each of YESB and ESE shall furnish to ADB annual reports analyzing their respective accounts receivable, ageing of all significant accounts receivable and a plan for reducing such aged receivables so that they do not exceed the equivalent of 3 months average sales revenue for fiscal years ending 2015 and thereafter during the period of Project implementation;

(c) in respect of each of YESB and ESE: (i) for fiscal years ending 2015 and 2016, the ratio of total operating expenses to total operating revenues is maintained at not more than 95%; and (ii) for each fiscal year thereafter, the ratio of total operating costs to total operating revenues is maintained at not more than 90%. For the purposes of this subparagraph: (i) the term "total operating expenses" means all expenses related to operations, including administration, adequate maintenance, taxes and payments in lieu of taxes and provision for depreciation but excluding interest and other charges on debt; and (ii) the term "total operating revenues" means revenues from all sources related to operations, after making adequate provisions for uncollectible debts; and

(d) if the Borrower, YESB and/or ESE fail to comply with any of the financial covenants in paragraphs (a) to (c) (inclusive) above, the Borrower shall and shall ensure that each of YESB and ESE promptly takes all such action as may be necessary to cure the relevant financial covenant(s).

Financial Viability of YESB and ESE

12. The Borrower shall ensure that electricity tariffs are reviewed annually and adjusted in a timely manner to enable each of YESB and ESE to maintain financial sustainability, ensure full cost recovery and meet the costs of capital expenditure.

Distribution Loss Reduction

13. Except as the Borrower and ADB may otherwise agree, the Borrower shall ensure that each of YESB and ESE takes all necessary actions to maintain distribution losses at a level not exceeding 14% for each Project Area, after the period of Project implementation.

Sector Reforms

14. The Borrower shall and shall ensure that the Project Executing Agency informs ADB of key power sector policy and restructuring reforms including: (a) reforms and any other changes pertaining to the electricity tariff policy and institutional reforms (including to the legal character) of the Project Executing Agency, YESB and/or ESE.

15. The Borrower shall use its best efforts to develop a plan, with the assistance of ADB, to establish a regulatory authority to regulate the electricity sector and shall inform ADB in advance of any other plans to establish other authorities or bodies which will have an impact on the regulation or operation of the electricity sector and its participants.

Laws

16. The Borrower shall promptly notify ADB of any proposal to amend, suspend or repeal any provision of the Laws, and shall afford ADB an adequate opportunity to comment on such proposal prior to taking any action thereon.

Development Coordination

17. The Borrower shall keep ADB informed of discussions with other multilateral and bilateral aid agencies that may have implications for the implementation of the Project including relating to any institutional and sector restructuring and shall share all such related documents with ADB including to the maximum extent permissible, all such documents of development partners. The Borrower shall provide ADB with an opportunity to comment on any resulting policy reforms which could affect the Project, and shall take into account ADB's views before finalizing and implementing any such proposals.

Budgets

18. The Borrower shall ensure that the Project Executing Agency, YESB and ESE ensure: (a) the timely preparation and submission of their respective annual budgets; and (b) that the Project is included in such annual budgets for each fiscal year during the term of the Loan and any other counterpart support is provided to the Project Executing Agency, YESB and ESE to enable them to carry out their respective obligations under this Loan Agreement.

Schedule 5

19. The Borrower shall and shall ensure that the Project Executing Agency shall make available sufficient budgetary appropriations necessary for timely disbursement of Project expenditures including providing sufficient budgetary appropriations to each of YESB and ESE to:

- (a) purchase pre-stressed concrete poles required for the Project;
- (b) carry out all Works under the Project including installation of Goods;
- (c) meet the O&M costs of the Goods and other Project facilities throughout the term of the Loan; and
- (d) meet the costs of carrying out the Material Recovery Plan.

