

---

GRANT NUMBER 0141-BHU(ACEF)

GRANT AGREEMENT  
(Asian Clean Energy Fund)  
(Green Power Development Project)

between

KINGDOM OF BHUTAN

and

ASIAN DEVELOPMENT BANK

DATED 13 FEBRUARY 2009

---

GAS:BHU 37399

## **ASIAN CLEAN ENERGY FUND GRANT AGREEMENT**

GRANT AGREEMENT dated 13 February 2009 between KINGDOM OF BHUTAN (hereinafter called the Recipient) and ASIAN DEVELOPMENT BANK (hereinafter called ADB).

### WHEREAS

(A) the Recipient has applied to ADB for (a) a grant (the “**ADF Grant**”) from ADB’s Special Funds resources for the purposes of financing Component A of the Rural Electrification Project (the “**Project**”) described in Schedule 1 hereto under the Green Power Development Project; and (b) a grant (the “**ACEF Grant**”) from the Asian Clean Energy Fund under the Clean Energy Financing Partnership Facility administered by ADB for the purposes of financing Component B of the Project;

(B) ADB has also agreed to provide the ADF Grant to the Recipient upon the terms and conditions set forth in the ADF Grant Agreement (“**ADF Grant Agreement**”) and in the Project Agreement of even date herewith between ADB and the Recipient;

(C) the Project will be executed by the Department of Energy (hereinafter called “**DOE**”), and Component A will be implemented by the Bhutan Power Corporation, Limited (“**BPC**”); and for this purpose the Recipient will make the proceeds of the ADF Grant provided for herein available to BPC through a Subsidiary Financing Agreement (the “**BPC Subsidiary Financing Agreement**”) upon terms and conditions satisfactory to ADB; and

(D) ADB has agreed to provide the ACEF Grant to the Recipient upon the terms and conditions set forth in this Grant Agreement, including that Component B of the Project will be implemented by DOE and for this purpose the Recipient will make available to DOE the proceeds of the ACEF Grant provided for herein upon terms and conditions herein;

NOW THEREFORE the parties agree as follows:

### **ARTICLE I**

#### **Definitions**

Section 1.01. Whenever used in this ACEF Grant Agreement, in each case unless the context otherwise requires, the several terms defined in this ACEF Grant Agreement have the respective meanings therein set forth, and the following additional terms have the following meanings:

(a) “ACEF Grant” has the meaning given in Recital A to this ACEF Grant Agreement;

(b) "ACEF Grant Account" means the account opened or to be opened by ADB on its books in the name of the Recipient into which the amount of the ACEF Grant has been or will be credited;

(c) "ACEF Grant Agreement" means this Grant Agreement;

(d) "ACEF Grant Closing Date" means the date specified in Section 3.05 of this Grant Agreement, after which ADB may terminate the right of the Recipient to make any withdrawals from the Grant Account, or such other date as any be agreed between ADB and the Recipient for such purpose;

(e) "ADF Grant" has the meaning given in Recital A to this ACEF Grant Agreement;

(f) "ADF Grant Agreement" has the meaning given in Recital B to this ACEF Grant Agreement;

(g) "BPC" has the meaning given in Recital C to this ACEF Grant Agreement;

(h) "Consulting Guidelines" means ADB's Guidelines on the Use of Consultants by Asian Development Bank and Its Borrowers dated February 2007, as amended from time to time;

(i) "DOE" means the Department of Energy as described in Recital C, and any successor entity thereto;

(j) "Dollars" or the sign "\$" each means the lawful currency of the United States of America;

(k) "Effective Date" means the date on which this Grant Agreement shall have come into force and effect pursuant to Section 6.03 of this Grant Agreement;

(l) "Goods" means equipment and materials to be financed out of the proceeds of the Grant; and including related services such as transportation, insurance, installation, commissioning, training, and initial maintenance, but excluding consulting services;

(m) "Procurement Guidelines" means ADB's Procurement Guidelines dated February 2007, as amended from time to time;

