
LOAN NUMBER IND-3200

LOAN AGREEMENT
(Ordinary Operations)

(Assam Power Sector Enhancement Investment Program – Project 4)

between

INDIA

and

ASIAN DEVELOPMENT BANK

DATED 20 FEBRUARY 2015

IND 41614

LOAN AGREEMENT (Ordinary Operations)

LOAN AGREEMENT dated 20 February 2015 between INDIA acting by its President (“Borrower”) and ASIAN DEVELOPMENT BANK (“ADB”).

WHEREAS

(A) by a framework financing agreement dated 15 September 2009 between the Borrower and ADB, ADB has agreed to provide a multitranche financing facility (hereinafter referred to as the Facility) to the Borrower for purposes of financing projects under the Assam Power Sector Enhancement Investment Program (“Investment Program”);

(B) by a periodic financing request (“PFR”) dated 25 September 2014 submitted by the Borrower, 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 State of Assam (“State”) and the Assam Power Distribution Company Limited (“APDCL”), and for this purpose the Borrower will make available to the State and through the State to APDCL, the proceeds of the Loan provided for herein upon terms and conditions mutually satisfactory 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 Agreement of even date herewith between ADB on the one part, and the State, and APDCL, on the other part;

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) "APDCL" means the Assam Power Distribution Company Limited, or any successor thereto acceptable to ADB;

(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 described in paragraph 4 of Schedule 1 to this Loan Agreement;

(d) "EA" or "Project Executing Agency" for the purposes of, and within the meaning of, the Loan Regulations means the State and APDCL or any successors thereto acceptable to ADB, that are responsible for carrying out the Project, either jointly or individually as the context may require;

(e) "Environmental Assessment and Review Framework" or "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 Agency and cleared by ADB, and incorporated by reference in the FFA;

(f) "Environmental Management Plan" or "EMP" means each environmental management plan for a Subproject, including any update thereto, incorporated in an IEE;

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

(h) “FFA” means the framework financing agreement dated 15 September 2009 between ADB and the Borrower with respect to the Facility;

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

(j) “Financing Arrangements” means the arrangements between the Borrower and the State as per current policy of the Borrower, and acceptable to ADB;

(k) “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;

(l) “Initial Environmental Examination” or “IEE” means each initial environmental examination for a Subproject, including any update thereto, prepared and submitted by the Borrower through the Project Executing Agency pursuant to the requirements set forth in the EARF and cleared by ADB;

(m) “Investment Program” means the Assam Power Sector Enhancement 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) “kV” means kilo-volt;

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

(q) “PAM” means the project administration manual for the Project dated October 2014 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;

(r) “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 25 September 2014;

(s) “PMU” means the Project management unit set up in APDCL;

(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 28 October 2014 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;

(v) “Project facilities” means the facilities to be constructed and the Goods to be provided under the Project;

(w) “Resettlement Framework” or “RF” means the resettlement framework for the Investment Program, including any update thereto, prepared and submitted by the Borrower through the Project Executing Agency and cleared by ADB, and incorporated by reference in the FFA;

(x) “Resettlement Plan” or “RP” means each resettlement plan for a Subproject, including any update thereto, prepared and submitted by the Borrower through the Project Executing Agency pursuant to the requirements set forth in the RF and cleared by ADB;

(y) “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, and the RP, including any corrective and preventative actions;

(z) “Safeguard Policy Statement” or “SPS” means ADB's Safeguard Policy Statement (2009);

(aa) “Subproject” means a subproject under the Project that meets the subproject eligibility criteria set out in paragraph 17 of Schedule 5 to this Loan Agreement; and

(bb) “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 fifty million two hundred thousand Dollars (\$50,200,000), 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 subsection (c) hereinafter.

(c) The term “grace period” as used in subsection (b) 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 2.02. 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 0.10% 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 May and 01 November 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 subsection (a) hereinabove 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 State and through the State to APDCL upon terms and conditions mutually agreeable to ADB and the Borrower.

