
LOAN NUMBER 2414 - IND

LOAN AGREEMENT
(Ordinary Operations)

(Rural Roads Sector II Investment Program – Project 2)

between

INDIA

and

ASIAN DEVELOPMENT BANK

DATED 28 March 2008

LAL: IND 37066

LOAN AGREEMENT (Ordinary Operations)

LOAN AGREEMENT dated 28 March 2008 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 (i) the Borrower's Ministry of Rural Development (hereinafter called "MORD"); and (ii) the State of Orissa (hereinafter called "State"); and for this purpose the Borrower will make available to MORD, and the State, 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, MORD and the State;

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. (a) 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.

(b) 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:

(a) 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.

(b) 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:

(a) 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.

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

(b) “Consulting Guidelines” means Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers (2007, as amended from time to time);

(c) “District” means a district in the State as defined under Article 243-P of the Constitution of India;

(d) “EAF” means the agreed Environment Assessment Framework applicable for the State;

(e) “ECOP” means the agreed Environmental Codes of Practice for the State;

(f) “FFA” means the Framework Financing Agreement dated 25 November 2005 between ADB and India, for the Facility;

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

(h) “IA” means the Orissa State Rural Road Agency- the implementing agency in the State responsible for implementation of the Subprojects as specified in each PFR;

(i) “Investment Program” means the entire program for rural roads development under the PMGSY for Assam, Orissa, and WB for a total cost of 2.1 billion dollars;

(j) “IEE” means the initial environment examination undertaken or to be undertaken for the Subprojects as acceptable to ADB;

(k) “MORD” means Ministry of Rural Development of the Borrower;

(l) “NRRDA” means the National Rural Roads Development Agency, set up as an agency of MORD to operationalize and manage the PMGSY at central level;

(m) "PFR" means the periodic financing request submitted by the Borrower dated 28 November 2007 for purposes of the Loan under the Facility;

(n) "PIC" means Project implementation consultants as described in Schedule 4 to this Agreement;

(o) "PIU" means the Program implementation units established by the State in accordance with the PMGSY Guidelines;

(p) "PMC" means Project Management consultants engaged under the Rural Roads Sector I Project (Loan No. 2018);

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

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

(u) "Procurement Plan" means the procurement plan for the Project dated 29 November 2007 and agreed between the Borrower, MORD, 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 as generally defined under the Loan Regulations and referred to as Project 2 under the Investment Program for this Loan Agreement;

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

(x) "SRRDA" means the Orissa State Rural Road Agency also referred to as SRRDA under Project 1 established for implementing rural roads construction and development under the PMGSY;

(y) "Schedule 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 the State of Orissa;

(aa) "Subprojects" mean the subprojects financed in accordance with the provisions of this Agreement; those that are identified, prepared and appraised and listed under Annexure 4 to the PFR;

(bb) "TSC" means the technical support consultants as more fully described in paragraph 1 of Schedule 1 to this Loan Agreement to be financed under this Loan Agreement beyond the closing of Project 1;

(cc) "Works" means construction or civil works to be financed out of the proceeds of the Loan, and 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

(dd) "zilla panchayat" means 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 seventy seven million and six hundred and fifty thousand dollars (\$77,650,000), 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 15 September and 15 March 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 satisfactory to ADB 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 Agreement.

Section 3.02. The Works and consulting services to be financed out of the proceeds of the Loan and the allocation of amounts of the Loan among different categories of such Works and consulting services 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 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 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 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 31 December 2009 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, and the State to carry out the Project with due diligence and efficiency and in conformity with sound administrative, financial, engineering, environmental, social, 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, and the State, 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, and the State to perform their respective 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 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.

(b) No rights or obligations under such financing arrangements relating to the Project 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 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 to the Government of India
Department of Economic Affairs
Ministry of Finance
North Block
New Delhi – 110001
India
Facsimile Number:

(91-11) 2309-2477
(91-11) 2309-2511.

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) 636-2340.

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 

ARVIND MAYARAM

Joint Secretary (Infra)

Department of Economic Affairs

ASIAN DEVELOPMENT BANK

By 

TADASHI KONDO

Country Director

India Resident Mission

SCHEDULE 1
Description of the Project

1. The Project comprises following components

(a) Road Connectivity - Construction and/or up-gradation of rural roads (under Subprojects covering about 1200 km) that are part of the PMGSY to provide connectivity to all habitations of population of 500 persons or more with all weather roads in the State. The Subprojects intended for financing under the loan are listed under Annexure IV to the PFR.