(n) "Procurement Plan" means the procurement plan for the Project dated 17 September 2008 and agreed between the Recipient and ADB, as updated from time to time in accordance with Procurement Guidelines, Consulting Guidelines, and other arrangements agreed with ADB;

(o) "Project" means the rural electrification project referred to in Recital A of this ACEF Grant Agreement as such description may be amended from time to time by agreement between ADB and the Recipient;

(p) "Project Executing Agency" means DOE or any legal successor thereto acceptable to ADB, which is responsible for the carrying out of the Project;

(q) "Taxes" includes imposts, levies, fees and duties of any nature, whether in effect at the date of the ACEF Grant Agreement or thereafter imposed; and

(r) "Works" means construction or civil works to be financed out of the proceeds of the Grant, 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 ACEF Grant

Section 2.01. ADB agrees to make available to the Recipient a grant in an amount of one million Dollars (\$1,000,000). The ACEF Grant shall be denominated in Dollars.

Section 2.02. (a) DOE shall furnish to ADB all such reports and information as ADB shall reasonably request concerning (i) the ACEF Grant and the expenditure of the proceeds thereof; (ii) the Goods, Works, and services and other items of expenditure financed out of such proceeds; (iii) the Project; and (iv) any other matters relating to the purposes of the ACEF Grant.

(b) Without limiting the generality of the foregoing, DOE shall furnish to ADB quarterly reports on the execution of the Project and on the operation and management of the Project facilities. Such reports shall be submitted in such form and in such detail and within such a period as ADB shall reasonably request, and shall indicate, among other things, progress made and problems encountered during the quarter under review, steps taken or proposed to be taken to remedy these problems, and proposed program of activities and expected progress during the following quarter.

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

Section 2.03. (a) DOE shall (i) maintain separate annual accounts for the Project and for its overall operations, with detailed descriptions of the sources of receipts and expenditures, by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB; and (ii) furnish to ADB, promptly after their preparation but in any event not later than 6 months after the close of the fiscal year to which they relate, certified copies of such audited accounts and the report of the auditors relating thereto (including the auditors' opinion on the use of the ACEF Grant proceeds, all in the English language. DOE shall furnish to ADB such further information concerning such accounts and the audit thereof as ADB shall from time to time reasonably request.

### **ARTICLE III**

#### **Use of Proceeds of the ACEF Grant**

Section 3.01. The Recipient shall make the proceeds of the ACEF Grant available to DOE and shall cause DOE to apply the proceeds of the ACEF Grant to the financing of expenditures on the Project in accordance with the provisions of this ACEF Grant Agreement.

Section 3.02. The Goods, Works, and consulting services to be financed out of the proceeds of the ACEF Grant and the allocation of amounts of the ACEF Grant for such consulting services shall be in accordance with the provisions of Schedule 2 to this Grant Agreement, as such Schedule may be amended from time to time by agreement between the Recipient and ADB.

Section 3.03. Except as ADB may otherwise agree, all Goods, Works, and consulting services to be financed out of the proceeds of the ACEF Grant shall be procured in accordance with the provisions of Schedule 3 to this ACEF Grant Agreement.

Section 3.04. Withdrawals from the ACEF Grant Account in respect of Goods, Works and consulting services shall be made only on account of expenditures relating to:

(a) Goods that are produced in and supplied from and Works and consulting services that are supplied from such member countries of ADB as shall have been specified by ADB from time to time as eligible sources for procurement; and

(b) Goods, Works, and consulting services that meet such other eligibility requirements as shall have been specified by ADB from time to time.

Section 3.05. The ACEF Grant Closing Date for the withdrawal of the proceeds of the ACEF Grant shall be 31 December 2013 or such other date as may from time to time be agreed between the Recipient and ADB.

### **ARTICLE IV**

#### **Particular Covenants**

Section 4.01. (a) The Recipient shall cause the Project to be carried out with due diligence and efficiency and in conformity with sound applicable financial, business, power, rural electrification, and development practices.

