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LOAN NUMBER 2464-BHU(SF)

LOAN AGREEMENT  
(Special Operations)  
(Green Power Development Project)

between

KINGDOM OF BHUTAN

and

ASIAN DEVELOPMENT BANK

DATED 13 FEBRUARY 2009

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LAS: BHU 37399

**LOAN AGREEMENT  
(Special Operations)**

LOAN AGREEMENT dated 13 February 2009 between KINGDOM OF BHUTAN (hereinafter called the "**Borrower**") and ASIAN DEVELOPMENT BANK (hereinafter called "**ADB**").

WHEREAS

(A) the Borrower has applied to ADB for (a) a loan from ADB's ordinary capital resources; and (b) a loan from ADB's Special Funds for the purposes of financing the Dagachhu Hydroelectric Power Project described in Schedule 1 to this Loan Agreement, which together with the rural electrification project, constitutes the Green Power Development Project;

(B) ADB has agreed to provide the loan from ADB's ordinary capital resources upon the terms and conditions set forth in the Loan Agreement to be entered into between the Borrower and ADB (the "**OCR Loan Agreement**"), and the Project Agreement, among ADB, DGPC, and DHPC (the "**Project Agreement**") of even date herewith;

(C) the Borrower has also applied to the Oesterreichische Kontrollbank, a specialized institution owned by Austrian commercial banks ("**OeKB**") for a loan in an estimated amount equivalent to fifty-five million four hundred and sixty thousand Dollars (\$55,460,000) (the "**OeKB Loan**"), and the National Pension and Provident Fund ("**NPPF**") for a loan in an amount equivalent to fifteen million Dollars (\$15,000,000), for the purposes of providing cofinance to the Project;

(D) the Borrower has also applied to ADB for technical assistance to promote hydropower development that will contribute to Bhutan's economic growth and enhance region wide efficiency and cross-border cooperation by building capacity for DGPC and Druk Holding and Investments to finance, develop and manage hydropower development, and build the capacity of the Department of Energy ("**DOE**") to implement the hydropower development policy; and for such purposes ADB has agreed to provide a technical assistance grant up to the equivalent of one million four hundred and eighty-eight thousand Dollars (\$1,488,000) (the "**Technical Assistance**"); and

(E) ADB has agreed upon the basis, among other things, of the foregoing, to provide the loan from ADB's Special Funds resources to the Borrower upon the terms and conditions set forth in this Loan Agreement and the Project Agreement among ADB, DGPC, and DHPC;

NOW THEREFORE the parties hereto agree as follows:

## ARTICLE I

### Loan Regulations; Definitions

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

Section 1.02. The definitions set forth in the Loan Regulations are applicable to this Loan Agreement, unless the context requires otherwise. In addition, the following terms have the following meanings:

(a) "CDM" means the Clean Development Mechanism under the Kyoto Protocol to the United Nations Framework Convention on Climate Change;

(b) "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;

(c) "DGPC" means Druk Green Power Corporation Limited., a company incorporated under the Companies Act of the Kingdom of Bhutan (2000), and any successor entity thereto acceptable to ADB;

(d) "DGPC Subsidiary Loan Agreement" means the agreement between the Borrower and DGPC described in Section 3.01 (a) of this Loan Agreement;

(e) "DHPC" means Dagachhu Hydro Power Corporation Limited, a company incorporated under the Companies Act of the Kingdom of Bhutan (2000), and any successor entity thereto acceptable to ADB;

(f) "DHPC Subsidiary Loan Agreement" means the agreement between the Borrower and DHPC, whereby the Borrower has agreed to relend the OCR Loan to DHPC for the purposes of the Project;

(g) "DOE" has the meaning given in Recital D to this Loan Agreement and any successor entity thereto;

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

(i) "EIA" means the environmental impact assessment prepared by the Borrower and approved by the Borrower's environmental agency;

(j) "EMP" means the environmental management plan prepared by the Borrower and included within the project's EIA;

(k) "Goods" means equipment and materials to be financed out of the proceeds of the Loan; and including related services such as transportation, insurance,

installation, commissioning, training, and initial maintenance, but excluding consulting services;

