
LOAN NUMBER 3073-IND

LOAN AGREEMENT
(Ordinary Operations)

(North Eastern State Roads Investment Program – Project 2)

between

INDIA

and

ASIAN DEVELOPMENT BANK

DATED 17 FEBRUARY 2014

IND 37143

LOAN AGREEMENT (Ordinary Operations)

LOAN AGREEMENT dated 17 February 2014 between INDIA, acting by its President (“Borrower”) and ASIAN DEVELOPMENT BANK (“ADB”).

WHEREAS

(A) by a framework financing agreement dated 17 June 2011 between the Borrower and ADB, ADB has agreed to provide a multitranche financing facility to the Borrower for purposes of financing projects under the North Eastern State Roads Investment Program;

(B) by a periodic financing request dated 11 June 2013, the Borrower has applied to ADB for a loan for the purposes of the Project described in Schedule 1 to this Loan Agreement;

(C) the Project will be carried out by the following Project Executing Agencies: (i) MDONER, at the national level; (ii) the State of Assam, acting through its PWD; (iii) the State of Manipur, acting through its PWD; (iv) the State of Mizoram, acting through its PWD; and (v) the State of Tripura, acting through its PWD. For this purpose the Borrower will make available to the Project Executing Agencies the proceeds of the loan provided for herein upon terms and conditions mutually agreeable to ADB and the Borrower; and

(D) ADB has agreed to make a loan to the Borrower from ADB's ordinary capital resources upon the terms and conditions set forth herein and in the Project Agreements of even date herewith between ADB and the Project Executing Agencies;

NOW THEREFORE the parties hereto agree as follows:

ARTICLE I

Loan Regulations; Definitions

Section 1.01. All the provisions of the Ordinary Operations Loan Regulations Applicable to LIBOR-Based Loans Made from ADB's Ordinary Capital Resources, dated 1 July 2001 (“Loan Regulations”), are hereby made applicable to this Loan Agreement with the same force and effect as if they were fully set forth herein, subject, however, to the following modifications:

(a) Section 3.03 is deleted and the following is substituted therefor:

Commitment Charge; Credit; Maturity Premium. (a) The Borrower shall pay a commitment charge on the unwithdrawn amount of the Loan at the rate and on the terms specified in the Loan Agreement.

(b) ADB shall provide to the Borrower a credit at the rate specified in the Loan Agreement, which credit shall remain fixed for the term of the Loan. ADB shall apply the credit against the interest payable by the Borrower.

(c) The Borrower shall pay a maturity premium at the rate specified in the Loan Agreement, which maturity premium shall remain fixed for the term of the Loan. ADB shall add the maturity premium to the interest payable by the Borrower.

(b) Section 3.06 is deleted and the following is substituted therefor:

Rebate. (a) Following any announcement by ADB that the Fixed Spread applicable to new Loans shall be reduced, ADB shall provide a Rebate to any Borrower with an outstanding Loan on which a higher Fixed Spread is applicable. The amount of the Rebate shall be determined by multiplying (i) the difference between the Fixed Spread applicable to the outstanding Loan and the Fixed Spread that will be applied to new Loans (expressed as a percentage per annum), by (ii) the principal amount of the outstanding Loan on which the Borrower shall pay interest for all interest periods commencing on and after the effective date of the lower Fixed Spread that will be applied to new Loans.

(b) Following any announcement by ADB that its Funding Cost Margin calculations with respect to any Loan Currency (or Approved Currency) in any Semester resulted in ADB achieving savings, ADB shall provide a Rebate to the Borrower. The amount of the Rebate shall be determined by multiplying (i) the Funding Cost Margin (expressed as a percentage per annum) by (ii) the principal amount of the Loan on which the Borrower shall pay interest for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated. ADB shall apply the amount of the Rebate against the interest payable by the Borrower for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated.

