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LOAN NUMBER 2324-IND

LOAN AGREEMENT  
(Ordinary Operations)

(Madhya Pradesh Power Sector Investment Program – Project 2 [Distribution Efficiency  
Enhancement])

between

INDIA

and

ASIAN DEVELOPMENT BANK

DATED 12 April 2007

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LAL:IND 32298

**LOAN AGREEMENT  
(Ordinary Operations)**

LOAN AGREEMENT dated 12 April 2007 between INDIA, acting by its President (hereinafter called the Borrower) and ASIAN DEVELOPMENT BANK (hereinafter called ADB).

**WHEREAS**

(A) the Borrower has applied to ADB for a loan for the purposes of the Project described in Schedule 1 to this Loan Agreement;

(B) the Project will be carried out by the State of Madhya Pradesh (hereinafter called the State) acting through Madhya Pradesh Poorv Kshetra Vidyut Vitaran Company Limited (hereinafter called DISCOM-E), and for this purpose the Borrower will make available to the State and DISCOM-E the proceeds of the Loan provided for herein upon terms and conditions satisfactory to ADB; and

(C) 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 Project Agreement of even date herewith between ADB on the one part and the State and DISCOM-E on the other part;

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, (said Ordinary Operations Loan Regulations being hereinafter called the Loan Regulations).

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 (2006, as amended from time to time);

(b) "DISCOM-E" has the meaning given in Recital B of this Loan Agreement;

(c) “EARF” means the Environmental Assessment and Review Framework prepared in accordance with ADB’s *Environment Policy* (2002) and attached to Schedule 5 to the FFA;

(d) “ED” means the Energy Department of the State or any legal successor thereto;

(e) “EIA” means the Environment Impact Assessment report prepared or to be prepared for subprojects in accordance with the EARF;

(f) “EMP” means the Environmental Management Plan prepared or to be prepared for subprojects in accordance with the EARF;

(g) “Facility” means a multitranche financing facility provided by ADB to the Borrower in accordance with ADB’s policy under *Pilot Financing Instruments and Modalities* (R194-05) dated 4 August 2005;

(h) “FFA” means the Framework Financing Agreement dated 20 February 2007 and entered into between ADB and India for the Facility;

(i) “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;

(j) “HVDS” means High Voltage Distribution Systems;

(k) “IEE” means the initial environmental examination prepared or to be prepared for subprojects in accordance with the EARF;

(l) “Investment Program” means the Madhya Pradesh Power Sector Investment Program, as more fully described in the RRP;

(m) “IPDF” means the Indigenous Peoples Development Framework prepared in accordance with ADB’s *Policy on Indigenous Peoples* (1998) and attached to Schedule 5 to the FFA;

(n) “IPDP” means the Indigenous Peoples Development Plan prepared or to be prepared for the subprojects in accordance with the IPDF;

(o) “MPERC” means the Madhya Pradesh Electricity Regulatory Commission, or any legal successor thereto;

(p) “Onlending Agreement” means the onlending agreement to be entered into between the State and DISCOM-E and referred to in Section 3.01 of this Loan Agreement;

(q) “PFR” means the periodic financing request 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 PFR dated 20 February 2007;

(r) "PIU" means the Program Implementation Unit to be established in accordance with paragraph 4 of Schedule 5 to this Loan Agreement;

(s) "PMU" means the Project Management Unit established in accordance with paragraph 3 of Schedule 5 to this Loan Agreement;

(t) "Procurement Guidelines" means ADB's Procurement Guidelines (2006, as amended from time to time);

(u) "Procurement Plan" means the procurement plan for the Project dated 20 February 2007 and agreed between the Borrower, the State and ADB, as updated from time to time in accordance with Procurement Guidelines, Consulting Guidelines, and other arrangements agreed with ADB;

(v) "Project" means the project as generally defined under the Loan Regulations and referred to as Project 2 under the Investment Program for this Loan Agreement;

(w) "Project Executing Agency" or "EA" for the purposes of, and within the meaning of, the Loan Regulations means the State acting through DISCOM-E or any legal successor thereto acceptable to ADB, which is responsible for the carrying out of the Project;

(x) "Project facilities" mean the facilities provided or to be provided under the Project;

(y) "RF" means the Resettlement Framework prepared in accordance with ADB's *Policy on Involuntary Resettlement* (1995) and attached to Schedule 5 to the FFA;