- (l) “Ngultrum” or the sign Nu means the currency of the Borrower;
- (m) “NPPF” has the meaning given in Recital C to this Loan Agreement;
- (n) “NPPF Loan Agreement” means the loan agreement between NPPF and DHPC to provide a loan equivalent to Fifteen Million United States Dollars to DHPC;
- (o) “OCR Loan” has the meaning given in Recital B to this Loan Agreement;
- (p) “OCR Loan Agreement” has the meaning given in Recital B to this Loan Agreement;
- (q) “OeKB” has the meaning given in Recital C to this Loan Agreement;
- (r) “OeKB Loan Agreement” means the loan agreement between OeKB and DHPC to provide a loan to DHPC;
- (s) “PPA” means the power purchase agreement between TPTCL and DHPC, dated 25 June 2008, and including any addendum or amendment thereto acceptable to ADB;
- (t) “PPA Addendum” means an addendum to the PPA making certain clarifications to the PPA in a form and substance satisfactory to ADB;
- (u) “PPMES” has the meaning given in paragraph 30 of Schedule 5 to this Loan Agreement;
- (v) “Procurement Guidelines” means ADB’s Procurement Guidelines dated February 2007, as amended from time to time;
- (w) “Procurement Plan” means the procurement plan for the Project dated 17 September 2008 and agreed between the Borrower and ADB, as updated from time to time in accordance with Procurement Guidelines, Consulting Guidelines, and other arrangements agreed with ADB;
- (x) “Project Agreement” means the Project Agreement among ADB, DHPC and DGPC;
- (y) “Project Executing Agency” for the purposes of, and within the meaning of, the Loan Regulations means DGPC which is responsible for carrying out the Project;
- (z) “Project facilities” means the generators, metering systems, and any other facilities or equipment provided pursuant to the Project;
- (aa) “Resettlement Plan” means the resettlement plan, prepared by the Borrower, and agreed with ADB dated 1 June 2008;

(bb) "Shareholders Agreement" means (i) the agreement between TPC and DGPC and DHPC, dated June 25, 2008, acknowledged and agreed by NPPF; and (ii) the agreement between NPPF and DGPC and DHPC, dated August 6, 2008, acknowledged and agreed by TPC, collectively setting forth the arrangements among shareholders for corporate governance of DHPC, including any addendum or amendment thereto acceptable to ADB;

(cc) "SIEE" means the summary initial environmental examination prepared by the Borrower and approved by ADB dated 1 July 2008;

(dd) "Tata ER Underwriting Agreement" means an agreement between TPTCL and DHPC, whereby TPTCL agrees to purchase for a period of 30 years, all emission reduction credits generated by the Project;

(ee) "TPC" means the Tata Power Company Limited, a corporation incorporated under the laws of India, and any successor entity thereto, acceptable to ADB;

(ff) "TPTCL" means the Tata Power Trading Company Limited, a corporation incorporated under the laws of India, and any successor entity thereto, acceptable to ADB;

(gg) "Updated Resettlement Plan" means the Resettlement Plan updated to take account of the detailed design of the Project; and

(hh) "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. ADB agrees to lend to the Borrower from ADB's Special Funds resources an amount in various currencies equivalent to eighteen million eight hundred and thirty-two thousand Special Drawing Rights (SDR 18,832,000).

Section 2.02. The Borrower shall pay to ADB an interest charge at the rate of 3.15% per annum on the amount of the Loan withdrawn from the Loan Account and outstanding from time to time.

Section 2.03. The interest charge and any other charge on the Loan shall be payable semiannually on 15 April and 15 October in each year.

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

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

### ARTICLE III

#### Use of Proceeds of the Loan

Section 3.01. (a) The Borrower shall relend the proceeds of the Loan together with other funds required for the Project to DGPC under a Subsidiary Loan Agreement (the “**DGPC Subsidiary Loan Agreement**”) upon terms and conditions satisfactory to ADB. Except as ADB shall otherwise agree, the terms for relending the proceeds of the Loan shall be the same as the Loan except that DGPC shall assume the foreign exchange risk.

(b) The Borrower shall ensure that the proceeds of the Loan made available to DGPC under the DGPC Subsidiary Loan Agreement are promptly made thereafter made available to DHPC as an equity contribution from DGPC under the Shareholders Agreement.

(c) The Borrower shall cause DGPC to cause DHPC 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 Goods, Works and consulting services and other items of expenditure to be financed out of the proceeds of the Loan and the allocation of amounts of the Loan among different categories of such Goods, Works and consulting services and other items of expenditure shall be 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. The proceeds of the Loan withdrawn from the Loan Account in respect of Goods, Works and consulting services shall only be used on account of expenditures relating to

(a) Goods that are produced in and supplied from and Works and 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 which meet such other eligibility requirements as shall have been specified by ADB from time to time.