(c) Section 3.07 is deleted and the following is substituted therefor:

Surcharge. (a) Following any announcement by ADB that the Fixed Spread applicable to new Loans shall be increased, any Borrower with an outstanding Loan on which a lower Fixed Spread is applicable shall pay ADB a Surcharge. The amount of the Surcharge shall be determined by multiplying (i) the difference between the Fixed Spread that will be applied to new Loans and the Fixed Spread applicable to the outstanding Loan (expressed as a percentage per annum),

by (ii) the principal amount of the outstanding Loan on which the Borrower shall pay interest for all interest periods commencing on and after the effective date of the higher Fixed Spread that will be applied to new Loans.

(b) Following any announcement by ADB that its Funding Cost Margin calculations with respect to any Loan Currency (or Approved Currency) in any Semester resulted in ADB incurring additional costs, the Borrower shall pay ADB a Surcharge. The amount of the Surcharge shall be determined by multiplying (i) the Funding Cost Margin (expressed as a percentage per annum) by (ii) the principal amount of the Loan on which the Borrower shall pay interest for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated. ADB shall add the amount of the Surcharge to the interest payable by the Borrower for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated.

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

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

(c) "EARF" means the environmental assessment and review framework for the Investment Program, including any update thereto, prepared and submitted by the Borrower through the Project Executing Agencies and cleared by ADB;

(d) "EMP" means the environment management plan for a Subproject, including any update thereto, prepared and submitted by the Borrower through the relevant Project Executing Agency and cleared by ADB;

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

(f) "Facility" means the multitranche financing facility provided by ADB to the Borrower for purposes of financing projects under the Investment Program;

(g) "FAM" means the updated Facility administration manual dated October 2013 and agreed between the Borrower, the Project Executing Agencies and ADB, as updated from time to time in accordance with the respective administrative procedures of the Borrower, the Project Executing Agencies and ADB;

(h) "FFA" means the framework financing agreement dated 17 June 2011 between ADB and the Borrower with respect to the Facility;

(i) "Financing Arrangements" means in reference to Section 3.01, the arrangements between the Borrower and the States as per current policy of the Borrower, and acceptable to ADB;

(j) "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;

(k) "IEE" means the initial environmental examination for a Subproject, including any update thereto, prepared and submitted by the Borrower through the relevant Project Executing Agency pursuant to the requirements set forth in the EARF and cleared by ADB;

(l) "Indigenous Peoples Safeguards" means the principles and requirements set forth in Chapter V, Appendix 3, and Appendix 4 (as applicable) of the SPS;

(m) "Investment Program" means the North Eastern State Roads Investment Program;

(n) "Involuntary Resettlement Safeguards" means the principles and requirements set forth in Chapter V, Appendix 2, and Appendix 4 (as applicable) of the SPS;

(o) "IPP" means the indigenous peoples plan for a Subproject, including any update thereto, prepared and submitted by the Borrower through the relevant Project Executing Agency pursuant to the requirements set forth in the IPPF and cleared by ADB;

(p) "IPPF" means the indigenous peoples planning framework for the Investment Program, including any update thereto, prepared and submitted by the Borrower through the Project Executing Agencies and cleared by ADB;

(q) "Loan Disbursement Handbook" means ADB's Loan Disbursement Handbook (2012, as amended from time to time);

(r) "MDONER" means the Ministry of Development of North Eastern Region of the Borrower;

(s) "PFR" means the periodic financing request submitted or to be submitted by the Borrower, for the purposes of each loan under the Facility, and for the purpose of this Loan Agreement means the periodic financing request dated 11 June 2013;

(t) "Procurement Guidelines" means ADB's Procurement Guidelines (2013, as amended from time to time);

(u) "Procurement Plan" means the procurement plan for the Project dated 25 October 2013, and agreed between the Borrower, the Project Executing Agencies and ADB, as updated from time to time in accordance with the Procurement Guidelines, the Consulting Guidelines, and other arrangements agreed with ADB;