(b) The Borrower shall cause the State and APDCL 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 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. 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 30 June 2019 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 to be carried out by the Project Executing Agency 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 Borrower shall perform, or cause to be performed by the Project Executing Agency, all obligations set forth in Schedule 5 to this Loan Agreement, and the Project Agreement.

Section 4.02. The Borrower shall make available, or cause to be made available by the Project Executing Agency, promptly as needed, 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 4.03. The Borrower shall ensure or cause the State (including APDCL) to ensure that the activities of its departments and agencies with respect to the carrying out of the Project and operation of the Project facilities 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. 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.

Section 4.06. In so far as it relates to the Project, the Borrower shall take all actions which shall be necessary on its part to enable the Project Executing Agency to perform its obligations under the Project Agreement, and shall not take or permit any action which would interfere with the performance of such obligations.

Section 4.07. (a) In so far 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) In so far 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 Number:

(91-11) 2309-2511.

For ADB

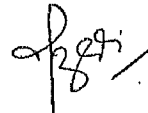
Asian Development Bank
6 ADB Avenue
Mandaluyong City
1550 Metro Manila
Philippines

Facsimile Numbers:

(63-2) 636-2444
(63-2) 636-2338.

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 

TARUN BAJAJ
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 Facility under the Investment Program is to address directly the sector issues based on the achievement of the Assam Power Sector Development Program with further strengthening of the transmission and distribution system and enhancement of institutional capacity.
2. The objective of the Project is increased operational efficiency and expanded distribution network capacity of APDCL.
3. The Project shall comprise the following:
Output 1: Enhanced capacity of distribution system including:
 - (a) augmentation of 9 transformers with capacity addition of 22 MVA;
 - (b) construction of 20 new 33/11 kV substations with total capacity of 200 MVA;
 - (c) construction of 730 km of 11 kV lines and 477 km of 33 kV lines (378.32 km for connecting new substations and 98.8 km for system strengthening); and
 - (d) construction of 13 new 33 kV and 11 kV railway and river crossings; 15 new 33 kV terminal bays and 31 km of 11 kV aerial bunch conductors.Output 2: Improved technology of operations and maintenance including:
 - (a) introduction of quick response operations and maintenance system by procuring 39 units of well-equipped maintenance and testing equipment mounted vehicles as well as the 2 new mobile emergency restoration units, and;
 - (b) installation of 8500 units of information technology (IT) modules for high tension (HT) consumers.
4. Consulting Services will be provided to support the above stated activities.
5. The Project is expected to be completed by 31 December 2018.

SCHEDULE 2**Amortization Schedule****(Assam Power Sector Enhancement Investment Program- Project 4)**

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.

<u>Payment Due</u>	<u>Installment Share</u> (Expressed as a %)
1 May 2020	2.500000
1 November 2020	2.500000
1 May 2021	2.500000
1 November 2021	2.500000
1 May 2022	2.500000
1 November 2022	2.500000
1 May 2023	2.500000
1 November 2023	2.500000
1 May 2024	2.500000
1 November 2024	2.500000
1 May 2025	2.500000
1 November 2025	2.500000
1 May 2026	2.500000
1 November 2026	2.500000
1 May 2027	2.500000
1 November 2027	2.500000
1 May 2028	2.500000
1 November 2028	2.500000
1 May 2029	2.500000
1 November 2029	2.500000
1 May 2030	2.500000
1 November 2030	2.500000
1 May 2031	2.500000
1 November 2031	2.500000
1 May 2032	2.500000
1 November 2032	2.500000
1 May 2033	2.500000
1 November 2033	2.500000

<u>Payment Due</u>	<u>Installment Share</u> (Expressed as a %)
1 May 2034	2.500000
1 November 2034	2.500000
1 May 2035	2.500000
1 November 2035	2.500000
1 May 2036	2.500000
1 November 2036	2.500000
1 May 2037	2.500000
1 November 2037	2.500000
1 May 2038	2.500000
1 November 2038	2.500000
1 May 2039	2.500000
1 November 2039	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 "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.

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, (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, 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, and detailed arrangements agreed upon between ADB and the Borrower.