(z) "RP" means the Resettlement Plan prepared or to be prepared for the subprojects in accordance with the RF;

(aa) "RRP" means the Report and Recommendation of the President of ADB to its Board of Directors for the Investment Program;

(bb) "State" has the meaning given in Recital B of this Loan Agreement;

(cc) "subproject" means each of the subprojects under the Project selected and approved in accordance with criteria referred to in paragraph 5 of Schedule 5 to this Loan Agreement;

(dd) "TRANSCO" means the Madhya Pradesh Power Transmission Company Limited or any legal successor thereto; and

(ee) "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. (a) ADB agrees to lend to the Borrower from ADB's ordinary capital resources an amount of forty five million Dollars (\$45,000,000), 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 term of 20 years, not including the 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 payment of the first principal amount of the Loan on the 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.

Section 2.03. The Borrower shall pay a commitment charge of 0.35% 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 15 January and 15 July 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. (a) The Borrower shall make the proceeds of the Loan available to the State upon terms and conditions satisfactory to ADB and shall cause 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 Agreement.

(b) The Borrower shall cause the State to make available to DISCOM-E the Loan under the Onlending Agreement on terms and conditions acceptable to ADB for carrying out the Project.

(c) The Borrower shall cause DISCOM-E to apply such proceeds 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, 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, 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 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 September 2011 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 the State and DISCOM-E 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 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 the State to make available to DISCOM-E, promptly as needed and on terms and conditions acceptable to ADB, the funds, facilities, services, land 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 cause the State to 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 the State and DISCOM-E to perform their obligations under the Project Agreement, and shall not take or permit any action which would interfere with the performance of such obligations.

Section 4.05. (a) The Borrower shall exercise its rights under the financing arrangements with the State 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 such financing arrangements shall be assigned, amended, abrogated or waived without the prior concurrence of ADB.

## **ARTICLE V**

### **Suspension; Cancellation; 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 State or DISCOM-E shall have failed to perform any of its obligations under the Onlending Agreement.

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 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. Either of the Secretary, Additional Secretary, Joint Secretary, Director or Deputy Secretary in the Department of the Economic Affairs, 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 to the Government of India  
Department of Economic Affairs  
Ministry of Finance  
North Block  
New Delhi – 110001  
India

Facsimile Number:

(9111) 2309-2024.

#### For ADB

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



## Cable Address:

ASIANBANK  
MANILA

## Telex Numbers:


29066 ADB PH (RCA)  
42205 ADB PM (ITT)  
63587 ADB PN (ETPI)

## Facsimile Numbers:

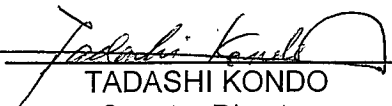
(632) 636-2444  
(632) 636-2338.

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.

INDIA

By   
ARVIND MAYARAM  
Joint Secretary  
Department of Economic Affairs  
(Authorized Representative)

ASIAN DEVELOPMENT BANK

By   
TADASHI KONDO  
Country Director  
India Resident Mission

## **SCHEDULE 1**

### **Description of the Project**

1. The overall objective of the Investment Program is to address power sector issues and provide a solid foundation for the sustainable growth of the reformed power sector in the State.
2. As part of the Investment Program, the Project consists of the following components, as more fully described in the PFR:
  - (i) Construction of HVDS in 6 distribution circles in the eastern distribution zone of the State, including conversion of about 7,400 kilometers of low voltage lines to high voltage lines;
  - (ii) Remote metering of about 2,000 industrial consumers;
  - (iii) Metering of about 250,000 consumers; and
  - (iv) Renovation of protection system at about 100 substations.
3. The Project is expected to be completed by 31 March 2011.

## SCHEDULE 2

### Amortization Schedule

#### (Madhya Pradesh Power Sector Investment Program – Project 2 [Distribution Efficiency Enhancement])

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>Payment Due</u>	<u>Installment Share</u> (Expressed as a %)
15/Jul/2012	2.50
15/Jan/2013	2.50
15/Jul/2013	2.50
15/Jan/2014	2.50
15/Jul/2014	2.50
15/Jan/2015	2.50
15/Jul/2015	2.50
15/Jan/2016	2.50
15/Jul/2016	2.50
15/Jan/2017	2.50
15/Jul/2017	2.50
15/Jan/2018	2.50
15/Jul/2018	2.50
15/Jan/2019	2.50
15/Jul/2019	2.50
15/Jan/2020	2.50
15/Jul/2020	2.50
15/Jan/2021	2.50
15/Jul/2021	2.50
15/Jan/2022	2.50
15/Jul/2022	2.50
15/Jan/2023	2.50
15/Jul/2023	2.50
15/Jan/2024	2.50
15/Jul/2024	2.50

