
LOAN NUMBER 2535-IND

LOAN AGREEMENT
(Ordinary Operations)

(Rural Roads Sector II Investment Program – Project 4)

between

INDIA

and

ASIAN DEVELOPMENT BANK

DATED 3 SEPTEMBER 2009

LAL:IND 37066

LOAN AGREEMENT (Ordinary Operations)

LOAN AGREEMENT dated 3 September 2009 between INDIA, acting by its President (hereinafter called the "Borrower") and ASIAN DEVELOPMENT BANK (hereinafter called "ADB").

WHEREAS

(A) by a framework financing agreement, dated 25 November 2005, between the Borrower and ADB, ADB has agreed to provide a multitranche financing facility to the Borrower for purposes of financing projects under the Borrower's National Rural Roads Program or otherwise known as PMGSY (as defined further in Section 1.02(q));

(B) by a periodic financing request dated 24 April 2009 submitted by the Borrower, the Borrower has applied to ADB for a loan for the purposes of the Project described in Schedule 1 to this Loan Agreement;

(C) the Project will be carried out by (i) the Borrower's Ministry of Rural Development or any legal successor thereto (hereinafter called "MORD"), (ii) the State of Assam (hereinafter called "Assam"), (iii) the State of Orissa (hereinafter called "Orissa"), and (iv) the State of West Bengal (hereinafter called "West Bengal"); and for this purpose the Borrower will make available to MORD, Assam, Orissa and West Bengal the proceeds of the Loan provided for herein upon terms and conditions satisfactory to ADB; and

(D) ADB has agreed to make a loan to the Borrower from ADB's ordinary capital resources upon the terms and conditions set forth herein and in the three Project Agreements of even date herewith including (i) between ADB on the one part and MORD and Assam on the other part (hereinafter called the "Assam Project Agreement"), (ii) between ADB on the one part and MORD and Orissa on the other part (hereinafter called the "Orissa Project Agreement"), and (iii) between ADB on the one part and MORD and West Bengal on the other part (hereinafter called the "West Bengal Project Agreement").

NOW THEREFORE the parties hereto agree as follows:

ARTICLE I

Loan Regulations; Definitions

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

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

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

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

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

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

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

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

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

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

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

Section 1.02. Wherever used in this Loan Agreement, unless the context otherwise requires, the several terms defined in the Loan Regulations have the respective meanings therein set forth, and the following additional terms have the following meanings:

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

(b) "CPF" means the agreed Community Participation Framework applicable for the State;

(c) "EAF" means the agreed Environment Assessment Framework applicable for the State;

(d) "ECOP" means the agreed Environmental Codes of Practice for Assam, Orissa and West Bengal;

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

(f) "FFA" means the framework financing agreement dated 25 November 2005 between ADB and the Borrower with respect to the Facility;

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

(h) "IA" means the implementing agency to be responsible for implementation of the Subprojects under this Project, which shall be the Assam State Road Board in case of Assam, Orissa State Rural Roads Development Agency in case of Orissa and West Bengal State Rural Development Agency in case of West Bengal;

(i) "IEE" means initial environment examination undertaken or to be undertaken for the Subprojects as acceptable to ADB;

(j) "Investment Program" means the Borrower's Rural Roads Program, as further described in the FFA;

(k) "Ministry of Environment and Forest" means the Borrower's Ministry of Environment and Forest or any legal successor thereto;

(l) "NRRDA" means the National Rural Roads Development Agency, which is an agency of MORD established to operationalize and manage the PMGSY at central level, or any legal successor thereto;

(m) "Panchayat" means an institution of self-government constituted for rural areas in a State under Article 243-B of the Constitution of India;

(n) "Panchayat and Rural Development Department" means the Panchayat and Rural Development Department of West Bengal or any legal successor thereto;

(o) "PFR" means the periodic financing request submitted or to be submitted by the Borrower, for the purposes of each loan under the Facility, and for the purpose of this Loan Agreement means the periodic financing request dated 24 April 2009;

(p) "PIC" means the Project Implementation Consultants engaged by the States;

(q) "PMGSY" means Pradhan Mantri Gram Sadak Yojana (Prime Minister's Rural Roads Program);