- (v) "PWD" means the Public Works Department of a State;
- (w) "RF" means the resettlement framework for the Investment Program, including any update thereto, prepared and submitted by the Borrower through the Project Executing Agencies and cleared by ADB;
- (x) "RP" means the resettlement plan for a Subproject, including any update thereto, prepared and submitted by the Borrower through the relevant Project Executing Agency pursuant to the requirements set forth in the RF and cleared by ADB;
- (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 through the Project Executing Agencies to ADB that describes progress with implementation of, and compliance with, the EMPs, the RPs and the IPPs (as applicable), including any corrective and preventative actions;
- (aa) "SEA" means each of the State level executing agencies responsible to carry out the Project i.e., (i) PWD in the State of Assam; (ii) PWD in the State of Manipur; (iii) PWD in the State of Mizoram; and (iv) PWD in the State of Tripura;
- (bb) "State" means the State of Assam, the State of Manipur, the State of Mizoram, and the State of Tripura, as the context requires;
- (cc) "Subproject" means a subproject under this Project that has been prepared by a Project Executing Agency pursuant to the selection criteria and approval process for investment subprojects set out in Schedule 4 to the FFA; and
- (dd) "Works" means construction or civil works to be financed out of the proceeds of the Loan, including services such as drilling or mapping, and project related services that are provided as part of a single responsibility or turnkey contract, but excluding Consulting Services.

ARTICLE II

The Loan

Section 2.01. (a) ADB agrees to lend to the Borrower from ADB's ordinary capital resources an amount of one hundred twenty five million two hundred thousand Dollars (\$125,200,000), as such amount may be converted from time to time through a Currency Conversion in accordance with the provisions of Section 2.06 of this Loan Agreement.

(b) The Loan has a principal repayment period of 20 years, and a grace period as defined in paragraph (c) of this Section.

(c) The term “grace period” as used in paragraph (b) of this Section 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 2.02. The Borrower shall pay to ADB interest on the principal amount of the Loan withdrawn and outstanding from time to time at a rate for each Interest Period equal to the sum of:

- (a) LIBOR;
- (b) 0.60% as provided by Section 3.02 of the Loan Regulations less a credit of 0.20% as provided by Section 3.03 of the Loan Regulations; and
- (c) a maturity premium of 0.10% as provided by Section 3.03 of the Loan Regulations.

Section 2.03. The Borrower shall pay a commitment charge of 0.15% per annum. Such charge shall accrue on the full amount of the Loan (less amounts withdrawn from time to time), commencing 60 days after the date of this Loan Agreement.

Section 2.04. Interest and other charges on the Loan shall be payable semiannually on 01 June and 01 December in each year.

Section 2.05. The Borrower shall repay the principal amount of the Loan withdrawn from the Loan Account in accordance with the provisions of Schedule 2 to this Loan Agreement.

Section 2.06. (a) The Borrower may at any time request any of the following Conversions of the terms of the Loan in order to facilitate prudent debt management:

- (i) a change of the Loan Currency of all or any portion of the principal amount of the Loan, whether withdrawn and outstanding or unwithdrawn, to an Approved Currency;
- (ii) a change of the interest rate basis applicable to all or any portion of the principal amount of the Loan withdrawn and outstanding from a Floating Rate to a Fixed Rate, or vice versa; and
- (iii) the setting of limits on the Floating Rate applicable to all or any portion of the principal amount of the Loan withdrawn and outstanding by the establishment of an Interest Rate Cap or Interest Rate Collar on said Floating Rate.

(b) Any conversion requested pursuant to paragraph (a) of this Section that is accepted by ADB shall be considered a “Conversion”, as defined in Section 2.01(6) of the Loan Regulations, and shall be effected in accordance with the provisions of Article V of the Loan Regulations and the Conversion Guidelines.