(b) Capacity Building – Capacity building at State level to assist in implementation of rural roads development in an efficient and sustainable manner, with proper address of policy issues such as safeguard and road safety throughout the Project.

2. The Project is expected to be completed by 30 June 2009.

SCHEDULE 2
Amortization Schedule

(Rural Roads Sector II Investment Program – Project 2)

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.

Payment Due	<u>Installment Share</u> (Expressed as a %)
15 Sep 2013	0.827816
15 Mar 2014	0.869207
15 Sep 2014	0.912667
15 Mar 2015	0.958301
15 Sep 2015	1.006216
15 Mar 2016	1.056526
15 Sep 2016	1.109353
15 Mar 2017	1.164820
15 Sep 2017	1.223061
15 Mar 2018	1.284214
15 Sep 2018	1.348425
15 Mar 2019	1.415846
15 Sep 2019	1.486639
15 Mar 2020	1.560971
15 Sep 2020	1.639019
15 Mar 2021	1.720970
15 Sep 2021	1.807019
15 Mar 2022	1.897369
15 Sep 2022	1.992238
15 Mar 2023	2.091850
15 Sep 2023	2.196442
15 Mar 2024	2.306264
15 Sep 2024	2.421578
15 Mar 2025	2.542657
15 Sep 2025	2.669789
15 Mar 2026	2.803279
15 Sep 2026	2.943443
15 Mar 2027	3.090615
15 Sep 2027	3.245146
15 Mar 2028	3.407403
15 Sep 2028	3.577773

15 Mar 2029	3.756662
15 Sep 2029	3.944495
15 Mar 2030	4.141720
15 Sep 2030	4.348806
15 Mar 2031	4.566246
15 Sep 2031	4.794558
15 Mar 2032	5.034286
15 Sep 2032	5.286000
15 Mar 2033	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. The Table attached to this Schedule sets forth the Categories of Works, and consulting services 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 percentages set forth in the Table.

Reallocation

3. 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, MORD and the State, (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, MORD and the State reallocate such excess amount to any other Category.

Disbursement Procedures

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

Statement of Expenditures

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

Retroactive Financing

6. 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 items to be retroactively financed, subject to a maximum amount equivalent to 20 percent of the Loan amount.

TABLE

ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (Rural Roads Sector II Investment Program – Project 2)			
CATEGORY			ADB FINANCING BASIS
Number	Item	Total Amount Allocated for ADB Financing (\$) Category	Percentage of ADB Financing
1	Works	75,880,000	80 percent of total expenditure claimed
2	Consulting Services	50,000	100 percent of total expenditure claimed*
3	Unallocated	1,720,000	
	Total	77,650,000	

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

SCHEDULE 4

Procurement of Works, and Consulting Services

A. General

1. All 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 Works

3. Except as ADB may otherwise agree, Works shall be procured only 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 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 PMGSY standard bidding documents and procurement procedures, currently under use for National Competitive Bidding (NCB) (Works) under the ongoing Project 1 for the State shall continue to apply to Subprojects financed out of the proceeds of the Loan. Modifications in this regard, if any required by MORD/State, together with justifications, will be furnished to ADB by the MORD and the State for (i) ADB's concurrence, and (ii) reflecting in the Procurement Plan as required.

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, 14, and 22 of Schedule 5 to this Loan Agreement have been complied with as applicable.

D. Selection of Consulting Services

6. Quality- and Cost-Based Selection. Except as ADB may otherwise agree, and except as set forth in the paragraph below, the Borrower through MORD and the State shall apply quality- and cost-based selection for selecting and engaging consulting services.
7. The Borrower shall cause MORD to apply the following method for selecting and engaging the specified consulting services, in accordance with, among other things, the procedures set forth in the Procurement Plan:

Single Source Selection for the TSC

E. Industrial or Intellectual Property Rights

8. (a) The Borrower through MORD and the State shall ensure that all 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 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.

9. 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.

F. ADB's Review of Procurement Decisions

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

SCHEDULE 5

Execution of Project and Operation of Project Facilities

Execution and Implementation

1. (a) The Borrower shall ensure that the Project is carried out in accordance with the PMGSY Guidelines as supplemented by Project-specific requirements including those more fully described in the agreed CPF and the EAF for the State, and related IEE for Subprojects.

(b) The Executing Agencies for the Project shall be (i) MORD at the central level and (ii) State at the State level. MORD shall be responsible for overall supervision and execution of the Project at central level and the State through its IA shall be responsible for executing the Project at the State level.

2. The 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. The 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. The State shall ensure that the PICs recruited under Project 1 continue to help implement the provisions of the CPF and the EAF (and related IEE) for all Subprojects in the State 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) The 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 quarterly basis to monitor the use of Loan funds and overall implementation performance of the Project under the Facility at the State level.