Section 3.04. Except as ADB may otherwise agree, all Goods, Works and consulting services to be financed out of the proceeds of the Loan shall be procured in accordance with the provisions of Schedule 4 to this Loan Agreement.

Section 3.05. The Loan Closing Date for the purposes of Section 8.02 (iii) of the Loan Regulations shall be 31 December 2013 or such other date as may from time to time be agreed between the Borrower and ADB.

## **ARTICLE IV**

### **Particular Covenants**

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

Section 4.02. The Borrower shall cause DGPC to enable ADB's representatives to inspect the Project, the Goods, and Works financed out of the proceeds of the Loan, all other plants, sites, properties and equipment , and any relevant records and documents relating to the Project.

Section 4.03. The Borrower shall take all action that shall be necessary on its part to enable DGPC 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 4.04. (a) The Borrower shall exercise its rights under the DGPC Subsidiary Loan Agreement in such a manner as to protect the interests of the Borrower and ADB and to accomplish the purposes of the Loan.

(b) No rights or obligations under the DGPC Subsidiary Loan Agreement shall be assigned, amended, or waived without the prior concurrence of ADB.

## **ARTICLE V**

### **Suspension; Acceleration of Maturity**

Section 5.01. The following are specified as additional events for suspension of the right of the Borrower to make withdrawals from the Loan Account for the purposes of Section 8.01(m) of the Loan Regulations:

(a) DHPC shall have failed to perform any of its obligations under the OCR Loan Agreement;

(b) DGPC or DHPC shall have failed to perform any of its obligations under the Project Agreement;

(c) any party shall have failed to perform any of its obligations under the DHPC Subsidiary Loan Agreement or the DGPC Subsidiary Loan Agreement, respectively;

(d) any party shall have failed to perform any of its obligations under the PPA, or the Shareholders Agreement, respectively; or

(e) the OeKB Loan Agreement or the NPPF Loan Agreement shall have become liable for suspension or cancellation or shall have become repayable prior to its agreed maturity date.

Section 5.02. The following are specified as additional events for acceleration of maturity for the purposes of Section 8.07(d) of the Loan Regulations: any of the events specified in Section 5.01.

## **ARTICLE VI**

### **Effectiveness**

Section 6.01. The following are specified as additional conditions to the effectiveness of this Loan Agreement for the purposes of Section 9.01(f) of the Loan Regulations:

(a) the Project Agreement shall have been duly executed and delivered on behalf of DGPC and DHPC respectively and shall have become fully legally valid, binding and enforceable upon DGPC and DHPC, respectively, in accordance with its terms;

(b) the PPA Addendum and the PPA, in form and substance satisfactory to ADB, shall have been duly executed and delivered on behalf of each party thereto, and shall have become fully legally valid, binding and enforceable upon each party thereto, in accordance with their respective terms; and

(c) The DGPC Subsidiary Loan Agreement, in form and substance satisfactory to ADB, shall have been duly executed and delivered on behalf of each party thereto, and shall have become fully legally valid, binding and enforceable upon each such party in accordance with its terms.

Section 6.02. The following are specified as additional matters, for the purposes of Section 9.02(d) of the Loan Regulations, to be included in the opinion or opinions to be furnished to ADB:

(a) the Project Agreement has been duly authorized or ratified by, and executed and delivered on behalf of, each party thereto and is legally binding upon such parties in accordance with its terms;

(b) the Addendum to the PPA and the PPA, have been duly authorized or ratified by, and executed and delivered on behalf of, each party thereto and are legally binding upon such parties in accordance with their terms; and

(c) the DGPC Subsidiary Loan Agreement has been duly authorized or ratified by, and executed and delivered on behalf of, each party thereto and is legally binding upon such parties in accordance with its terms.

Section 6.03. A date ninety (90) days after the date of this Loan Agreement is specified for the effectiveness of the Loan Agreement for the purposes of Section 9.04 of the Loan Regulations.

## **ARTICLE VII**

### **Delegation of Authority**

Section 7.01. The Borrower hereby designates DGPC its agent for the purposes of taking any action or entering into any agreement required or permitted under Sections 3.02 and 3.05 of this Loan Agreement and under Sections 5.01, 5.02, 5.03 and 5.04 of the Loan Regulations.