(b) In the carrying out of the Project, the Recipient shall perform, or cause to be performed, all obligations set forth in Schedule 4 to this ACEF Grant Agreement.

Section 4.02. The Recipient shall make available to DOE, as needed, the funds, facilities, services and other resources that are required, in addition to the proceeds of the ACEF Grant, for the carrying out of the Project.

Section 4.03. The Recipient shall enable ADB's representatives to inspect the Project, the Goods, Works, and consulting services financed out of the proceeds of the ACEF Grant, and any relevant records and documents.

Section 4.04. The Recipient shall ensure that the activities of its 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 4.05. The Recipient shall take all action that shall be necessary on its part to enable DOE to perform its obligations under the Project Agreement, and shall not take or permit any action that would interfere with the performance of such obligations.

Section 4.06. (a) The Recipient shall exercise its rights under this Grant Agreement in such a manner as to protect the interests of the Recipient and ADB and to accomplish the purposes of the ACEF Grant.

(b) No rights or obligations under the financing arrangements shall be assigned, amended, abrogated or waived without the prior concurrence of ADB.

## **ARTICLE V**

### **Suspension and Cancellation**

Section 5.01. (a) The following are specified as events for suspension of the right of the Recipient to make withdrawals from the ACEF Grant Account:

- (i) the Recipient shall have failed to perform any of its obligations under this ACEF Grant Agreement or the ADF Grant Agreement;
- (ii) ADB shall have determined, with respect to any contract to be financed in full or in part out of the proceeds of the ACEF Grant, that corrupt or fraudulent practices, as determined by ADB, were engaged in by representatives of the Recipient or any beneficiary of the ACEF Grant during the procurement of services, consultants' selection or the execution of a contract, without the Recipient having taken timely and appropriate action satisfactory to ADB to remedy the situation; or ADB shall have determined that the procurement of any Goods, Works, or services to be financed out of the proceeds of the ACEF Grant is inconsistent with the relevant procedure set out in this ACEF Grant Agreement; or

(b) The right of the Recipient to make withdrawals from the ACEF Grant Account shall continue to be suspended in whole or in part, as the case may be, until the event that gave rise to such suspension shall have, in the reasonable opinion of ADB, ceased to exist

or until ADB shall have notified the Recipient that the right to make withdrawals has been restored in whole or in part, whichever is the earlier.

Section 5.02. (a) If (i) the right of the Recipient to make withdrawals from the ACEF Grant Account shall have been suspended with respect to any amount of the ACEF Grant for a continuous period of 30 days; or (ii) at any time ADB determines, after consultation with the Recipient, that any amount of the ACEF Grant will not be required for the purposes of the Project; (iii) by the date specified in the ACEF Grant Agreement as the ACEF Grant Closing Date, an amount of the ACEF Grant shall have not been withdrawn from the ACEF Grant Account; or (iv) at any time ADB determines, with respect to any contract to be financed in full or in part out of the proceeds of the ACEF Grant, that corrupt or fraudulent practices, as determined by ADB, were engaged in by representatives of the Recipient or any beneficiary of the ACEF Grant during the procurement of Goods Works, and services, consultants' selection or the execution of a contract, without the Recipient having taken timely and appropriate action satisfactory to ADB to remedy the situation; or (v) at any time, ADB determines that the procurement of any Goods, Works, or services to be financed out of the proceeds of the Grant is inconsistent with the procedure set out in this ACEF Grant Agreement, ADB may by notice to the Recipient terminate the right of the Recipient to make withdrawals with respect to such amount. Upon the giving of such notice, such amount of the ACEF Grant shall be cancelled.

(b) After consultation with ADB and with the concurrence of the Recipient may by notice to ADB cancel any amount of the ACEF Grant which the Recipient shall not have withdrawn prior to the giving of such notice.

Section 5.03. Notwithstanding any cancellation or suspension, all the provisions of this ACEF Grant Agreement shall continue in full force and effect except as in this Article specifically provided.

