
LOAN NUMBER 2442-IND

PROGRAM AGREEMENT

(Assam Governance and Public Resource Management Sector Development Program -
Subprogram II)

between

ASIAN DEVELOPMENT BANK

and

STATE OF ASSAM

DATED 14 October 2008

PAL: IND 36308

PROGRAM AGREEMENT

PROGRAM AGREEMENT dated 14 October 2008 between ASIAN DEVELOPMENT BANK (hereinafter called ADB) and the State of Assam, acting by its Governor (hereinafter called the State).

WHEREAS

(A) by a Loan Agreement of even date herewith between India (hereinafter called the Borrower) and ADB, ADB has agreed to make to the Borrower a loan of one hundred million dollars (\$100,000,000) on the terms and conditions set forth in the Loan Agreement, but only on the condition that the proceeds of the Loan be made available to the State and that the State agrees to undertake certain obligations towards ADB as hereinafter set forth; and

(B) the State, in consideration of ADB entering into the Loan Agreement with the Borrower, has agreed to undertake the obligations hereinafter set forth;

NOW THEREFORE the parties hereto agree as follows:

ARTICLE I

Definitions

Section 1.01. Wherever used in this Program Agreement, unless the context otherwise requires, the several terms defined in the Loan Agreement and in the Loan Regulations (as so defined) have the respective meanings therein set forth.

ARTICLE II

Particular Covenants

Section 2.01. (a) The State shall carry out the Program with due diligence and efficiency, and in conformity with sound administrative, financial, engineering, environmental and fiscal practices.

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

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Section 2.02. The State shall make available, promptly as needed, the funds, facilities, services and other resources which are required, in addition to the proceeds of the Loan, for the carrying out of the Program.

Section 2.03. The State shall carry out the Program in accordance with plans and programs formulated in accordance with governance and public resource management best practices as acceptable to ADB. The State shall furnish, or cause to be furnished, to ADB, promptly after their preparation, such plans and programs, and any material modifications subsequently made therein, in such detail as ADB shall reasonably request.

Section 2.04. The State shall maintain, or cause to be maintained, records and accounts adequate to identify the use of Counterpart Funds, to disclose the use thereof in the Program, to record the progress of the Program (including the cost thereof) and to reflect, in accordance with consistently maintained sound accounting principles, its operations and financial condition.

Section 2.05. (a) ADB and the State shall cooperate fully to ensure that the purposes of the Loan will be accomplished.

(b) The State shall, through the Borrower, promptly inform ADB of any condition which interferes with, or threatens to interfere with, the progress of the Program, the performance of its obligations under this Program Agreement, or the accomplishment of the purposes of the Loan.

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

Section 2.06. (a) The State shall furnish to ADB all such reports and information as ADB shall reasonably request concerning: (i) the Loan and the expenditure of the proceeds thereof; (ii) the expenditures financed out of the Counterpart Funds; (iii) the Program; (iv) the administration, operations and financial condition of the State to the extent relevant to the Program; and (v) any other matters relating to the purposes of the Loan.

(b) Without limiting the generality of the foregoing, the State shall furnish to ADB quarterly reports on the execution of the Program, on the operation and management of the Program facilities and the State's budgetary position in each current FY and its medium term projects. Such reports shall be submitted quarterly or in such other 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, status and progress of expenditures to be financed out of the Counterpart Funds, and proposed program of activities and expected progress during the following quarter.

(c) Promptly after closing date for withdrawal from the Loan Account, but in any event not later than three (3) months thereafter or such later date as ADB may agree for this purpose, the State shall prepare and furnish to ADB a report, in such form and in such detail as ADB shall reasonably request, on the execution of the Program, including its cost, the performance by the State of its obligations under this Program Agreement and the

accomplishment of the purposes of the Loan, including a comprehensive description of the impact of the reforms implemented under the Program.

Section 2.07. (a) The State shall: (i) maintain separate accounts for the Program and for its overall operations; (ii) have such accounts and related financial statements (statement of income and expenses, and related statements) audited by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB; and, in accordance with appropriate auditing standards; and (iii) furnish to ADB, promptly after their preparation but in any event not later than nine (9) months after the close of the FY to which they relate, certified copies of such audited accounts and financial statements and the report of the auditors relating thereto (including the auditors' opinion on the use of the Loan proceeds and compliance with the covenants of the Loan Agreement), all in the English language. The State shall furnish to ADB such further information concerning such accounts and financial statements and the audit thereof as ADB shall from time to time reasonably request.

(b) The State shall enable ADB, upon ADB's request, to discuss the State's financial statements and its financial affairs from time to time with the State's auditors.

Section 2.08. The State shall enable ADB's representatives to examine relevant records and documents pertaining to the use of the Counterpart Funds.

Section 2.09. (a) The State shall, promptly as required, take all action within its powers which are necessary to carry out the Program.

(b) The State shall at all times conduct its business in accordance with sound administrative, financial, environmental and fiscal practices, with competent and experienced management and personnel.

Section 2.10. Except as ADB may otherwise agree, the State shall apply the proceeds of the Counterpart Funds to the financing of expenditures on the Program in accordance with the provisions of the Loan Agreement and this Program Agreement, and shall ensure that the expenditures financed out of such Counterpart Funds are used exclusively in the carrying out of the Program.

Section 2.11. The State shall promptly notify ADB of any proposal which in any manner impacts the Program and shall afford ADB an adequate opportunity to comment on such proposal for due consideration by the State.

ARTICLE III

Effective Date; Termination

Section 3.01. This Program Agreement shall come into force and effect on the date on which the Loan Agreement shall come into force and effect. ADB shall promptly notify the State of such date.