Retroactive Financing

5. Withdrawals from the Loan Account may be made for reimbursement of eligible expenditures incurred under the Project before the Effective Date, but not earlier than 12 months before the date of this Loan Agreement in connection with items to be retroactively financed, subject to a maximum amount equivalent to 20% of the Loan amount.

TABLE

ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (Assam Power Sector Enhancement Investment Program- Project 4)			
Number	Item	Total Amount Allocated for ADB Financing (\$) Category	Basis for Withdrawal from the Loan Account
1	Equipment	45,590,000	100% of total expenditure claimed*
2	Consulting Services	900,000	100% of total expenditure claimed*
3	Unallocated	3,710,000	
	Total	50,200,000	

*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 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 EA 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.

Conditions for Award of Contract

6. The Borrower shall ensure or cause EA to ensure that no Works contract is awarded for a Subproject which involves environmental impacts until the EA has incorporated the relevant provisions from the EMP into the Works contract.
7. The Borrower shall ensure or cause the EA to ensure that no Works contract is awarded for a Subproject which involves involuntary resettlement impacts until EA 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.
8. The Borrower shall ensure or cause the EA to ensure that no commencement of Works is allowed under any Works contract under any Subproject which involves environmental impacts and requires environmental clearances, until EA has obtained the final approval of (a) the IEE from ADB, and (b) environmental clearance including approval of the environmental assessment report, from the State Environmental Impact Assessment Authority.

Consulting Services

9. Except as ADB may otherwise agree, the EA shall apply quality- and cost-based selection for selecting and engaging Consulting Services for project implementation, in accordance with, among other things, the procedures set forth in the Procurement Plan.

Industrial or Intellectual Property Rights

10. (a) The EA 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 EA 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.

11. The EA 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

12. 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, EA and ADB and set forth in the Procurement Plan.

SCHEDULE 5

Execution of Project; Financial Matters

Implementation Arrangements

1. The Borrower and the EA 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, the State, APDCL, and ADB. In the event of any discrepancy between the PAM and this Loan Agreement, the provisions of this Loan Agreement shall prevail.

2. (a) The EA shall ensure that towards smooth implementation of the Project, grievances if any from stakeholders, relating to any Subproject implementation or use of funds are addressed effectively and efficiently.

(b) The Borrower shall ensure that the EA complies with all the requirements and obligations on its part as included in this Loan Agreement and the Project Agreement to meet the objectives of the Project in a timely and efficient manner.

Institutional matters

3. The EA shall ensure that information pertinent to the Project is made available to the public and relevant stakeholders.

4. The EA shall ensure that the Project is implemented in accordance with the governance measures referred under the section on Corporate Governance Measures in the FFA.

Counterpart Funds

5. The State shall make available to APDCL:

(a) sufficient counterpart funds from its budget for each fiscal year, in a timely manner, for the efficient implementation of the Project; and

(b) adequate funds towards operations and maintenance of Project facilities, through budgetary allocations or other means, to be provided to the EA, during and after Subprojects' completion.

Financial Covenant

6. The State shall cause APDCL to ensure that its average accounts receivables do not exceed 120 days, as of March 31 annually.

SafeguardsLand Acquisition and Involuntary Resettlement

7. The Borrower shall ensure or cause the EA to ensure that all land and all rights-of-way required for the Project, and all Project/Subproject facilities 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 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 respective RP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

8. Without limiting the application of the Involuntary Resettlement Safeguards, the RF or the RP, the Borrower shall ensure or cause EA 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 RP; and
- (b) a comprehensive income and livelihood restoration program has been established in accordance with the RP.

Environment

9. The Borrower shall ensure or cause EA to ensure that the preparation, design, construction, implementation, operation and decommissioning of the Project, and all Subprojects' facilities comply with (a) all applicable laws and regulations of the Borrower and the State relating to environment, health, and safety; (b) the Environmental Safeguards; (c) the EARF; and (d) all measures and requirements set forth in the respective IEE and EMP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

Indigenous Peoples

10. The Borrower shall ensure or cause EA to ensure that the Project does not involve any indigenous peoples risks or impacts within the meaning of the SPS. If due to unforeseen circumstances, the Project involves any such impacts, the Borrower shall take all steps necessary or desirable to ensure that the Project complies with all applicable laws and regulations of the Borrower and State and with the SPS.