(r) "PMGSY Guidelines" means the PMGSY Guidelines issued by MORD, as revised and issued in November 2004, as amended from time to time, and includes the Operations Manual issued in February 2005, and other instructions or notifications as may be issued under the stated guidelines;

(s) "Project 1" means the Rural Roads Sector II Investment Program – Project 1 (Loan No. 2248);

(t) "Procurement Guidelines" means ADB's Procurement Guidelines (2007, as amended from time to time);

(u) "Project Executing Agency" for the purposes of, and within the meaning of, the Loan Regulations means any of the entities referred to in Schedule 5 Paragraph 1 or any legal successor thereto acceptable to ADB;

(v) "Procurement Plan" means the procurement plan for the Project dated 24 April 2009 as attached to the PFR, 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;

(w) "Public Works Department" means the Public Works Department of Assam or any legal successor thereto;

(x) "Rural Development Department" means the Rural Development Department of Orissa or any legal successor thereto;

(y) "Scheduled Tribe" means such tribes or tribal communities or parts of groups within tribes or tribal communities as are deemed under Article 342 of the Constitution of India to be Scheduled Tribes in the State;

(z) "State" means any or all of the States of Assam, Orissa and West Bengal of the Borrower, as the context may require;

(aa) "Subprojects" means the subprojects to be financed in accordance with the provisions of this Loan Agreement;

(bb) "Works" means construction or civil works to be financed out of the proceeds of the Loan, including services such as drilling or mapping, and project related services that are provided as part of a single responsibility or turnkey contract, but excluding consulting services; and

(cc) "Zilla Panchayat" means the Panchayat at District level as defined under Article 243-B of the Constitution of India.

ARTICLE II

The Loan

Section 2.01. (a) ADB agrees to lend to the Borrower from ADB's ordinary capital resources an amount of one hundred eighty five million Dollars (\$185,000,000), as such amount may be converted from time to time through a Currency Conversion in accordance with the provisions of Section 2.06 of this Loan Agreement.

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

(c) The term "grace period" as used in paragraph (b) of this Section means the period prior to the first Principal Payment Date in accordance with the amortization schedule set forth in Schedule 2 to this Loan Agreement.

Section 2.02. The Borrower shall pay to ADB interest on the principal amount of the Loan withdrawn and outstanding from time to time at a rate for each Interest Period equal to the sum of LIBOR and 0.60% as provided by Section 3.02 of the Loan Regulations, less a credit of 0.40% as provided by Section 3.03 of the Loan Regulations.

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

Section 2.04. Interest and other charges on the Loan shall be payable semiannually on 1 February and 1 August in each year.

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

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

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

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

ARTICLE III

Use of Proceeds of the Loan

Section 3.01. The Borrower shall make the proceeds of the Loan available to MORD upon terms and conditions mutually acceptable to ADB and the Borrower, and shall cause MORD and the State to apply such proceeds to the financing of

expenditures on the Project in accordance with the provisions of this Loan Agreement and the Project Agreements.

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. 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. ADB may refuse to finance a contract where Goods, Works or consulting or services have not been procured under procedures substantially in accordance with those agreed between the Borrower and ADB or where the terms and conditions of the contract are not satisfactory to ADB.

Section 3.04. Except as ADB may otherwise agree, the Borrower shall cause all Goods, Works and consulting services financed out of the proceeds of the Loan to be used exclusively in the carrying out of the Project.

Section 3.05. The closing date for withdrawals from the Loan Account for the purposes of Section 9.02 of the Loan Regulations shall be 30 June 2012 or such other date as may from time to time be agreed between the Borrower and ADB.

ARTICLE IV

Particular Covenants

Section 4.01. (a) The Borrower shall cause MORD, Assam, Orissa and West Bengal to carry out the Project with due diligence and efficiency and in conformity with sound administrative, financial, engineering, environmental and rural roads development practices.

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

Section 4.02. The Borrower shall make available to MORD, Assam, Orissa and West Bengal, 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 Project.

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

Section 4.04. The Borrower shall take all action which shall be necessary on its part to enable MORD, Assam, Orissa and West Bengal to perform their obligations under their respective Project Agreement, and shall not take or permit any action which would interfere with the performance of such obligations.