## **ARTICLE VI**

### **Effectiveness**

Section 6.01. The following are specified as conditions to the effectiveness of this ACEF Grant Agreement:

(a) this ACEF Grant Agreement has been authorized or ratified by all necessary government action, and has been executed and delivered by, the Recipient and is legally valid and binding in accordance with its terms; and

(b) approval of the ACEF Grant has been given by the Government of Japan.

Section 6.02. The Recipient shall furnish, or cause to be furnished, to the ADB an opinion or opinions satisfactory to ADB of counsel acceptable to ADB showing on behalf of the Recipient that: this ACEF Grant Agreement has been duly authorized or ratified by, and executed and delivered on behalf of, the Recipient and is legally valid and binding upon the Recipient in accordance with its terms.

Section 6.03. (a) Except as ADB and the Recipient shall otherwise agree, this ACEF Grant Agreement shall come into force and effect on the date upon which ADB dispatches to the Recipient notice of its acceptance of the evidence required to declare the ACEF Grant Agreement effective.

(b) If, before the Effective Date, any event shall have occurred which would have entitled ADB to suspend the right of the Recipient to make withdrawals of the proceeds under the ACEF Grant Agreement if the ACEF Grant Agreement had been effective, ADB may postpone the dispatch of the notice referred to in paragraph (a) of this Section until such event shall have ceased to exist.

Section 6.04. If this ACEF Grant Agreement shall not have come into force and effect by a date ninety (90) days after the date of this ACEF Grant Agreement, this ACEF Grant Agreement, and all obligations of the parties thereunder shall terminate, unless ADB, after consideration of the reasons for the delay, shall establish a later date for the purposes of this Section. ADB shall promptly notify the Recipient of such later date.

## **ARTICLE VII**

### **Withdrawal of Grant Proceeds**

Section 7.01. Withdrawal from the ACEF Grant Account shall be made in the currency in which the ACEF Grant is denominated. The Recipient shall furnish to ADB sufficient evidence of the authority of the person authorized to sign applications for withdrawal and the authenticated specimen signature of each person.

Section 7.02. The Recipient shall furnish to ADB such documents and other evidence in support of the application for withdrawal as ADB shall reasonably request, whether before or after ADB shall have permitted any withdrawal requested in the application.

Section 7.03. Each application for withdrawal and the accompanying documents and all other evidence must be sufficient in form and substance to satisfy ADB that the Recipient is entitled to withdraw from the ACEF Grant Account the amount applied for and that the amount to be withdrawn from the ACEF Grant Account is to be used only for the purposes specified in the ACEF Grant Agreement.

Section 7.04. Payment by ADB of amounts which the Recipient is entitled to withdraw from the ACEF Grant Account shall be made to or on the order of the Recipient.

## **ARTICLE VIII**

### **Delegation of Authority**

Section 8.01. The Recipient hereby designates DOE its agent for the purposes of taking any action or entering into any agreement required or permitted under Sections 3.02, 3.05, 7.01, 7.02, and 7.03 of this ACEF Grant Agreement.

Section 8.02. Any action taken or any agreement entered into by DOE pursuant to the authority conferred under Section 8.01 of this ACEF Grant Agreement shall be fully binding on the Recipient and shall have the same force and effect as if taken by the Recipient.

Section 8.03. The authority conferred on DOE under Section 8.01 of this ACEF Grant Agreement may be revoked or modified by agreement between the Recipient and ADB.

## **ARTICLE IX**

### **Enforceability; Failure to Exercise Rights; Arbitration**

Section 9.01. (a) The rights and obligations of ADB and the Recipient under the Grant Agreement shall be valid and enforceable in accordance with their terms and notwithstanding the law of any state, or political subdivision thereof, to the contrary.

(b) Neither ADB nor the Recipient shall be entitled in any proceeding under this Article to assert any claim that any provision of the ACEF Grant Agreement is invalid or unenforceable because of any provision of the Articles of Agreement Establishing the Asian Development Bank or for any other reason.