Schedule 2

<u>Payment Due</u>	<u>Installment Share</u> (Expressed as a %)
15/Jan/2025	2.50
15/Jul/2025	2.50
15/Jan/2026	2.50
15/Jul/2026	2.50
15/Jan/2027	2.50
15/Jul/2027	2.50
15/Jan/2028	2.50
15/Jul/2028	2.50
15/Jan/2029	2.50
15/Jul/2029	2.50
15/Jan/2030	2.50
15/Jul/2030	2.50
15/Jan/2031	2.50
15/Jul/2031	2.50
15/Jan/2032	2.50
<b>Total</b>	<b>100.00</b>

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.

Schedule 2

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

##### Percentages of ADB Financing

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

##### Interest and Commitment Charge

3. The amount allocated to Category 3 is for financing interest and commitment charge on the Loan during the implementation period of the Project. ADB shall be entitled to withdraw from the Loan Account and pay to itself, on behalf of the Borrower, the amounts required to meet payments, when due, of such interest and commitment charge.

##### Reallocation

4. Notwithstanding the allocation of Loan proceeds and the withdrawal percentages set forth in the Table,

(a) if the amount of the Loan allocated to any Category appears to be insufficient to finance all agreed expenditures in that Category, ADB may, by notice to the Borrower, (i) reallocate to such Category, to the extent required to meet the estimated shortfall, amounts of the Loan which have been allocated to another Category but, in the opinion of ADB, are not needed to meet other expenditures, and (ii) if such reallocation cannot fully meet the estimated shortfall, reduce the withdrawal percentage applicable to such expenditures in order that further withdrawals under such Category may continue until all expenditures thereunder shall have been made; and

(b) if the amount of the Loan then allocated to any Category appears to exceed all agreed expenditures in that Category, ADB may, by notice to the Borrower, reallocate such excess amount to any other Category.

##### Disbursement Procedures

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

Imprest Account; Statement of Expenditures

6. (a) Except as ADB may otherwise agree, the Borrower shall establish immediately after the Effective Date an imprest account at the Reserve Bank of India. Except as ADB may otherwise agree, a second generation imprest account shall be established by the EA at a commercial bank, acceptable to ADB and the Borrower. The imprest and the second generation imprest accounts (collectively called the imprest accounts) shall be established, managed, replenished and liquidated in accordance with ADB's Loan Disbursement Handbook, and detailed arrangements agreed upon between the Borrower and ADB. The currency of the imprest account shall be Dollar. The initial amount to be deposited into each of the imprest accounts shall not exceed the lower of (i) the estimated expenditure for the first six months of Project implementation, or (ii) the equivalent of ten (10) percent of the Loan amount.

(b) The statement of expenditures (SOE) procedure may be used for reimbursement of eligible expenditures for the Project and to liquidate advances provided into the imprest account, 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.

**TABLE**

<b>ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (Madhya Pradesh Power Sector Investment Program – Project 2 [Distribution Efficiency Enhancement])</b>			
<b>CATEGORY</b>			<b>ADB FINANCING</b>
<b>Number</b>	<b>Item</b>	<b>Amount Allocated \$ Category</b>	<b>Percentage and Basis for Withdrawal from the Loan Account</b>
1	Works	2,000,000	100 percent of total expenditure*
2	Equipment	33,500,000	100 percent of total expenditure*
3	Interest and Commitment Charge	800,000	
4	Unallocated	8,700,000	
	Total	45,000,000	

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



## SCHEDULE 4

### Provisions on Procurement and Consulting Services

#### A. General

1. All Goods and 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:

International Competitive Bidding
Limited International Bidding
National Competitive Bidding
Shopping

The methods of procurement are subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. The Borrower may only modify the methods of procurement or threshold values with the prior agreement of ADB, and modifications must be set out in updates to the Procurement Plan.

4. Domestic Preference. The Borrower may grant a margin of preference in the evaluation of bids under international competitive bidding in accordance with paragraphs 2.55(a) and 2.56 of the Procurement Guidelines for domestically manufactured Goods and paragraphs 2.55(b) and 2.56 of the Procurement Guidelines for domestic Works.