Section 4.05. The Borrower shall exercise its rights under the financing arrangements with respect to the Project in such a manner as to protect the interests of the Borrower and ADB and to accomplish the purposes of the Loan.

ARTICLE V

Suspension; Acceleration of Maturity

Section 5.01. The following is specified as an additional event for suspension of the right of the Borrower to make withdrawals from the Loan Account for the purposes of Section 9.01(l) of the Loan Regulations: the PMGSY Guidelines or any provision thereof shall have been repealed, suspended or amended in any manner in so far as it relates to the Project, which in the reasonable opinion of ADB shall or may adversely affect the carrying out of the Project or the operation of the Project facilities.

Section 5.02. The following is specified as an additional event for acceleration of maturity for the purposes of Section 9.07(a)(iv) of the Loan Regulations: the event specified in Section 5.01 of this Loan Agreement shall have occurred.

ARTICLE VI

Effectiveness

Section 6.01. A date within ninety (90) days after the date of this Loan Agreement is specified for the effectiveness of the Loan Agreement for the purposes of Section 10.04 of the Loan Regulations.

ARTICLE VII

Miscellaneous

Section 7.01. The Secretary, Additional Secretary, Joint Secretary, Director, or Deputy Secretary in the Department of Economic Affairs of the Ministry of Finance of the Borrower is designated as representative of the Borrower for the purposes of Section 12.02 of the Loan Regulations.

Section 7.02. The following addresses are specified for the purposes of Section 12.01 of the Loan Regulations:

For the Borrower

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

Facsimile Numbers:

(91-11) 2309-4075
(91-11) 2309-2511

For ADB

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

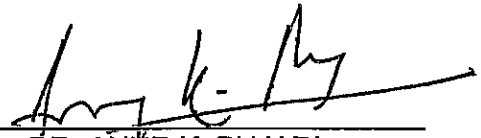
Facsimile Numbers:

(632) 636-2444
(632) 636-2340.

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

INDIA

By



DR. ANUP K. PUJARI

Joint Secretary (MI)

Department of Economic Affairs

ASIAN DEVELOPMENT BANK

By



TADASHI KONDO

Country Director

India Resident Mission

SCHEDULE 1**Description of the Project**

1. The objective of the Investment Program is to reduce poverty and deprivation, and improve economic growth of rural communities in the vicinity of the subproject roads by providing them with enhanced access to markets; employment opportunities; and social services, including health and education.
2. As a part of the Investment Program, the Project aims to improve rural road connectivity in the states of Assam, Orissa and West Bengal through improvement of priority rural roads in these states.
3. The Project consists of the following:
 - (a) the improvement of about 917 km of rural roads in the state of Assam;
 - (b) the improvement of about 1,499 km of rural roads in the state of Orissa;
 - (c) the improvement of about 696 km of rural roads in the state of West Bengal; and
 - (d) provision of Consultancy Services provided by the project implementation and technical support consultants to assist with the preparation and implementation of the Project
4. The Project is expected to be completed by 31 December 2011.

SCHEDULE 2**Amortization Schedule****(Rural Roads Sector II Investment Program -- Project 4)**

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

<u>Date Payment Due</u>	<u>Installment Share</u> (Expressed as a % based on 10% annuity)
1 Feb 2015	0.827816
1 Aug 2015	0.869207
1 Feb 2016	0.912667
1 Aug 2016	0.958301
1 Feb 2017	1.006216
1 Aug 2017	1.056526
1 Feb 2018	1.109353
1 Aug 2018	1.164820
1 Feb 2019	1.223061
1 Aug 2019	1.284214
1 Feb 2020	1.348425
1 Aug 2020	1.415846
1 Feb 2021	1.486639
1 Aug 2021	1.560971
1 Feb 2022	1.639019
1 Aug 2022	1.720970
1 Feb 2023	1.807019
1 Aug 2023	1.897369
1 Feb 2024	1.992238
1 Aug 2024	2.091850
1 Feb 2025	2.196442
1 Aug 2025	2.306264
1 Feb 2026	2.421578
1 Aug 2026	2.542657