Section 9.02. No delay in exercising, or omission to exercise, any right, power or remedy accruing to either party under the ACEF Grant Agreement upon any default shall impair any such right, power or remedy, or be construed to be a waiver thereof or an acquiescence in any 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.

Section 9.03. (a) Any controversy between the parties to the ACEF Grant Agreement and any claim by any such party against any other such party arising under the ACEF Grant Agreement which can not be settled by agreement of the parties shall be submitted to arbitration by an Arbitral Tribunal as hereinafter provided.

(b) The parties to such arbitration shall be ADB on the one side, and the Recipient on the other side.

(c) The Arbitral Tribunal shall consist of three arbitrators appointed as follows: one arbitrator shall be appointed by ADB; a second arbitrator shall be appointed by the

Recipient; and the third arbitrator (hereinafter sometimes called the Umpire) shall be appointed by agreement of the parties or, if they shall not agree, by the President of the International Court of Justice or, failing appointment by him, by the Secretary-General of the United Nations. If either side shall fail to appoint an arbitrator, the Umpire shall appoint such arbitrator. In case any arbitrator appointed in accordance with this Section shall resign, die or become unable to act, a successor arbitrator shall be appointed in the same manner as herein prescribed for the appointment of the original arbitrator and such successor shall have all the powers and duties of such original arbitrator.

(d) An arbitration proceeding may be instituted under this Section upon notice by the party instituting such proceeding to the other party or parties. Such notice shall contain a statement setting forth the nature of the controversy or claim to be submitted to arbitration, the nature of the relief sought and the name of the arbitrator appointed by the party instituting such proceeding. Within 30 days after the giving of such notice, the other party or parties shall notify the party instituting the proceeding of the name of the arbitrator appointed by such other party or parties.

(e) If within 60 days after the giving of the notice instituting the arbitration proceeding the parties shall not have agreed upon an Umpire, any party may request the appointment of an Umpire as provided in paragraph (c) of this Section.

(f) The Arbitral Tribunal shall convene at such time and place as shall be fixed by the Umpire. Thereafter, the Arbitral Tribunal shall determine where and when it shall sit.

(g) The law to be applied by the Arbitral Tribunal shall be public international law, the sources of which shall be taken for these purposes to include:

- (i) any relevant treaty obligations that are binding reciprocally on the parties;
- (ii) the provisions of any international conventions and treaties (whether or not binding directly as such on the parties) generally recognized as having codified or ripened into binding rules of customary law applicable to states and international institutions, as appropriate;
- (iii) other forms of international custom, including the practice of states and international institutions of such generality, consistency and duration as to create legal obligations; and
- (iv) applicable general principles of law.

(h) Subject to the provisions of this Section and except as the parties shall otherwise agree, the Arbitral Tribunal shall decide all questions relating to its competence and shall determine its procedure. All decisions of the Arbitral Tribunal shall be by majority vote.

(i) The Arbitral Tribunal shall afford to all parties a fair hearing and shall render its award in writing. Such award may be rendered by default. An award signed by a majority of the Arbitral Tribunal shall constitute the award of such Tribunal. A signed counterpart of the award shall be transmitted to each party. Any such award rendered in accordance with the provisions of this Section shall be final and binding upon the parties to the ACEF Grant

Agreement. Each party shall abide by and comply with any such award rendered by the Arbitral Tribunal in accordance with the provisions of this Section.

(j) The parties shall fix the amount of the remuneration of the arbitrators and such other persons as shall be required for the conduct of the arbitration proceedings. If the parties shall not agree on such amount before the Arbitral Tribunal shall convene, the Arbitral Tribunal shall fix such amount as shall be reasonable under the circumstances. Each party shall defray its own expenses in the arbitration proceedings. The costs of the Arbitral Tribunal shall be divided between and borne equally by ADB on the one side, and the Recipient on the other side. The Arbitral Tribunal shall determine any question concerning the division of the costs of the Arbitral Tribunal or the procedure for payment of such costs.