Section 7.02. Any action taken or any agreement entered into by DGPC pursuant to the authority conferred under Section 7.01 of this Loan Agreement shall be fully binding on the Borrower and shall have the same force and effect as if taken by the Borrower.

Section 7.03. The authority conferred on DGPC under Section 7.01 of this Loan Agreement may be revoked or modified by agreement between the Borrower and ADB.

## **ARTICLE VIII**

### **Miscellaneous**

Section 8.01. The Secretary of the Ministry of Finance of the Borrower is designated as representative of the Borrower for the purposes of Section 11.02 of the Loan Regulations.

Section 8.02. The following addresses are specified for the purposes of Section 11.01 of the Loan Regulations:

#### For the Borrower

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.

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 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 impact of the Project is to sustain the Borrower's inclusive economic growth and promote cross-border power trade and electricity access. The expected outcome of the Project is to generate long term revenue to finance development for, among other things, health, education, and rural electrification development.
2. The Project involves the construction, operation and maintenance of the Dagachhu Hydroelectric Power Plant with an installed capacity of about 114MW, providing power for export to India, comprising *inter alia*, a run of the river hydropower project located on the Dagachhu river in Dagana district, and associated facilities, land acquisition and environmental management.
3. The Project is expected to be completed by 30 June 2013.

**SCHEDULE 2****Amortization Schedule****(Green Power Development Project)**

<u>Date Payment Due</u>	<u>Payment of Principal</u> (expressed in Special Drawing Rights)*
15-Apr-2017	392,333.00
15-Oct-2017	392,333.00
15-Apr-2018	392,333.00
15-Oct-2018	392,333.00
15-Apr-2019	392,333.00
15-Oct-2019	392,333.00
15-Apr-2020	392,333.00
15-Oct-2020	392,333.00
15-Apr-2021	392,333.00
15-Oct-2021	392,333.00
15-Apr-2022	392,333.00
15-Oct-2022	392,333.00
15-Apr-2023	392,333.00
15-Oct-2023	392,333.00
15-Apr-2024	392,333.00
15-Oct-2024	392,333.00
15-Apr-2025	392,333.00
15-Oct-2025	392,333.00
15-Apr-2026	392,333.00
15-Oct-2026	392,333.00
15-Apr-2027	392,333.00
15-Oct-2027	392,333.00
15-Apr-2028	392,333.00
15-Oct-2028	392,333.00
15-Apr-2029	392,333.00
15-Oct-2029	392,333.00
15-Apr-2030	392,333.00
15-Oct-2030	392,333.00
15-Apr-2031	392,333.00
15-Oct-2031	392,333.00
15-Apr-2032	392,333.00
15-Oct-2032	392,333.00
15-Apr-2033	392,333.00
15-Oct-2033	392,333.00
15-Apr-2034	392,333.00
15-Oct-2034	392,333.00
15-Apr-2035	392,333.00
15-Oct-2035	392,333.00

15-Apr-2036	392,333.00
15-Oct-2036	392,333.00
15-Apr-2037	392,333.00
15-Oct-2037	392,333.00
15-Apr-2038	392,333.00
15-Oct-2038	392,333.00
15-Apr-2039	392,333.00
15-Oct-2039	392,333.00
15-Apr-2040	392,333.00
15-Oct-2040	392,349.00
<b>Total</b>	<b>18,832,000.00</b>

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\* The figures in this column represent SDR equivalents determined as of the respective dates of withdrawal. The arrangements for payment of each maturity are subject to the relevant provisions of the Special Operations Loan Regulations.

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

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

Percentages of ADB Financing

2. Except as ADB may otherwise agree, the items of the Category listed in the Table shall be financed out of the proceeds of the Loan on the basis of the percentage set forth in the Table.

Disbursement Procedures

3. Except as ADB may otherwise agree, the Loan proceeds for financing Goods, Works, and consulting services and other items shall be disbursed in accordance with ADB's "Loan Disbursement Handbook" dated January 2007 (ADB's Loan Disbursement Handbook), as amended from time to time.

Conditions for Withdrawal

4. No withdrawals from the Loan Account shall be made until the following conditions have been met:

(a) the Shareholders Agreement, in form and substance satisfactory to ADB to ensure adequate funding of the equity contribution to the Project, shall have been duly executed and delivered on behalf of all parties thereto and shall have become fully legally binding and enforceable in accordance with its terms; and

(b) a legal opinion has been delivered for the Shareholders Agreement, in form and substance satisfactory to ADB, indicating that such Shareholders Agreement has been duly executed and delivered on behalf of all parties thereto and shall have become fully legally binding and enforceable in accordance with its terms according to the applicable laws of Bhutan.