5. National Competitive Bidding. The bidding documents and procurement procedures agreed between the EA and ADB, as also set out in the Procurement Plan, will be followed. Any modifications to these will be agreed between the EA and ADB and further set out in the Procurement Plan.

#### C. Selection of Consulting Services

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

**D. Industrial or Intellectual Property Rights**

7. (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.

8. 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**

9. All contracts procured under international competitive bidding procedures and contracts for consulting services shall be subject to prior review by ADB, unless otherwise agreed between the Borrower and ADB and set forth in the Procurement Plan.

## **SCHEDULE 5**

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

1. The Borrower shall cause the State, acting through DISCOM-E, to implement the Project in accordance with the provisions of this Loan Agreement, the Project Agreement, and the FFA including its Schedules and Annexes.

#### Executing Agency (EA)

2. The State, acting through DISCOM-E, shall be the EA for the Project and shall be responsible for the execution of the Project.

#### Project Management Unit (PMU)

3. The PMU, established within DISCOM-E, shall be headed by a PMU Manager. The PMU manager shall report all Project related matters to the Chairman and the Managing Director of DISCOM-E. The PMU shall comprise technical, financial, procurement and safeguard sections. The EA shall appraise subprojects and be responsible for processing and implementing the subprojects. These shall include preparation of technical reports (feasibility studies, preliminary design reports, environment assessment reports, resettlement and indigenous people's development plans, detailed design reports), and bidding documents to ensure compliance with the requirements of the Borrower and ADB.

#### Coordinating Committee

4. An Investment Program Coordinating Committee, chaired by the Chairman and the Managing Director of TRANSCO shall be established to coordinate and monitor the overall implementation of the Investment Program. The Coordinating Committee shall report to the ED through a Program Implementation Unit (PIU) to be established within the ED and to MPERC. At the State level, the ED shall monitor the implementation of reform policy, planning process and overall power sector investment, while MPERC shall conduct review and due diligence for new project proposals submitted by the companies prior to approval, and monitor the performance and improvement of service delivery of the EA. At the national level, the Ministry of Power of the Borrower shall also monitor the state sector policy and Investment Program implementation.

#### Selection Criteria and Approval Process for Subprojects

5. The Borrower and the EA shall ensure that all subprojects are selected and approved in accordance with the criteria and approval process stipulated in Schedule 4 to the FFA.

Counterpart Funds

6. The Borrower and the EA shall ensure the availability and timely release of counterpart funds for the timely implementation of each subproject. The EA shall provide, as necessary, respective counterpart staff, land facilities, and counterpart funds for related subprojects in accordance with the agreed financing plan. It shall do so in a timely manner through approved annual budget allocations, including the cost of making land available for the subprojects, and environment monitoring including cost of mitigating unforeseen environmental impacts, and general management expenses.

Cash Management Responsibilities

7. The Borrower shall cause the State to ensure that the cash management responsibilities are transferred to DISCOM-E from 1 April 2009, so that DISCOM-E can commence commercially independent operations, with any deficits met by commercial borrowings or other satisfactory means.

Audits

8. Without limiting the generality of Section 2.09 of the Project Agreement, the EA shall engage independent private audit firms, whose qualifications, experience and terms of reference are acceptable to ADB, to (i) conduct annual financial audit and procurement audit, and submit reports to ADB promptly after their preparation but in any event not later than 6 months after the close of the fiscal year to which they relate.

9. The EA shall ensure that in addition to the financial and procurement audits, (i) energy audit for distribution reconfiguration; and (ii) business process and performance audits in all operational areas are conducted annually by independent private audit firms whose qualifications, experience and terms of reference are acceptable to ADB.

Corporate Governance

10. The EA shall ensure that the following measures to strengthen corporate governance shall have been completed by 31 December 2007: (i) independent directors at DISCOM-E's Board level are recruited; (ii) DISCOM-E's Board level committees, including audit and risk management committees, are formed; (iii) internal audit functions are strengthened and internal audit guidelines in line with best practices are developed (DISCOM-E's internal audit scope to cover revenue audit and internal audit reports to the audit committee of the Board); (iv) internal controllers reporting to the Chairman and the Managing Director of DISCOM-E on a regular basis are appointed.