(k) The provisions for arbitration set forth in this Section shall be in lieu of any other procedure for the settlement of controversies between the parties to the Grant Agreement, and any claim by either party against the other such party arising thereunder.

(l) If within 30 days after the counterparts of the award have been delivered to the parties the award shall not be complied with, any party may enter judgment upon, or institute a proceeding to enforce, the award in any court of competent jurisdiction against any other party, and may enforce such judgment by execution or may pursue any other appropriate remedy against such other party for the enforcement of the award and the provisions of this Grant Agreement. Notwithstanding the foregoing, this Section shall not authorize any entry of judgment or enforcement of the award against any party that is a member except as such procedure may be available otherwise than by reason of the provisions of this Section.

(m) Service of any notice or process in connection with any proceeding under this Section or (to the extent that such remedy shall be available) in connection with any proceeding to enforce any award rendered pursuant to this Section may be made in the manner provided in Section 10.01. The parties to the ACEF Grant Agreement waive any and all other requirements for the service of any such notice or process.

## **ARTICLE X**

### **Miscellaneous**

Section 10.01. Any notice or request required or permitted to be given or made under this ACEF Grant Agreement shall be in writing. Except as otherwise provided in Section 7.03 such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand or by mail, telegram, facsimile or electronic mail to the party to which it is required or permitted to be given or made at such party's address specified in Section 10.02 or at such other address as such party shall have designated by notice to the party giving such notice or making such request.

Section 10.02. The following addresses are specified for the purposes of notices or requests required or permitted to be given or made under this ACEF Grant Agreement:

For the Recipient

Ministry of Finance  
Thimphu  
Bhutan

Facsimile Numbers:

(975) 2-323154  
(975) 2-334994.

For ADB

Asian Development Bank  
P.O. Box 789  
0980 Manila, Philippines

Facsimile Numbers:

(632) 636-2444  
(632) 636-2338.

Section 10.03. Any action required or permitted to be taken, and any documents required or permitted to be executed, under this ACEF Grant Agreement, on behalf of the Recipient, may be taken or executed by the Secretary of the Ministry of Finance of the Recipient or any person thereunto authorized in writing by him or her. Any modification of the provisions of this ACEF Grant Agreement may be agreed to on behalf of the Recipient, by written instrument executed on behalf of the Recipient by the representative so designated or any person authorized in writing by such representative; provided that, in the opinion of such representative or other person, such modification is reasonable in the circumstances and will not substantially increase the obligations of the Recipient under this ACEF Grant Agreement. ADB may accept the execution by such representative or other person of any such instrument as conclusive evidence that in the opinion of such representative or other person any modification of the provisions of this ACEF Grant Agreement effected by such instrument is reasonable in the circumstances and will not substantially increase the obligations of the Recipient thereunder.

Section 10.04. The Recipient shall furnish to ADB sufficient evidence of the authority of the person or persons who will, on behalf of the Recipient, take any action or execute any documents required or permitted to be taken or executed by the Recipient under this Grant Agreement and the authenticated specimen signature of each such person.

Section 10.05. This ACEF Grant Agreement may be executed in several counterparts, each of which shall be an original.

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

KINGDOM OF BHUTAN

By

  
\_\_\_\_\_  
LYONPO WANGDI NORBU  
Authorized Representative

ASIAN DEVELOPMENT BANK

By

  
\_\_\_\_\_  
KUNIO SENGA  
Director General  
South Asia Department

## SCHEDULE 1

### Description of the Project

1. The expected impact of the Project is to sustain the Recipient's inclusive economic growth by promoting electricity access. The expected outcome of the Project is to improve access to electricity to the rural households and small businesses and will replace polluting kerosene and fuelwood with clean renewable energy.
2. The Project shall include the following components:
  - A. On-Grid Rural Electrification
    3. The Project will provide clean and reliable power to rural households in about seven districts in the central and eastern of Bhutan by expanding the distribution system and assisting electrification to about 8,767 consumers, including households, facilities and industries.
    4. The targeted districts are expected to be Lhuentse, Pemagatshel, Punakha, Samdrup Jongkhar, Sarpang, Trashigang and Wangduephodrang, and part of Dagana and Mongar.
  - B. Off-Grid Rural Electrification
    5. This component will provide about 119 solar photovoltaic (PV) systems to support off-grid rural electrification in isolated areas by targeting schools, health clinics, monasteries, and other community facilities.
    6. The Project will include the provision of consulting services. The Project is expected to be completed by 30 June 2013.

