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LOAN NUMBER 2502 - IND

PROJECT AGREEMENT  
(Uttarakhand Power Sector Investment Program – Project 3)

between

ASIAN DEVELOPMENT BANK

and

STATE OF UTTARAKHAND

DATED 25 February 2009

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PAL: IND 37139

## **PROJECT AGREEMENT**

PROJECT AGREEMENT dated 25 February 2009 between ASIAN DEVELOPMENT BANK (hereinafter called ADB) and the State of Uttarakhand acting by its Governor (hereinafter referred to as the State).

### **WHEREAS**

(A) by a Loan Agreement of even date herewith between India (hereinafter referred to as the Borrower) and ADB, ADB has agreed to make to the Borrower a loan of thirty million and six hundred thousand Dollars (\$30,600,000) 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 Project 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 cause the EA and the IA to carry out the Project with due diligence and efficiency, and in conformity with sound administrative, financial, engineering, environmental and power sector development practices.

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

Section 2.02. The State shall cause that EA and the IAs 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 Project.

Section 2.03. (a) In the carrying out of the Project, the State shall ensure that UED and the IAs employ competent and qualified consultants and contractors, acceptable to ADB, to an extent and upon terms and conditions satisfactory to ADB.

(b) 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 the Loan Agreement. ADB may refuse to finance a contract where Goods, Works and consulting 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 2.04. The State shall ensure that the EA and the IAs carry out the Project in accordance with plans, design standards, specifications, work schedules and construction methods acceptable to ADB. The State shall ensure that UED and the IAs furnish, or cause to be furnished, to ADB, promptly after their preparation, such plans, design standards, specifications and work schedules, and any material modifications subsequently made therein, in such detail as ADB shall reasonably request.

Section 2.05. (a) The State shall ensure that UED and the IAs take out and maintain with responsible insurers, or make other arrangements satisfactory to ADB for, insurance of the Project facilities to such extent and against such risks and in such amounts as shall be consistent with sound practice.

(b) Without limiting the generality of the foregoing, the State undertakes to ensure that UED and the IAs insure, or cause to be insured, the Goods to be imported for the Project and to be financed out of the proceeds of the Loan against hazards incident to the acquisition, transportation and delivery thereof to the place of use or installation, and for such insurance any indemnity shall be payable in a currency freely usable to replace or repair such Goods.

Section 2.06. The State shall maintain, or cause to be maintained by UED and the IAs, records and accounts adequate to identify the Goods, Works and consulting services financed out of the proceeds of the Loan, to disclose the use thereof in the Project, to record the progress of the Project (including the cost thereof) and to reflect, in accordance with consistently maintained sound accounting principles, its operations and financial condition.

Section 2.07. (a) ADB and the State shall cooperate fully to ensure that the purposes of the Loan will be accomplished.

(b) The State shall promptly inform ADB under intimation to the Borrower, of any condition which interferes with, or threatens to interfere with, the progress of the Project, the performance of its obligations and that of the UED and the IAs, under this Project 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 Project, the State, UED, the IAs, and the Loan.

Section 2.08. (a) In so far as it relates to the Project 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 Goods, Works and consulting services financed out of such proceeds; (iii) the Project; (iv) the administration, operations and financial condition of the State, UED, and IAs; and (v) any other matters relating to the purposes of the Loan.

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

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

Section 2.09. The State shall cause through UED (i) that the IAs maintain separate accounts for the Project; (ii) IAs shall have such accounts and related financial statements (balance sheet, statement of income and expenses, and related statements) audited annually, in accordance with appropriate auditing standards consistently applied, by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB; and (iii) furnish to ADB, promptly after their preparation but in any event not later than 9 months after the close of the fiscal year 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 as well as on the use of the procedures for Imprest Account/Statement of Expenditures), all in the English language. The State through UED 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.

Section 2.10. The State shall cause UED and IAs to enable ADB's representatives to inspect the Project, the Goods, Works and consulting services financed out of the proceeds of the Loan, all other plants, sites, properties and equipment of the State, and any relevant records and documents.

Section 2.11. (a) The State shall, promptly as required, take all action within its powers to maintain the corporate existence of PTCUL, to carry on its operations, and to acquire, maintain and renew all rights, properties, powers, privileges and franchises which are necessary in the carrying out of the Project or in the conduct of its business.

(b) In relation to the Project, the State shall ensure through UED that PTCUL at all times conducts its business in accordance with sound administrative, financial, environmental and power sector development practices, and under the supervision of competent and experienced management and personnel.

(c) The State shall ensure through UED that insofar as it relates to the Project, PTCUL at all times operates and maintain its plants, equipment and other property, and from time to time, promptly as needed, makes all necessary repairs and renewals thereof, all in accordance with sound administrative, financial, engineering, environmental, and maintenance and operational practices in relation to the power sector.

Section 2.12. Except as ADB may otherwise agree, the State through UED shall ensure that the IAs do not sell, lease or otherwise dispose of any of their respective assets which shall be required for the efficient carrying on of their operations or the disposal of which may prejudice their ability to perform satisfactorily any of their obligations under this Project Agreement and the Loan Agreement.

Section 2.13. Except as ADB may otherwise agree, the State through UED shall ensure application of the proceeds of the Loan to the financing of expenditures on the Project in accordance with the provisions of the Loan Agreement and this Project Agreement, and shall ensure that all Goods, Works and consulting services financed out of such proceeds are used exclusively in the carrying out of the Project.

Section 2.14. Except as ADB may otherwise agree, the State shall duly perform all its obligations under the financing arrangements with the Borrower for the Project, and shall not take, or concur in, any action which would have the effect of assigning, amending, abrogating or waiving any rights or obligations of the parties under such financing arrangement.

Section 2.15. The State through UED shall, under intimation to the Borrower, ensure that PTCUL promptly notifies ADB of any proposal to amend, suspend or repeal any provision of its Charter and shall afford ADB an adequate opportunity to comment on such proposal prior to taking any action thereon.

### **ARTICLE III Effective Date; Termination**

Section 3.01. This Project 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 Project 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 Project Agreement and any agreement between the parties contemplated by this Project 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, telex, facsimile 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) 636-2338.

For the State of Uttarakhand

Secretary, Energy Department  
Uttarakhand Secretariat  
Government of Uttarakhand  
Dehradun – 248001.

Facsimile Number:  
(0091) 135-271-2077.

Section 4.02. (a) Any action required or permitted to be taken, and any documents required or permitted to be executed, under this Project Agreement by or on behalf of the State may be taken or executed by its Secretary, Energy Department, or by such other person or persons as he/she shall so designate in writing notified to ADB.

(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.

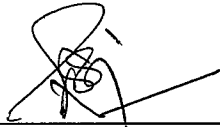
Section 4.03. No delay in exercising, or omission to exercise, any right, power or remedy accruing to either party under this Project Agreement upon any default shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence in such default; nor shall the action 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 Project 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  
India Resident Mission

THE STATE OF UTTARAKHAND

By   
PRABHAT SARANGI  
Secretary (Energy)