ARTICLE III

Use of Proceeds of the Loan

Section 3.01. (a) The Borrower shall make the proceeds of the Loan available to the Project Executing Agencies under Financing Arrangements upon terms and conditions mutually agreeable to ADB and the Borrower, and shall cause the Project Executing Agencies to apply such proceeds to the financing of expenditures on the Project in accordance with the provisions of this Loan Agreement and the Project Agreements.

(b) The Borrower shall cause the Project Executing Agencies to apply the proceeds of the Loan to the financing of expenditures on the Project in accordance with the provisions of this Loan Agreement and the Project Agreements.

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. 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 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. The Loan Closing Date for the purposes of Section 9.02 of the Loan Regulations shall be 31 March 2020 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) The Borrower shall cause the Project Executing Agencies to 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 Subprojects' facilities, the Borrower shall perform, or cause to be performed, all obligations set forth in Schedule 5 to this Loan Agreement and the Project Agreements.

Section 4.02. The Borrower shall make available to the Project Executing Agencies, promptly as needed, the funds, facilities, services and other resources, as required, in addition to the proceeds of the Loan, for the carrying out of the Project.

Section 4.03. The Borrower and the Project Executing Agencies shall ensure that the activities of their departments and agencies with respect to the carrying out of the Project are conducted and coordinated in accordance with sound administrative policies and procedures.

Section 4.04. The Borrower shall enable ADB's representatives to inspect the Project, the Goods and Works, and any relevant records and documents.

Section 4.05. Insofar as it relates to the Project, the Borrower shall take all actions which shall be necessary on its part to enable the Project Executing Agencies to perform their obligations under the Project Agreements, and shall not take or permit any action which would interfere with the performance of such obligations.

Section 4.06. (a) Insofar as it relates to the Project, the Borrower shall exercise its rights under the Financing Arrangements in such a manner as to protect the interests of the Borrower and ADB and to accomplish the purposes of the Loan.

(b) Insofar as it relates to the Project, no rights or obligations under the Financing Arrangements shall be assigned, amended, abrogated or waived without prior notice to ADB.

ARTICLE V

Effectiveness

Section 5.01. 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 10.04 of the Loan Regulations.

ARTICLE VI

Miscellaneous

Section 6.01. The Secretary, Additional Secretary, Joint Secretary, Director, or Deputy Secretary, in the Department of Economic Affairs of the Ministry of Finance of the Borrower is designated as representative of the Borrower for the purposes of Section 12.02 of the Loan Regulations.

Section 6.02. The following addresses are specified for the purposes of Section 12.01 of the Loan Regulations:

For the Borrower

The Secretary to the Government of India
Department of Economic Affairs
Ministry of Finance
North Block
New Delhi – 110001
India

Facsimile Numbers:
(91-11) 2309- 2477
(91-11) 2309- 2511.

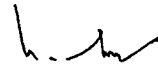
For ADB

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

Facsimile Numbers:
(632) 636-2444
(632) 636-2340.

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.

INDIA



By _____
NILAYA MITASH
Joint Secretary (MI)
Department of Economic Affairs

ASIAN DEVELOPMENT BANK



By _____
M. TERESA KHO
Country Director

SCHEDULE 1**Description of the Project**

1. The objective of the Investment Program and the Project is to improve mobility and accessibility in the Borrower's northeastern region.
2. The Project comprises 5 Subprojects for the reconstruction or upgrading of about 236 kilometers of state road sections: one Subproject each in the States of Assam, Mizoram and Tripura, and two Subprojects in the State of Manipur, all as more fully described in the PFR.
3. The Project includes Consulting Services to assist the Project Executing Agencies with project management and supervision.
4. The Project is expected to be completed by 30 September 2019.