Human and Financial Resources to Implement Safeguards Requirements

11. The Borrower shall ensure or cause EA to ensure that all necessary budgetary and human resources to fully implement the EMP, the RP and the IPP as required, are made available.

Safeguards – Related Provisions in Bidding Documents and Works Contracts

12. The Borrower shall ensure or cause EA 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 IEE, the EMP, and the RP (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 Borrower 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 IEE, the EMP, or the RP;
- (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

13. The Borrower shall ensure or cause EA to ensure 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 construction, implementation or operation of the Project that were not considered in the IEE, the EMP, or the RP, 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 or the RP promptly after becoming aware of the breach.

Prohibited List of Investments

14. The Borrower shall ensure or cause EA to ensure that no proceeds of the Loan under the Project are used to finance any activity included in the list of prohibited investment activities provided in Appendix 5 of the SPS.

Labor Standards

15. The Borrower and EA shall ensure that 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; (a) 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 (b) 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.

Subprojects Selection and Implementation

16. The EA shall ensure that all Subprojects are evaluated, selected and prepared in accordance with the Selection Criteria and Approval Process included as Schedule 4 to the FFA and implemented in accordance with the procedures set out therein.

Procurement

17. The Borrower and the EA shall ensure that the anticorruption provisions acceptable to ADB, the Borrower, and the EA 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 EA and all contractors, suppliers, consultants, and other service providers as they relate to the Project and Subprojects. The Borrower and the EA 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.

18. The Borrower and the EA shall announce the Project and business opportunities associated with the Project on its website. The website shall disclose the following information in relation to goods and services procured for the Project and Subprojects: (a) the list of participating bidders; (b) the name of the winning bidder; (c) the amount of the contracts awarded; and (d) the goods and services procured. In accordance with the Procurement Guidelines, the published information for International Competitive Bidding contracts shall also include the bid prices as read out at bid opening, the reasons for rejection of unsuccessful bidders, and the duration of the awarded contract.

Communications and Participation

19. The EA shall ensure that the Project is undertaken in conformity with the communication strategy as agreed between ADB, the Borrower, and the EA and referred in the PAM.

Governance and Anticorruption

20. The Borrower and the EA shall comply with ADB's Anticorruption Policy (1998, as amended to date) and (a) shall ensure that the anticorruption provisions acceptable to ADB, the Borrower and the EA 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 EA and all contractors, suppliers, consultants, and other service providers as they relate to the Subprojects and the Project, and as included in the PAM; (b) 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; (c) 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 (d) cooperate with any such investigation and extend all necessary assistance for satisfactory completion of such investigation, and as included in the PAM.

Performance Monitoring; Progress Reports; Review

21. Without limiting the generality of Section 2.08 of the Project Agreement, the progress report submitted by the EA under the said Section shall also include project expenditures for the year to date and total expenditure to date. The EA shall undertake periodic project performance review under each loan under the Facility, as also for the Facility to evaluate the scope, implementation arrangements, progress and achievements of objectives of the Project and the overall Facility. Performance shall be evaluated based on indicators and targets stipulated in the Design and Monitoring Framework for the Facility included as Appendix to the PFR.

22. Without limiting the generality of Section 2.09 of the Project Agreement, the EA shall coordinate with the PMU in order to support the EA to furnish to ADB, a Facility completion report within 6 months of physical completion of the Facility. These reports shall cover a detailed evaluation of projects and the Facility respectively, covering the design, costs, contractors' and consultants' performance, social, environmental and economic impact, economic rate of return, and other details for each project and the Facility as may be requested by ADB.

Amendment to Loan Agreements under ADB Loans Nos. 2592, 2677, and 2800 under the Facility

23. Consistent with paragraph 6 of this Schedule, paragraph 11 (under Loan Agreement for Loan No. 2592); paragraph 8 (under Loan Agreement for Loan No. 2677); and paragraph 7 (under Loan Agreement for Loan No.2800) of Schedule 5 in each case, will stand amended and replaced with paragraph 6 of this Schedule.