<u>Date Payment Due</u>	<u>Installment Share</u> (Expressed as a % based on 10% annuity)
1 Feb 2027	2.669789
1 Aug 2027	2.803279
1 Feb 2028	2.943443
1 Aug 2028	3.090615
1 Feb 2029	3.245146
1 Aug 2029	3.407403
1 Feb 2030	3.577773
1 Aug 2030	3.756662
1 Feb 2031	3.944495
1 Aug 2031	4.141720
1 Feb 2032	4.348806
1 Aug 2032	4.566246
1 Feb 2033	4.794558
1 Aug 2033	5.034286
1 Feb 2034	5.286000
1 Aug 2034	5.550311
Total	100.000000

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

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

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

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

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

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

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

1. This Schedule sets for the allocation of amounts of the Loan.

Percentages of ADB Financing

2. Subject to the provisions of Section 3.01 of the Loan Agreement, and except as ADB may otherwise agree, the Loan proceeds shall be disbursed on the basis of the following percentage: Goods and Works – \$184.60 million - 80% of the total expenditures; and Consulting Services – \$0.40 million – 100% of the total expenditure exclusive of taxes and duties.

Disbursement Procedures

3. Except as ADB may otherwise agree, the Loan proceeds for financing Goods and Works 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.

Statement of Expenditures

4. The statement of expenditures (SOE) procedure may be used for reimbursement of eligible expenditures in accordance with ADB's Loan Disbursement Handbook and detailed arrangements agreed upon between the Borrower and ADB. Any individual payment to be reimbursed or liquidated under the SOE procedure shall not exceed the equivalent of \$100,000.

Retroactive Financing

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

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 methods of procurement set forth below:

National Competitive Bidding

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 cause MORD and the State to 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.

4. National Competitive Bidding. The Borrower, through MORD and the State, and ADB shall ensure that any procurement activity under national competitive bidding must be consistent with the Procurement Guidelines. The PMGSY standard bidding documents and procurement procedures used for national competitive bidding under Project 1 shall continue to apply to Subprojects financed under the proceeds of the Loan. Any modifications or clarifications to such procedures agreed between the Borrower and ADB shall be set out in the Procurement Plan. Any subsequent change to the agreed modifications and clarifications shall become effective only after the concurrence of such change by the Borrower and ADB.

C. Conditions for Award of Contract

5. The Borrower through MORD and the State shall ensure that no Works contracts financed under the Loan are awarded until all requirements as referred to in this Schedule and in paragraphs 12, 13 and 23 of Schedule 5 to this Loan Agreement have been complied with.

D. Selection of Consulting Services

6. Quality-and Cost-Based Selection. Except as ADB may otherwise agree, for consultants financed under the Loan, the Borrower shall apply quality-and cost-based selection for selecting and engaging consulting services.

E. Industrial or Intellectual Property Rights

7. (a) The Borrower through MORD and the State 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 through MORD and the State 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 Borrower through MORD and the State 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.

SCHEDULE 5

Execution of Project and Operation of Project Facilities; Financial Matters

Execution and Implementation

1. The Project Executing Agencies for the Project shall be (a) MORD at the central level, (b) Assam through its Public Works Department, (c) Orissa through its Rural Development Department, and (c) West Bengal through its Panchayat and Rural Development Department at the state level. MORD shall be responsible for overall supervision and execution of the Project at central level and each State shall be responsible for the execution of the Project at their state level.
2. Each State shall assist the related IA in obtaining approvals and clearances for timely Project execution under the PMGSY Guidelines and other applicable laws and regulations of the Borrower and the State.
3. Each State shall provide, as necessary, respective counterpart staff, land facilities, and counterpart funding for the Project in accordance with the financing plan, cost of making land available for the Subprojects and assistance, and implementation and monitoring under the CPF and EAF, including related IEE (including unforeseen expenses beyond the estimates), utility relocation, general Project management expenses, and road maintenance, in a timely manner through approved annual budget allocations.
4. Each State shall ensure that the PICs continue to assist in the implementation of the provisions of the CPF and the EAF (and related IEE) for all Subprojects under this Project.