SCHEDULE 2**Amortization Schedule****(North Eastern State Roads Investment Program – Project 2)**

1. The following table sets forth the Principal Payment Dates of the Loan and the percentage of the total principal amount of the Loan payable on each Principal Payment Date (Installment Share). If the proceeds of the Loan shall have been fully withdrawn as of the first Principal Payment Date, the principal amount of the Loan repayable by the Borrower on each Principal Payment Date shall be determined by ADB by multiplying: (a) the total principal amount of the Loan withdrawn and outstanding as of the first Principal Payment Date; by (b) the Installment Share for each Principal Payment Date, such repayment amount to be adjusted, as necessary, to deduct any amounts referred to in paragraph 4 of this Schedule, to which a Currency Conversion applies.

Date Payment Due	Installment Share (Expressed as a %)
1 June 2019	2.500000
1 December 2019	2.500000
1 June 2020	2.500000
1 December 2020	2.500000
1 June 2021	2.500000
1 December 2021	2.500000
1 June 2022	2.500000
1 December 2022	2.500000
1 June 2023	2.500000
1 December 2023	2.500000
1 June 2024	2.500000
1 December 2024	2.500000
1 June 2025	2.500000
1 December 2025	2.500000
1 June 2026	2.500000
1 December 2026	2.500000
1 June 2027	2.500000
1 December 2027	2.500000
1 June 2028	2.500000
1 December 2028	2.500000
1 June 2029	2.500000
1 December 2029	2.500000
1 June 2030	2.500000
1 December 2030	2.500000
1 June 2031	2.500000
1 December 2031	2.500000
1 June 2032	2.500000

Date Payment Due	Installment Share (Expressed as a %)
1 December 2032	2.500000
1 June 2033	2.500000
1 December 2033	2.500000
1 June 2034	2.500000
1 December 2034	2.500000
1 June 2035	2.500000
1 December 2035	2.500000
1 June 2036	2.500000
1 December 2036	2.500000
1 June 2037	2.500000
1 December 2037	2.500000
1 June 2038	2.500000
1 December 2038	2.500000
Total	100.000000

2. If the proceeds of the Loan shall not have been fully withdrawn as of the first Principal Payment Date, the principal amount of the Loan repayable by the Borrower on each Principal Payment Date shall be determined as follows:

(a) To the extent that any proceeds of the Loan shall have been withdrawn as of the first Principal Payment Date, the Borrower shall repay the amount withdrawn and outstanding as of such date in accordance with paragraph 1 of this Schedule.

(b) Any withdrawal made after the first Principal Payment Date shall be repaid on each Principal Payment Date falling after the date of such withdrawal in amounts determined by ADB by multiplying the amount of each such withdrawal by a fraction, the numerator of which shall be the original Installment Share specified in the table in paragraph 1 of this Schedule for said Principal Payment Date (the Original Installment Share) and the denominator of which shall be the sum of all remaining Original Installment Shares for Principal Payment Dates falling on or after such date, such repayment amounts to be adjusted, as necessary, to deduct any amounts referred to in paragraph 4 of this Schedule, to which a Currency Conversion applies.

3. Withdrawals made within two calendar months prior to any Principal Payment Date shall, for the purposes solely of calculating the principal amounts payable on any Principal Payment Date, be treated as withdrawn and outstanding on the second Principal Payment Date following the date of withdrawal and shall be repayable on each Principal Payment Date commencing with the second Principal Payment Date following the date of withdrawal.

4. Notwithstanding the provisions of paragraphs 1 and 2 of this Schedule, upon a Currency Conversion of all or any portion of the withdrawn principal amount of the Loan to an Approved Currency, the amount so converted in said Approved Currency that shall be repayable on any Principal Payment Date occurring during the Conversion Period, shall be determined by ADB by multiplying such amount in its currency of denomination immediately prior to said Conversion by either: (i) the exchange rate that reflects the amounts of principal in said Approved Currency payable by ADB under the Currency Hedge Transaction relating

to said Conversion; or (ii) if ADB so determines in accordance with the Conversion Guidelines, the exchange rate component of the Screen Rate.