Change in Ownership

20. The Borrower shall ensure that: (a) in the event of any change in ownership, control, operation or management of the Project facilities; or (b) if any sale, transfer, assignment or issuance of any interest (including debt or equity interest) in YESB or ESE is proposed, the Project Executing Agency, YESB and ESE (as the case may be) shall inform ADB as soon as they become aware of the proposal and at the latest 3 months prior to the implementation of such change. The Project Executing Agency, YESB and ESE (as the case may be) shall further ensure that concurrent with any of the changes described above, the rights and obligations of YESB or ESE (as applicable) under the Project are assumed by the acquiring entity and all other applicable policies of ADB are followed. The Project Executing Agency shall cause YESB or ESE (as applicable) to ensure that such changes are carried out in a lawful and transparent manner.

Project Performance Monitoring and Progress Reports

21. Within 3 months of the Effective Date, the Borrower shall ensure that the Project Executing Agency, YESB and ESE establishes a Project performance monitoring system (PPMS) for the Project, in form and substance acceptable to ADB. The PPMS will track the Project implementation activities, corresponding target dates, expected outcomes and assigned responsibilities under a monitoring mechanism that can be used to track progress on specific activities and the PPMS will include gender-disaggregated monitoring indicators to monitor progress with gender-related covenants under the Project. The PPMS will aim to detect any deficiency and discrepancy between the plan and the execution of the Project in using the resources efficiently in order to ensure that timely corrections can be made to adjust the design of the Project as feasible.

Safeguards Covenants

22. The Borrower shall ensure that the Project does not have any environmental, indigenous peoples or involuntary resettlement impacts, all within the meaning of the Safeguard Policy Statement. In the event that the Project does have any such impact, the Government shall take all steps required to ensure that the Project complies with the applicable laws and regulations of the Borrower and with ADB's Safeguard Policy Statement.

Environment

23. The Borrower shall ensure or cause the Project Executing Agency to ensure that the preparation, design, installation, implementation, operation and decommissioning of the Project and all Project facilities comply with (a) all applicable laws and regulations of the Borrower relating to environment, health and safety; (b) the Environmental Safeguards; and (c) all measures and requirements set forth in the IEE, the EMP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

24. The Borrower shall ensure, or cause the Project Executing Agency to ensure that a Material Recovery Plan is prepared and implemented by each PMU in accordance with the PAM.

25. The Borrower shall make available or cause the Project Executing Agency, YESB and ESE to make available necessary budgetary and human resources to fully implement the EMP.

Safeguards Monitoring and Reporting

26. The Borrower shall do the following:

- (a) submit semi-annual Safeguards Monitoring Reports to ADB and disclose relevant information from such reports to affected persons promptly upon submission;
- (b) if any unanticipated environmental and/or social risks and impacts arise during installation, implementation or operation of the Project that were not considered in the IEE or the EMP, promptly inform ADB of the occurrence of such risks or impacts, with detailed description of the event and proposed corrective action plan; and
- (c) report any actual or potential breach of compliance with the measures and requirements set forth in the EMP promptly after becoming aware of the breach.

Labor, Health and Safety, and Gender

27. The Borrower shall ensure that the Project Executing Agency, YESB and ESE comply with the following labor requirements in respect of workers carrying out Works under the Project: (a) provide such workers with equal pay for work of equal value, regardless of gender, age, ethnicity or any other factors; (b) ensure the timely payment of wages to such workers; (c) not discriminate against people based on age, gender or ethnicity, provided they are capable of performing the work; (d) advertise labor requirements in a timely manner prior to recruitment, in a venue that can reasonably be expected to be seen by interested men and women, regardless of age or ethnicity; (e) provide such workers with a written contract; (f) provide such workers with adequate on-the-job training and safety training; (g) do not restrict freedom of association of such workers; (h) comply with core labor standards and the applicable national and local labor laws and regulations, including stipulations related to employment; (i) not employ, use or benefit from children in a manner that is economically exploitative, or is likely to be hazardous to, or interfere with, the child's education, or be

harmful to the child's health, physical, mental, spiritual, moral and social development and not employ children below the age of 18 in dangerous work; and (j) not employ, use or benefit from forced labor, which consists of any work or service not voluntarily performed that is exacted from an individual under threat or force or penalty including any kind of involuntary or compulsory labor, such as indentured labor, bonded labor or similar labor-contracting arrangements.