Coordination Committees

5. (a) The Borrower shall ensure that the Coordination Committee set up under Project 1 for the Investment Program continues to meet on a semi-annual basis and monitor the use of Loan funds and overall implementation performance of the Project under the Facility.

(b) Each State shall likewise ensure that the State-level standing committee established for the PMGSY that has been serving as the State level Project Implementation Committee under Project 1 shall continue to meet on a semi-annual basis to monitor the use of Loan funds and overall implementation performance of the Project under the Facility at the State level.

Project Implementation Unit

6. Each State shall ensure that the Program Implementation Units (PIUs) established by each State in accordance with the PMGSY Guidelines shall implement the Subprojects and carry out necessary coordination with the concerned departments in the State and panchayats to ensure the smooth implementation of the Subprojects.

7. Each State shall ensure that the services of the PICs shall be utilized in the carrying out of the Project, particularly with regard to assisting the PIUs in: (a) preparing additional subprojects; (b) implementing the CPF to mitigate social impacts; (c) monitoring and implementing the EAF and the relevant provisions of the ECOP and the related IEE; and (d) supporting in social and environmental safeguard.

Road Maintenance

8. In accordance with the PMGSY Guidelines, each State shall provide adequate and timely funding for proper maintenance of the PMGSY roads. Any increases in the actual amounts to be provided shall be met by the respective State through its respective additional budget allocations, or other alternative sources of financing.

9. Except as ADB may otherwise agree, each State shall require the respective IA (through the PIU) to ensure proper maintenance of the PMGSY roads until these roads are transferred to the designated zilla panchayats in accordance with the PMGSY Guidelines. Each State shall ensure availability of the requisite funds to the relevant functionaries at either the zilla panchayat or the PIU, as the case may be, for such maintenance in accordance with the requirements of the PMGSY Guidelines.

Road Safety

10. As part of the mid term review of the Investment Program and the Project, the Borrower, each State, and ADB shall review the outcomes of the road safety program, to consolidate the institutional mechanism, financing modalities, and detailed implementing arrangements to further ensure sustainable road safety programs for the roads to be developed under PMGSY and the Investment Program at the national and State levels.

Land Availability

11. Each State shall ensure that the respective IA implements the provisions of the CPF for all Subprojects as agreed upon with ADB and in conformity with all relevant applicable laws and regulations of the Borrower and each State.

12. Each State shall ensure that the respective IA shall, subject to compliance with the relevant provisions of the CPF, EAF, ECOP and related IEE and in accordance with all relevant applicable laws and regulations of the Borrower and each State, acquire or make available the land and rights to land free from any encumbrances, 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 Works contract.

13. Each State shall ensure that (a) the respective IA shall (i) carry out the community consultation process for all Subprojects in accordance with the PMGSY Guidelines as supplemented by the CPF and the related IEE, (ii) disseminate the information on process of land transfer/availability as the case may be, support/assistance provisions and grievance procedures to the Project affected communities in a timely manner so that all related issues are resolved before awarding Work contracts, and (iii) ensure that in case of voluntary land donations/transfer there are undertaken in a transparent manner under proper documentation, and avoid any kind of coercion or forced donations/transfer;

and in this regard shall not exercise any eminent domain or related mechanisms that may be deemed to be compulsory acquisition of land; and (b) the details of land made available in accordance with the procedures prescribed in the PMGSY Guidelines, are reflected in the local land records in a timely manner, to avoid any disputes.

Bid Document and Execution of Civil Works Contracts

14. Subject to compliance with the requirements of the CPF, EAF, ECOP and related IEE, each state shall include the relevant environmental management plan (EMP) and environmental checklist in the bid document, to enable the contractor to include the cost required for implementing the EMP in its bid.

15. Subject to compliance with the requirements of CPF, EAF, ECOP and related IEE, each State shall: (i) acquire or make available on a timely basis the land and rights in land, free from any encumbrances; and (ii) clear the utilities, trees and any other obstruction from such land, on a timely basis, i.e., strictly in accordance with the schedule as agreed under the related civil works contract, as required for construction activities relating to each section of the related civil works contract under the Subproject.