5. If the principal amount of the Loan withdrawn and outstanding from time to time shall be denominated in more than one Loan Currency, the provisions of this Schedule shall apply separately to the amount denominated in each Loan Currency, so as to produce a separate amortization schedule for each such amount.

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 a "Category" or "Subcategory" 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.

Reallocation

3. 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, in consultation with and by notice to the Borrower and the relevant Project Executing Agencies, (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, in consultation with and by notice to the Borrower and the relevant Project Executing Agencies, reallocate such excess amount to any other Category.

Disbursement Procedures

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

Retroactive Financing

5. Withdrawals from the Loan Account may be made for reimbursement of eligible expenditures incurred under the Project Works and Consulting Services before the Effective Date, but not earlier than 12 months before the date of this Loan Agreement, subject to a maximum amount equivalent to 20% of the Loan amount.

TABLE

ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (North Eastern State Roads Investment Program – Project 2)				
Number	Item	Total Amount Allocated for ADB Financing (\$)		Basis for Withdrawal from the Loan Account
		Category	Subcategory	
1	Works	96,500,000		
1A	Assam		35,700,000	86.5 % of total expenditure claimed
1B	Manipur		33,600,000	86.5 % of total expenditure claimed
1C	Mizoram		19,700,000	86.5 % of total expenditure claimed
1D	Tripura		7,500,000	86.5 % of total expenditure claimed
2	Equipment	600,000		
2A	Manipur		200,000	100 % of total expenditure claimed*
2B	Mizoram		200,000	100 % of total expenditure claimed*
2C	Tripura		200,000	100 % of total expenditure claimed*
3	Consulting Services	8,300,000		
3A	Assam		2,300,000	100 % of total expenditure claimed*
3B	Manipur		2,700,000	100 % of total expenditure claimed*
3C	Mizoram		2,200,000	100 % of total expenditure claimed*
3D	Tripura		1,100,000	100 % of total expenditure claimed*
4	Unallocated	19,800,000		
	Total	125,200,000		

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

SCHEDULE 4

Procurement of Goods, Works and Consulting Services

General

1. The procurement of Goods, Works 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 and Works

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

Conditions for Award of Contract; Commencement of Works

5. The Borrower shall cause the Project Executing Agencies to ensure that:
 - (a) no Works contract is awarded for a Subproject that involves environmental impacts until the relevant Project Executing Agency has incorporated the relevant provisions from the EMP into the Works contract;
 - (b) no Works contract is awarded for a Subproject that involves involuntary resettlement impacts until the relevant Project Executing Agency has prepared and submitted to ADB the final RP for such Subproject based on the Subproject's detailed design, and obtained ADB's clearance of such RP;
 - (c) no Works contract is awarded for a Subproject that involves impacts on indigenous peoples until the relevant Project Executing Agency has prepared and submitted to ADB the final IPP and obtained ADB's clearance of such IPP; and
 - (d) no commencement of Works is allowed under any Subproject that involves environmental impacts and requires environmental clearances, until the relevant Project Executing Agency has obtained the final approval of (i) the IEE from ADB; and (ii) environmental clearance, including approval of the environmental assessment report, from the State Environmental Impact Assessment Authority.

Consulting Services

6. Except as ADB may otherwise agree, the Project Executing Agencies shall apply quality- and cost-based selection for selecting and engaging Consulting Services.

Industrial or Intellectual Property Rights

7. (a) The Project Executing Agencies shall ensure that all Goods and Works 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 Project Executing Agencies shall ensure that all contracts for the procurement of Goods and Works 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.

8. The Project Executing Agencies 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

9. 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, the Project Executing Agencies and ADB and set forth in the Procurement Plan.