11. The State shall ensure that accountability and transparency of DISCOM-E is maintained through the stakeholder meetings and publication of its agendas and actions throughout the duration of the Project

Schedule 5Financial Management

12. The EA shall ensure that the current capacity development program that covers financial management and human resources development is implemented on a timely basis till 2010.

Turnkey Contracts

13. The EA shall (i) ensure utilization of turnkey contracts, where appropriate, (ii) negotiate longer terms of guarantees on equipment; and (iii) include long-term maintenance provisions in the turnkey contracts.

Recruitment

14. The EA shall have appointed managers for operations, information and technology (IT), commercial functions, and finance; and will have recruited (i) chartered accountants, (ii) IT specialists (iii) specialists in commercial areas by not later than 31 December 2008. The EA shall have established management training programs in finance, operations and commercial functions.

Debt Service Coverage Ratio

15. The State shall ensure that DISCOM-E maintains a debt service coverage ratio of 1.2 from financial year 2007-2008 and onwards.

Self Financing Ratio

16. The State shall ensure that DISCOM-E maintains historic self financing ratio of 20% from 2010 onwards (3 years moving average capital expenditure).

Corporate Social Responsibility

17. The State shall ensure that DISCOM-E conducts extensive public awareness campaign through installing appropriate signs and issuing fliers to public to ensure that people are aware that HVDS networks may result in serious injury or death in case of attempts to illegally connect to overhead circuits.

Tariff

18. The State shall ensure that DISCOM-E's multi-year tariff as given by the MPERC is effective as of 1 April 2007. Support to poor households shall continue through an appropriate lifeline tariff.

Billing and Collection Efficiency

19. The State shall ensure that DISCOM-E's collection efficiency is improved from 92% in 2006 to 96% by not later than 31 December 2010.

Loss Reduction

20. The State shall ensure that agreed DISCOM-E's loss reduction targets are met as follows: (i) by 31 December 2007 to 32.5%; (ii) by 31 December 2008 to 29.5%; and (iii) by 31 December 2009 to 26.5%.

Customer Service Centers

21. The State shall ensure that by not later than 31 January 2009, DISCOM-E shall have established, made operational and fully staffed with specialists with appropriate skills, a number of customer service centers in large cities.

Pension Funds

22. The EA shall have legally established trust funds to cover pension arrears by 31 December 2008.

Land Availability and Resettlement

23. Without limiting the generality of Schedule 5 to the FFA, including its Annexes, the EA shall, subject to compliance with the relevant provisions of the RF/RPs and EARF/EMP and in accordance with all applicable laws and regulations of the Borrower, acquire or make available the land and rights to land free from any encumbrances, and cleared 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.

24. The EA shall ensure that all land and rights-of way required by the subprojects are made available in a timely manner and that the provisions of the RPs, including compensation and entitlements for affected households and persons, are implemented in conformity with all applicable laws and regulations of the Borrower, including as amended from time to time, and the entitlement benefits as listed in the Borrower's applicable laws, ADB's *Policy on Involuntary Resettlement* (1995), and the RF.

25. The EA shall ensure that people affected by each subproject are fairly compensated in a timely manner based on replacement values in accordance with the related RPs and RF, such that their living standards are not adversely affected. The EA shall submit progress and completion reports on land acquisition and resettlement under the quarterly progress reports for each subproject. In addition, the external monitoring report shall be submitted to ADB on a semi-annual basis for review.

26. The EA shall ensure that prior to land acquisition and any resettlement under each subproject, the related RP, including its update based on consensus of the affected peoples (APs) concerned, is disclosed with all necessary information made available to persons affected by the subproject and confirm that it be uploaded onto ADB website. The EA shall ensure that essential public infrastructure that may be affected under land acquisition and resettlement is replaced as appropriate in an expeditious manner in accordance with the RPs.

Schedule 5

27. The EA shall ensure that construction contracts contain binding requirements for construction contractors to fully reinstate pathways, other local infrastructures, and agricultural land to at least their pre-project condition upon construction completion. Provision shall be made for adequate recording of the condition of roads, agricultural land and other infrastructure prior to transport of material and construction commencement.

28. For each subproject, the EA shall ensure timely provision of budget for land acquisition, resettlement and other activities outlined in the related RP and shall meet any unforeseen obligations in excess of the RP budget estimate in order to satisfy the RP requirements.

