

PROJECT AGREEMENT

(Madhya Pradesh Power Transmission and Distribution System Improvement Project)

between

ASIAN DEVELOPMENT BANK

and

STATE OF MADHYA PRADESH

MADHYA PRADESH POWER TRANSMISSION COMPANY LIMITED

MADHYA PRADESH MADHYA KSHETRA VIDYUT VITARAN COMPANY LIMITED

MADHYA PRADESH POORV KSHETRA VIDYUT VITARAN COMPANY LIMITED

MADHYA PRADESH PASCHIM KSHETRA VIDYUT VITARAN COMPANY LIMITED

DATED 17 FEBRUARY 2014

PROJECT AGREEMENT

PROJECT AGREEMENT dated 17 February 2014 between ASIAN DEVELOPMENT BANK (“ADB”) on the one part and the STATE OF MADHYA PRADESH, acting by its Governor (“State”), MADHYA PRADESH POWER TRANSMISSION COMPANY LIMITED (“MP Transco”), MADHYA PRADESH MADHYA KSHETRA VIDYUT VITARAN COMPANY LIMITED (“DISCOM-C”), MADHYA PRADESH POORV KSHETRA VIDYUT VITARAN COMPANY LIMITED (“DISCOM-E”) and MADHYA PRADESH PASCHIM KSHETRA VIDYUT VITARAN COMPANY LIMITED (“DISCOM-W”, and together with DISCOM-C and DISCOM-E called “DISCOMs”) on the other part.

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 three hundred fifty million Dollars (\$350,000,000) 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, MP Transco and the DISCOMs, and that the State, MP Transco and the DISCOMs agree to undertake certain obligations towards ADB set forth herein; and

(B) the State, MP Transco and the DISCOMs, 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 Project 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, except that for purposes of this Project Agreement, the term “the Project” means (i) Component A and Component C of the Project for MP Transco; (ii) Component B and Component C of the Project for the DISCOMs; and (iii) the Project for the State, each as described in Schedule 1 to the Loan Agreement.

ARTICLE II

Particular Covenants

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

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

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

Section 2.03. (a) In the carrying out of the Project, the State, MP Transco and the DISCOMs shall employ competent and qualified consultants and contractors, acceptable to ADB, to an extent and upon terms and conditions satisfactory to ADB.

(b) Except as ADB may otherwise agree, the State, MP Transco and the DISCOMs shall procure all items of expenditures to be financed out of the proceeds of the Loan in accordance with the provisions of Schedule 4 to the Loan Agreement. ADB may refuse to finance a contract where any such item has not been procured under procedures substantially in accordance with those agreed between the Borrower and ADB or where the terms and conditions of the contract are not satisfactory to ADB.

Section 2.04. The State, MP Transco and the DISCOMs shall carry out the Project in accordance with plans, design standards, specifications, work schedules and construction methods acceptable to ADB. The State, MP Transco and the DISCOMs 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, MP Transco and the DISCOMs shall take out and maintain with responsible insurers, or make other arrangements satisfactory to ADB for, insurance of Project 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, MP Transco and the DISCOMs undertake to 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.

Section 2.06. The State shall cause MP Transco and each DISCOM to maintain records and accounts adequate to identify the items of expenditure financed out of the proceeds of the Loan, to disclose the use thereof in the Project, to record the progress

of the Project (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, the State, MP Transco and the DISCOMs shall cooperate fully to ensure that the purposes of the Loan will be accomplished.

(b) The State, MP Transco and the DISCOMs shall promptly inform ADB of any condition which interferes with, or threatens to interfere with, the progress of the Project, the performance of its obligations under this Project Agreement or any Onlending Agreement, or the accomplishment of the purposes of the Loan.

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

Section 2.08. (a) In relation to the Project, the State, MP Transco and the DISCOMs 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 Project; (iv) the administration, operations and financial status of the State and the financial condition of MP Transco and the DISCOMs; and (v) any other matters relating to the purposes of the Loan.

(b) Without limiting the generality of the foregoing, the State shall cause MP Transco and the DISCOMs to furnish to ADB periodic reports on the execution of the Project, and on the operation and management of the Project facilities as ADB shall reasonably request. 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 Project, but in any event not later than 3 months thereafter or such later date as ADB may agree for this purpose, the State shall cause MP Transco and the DISCOMs to 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 Project, including its cost, the performance by the State, MP Transco and the DISCOMs of their obligations under this Project Agreement and the accomplishment of the purposes of the Loan.