Section 3.02. All the provisions of this Program Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the Loan Agreement.

ARTICLE IV

Miscellaneous

Section 4.01. Any notice or request required or permitted to be given or made under this Program Agreement and any agreement between the parties contemplated by this Program Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand or by mail, telegram, cable, telex, facsimile or radiogram to the party to which it is required or permitted to be given or made at its address hereinafter specified, or at such other address as such party shall have designated by notice to the party giving such notice or making such request. The addresses so specified are:

For ADB

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

Facsimile Numbers:

(632) 636-2444
(632) 636-2337

For the State

Principal Secretary
Finance Department
Assam Civil Secretariat
State Government of Assam
Dispur
Guwahati – 781006
Assam

Facsimile Number:

(91-361) 223-7300.

Section 4.02. (a) Any action required or permitted to be taken, and any documents required or permitted to be executed, under this Program Agreement by or on behalf of the State may be taken or executed by an officer of the Finance Department not below the rank of Secretary to the Government of Assam.

(b) The State shall furnish to ADB sufficient evidence of the authority of each person who will act under paragraph (a) of this Section, together with the authenticated specimen signature of each such person.

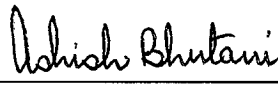
Section 4.03. No delay in exercising, or omission to exercise, any right, power or remedy accruing to either party under this Program Agreement upon any default shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence in such default; nor shall the action of such party in respect of any default, or any acquiescence in any default, affect or impair any right, power or remedy of such party in respect of any other or subsequent default.

IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Program 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.

ASIAN DEVELOPMENT BANK

By 
TADASHI KONDO
Country Director

STATE OF ASSAM

By 
A.K. BHUTANI
Secretary to the Government of
Assam, and Project Director,
Assam Governance and Public
Resource Management Program

SCHEDULE

Program Implementation and Other Matters

Program Executing Agency

1. (a) The State shall be responsible for the coordination and execution of the Program with the various concerned departments and agencies of the State.

(b) Without limiting the generality of the foregoing subparagraph, the FD shall be the Program Executing Agency and shall be responsible for implementation and monitoring of the Program.

(c) The State shall endeavour that critical Program staff shall remain in their position on a full time basis for a reasonable duration to ensure continuity in the implementation of the Program.

Policy Actions

2. The State shall ensure that all policies adopted and actions taken under the Program, as set forth in the Policy Letter and the Policy Matrix, shall continue to be in effect for and beyond the duration of the Program.

3. The State shall give due consideration to the findings and recommendations proposed as a result of the Program while carrying out the policies and actions under the Program.

4. The State shall ensure that any communication relating to the implementation of VRS and related compensation and labour rehabilitation for employees of PSEs notified for closure is made available to the employees through the local media.

Policy Dialogue

5. The State shall keep ADB informed of, and the State and ADB shall from time to time exchange views on, the progress made in carrying out the policies and actions set out in the Policy Letter and the Policy Matrix and in the formulation and implementation of new related policies, and keep the Borrower informed.

6. The State and ADB shall promptly discuss problems and constraints encountered during the implementation of the Program and appropriate measures to overcome or mitigate such problems and constraints.

7. The State shall keep ADB informed of policy discussions with other multilateral and bilateral aid agencies that may have implications for the implementation of the Program and shall provide ADB with an opportunity to comment on any resulting policy proposals. The State shall take into account ADB's views before finalizing and implementing any such proposals.

Counterpart Funds

8. The State shall use the Counterpart Funds to support the adjustment costs for the policies adopted and actions taken for Program implementation. Prior to the release of the Third Tranche, the State shall have inter alia: (a) applied \$72 million equivalent in Counterpart Funds for the complete disbursement of VRS and related compensation for employees of the twelve (12) PSEs that had been notified for closure (of which \$40 million equivalent shall be from the First Tranche and \$32 million equivalent shall be from the Second Tranche); and (b) transferred \$8 million equivalent in Counterpart Funds from the Second Tranche for the State's contribution to the Defined Contribution Pension Scheme. The State shall apply \$12 million equivalent in Counterpart Funds from the Third Tranche for the State's contribution to the Defined Contribution Pension Scheme.

9. The State shall ensure that sufficient budgetary allocations are made in a timely manner for the efficient and timely implementation of Program.

Program Monitoring and Review

10. The State shall, through the FD, undertake periodic reviews during Program implementation to evaluate the scope, implementation arrangements, progress and achievement of the objectives of the Program. The FD shall ensure that ADB shall have the opportunity to participate in these reviews.

11. (a) Without limiting the generality of Section 2.06 of the Program Agreement, the State shall cause the FMU to submit to ADB the quarterly progress reports referred in such Section. Such reports shall describe: (i) progress of the Program during the period; (ii) implementation schedule; (iii) problems encountered; (iv) remedial actions taken; and (v) work to be undertaken in the following quarter. The State shall also cause FMU to publish these reports on a website of the State.

(b) For the purposes of subparagraph (a) of this paragraph, the FD shall cause FMU to set up a project performance management system as agreed with ADB within six (6) months of the Effective Date.

12. Prior to the release of the Second Tranche and the Third Tranche, the State and ADB shall undertake a comprehensive review of the Program with respect to the conditions relating to the Second Tranche and the Third Tranche respectively. The reviews shall: (a) review the scope, design and implementation arrangements of the Program; (b) assess implementation performance; (c) review compliance with the covenants of this Loan Agreement; and (d) identify problems and constraints.