16. Each State shall ensure that, subsequent to award of Works contract under any Subproject, no section or part thereof under the Works contract shall be handed over to the contractor unless the applicable provisions of the CPF, the EAF, ECOP and the related IEE have been complied with.

17. Each State shall ensure that any changes to the land alignment or environment impacts on account of detailed designs of related Subproject roads shall be subject to prior approval by ADB or related agency (MORD), as the case may be, in accordance with the Subproject selection criteria and procedures included in Schedule 2 to the FFA.

Social Impacts

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

19. Each State shall ensure acceptance of the Project through effective community participation in selecting and implementing Subprojects in accordance with the PMGSY Guidelines as supplemented by the CPF and the related IEE.

20. In case of any significant impacts on Scheduled Tribes under any Subproject, the mitigation shall follow the requirements as set out in the CPF as agreed by ADB. As also laid down in the CPF, for any impact on land involving traditional and tenure rights of the Scheduled Tribes, the legal provisions laid down by the Borrower and the related State pertaining to land transfer shall be followed.

Environment

21. Only those Subprojects that meet the eligibility requirements set out in Subproject selection criteria and procedures included in Schedule 2 to the FFA, and which adhere to the relevant requirements of the PMGSY Guidelines, the CPF, the EAF and related IEE, and other applicable guidelines for Subproject implementation, shall be eligible for financing from the Loan proceeds. Each State shall monitor the implementation of Subprojects through to the completion of each Subproject.

22. Each State shall ensure that: (i) Subprojects shall be implemented in accordance with the EAF and related IEE, (ii) relevant provisions of the ECOP identified in the Subproject preparation stage are incorporated into the Subproject designs and followed during Subproject design, construction, operation and maintenance, and (iii) adequate Project documentation related to environment, as mutually acceptable to ADB, and MORD, environmental checklists, and reports on environmental monitoring shall be properly maintained.

23. Each State shall require the respective IA to implement the Project in accordance with all applicable laws and regulations regarding wildlife and protected areas/forest areas for Subprojects that involve roads passing through forest areas and address these under the relevant IEE for such Subprojects. No construction work shall be undertaken on sections of Subprojects that pass through a forest reserve unless clearance is granted in accordance with applicable laws and regulations of the Borrower and each State, and no Subproject shall be located within or close to an environmentally sensitive area such as a wildlife sanctuary, national park, or other areas with significant ecological functions that are declared as national parks, sanctuaries, or national/international cultural heritage.

Subproject Selection and Approval Process: Subprojects implementation

24. The Borrower through MORD shall ensure that the Subprojects follow the selection criteria and are promptly processed for approval by ADB as described in detail in Subproject selection criteria and procedures included in Schedule 2 to the FFA.

Performance Audit

25. Without limiting the generality of Section 2.09 of the Project Agreements, the Borrower through MORD shall cause the State to allow ADB to carry out procurement audits during Project implementation as part of its regular review process.

Project Performance Monitoring and Progress Reports

26. Each State through the respective IA shall undertake periodic Subproject performance review under the Project and the Investment Program, in accordance with the Investment Program Performance Monitoring System, to evaluate the scope, implementation arrangements, progress and achievements of objectives of the Project and overall Investment Program.

27. Notwithstanding the generality of Section 2.08 of the Project Agreements, each State through the respective IA shall submit to MORD the monthly progress reports on the implementation of the Subprojects under the Project. Based on these reports, MORD through NRRDA shall prepare and provide ADB with quarterly progress reports on the implementation of the Subprojects under the Project within 45 days of the close of each quarter.

Reports and Review

28. (a) Without limiting the generality of Section 2.08(c) of the Project Agreements and Section 7.04(d) of the Loan Regulations, the Borrower shall submit to ADB a project completion report within 3 months of physical completion of the Project. The report shall include a detailed evaluation of the Project, covering the design, costs, contractors' and consultants' performance, social and economic impact, economic rate of return, implementation of social and environmental safeguards measures and other details relating to Project, as may be requested by ADB.

(b) ADB, the Borrower, MORD, and each State, shall meet regularly as required to discuss Project progress and any changes to implementation arrangements or remedial measures required to be undertaken towards achieving overall Project and Investment Program objectives.