## SCHEDULE 2

### Allocation and Withdrawal of Grant Proceeds

#### General

1. The table attached to this Schedule sets forth the Categories of Goods, Works, consulting services and other items to be financed out of the proceeds of the ACEF Grant and the allocation of amounts of the ACEF Grant to each such Category (hereinafter called the Table). (Reference to "Category" or "Categories" in this Schedule is to a Category or Categories of the Table).

#### Percentages of ADB Financing

2. Except as ADB may otherwise agree, the items of the Categories listed in the Table shall be financed out of the proceeds of the ACEF Grant on the basis of the percentages set forth in the Table.

#### Reallocation

3. Notwithstanding the allocation of ACEF Grant proceeds and the withdrawal percentages set forth in the Table,

(a) if the amount of the ACEF Grant allocated to any Category appears to be insufficient to finance all agreed expenditures in that Category, ADB may, by notice to the (i) reallocate to such Category, to the extent required to meet the estimated shortfall, amounts of the Canadian Grant 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 ACEF Grant then allocated to any Category appears to exceed all agreed expenditures in that Category, ADB may, by notice to the reallocate such excess amount to any other Category.

#### Disbursement Procedures

4. Except as ADB may otherwise agree, the ACEF Grant proceeds for financing Goods, Works and consulting services shall be disbursed in accordance with the Reimbursement Procedures as described in ADB's Loan Disbursement Handbook (2007, as amended from time to time).

**TABLE**

<b>ALLOCATION AND WITHDRAWAL OF GRANT PROCEEDS</b>			
<b>Green Power Development Project</b>			
<b>CATEGORY</b>			<b>ADB FINANCING</b>
<b>Number</b>	<b>Item</b>	<b>Amount Allocated (\$) Category</b>	<b>Percentage and Basis for Withdrawal from the Grant Account</b>
1	Capacitor, Controller & LED Lamps	560,000	100 percent of total cost*
2	PV Module	100,000	100 percent of total cost*
3	Transportation and Installation	50,000	100 percent of total cost*
4	Consulting Services	220,000	100 percent of total cost*#
5	Contingencies	70,000	
	Total	1,000,000	

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

# Monitoring and evaluation costs are built into consulting services.

### SCHEDULE 3

#### Provisions on Procurement and Consulting Services

##### A. General

1. All Goods, Works, and consulting services, to be financed out of the proceeds of the ACEF Grant shall be subject to and governed by the Procurement Guidelines, and the Consulting Guidelines, respectively.
2. All terms used and not otherwise defined in this ACEF Grant Agreement have the meanings provided in the Procurement Guidelines and/or the Consulting Guidelines, as applicable.

##### B. Procurement for 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:

International Competitive Bidding
National Competitive Bidding
Shopping

4. The methods of procurement are subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. The Recipient 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.
5. No procurement under national competitive bidding may be undertaken unless ADB and the Recipient have agreed in writing on any modifications or clarifications to the Recipient's national competitive bidding procedures as may be required to ensure their consistency with the Procurement Guidelines. Such modifications or clarifications agreed between the Recipient and ADB shall be set out in the Procurement Plan. Any subsequent change to the agreed modifications and clarifications shall become effective only after written approval of such change by the Recipient and ADB.

##### C. Selection of Consulting Services

6. The Recipient shall recruit the individual consultants in accordance with procedures acceptable to ADB for recruiting individual consultants.