TABLE

<b>ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (Green Power Development Project)</b>			
<b>CATEGORY</b>			<b>ADB FINANCING</b>
<b>Number</b>	<b>Item</b>	<b>Amount Allocated SDR  Category</b>	<b>Percentage and Basis for Withdrawal from the Loan Account</b>
1	DGPC's investment in DHPC	18,832,000	100% of the total cost*
	Total	18,832,000	

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

## SCHEDULE 4

### Procurement of Goods and Works, and Consulting Services

#### A. General

1. All Goods, Works and consulting services to be financed out of the proceeds of the Loan 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 Loan 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 method of procurement set forth below:

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.

#### C. Conditions for Award of Contract

5. The Borrower shall not award any Works contracts financed under the Loan until:

(a) the Updated Resettlement Plan has been submitted to ADB for review and approval and disclosed to affected people in accordance with ADB's applicable information disclosure requirements for resettlement;

(b) ADB has approved the EIA and EMP, SIEE, and the Updated Resettlement Plan each such document complies with all applicable laws and regulations of Bhutan and ADB's *Environment Policy (2002)* and *Involuntary Resettlement Policy (1995)* and applicable disclosure requirements;

(c) the Borrower has made any land and rights to land, available free from any encumbrances and clear the utilities, trees and any other obstruction from such land, required for commencement of construction activities in accordance with the schedule agreed under the related civil works contract;

(d) the relevant requirements from the EMP have been included into the civil works contracts;

(e) minimum workplace occupational safety norms, including the core labor standards as identified by the fundamental ILO conventions are included in the civil works contract;

(f) requirements regarding the payment of wages to all workers including male and female workers is timely have been included in the civil works contract;

(g) requirements regarding women's employment is provided where appropriate, and equal wages are paid to the women employees for equivalent work have been included in the civil works contract; and

(h) requirements prohibiting child labor in project activities (and complying with the relevant laws and regulations of the Recipient) are included in the civil works contract.

D. Industrial or Intellectual Property Rights

6. (a) The Borrower 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 Borrower 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.

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

E. ADB's Review of Procurement Decisions

8. 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 Borrower and ADB and set forth in the Procurement Plan.

## SCHEDULE 5

### Execution of Project and Operation of Project Facilities; Financial Matters

#### I. Project Execution and Implementation Arrangements

##### A. Project Executing Agency

1. DGPC shall be the Project Executing Agency and shall be responsible for the overall execution and supervision of the Project. The Borrower shall cause DGPC to, and DGPC shall, follow the implementation arrangements set forth in this schedule

##### B. Project Implementing Agency.

2. DHPC shall be the Implementing Agency and shall be responsible for day to day coordination, implementation and administration of the Project and all activities required for carrying out the successful implementation of 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;
- (e) the provision of coordination, support, and liaison activities; and
- (f) disbursement, accounting, logistics management, reporting, monitoring, supervision, organization of research activities, and local training.

3. The Borrower, through DGPC, shall cause DHPC to follow the implementation arrangements set forth in this schedule. The Borrower shall also ensure that (a) DHPC is managed and operated by a full-time Project director; and (b) the Project director is supported by competent full-time personnel.

#### II. Financial Aspects

##### A. Counterpart Funding

4. The Borrower and DGPC shall ensure, and shall cause DHPC to 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 the Resettlement Plan are fully provided directly to affected people prior to their displacement from housing and land.

B. Subsidiary Loan Agreement

5. The Borrower shall execute the DGPC Subsidiary Loan Agreement with DGPC upon terms and conditions satisfactory to ADB. The Borrower shall obtain all necessary approvals to enter such Subsidiary Loan Agreement and make any subloan thereunder, and shall have executed and validly entered into such Subsidiary Loan Agreement.

C. Cofinancing

6. The Borrower and DHPC shall (a) keep ADB informed of their discussions on any proposed financing arrangements with other public, commercial, bilateral, and multilateral financial institutions on the Project, and (b) provide ADB with an opportunity to comment on any resulting proposals. The Borrower shall consider ADB's views before finalizing any such proposals.