29. Within 3 months of the Effective Date, the EA shall engage an independent external expert/agency, acceptable to ADB, for monitoring and verification of the RP implementation under each subproject that will be responsible for providing ADB through the PMU quarterly monitoring and evaluation reports on resettlement implementation in accordance with the RPs.

30. Within 3 months of the Effective Date, the EA shall establish a grievance redress committee with representation from all stakeholders for the Project to address any grievances from APs concerning resettlement, environment and other social issues in a timely manner.

Indigenous Peoples

31. The EA shall prepare and implement the IPDPs or appropriate indigenous peoples actions for all subprojects with indigenous peoples issues in accordance with the requirements set out in (i) ADB's *Policy on Indigenous Peoples* (1998), the IPDF, and (ii) the Borrower's and the State's applicable laws.

Environment

32. Without limiting the generality of Schedule 5 to the FFA, including its Annexes, the EA shall implement the Project and operate and maintain all Project facilities in accordance with the IEE, EARF, ADB's *Environment Policy* (2002) and the Borrower's and the State's applicable laws, rules, and regulations.

33. For each subproject the EA shall prepare and implement the necessary IEE, EIA and EMP (with budget) in accordance with the EARF. Environment category A and B-sensitive subprojects shall be subject to the 120-day public disclosure requirement of ADB. The EA shall ensure that the recommendations of the environmental assessments and EMPs approved by ADB and relevant government agencies are adhered to during design, construction and operation phases of the subprojects.

34. The EA shall monitor, audit, and report to ADB twice a year on the implementation of the EMPs for each subproject. The EA shall verify that all associated power projects not financed by ADB will be constructed and commissioned in compliance with the laws and regulations of the Borrower and the State prior to connecting such facilities to the ADB-supported transmission network.

Schedule 5

35. The EA shall ensure that (i) the subprojects are not located within national parks and wildlife sanctuaries, unless prior environmental clearance is obtained from relevant government agencies; (ii) monuments of cultural or historical importance are avoided; and (iii) EMP with adequate budget is developed and implemented for each subproject.

Execution of Civil Works Contracts

36. The EA shall ensure that, subsequent to award of civil works contract under any subproject, no section or part thereof under the civil works contract shall be handed over to the contractor unless the applicable provisions of the RF/RP and the EARF/EMP have been complied with.

37. Any changes to the location, land alignment, or environmental impacts on account of detailed designs of related subproject shall be subject to prior approval by ADB and/or the EA, as the case may be, in accordance with the selection criteria and process stipulated in Schedule 4 to the FFA.

Performance Monitoring and Reporting

38. The Borrower shall ensure that within 3 months of the Effective Date, a Project Performance Monitoring System (PPMS) shall have been established by the EA in a form and with a composition acceptable to ADB in accordance with the Investment Program and Project performance indicators. The EA shall undertake periodic Project performance review, and also for the Investment Program in accordance with the PPMS to evaluate the scope, implementation arrangements, progress and achievements of objectives of the related subproject and overall Investment Program.

39. Without limiting the generality of Section 2.08 (b) of the Project Agreement, the EA shall prepare quarterly progress reports and submit these to ADB within 30 days of the end of each quarter. These reports shall provide (i) a narrative description of progress made during the period (progress on compliance with environmental and social requirements including EMP and RF shall also be included), (ii) changes in the implementation schedule, (iii) problems or difficulties encountered, and (iv) work to be carried out in the next period. The progress reports shall also include a summary financial account for the components, including subprojects, consisting of expenditures during the period, total expenditure to date, and reports on environmental, resettlement and benefit monitoring.

40. Without limiting the generality of Section 2.08 (c) of the Project Agreement, the Borrower shall ensure the submission to ADB of a Project completion report within 3 months of physical completion of the Project by the EA, and the Facility completion report within 3 months of physical completion of the Investment Program. These reports shall cover a detailed evaluation of the Project and the Facility respectively, covering the design, costs, contractors' and consultants' performance, social, environmental and economic impact, economic and financial rates of return, and other details of the Project and the Facility, as may be requested by ADB.



Review

41. ADB, the Borrower and the EA shall meet regularly as required to discuss the progress of the Project and any changes to implementation arrangements or remedial measures required to be undertaken towards achieving the objectives of the Project and the Investment Program.

42. A mid-term review of the Project shall be undertaken by ADB and the EA. The mid-term review shall include a review of issues and any problems or weaknesses in implementation arrangements, and agree on any changes needed to achieve the objectives of the Project and the Investment Program.