SCHEDULE 5

Execution of Project

Implementation Arrangements

1. The Borrower and the Project Executing Agencies shall ensure that the Project is implemented in accordance with the detailed arrangements set forth in the FFA, the FAM and this Loan Agreement. Any subsequent change to the FFA or FAM shall become effective only after approval of such change by the Borrower, the Project Executing Agencies and ADB, as applicable. In the event of any discrepancy between the FFA or the FAM and this Loan Agreement, the provisions of this Loan Agreement shall prevail.
2. The Borrower and the Project Executing Agencies shall ensure that towards smooth implementation of the Project, grievances if any from stakeholders, relating to any Subproject implementation or use of funds under the Project are addressed effectively and efficiently.

Subproject Approval and Implementation

3. The Project Executing Agencies shall ensure that all Subprojects are selected, processed for approval, and implemented in accordance with the criteria and procedures set out in Schedule 4 to the FFA.

Safeguards

Environment

4. The Borrower shall cause the relevant Project Executing Agency to ensure that the preparation, design, construction, implementation and operation of each Subproject comply with (i) all applicable laws and regulations of the Borrower and the relevant State relating to environment, health, and safety; (ii) the Environmental Safeguards; (iii) the EARF; and (iv) all measures and requirements set forth in the relevant IEE and EMP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

Land Acquisition and Involuntary Resettlement

5. The Borrower shall cause the relevant Project Executing Agency to ensure that all land and all rights-of-way required for a Subproject are made available to the Works contractor in accordance with the schedule agreed under the related Works contract and all land acquisition and resettlement activities are implemented in compliance with (a) all applicable laws and regulations of the Borrower and the relevant State relating to land acquisition and involuntary resettlement; (b) the Involuntary Resettlement Safeguards; (c) the RF; and (d) all measures and requirements set forth in the relevant RP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.
6. Without limiting the application of the Involuntary Resettlement Safeguards, the RF or the RPs, the Borrower shall cause the relevant Project Executing Agency to ensure that no physical or economic displacement takes place in connection with any Subproject until:

(a) compensation and other entitlements have been provided to affected people in accordance with the relevant RP; and

(b) a comprehensive income and livelihood restoration program has been established in accordance with the relevant RP.

Indigenous Peoples

7. In the event of any Subproject involving indigenous peoples, the Borrower shall cause the relevant Project Executing Agency to ensure that the preparation, design, construction, implementation and operation of each Subproject comply with (a) all applicable laws and regulations of the Borrower and the relevant State relating to indigenous peoples; (b) the Indigenous Peoples Safeguards; (c) the IPPF; and (d) all measures and requirements set forth in the relevant IPP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

Human and Financial Resources to Implement Safeguards Requirements

8. (a) The Borrower shall cause the relevant Project Executing Agency to ensure that all necessary budgetary and human resources to fully implement the EMPs, the RPs and the IPPs as required, are made available.

(b) Each Project Executing Agency shall designate at least one expert to supervise implementation of the EMPs and RPs for the Subprojects in its State.

Safeguards – Related Provisions in Bidding Documents and Works Contracts

9. The Borrower shall cause the relevant Project Executing Agency to ensure that all bidding documents and contracts for Works contain provisions that require contractors to:

(a) comply with the measures and requirements relevant to the contractor set forth in the relevant IEE, EMP, RP and IPP (to the extent they concern impacts on affected people during construction), and any corrective or preventative actions set out in a Safeguards Monitoring Report;

(b) make available a budget for all such environmental and social measures;

(c) provide the Project Executing Agency with a written notice of any unanticipated environmental, resettlement or indigenous peoples risks or impacts that arise during construction, implementation or operation of the Project that were not considered in the relevant IEE, EMP, RP or IPP;

(d) adequately record the condition of roads, agricultural land and other infrastructure prior to starting to transport materials and construction; and

(e) fully reinstate pathways, other local infrastructure, and agricultural land to at least their pre-project condition upon the completion of construction.