D. Corporate Governance

7. The Borrower shall cause DGPC and DHPC to ensure, and DGPC and DHPC shall ensure, to the satisfaction of ADB that:

(a) DGPC retains the majority shareholding and majority representation on the Board of Directors of DHPC, and a majority representation from DGPC is required for a quorum for any meeting of DHPC's board of directors; and

(b) no material changes are made to the Shareholders Agreement without consultation with ADB.

E. Debt Service Coverage Ratio

8. DGPC and DHPC shall maintain a debt service coverage ratio of a minimum of 1.2 from the date commercial operations commence.

III. Commercial

A. Commercial Agreement

9. The Borrower, DGPC, and DHPC, shall consult ADB before making any changes to the Power Purchase Agreement, the Shareholders Agreement or to authorize new capital of DHPC.

10. No later than 28 February 2009, the Tata ER Underwriting Agreement shall have been executed and delivered, and all conditions precedent to its effectiveness shall be fulfilled (except for the condition that it has achieved registration with the Clean Development Mechanism executive board) and a legal opinion in a form acceptable to ADB stating the same shall have been provided.

11. The Borrower, through DGPC, shall cause DHPC to use its best efforts to achieve validation and registration of the Project under the Clean Development Mechanism of the Kyoto Protocol as soon as possible.

B. Licensing

12. Within sixty days of the Effective Date, the Borrower shall cause DHPC to, and DHPC shall, obtain all necessary construction licenses for the Project from the Bhutan Electricity Authority.

IV. Institutional Aspects and Financial Management

13. The Borrower shall cause DGPC and DHPC to, and DGPC and DHPC shall, apply a new corporate accounting policy, satisfactory to ADB, by no later than 31 December 2009.

14. The Borrower shall cause DHPC to, and DHPC shall, prepare the design for an integrated management information system, satisfactory to ADB by 31 December 2010, and install such integrated management information system by 31 December 2011.

V. Environmental Safeguards

15. The Borrower, DGPC and DHPC shall each ensure that the Project is implemented in accordance with all environmental safeguard measures. DGPC and DHPC shall adequately supervise the construction works carried out by private contractors to ensure compliance with these environmental safeguard measures.

16. The Borrower, DGPC and DHPC shall each ensure that the Project is undertaken, and all facilities and associated equipment are assessed, operated and maintained, in accordance with applicable laws and regulations of the Borrower, ADB's *Environment Policy (2002)*, and internal environmental policies and safeguard operational rules of DGPC and DHPC.

17. The Borrower, DGPC and DHPC shall each ensure that the outcomes of the EIA, SIEE and mitigation measures identified in the EMP and relevant government agencies are complied with during the design, construction and operation of the Project. The Borrower shall and shall cause DGPC and DHPC to monitor and audit the implementation of the EMP, and shall provide reports to ADB twice a year on the implementation of the EMP.

18. The Borrower, DGPC and DHPC shall each ensure that construction (a) does not take place within national parks, wild and planted forests and wildlife sanctuaries without prior environmental clearances obtained from all relevant government agencies; and (b) avoids monuments of cultural or historical importance.

19. The Borrower shall cause DGPC and DHPC to, and DGPC and DHPC shall, (a) monitor the air, soil and water quality baseline and the minimum ecological water flow for a minimum of two years; (b) update the EMP in consultation with, and to the satisfaction of, ADB if any of these baselines suggests that changes to the existing EMP be required; and

(c) revise and update the EMP in consultation with and to the satisfaction of ADB if any unanticipated environmental impacts arise.

## VI. Land Acquisition and Resettlement

20. The Borrower, DGPC, and DHPC shall ensure that (i) all land and rights-of-way required by the Project are made available in a timely manner; (ii) any involuntary resettlement will be avoided or minimized; (iii) in collaboration with the competent authorities, title deeds for the new plots of land will be made available to all affected persons by 31 December 2008, (iv) the provisions of the Resettlement Plan, including compensation and entitlements for affected households and persons, will be implemented, and (v) the Project is in compliance with all applicable laws and regulations of the Borrower, including those amended from time to time, and the entitlement benefits as listed in the Borrower's applicable laws, and ADB's *Involuntary Resettlement Policy (1995)*.