28. The Borrower shall ensure that: (a) the preparation, installation, operation and maintenance of the Project facilities comply with all applicable laws and regulations of the Borrower relating to health and safety; (b) all substation operators use (amongst others) personal protective equipment (PPE) such as boots, hard hats, overalls, insulating gloves, safety glasses, ear muffs under the Project; and (c) the project implementation consultants for the Project provide training to workers on health and safety and use of PPE.

29. The Borrower shall ensure that YESB and ESE use their best endeavors to ensure that special measures are undertaken to promote the participation of women in Project activities, particularly within each PMU, each PIU and as part of installation, operation and maintenance of the Project facilities.

Governance and Anticorruption

30. The Borrower, the Project Executing Agency, YESB and ESE shall: (a) comply with ADB's Anticorruption Policy (1998, as amended to date) and acknowledge that ADB reserves the right to investigate directly, or through its agents, any alleged corrupt, fraudulent, collusive or coercive practice relating to the Project; and (b) cooperate fully with any such investigation and extend all necessary assistance, including providing access to all relevant books and records, as may be necessary for satisfactory completion of such investigation.

31. The Borrower and the Project Executing Agency shall ensure that anticorruption provisions acceptable to ADB are included in all bidding documents and contracts, including provisions specifying the right of ADB to audit and examine the records and accounts of the Project Executing Agency, YESB and ESE and all contractors, suppliers, consultants, and other service providers as they relate to the Project. Individuals/entities on ADB's anticorruption debarment lists are ineligible to participate in ADB-financed activity and may not be awarded any contracts under the Project. If the Borrower, the Project Executing Agency, YESB, ESE or ADB is or becomes aware or has a reasonable suspicion that any member of the Borrower, the Project Executing Agency, YESB or ESE has engaged in corrupt or fraudulent practices (as defined in ADB's Anticorruption Policy under or in connection with the Project or the loan, the Borrower, the Project Executing Agency, YESB and ESE shall take such timely and appropriate action satisfactory to ADB to investigate and/or remedy the situation.

32. The Borrower shall cause the Project Executing Agency, YESB and ESE to take all actions necessary to protect the Goods by ensuring: (a) that all deliveries of such Goods procured are verified upon receipt by each PIU including verifying that the Goods ordered are of the quality or standard as ordered, are in good and proper working order and condition; (b) that an accurate asset register is established and maintained for each Project Area recording all Goods and allowing regular, unannounced inspections and audits to take place to verify the presence of all Goods and its use for the purposes for which they are

purchased for this Project; (c) all Goods leaving the central procurement site are safely delivered to their end use site in accordance with their purchase order, maintained in good and proper working condition at the location of delivery and used for the purpose for which they were purchased; and (d) that all inspections of Goods are carried out by personnel within each PIU who are qualified to verify their appropriate use and do not have an interest that could improperly influence the performance of their duties and responsibilities to carry out due and proper inspections of such Goods (such as vested interests or connections with any contractors, suppliers, consultants, and other service providers as they relate to the Project).

33. In addition to these requirements, to deter corruption and increase transparency, the Project Executing Agency shall create a Project website within 3 months of the Effective Date, accessible by the public, to disclose various information concerning the Project including general information about the Project, public procurement related to the Project, Project progress and contact details in English and Myanmar language. The website will also provide a link to ADB's Integrity Unit (<http://www.adb.org/Integrity/complaint.asp>) for reporting to ADB any grievances or allegations of corrupt practices arising out of the Project and Project activities. For each contract, the website will include information on, among others, the list of participating bidders, name of the winning bidder, basic details on bidding procedures adopted, amount of contract awarded, and the list of Goods and Consulting Services. The Project Executing Agency shall permit any bidder to request an explanation as to why a bid was unsuccessful and the Project Executing Agency shall respond promptly. The website will be updated regularly. In addition to the web-based disclosure, stakeholders will be provided by the Project Executing Agency with detailed information on procurement on public notice boards in their respective areas.