##### D. Industrial or Intellectual Property Rights

7. (a) The Recipient 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 Recipient 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 Recipient 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.

**E. ADB's Review of Procurement Decisions**

9. All 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 Recipient and ADB and set forth in the Procurement Plan.

## SCHEDULE 4

### Execution of Project and Operation of Project Facilities

#### I. Project Executing Agency and Project Implementing Agency

1. The Recipient shall designate DOE as the Project Executing Agency with overall responsibility for Project coordination and implementation, and liaison with ADB and government agencies concerned. DOE shall be directly responsible for the planning, design, and other activities under the Project. Such activities include:

- (a) the procurement of Goods and Works;
- (b) construction supervision;
- (c) maintenance of separate project accounts;
- (d) monitoring and reporting upon implementation of the Project; and
- (e) the provision of coordination, support, and liaison activities, including with contractors, district offices and relevant government departments especially the Department of Roads.

2. The Recipient, through DOE, shall follow the implementation arrangements set forth in this schedule.

#### II. Counterpart Funding

3. The Recipient and DOE shall ensure that (a) all local and foreign currency counterpart financing necessary for the Project shall be provided in time to enable completion of the Project activities; (b) additional counterpart financing shall be provided if necessary for any shortfall of funds or cost overruns; and (c) counterpart financing for compensation and entitlements under any Resettlement Plan that becomes necessary for the Project are fully provided directly to affected people prior to their displacement from housing and land.

#### III. Governance and Anti-Corruption

4. The Recipient shall comply with, and shall cause DOE to carry out the Project in accordance with, ADB's *Anti-corruption Policy* (1998, as amended to date) and all applicable law. The Recipient acknowledges ADB's right to investigate, directly or through its agents, any alleged corrupt, fraudulent, collusive or coercive practices relating to the Project and shall ensure that DOE cooperate fully with any such investigation and extend all necessary assistance as may be necessary for successful completion of the investigation.

IV. Planning, Monitoring and Review

A. Disbursements and Performance Audits

5. The Recipient shall ensure that DOE reviews invoices from consultants engaged in implementing the Project, and makes payments within 30 days of their receipt or inform the Contractors of any shortfalls in its ability to make payment of the invoices.

6. The Recipient shall allow and facilitate ADB's representatives to conduct spot and random checks on (i) flow of funds and their use for the Project in accordance with the ACEF Grant Agreement, (ii) work-in-progress; and (iii) Project implementation.

B. Project Performance Monitoring and Evaluation System

7. During Project implementation, the Recipient shall cause DOE to develop a Project Performance Monitoring and Evaluation System ("**PPMES**") including baseline performance monitoring, and systematic Project performance monitoring, including benefits monitoring and evaluation acceptable to ADB and the other donors. DOE shall carry out surveys (a) at the start of Project implementation to establish baseline data, (b) at Project mid-term, and (c) at the time of Project completion and not later than six months after Project completion, to evaluate the Project benefits. Data to be compiled and analyzed for the purpose of performance monitoring and evaluation shall be in a format acceptable to ADB. Key indicators shall be proposed by DOE and acceptable to ADB.

C. Annual Budget Plan

8. By 31 December of each year of Project implementation, the Borrower shall cause DOE to provide ADB with an annual budget plan for the following fiscal year.

D. Semiannual Reviews

9. The Recipient and ADB shall carry out semiannual reviews of the Project during Project implementation. The semiannual reviews shall include an examination of budgetary allocations for the Project, operation and maintenance costs, staffing, implementation arrangements and achievements under the Project. The review shall include assessing progress for each Project component, identifying difficulties and constraints, and determining ways to overcome them.

E. Midterm Review

10. The Recipient and ADB shall jointly carry out a midterm review of the Project during the third year of Project implementation or at any other time as may be agreed upon by the Recipient and ADB. The results of the midterm review shall be discussed by the Recipient and ADB and if required, appropriate corrective measures shall be formulated to ensure successful Project implementation and achievement of the Project objectives by the ACEF Grant Closing Date.