21. The Borrower, DGPC, and DHPC shall ensure that

(a) sufficient budgetary resources are made available to cover all such compensation and associated costs;

(b) all such compensation will be paid at the applicable rates for the implementation of the Project as per the Resettlement Plan;

(c) rates will be revised by 30 September 2008 to ensure the application of the actual market price and the entitlement matrix in the Resettlement Plan should be used in determining the suitable compensation;

(d) payments are made in a timely manner, in any case before dispossession and beginning of civil works;

(e) all people affected by the Project are compensated fairly, such that their living standards are not adversely affected; and

(f) any relocation, resettlement and compensation of any persons who are adversely affected by the Project, or who will be relocated as a consequence of the Project, shall be promptly and efficiently carried out in accordance with (i) the Resettlement Plan, and (ii) ADB's *Policy on Involuntary Resettlement (1995)*, such that project-affected persons will at least maintain their standard of living at the same level as before implementation of the Project.

22. The Borrower, through DHPC, shall conduct monthly monitoring of the implementation of the Resettlement Plan. The Borrower and DGPC shall ensure that DHPC shall submit progress and completion reports on land acquisition and resettlement under the quarterly progress reports for the Project, and each of the Borrower, DGPC, and DHPC shall ensure that the compensation completion report is submitted to ADB within three months of completion of the implementation of the Resettlement Plan.

23. If any changes are made to the design of the Project that affect the land to be acquired or used for the Project in any way, the Resettlement Plan shall be updated based on detailed design, disclosed to affected persons, and submitted to ADB for review and

approval prior to award of civil works contracts. The Borrower, DGPC, and DHPC shall ensure that prior to land acquisition and any resettlement under the Project, the Updated Resettlement Plan, including its update based on consensus of affected peoples is disclosed with all necessary information made available to persons affected by the Project and confirm that it is uploaded onto ADB's website. The Borrower, through DHPC shall ensure that essential public infrastructure that may be affected under land acquisition and resettlement are replaced as appropriate in an expeditious manner in accordance with the Resettlement Plan and DHPC shall be responsible for associated costs and expenses

24. DGPC and DHPC shall ensure that all construction contracts contain binding requirements for construction contractors to (a) fully reinstate pathways, other local infrastructures, and agricultural land to at least their pre-project condition upon the completion of construction; and (b) adequately record the condition of roads, agricultural land and other infrastructure prior to transport of material and construction commencement.

#### VII. Labor and Health

25. The Borrower, through DGPC and DHPC, shall (a) ensure that all civil works contracts require contractors employed under the project to incorporate minimum workplace occupational safety norms and the core labor standards as identified by the fundamental ILO conventions; (b) provide timely payment of wages to all workers including male and female workers (with such requirements being included in civil works contract and monitored by construction supervision consultants); (c) provide women's employment, where appropriate, and pay equal wages to women for work of equal value; (d) not employ child labor in Project activities, in compliance with the relevant laws and regulations of the Borrower; and (e) monitor the implementation of these provisions, including the effects of the Project on women, through collection and compilation of gender-disaggregated data, where relevant, including in the relevant Resettlement Plan, social development action plan, and PPMES and provide monitoring reports of these activities to ADB.

26. The Borrower, through DGPC, and DHPC, shall cause the contractors to disseminate information on the risks of socially and sexually transmitted diseases, including HIV/AIDS and malaria, to their employees during Project implementation.

#### VIII. Governance and Anti-Corruption

27. The Borrower shall comply with, and shall cause DGPC and DHPC to carry out the Project in accordance with, ADB's *Anti-corruption Policy* (1998, as amended to date) and all applicable laws, including the Companies Act of the Kingdom of Bhutan. The Borrower 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 DGPC and DHPC cooperate fully with any such investigation and extend all necessary assistance as may be necessary for successful completion of the investigation.

IX. Planning, Monitoring and Review

A. Disbursements and Performance Audits

28. The Borrower shall ensure that DHPC reviews invoices from firms engaged in implementing the Project, and makes payments within 30 days of the receipt of the invoices or inform the contractors of any shortfalls in its ability to make payment of the invoices.

29. The Borrower 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 Loan Agreement, (ii) work-in-progress; and (iii) Project implementation.

B. Project Performance Monitoring and Evaluation System

30. During Project implementation, the Borrower shall cause DHPC, through the DGPC, 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. DHPC 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 DGPC and acceptable to ADB.

C. Annual Budget Plan

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

D. Semiannual Reviews

32. The Borrower 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

33. The Borrower 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 Borrower and ADB. The results of the midterm review shall be discussed by the Borrower and ADB and if required, appropriate corrective measures shall be formulated to ensure successful Project implementation and achievement of the Project objectives by the Loan Closing Date.