Safeguards Monitoring and Reporting

10. The Borrower shall cause the Project Executing Agencies to ensure 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 construction, implementation or operation of the Project that were not considered in any IEE, EMP, RP or IPP (as applicable), promptly inform ADB of the occurrence of such risks or impacts, with detailed description of the event and proposed corrective action plan;

(c) no later than three months from the commencement of RP implementation of the first Subproject, engage qualified and experienced external experts or qualified non-governmental organizations under a selection process and terms of reference acceptable to ADB, to verify information produced through the project monitoring process for resettlement, environment and indigenous peoples (if any), and facilitate the carrying out of any verification activities by such external experts; and

(d) report any breach of compliance with the measures and requirements set forth in any EMP, RP or IPP promptly after becoming aware of the breach.

Prohibited List of Investments

11. The Borrower shall cause the Project Executing Agencies to ensure that no proceeds of the Loan are used to finance any activity included in the list of prohibited investment activities provided in Appendix 5 of the Safeguard Policy Statement.

Labor Standards

12. The Borrower shall cause the Project Executing Agencies to ensure that the Works contracts under the Project follow all applicable labor laws of the Borrower and the State and that these further include provisions to the effect that contractors; (i) carry out HIV/AIDS awareness programs for labor and disseminate information at worksites on risks of sexually transmitted diseases and HIV/AIDS as part of health and safety measures for those employed during construction; and (ii) follow and implement all statutory provisions on labor (including not employing or using children as labor, equal pay for equal work), health, safety, welfare, sanitation, and working conditions. Such contracts shall also include clauses for termination in case of any breach of the stated provisions by the contractors.

Communications and Participation

13. The Borrower and the States, through the SEAs, shall ensure that the Project is undertaken in conformity with the communication strategy as agreed between ADB, the Borrower, the States and the Project Executing Agencies, and referred in the FAM.

Governance and Anticorruption

14. The Borrower, the States and the Project Executing Agencies shall comply with ADB's Anticorruption Policy (1988, as amended to date) and shall allow and assist ADB's representatives to carry out random spot checks on the work in progress and utilization of funds for the Project.

15. The Borrower, the States and the Project Executing Agencies shall ensure that the anticorruption provisions acceptable to ADB, the Borrower, the States and the Project Executing Agencies are included in all bidding documents and contracts financed by ADB in connection with the Project, including provisions specifying the right of ADB to review and examine the records and accounts of the States and the Project Executing Agencies and all contractors, suppliers, consultants, and other service providers as they relate to the Project.

Gender and Development

16. Each Project Executing Agency shall encourage civil works contractors (i) to engage women workers as wage-labor depending on their skills; (ii) to the extent possible assign to women the bio-engineering works for road rehabilitation and maintenance; and (iii) ensure equal wages for equal work between men and women.

Counterpart Support

17. The Borrower and each State shall provide, as necessary, respective counterpart staff, land facilities, and counterpart funding for the Project and Subprojects in accordance with the financing plan, cost of making land available for the Subprojects and assistance, and implementation and monitoring of EMPs, RPs and IPPs (including unforeseen expenses beyond the estimates), utility relocation, road maintenance, and general Project management expenses in a timely manner through approved annual budget allocations.

Road Maintenance Funding

18. Each State shall ensure that adequate and timely funding is provided for maintenance of Investment Subproject roads for at least 5 years after construction completion.

19. The Borrower and each State shall ensure that funding options for State road maintenance expenditures in the States are reviewed prior to 22 October 2014, and a decision on the funding mechanism is made by each State prior to 22 October 2015.

Road Safety

20. The Borrower and each State shall ensure that a road safety program with coordinated engineering, enforcement and education components to be developed under the Institutional Development and Capacity Building (IDCB) Technical Assistance is initiated by 30 December 2014.

Institutional Development and Capacity Building

21. Each State shall implement measures included in the institutional development and capacity building action plans (attached as Table 2 to Schedule 1 to the FFA) for the respective States in a timely manner.