Section 2.09. (a) The State shall cause MP Transco and the DISCOMs to (i) maintain separate accounts and records for the Project; (ii) prepare annual financial statements for the Project in accordance with accounting principles acceptable to ADB; (iii) have such financial statements for the Project 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 as well as on the use of the procedures for imprest fund(s) and statement of expenditures) and a management letter (which sets out the deficiencies in the internal control of the Project 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 Project 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, MP Transco and the DISCOMs shall (i) provide their annual financial statements prepared in accordance with national accrual-based financing reporting standards acceptable to ADB; (ii) have their 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 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 State, MP Transco and the DISCOMs shall enable ADB, upon ADB's request, to discuss the financial statements for the Project, MP Transco and the DISCOMs and their financial affairs where they relate to the Project with the auditors appointed by (i) the State, MP Transco and the DISCOMs pursuant to subsection (a)(iii) hereinabove; and (ii) by MP Transco and the DISCOMs pursuant to subsection (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 the State, MP Transco and/or the DISCOMs, as appropriate, unless the State, MP Transco and the DISCOMs shall otherwise agree.

Section 2.10. The State, MP Transco and the DISCOMs shall enable ADB to inspect the Project, the Goods and Works and any relevant records and documents.

Section 2.11. (a) MP Transco and the DISCOMs shall, promptly as required, take all action within their powers to maintain their corporate existence, to carry on their operations, and to acquire, maintain and renew all rights, properties, powers, privileges and franchises which are necessary in the carrying out of the Project or in the conduct of their operations.

(b) In so far as it relates to the Project, MP Transco and the DISCOMs shall at all times conduct their 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 so far as it relates to the Project, MP Transco and the DISCOMs shall at all times operate and maintain their 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, MP Transco and the DISCOMs shall not sell, or otherwise dispose of any assets which shall be required for the efficient carrying on of their operations or the disposal of which may

prejudice their ability to perform satisfactorily any of their obligations under this Project Agreement.

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

Section 2.14. Except as ADB and the Borrower may otherwise agree, the State, MP Transco and the DISCOMs shall duly perform all its obligations under the Onlending Agreements, and shall not take, or concur in, any action which would have the effect of assigning, amending, abrogating or waiving any rights or obligations of the parties under the Onlending Agreements.

Section 2.15. The State, MP Transco and the DISCOMs shall promptly notify ADB of any proposal to amend, suspend or repeal any provision of the constitutional documents of MP Transco or a DISCOM, which, if implemented, could adversely affect the carrying out of the Project or the operation of the Project facilities. The State, MP Transco and the DISCOMs shall afford ADB an adequate opportunity to comment on such proposal.

ARTICLE III

Effective Date; Termination

Section 3.01. This Project 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, MP Transco and the DISCOMs of such date.

Section 3.02. This Project 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.

Section 3.03. All the provisions of this Project 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 Project Agreement and any agreement between the parties contemplated by this Project 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 2 636-2338.

For the State

Principal Secretary (Energy)
Energy Department, Government of Madhya Pradesh
Mantralaya, Vallabh Bhawan
Bhopal, Madhya Pradesh

Facsimile Number:

+91 755 276-6587.

For MP Transco

Managing Director
Madhya Pradesh Power Transmission Company Limited
Block No. 2, Shakti Bhawan
Rampur, Jabalpur - 482008

Facsimile Number:

+91 761 266-4141.

For DISCOM-C

Managing Director
Madhya Pradesh Madhya Kshetra Vidyut Vitaran Company Limited
Nishtha Parisar
Govindpura
Bhopal - 462023, Madhya Pradesh

Facsimile Number:

+91 755 258-9821.

For DISCOM-E

Managing Director
Madhya Pradesh Poorv Kshetra Vidyut Vitaran Company Limited
Block No. 11, Shakti Bhawan, Rampur
Jabalpur - 482008, Madhya Pradesh

Facsimile Number:

+91 761 266-6070.

For DISCOM-W

Managing Director
Madhya Pradesh Paschim Kshetra Vidyut Vitaran Company Limited
GPH Compound, Pologround
Indore - 452003, Madhya Pradesh

Facsimile Number:

+91 731 242-3300.

Section 4.02. (a) Any action required or permitted to be taken, and any documents required or permitted to be executed, under this Project Agreement (i) by or on behalf of the State, may be taken or executed by Principal Secretary (Energy) or Secretary, Energy Department of the State, (ii) by MP Transco or any DISCOM, may be taken or executed by the respective Managing Director, or in each case, by such other person or persons as any of them shall so designate in writing notified to ADB.

(b) The State, MP Transco and the DISCOMs 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 Project 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 Project 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 MADHYA PRADESH

By 
 RAJESH CHAURASIA
 Deputy Secretary

MADHYA PRADESH POWER
 TRANSMISSION COMPANY LIMITED

By 
 RAVI SETHI
 Chief Engineer, Planning and Design

MADHYA PRADESH MADHYA KSHETRA
 VIDYUT VITARAN COMPANY LIMITED

By 
 RAJNISH KUMAR REJA
 DGM Rural

MADHYA PRADESH POORV KSHETRA
 VIDYUT VITARAN COMPANY LIMITED

By 
 S.K. YADAV
 Chief Engineer

MADHYA PRADESH PASCHIM KSHETRA
 VIDYUT VITARAN COMPANY LIMITED

By 
 VIRENDRA KUMAR GOEL
 Project Director