Road Maintenance

6. In accordance with the PMGSY Guidelines, the 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 State through its additional budget allocations, or other alternative sources of financing.

Schedule 5

7. The State shall ensure that the financing of maintenance of PMGSY roads as required under the PMGSY Guidelines shall not involve reduction of budgets for maintaining other roads under the responsibility of the State not included under the PMGSY.

8. As also required under the PMGSY Guidelines, except as ADB may otherwise agree, the State shall require the IA (through the PIU) to ensure proper maintenance of the PMGSY roads until these are transferred to the designated zilla panchayats in accordance with the PMGSY Guidelines. The State shall also allocate the requisite funds to the relevant functionaries (the related PIU/zilla panchayat) for such maintenance in accordance with the requirements of the PMGSY Guidelines.

9. The State shall ensure that the related PIU/zilla panchayat as the case may be, shall enter into further maintenance contracts with competitively procured contractors (on the basis of the standard performance-based contracts for road maintenance to be prepared by PMC under Rural Roads Sector I Project (Loan No. 2018)). The contracts shall begin upon completion of the initial 5-year maintenance period under the related construction contracts and shall cover routine maintenance and renewal of all PMGSY roads for further periods of not less than 5 years.

Road Safety

10. As part of the mid term review of the Investment Program as also the Project, the Borrower, the 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. The State shall ensure that the 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 the State.

12. The State shall ensure that the IA shall, subject to compliance with the relevant provisions of the CPF and EAF/ECOP (and related IEE) and in accordance with all relevant applicable laws and regulations of the Borrower/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 civil works contract.

13. (a) The State shall ensure that the IA shall (i) carry out the community consultation process for all Subprojects in accordance with the PMGSY Guidelines as supplemented by the CPF (and 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 civil 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

Schedule 5

regard shall not exercise any eminent domain or related mechanisms that may be deemed to be compulsory acquisition of land.

(b) The State shall ensure that 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.

Execution of Civil Works Contracts

14. (a) Subject to compliance with the requirements of CPF and EAF/ECOP (and related IEE), MORD shall ensure that the bid documents include the environmental management plan (EMP) and environmental checklist, to enable the contractor to include the cost required for implementing the EMP in its bid.

(b) Subject to compliance with the requirements of CPF and EAF/ECOP (and related IEE), the State shall: (i) acquire or make available on a timely basis the land and rights in land, free from any encumbrances; (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.

15. The State shall ensure that subsequent to award of civil works contract under any Subproject, no section or part thereof under the civil works contract will be handed over to the contractor unless the applicable provisions of the CPF and the EAF/ECOP (and related IEE) have been complied with.

16. 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

17. (a) The State shall ensure through specific provisions in the bid documents and the civil works contracts financed under the Project that the contractors shall: (i) disseminate information at work sites on the risks of sexually transmitted diseases and HIV/AIDS as part of the health and safety measures for those employed during construction; (ii) follow legally mandated provisions on health, welfare, sanitation, and appropriate working conditions, including accommodation, where appropriate, for construction workers at camp sites; (iii) comply with all applicable labor laws, not employ child labor for construction and maintenance activities, and provide appropriate facilities for children of labor in construction camp sites; (iv) provide equal opportunity for women for road construction activities, and not differentiate wages for men and women for work of equal value.

(b) The State shall ensure that compliance with provisions in clause (a) of this paragraph is monitored by the IA. The civil works contracts shall also provide for their termination by the employer for breach of any provision.

Schedule 5

18. The 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 related IEE).

19. In case of any significant impacts on Scheduled Tribes under any additional Subproject, these 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 State pertaining to land transfer shall be duly followed.

Environment

20. 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. The State shall monitor the implementation of Subprojects through to the completion of each Subproject.

21. The State shall ensure that: (i) Subprojects shall be implemented in accordance with the EAF (and related IEE); (ii) relevant provisions of the ECOP (and related IEE) identified in the Subproject preparation stage are incorporated into the Subproject designs and followed during Subproject design, construction, operation and maintenance; and (iii) Project documentation related to environment will be maintained and kept orderly throughout Project life.

22. The State shall require its SRRDA 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 will be undertaken on sections of Subprojects that pass through a forest reserve unless clearance is granted by the Borrower's Ministry of Environment and Forest under applicable laws and regulations of the Borrower and the 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

23. 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

24. Without limiting the generality of Section 2.09 of the Project Agreement, 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

25. The State shall ensure under the Investment Program Performance Monitoring System (IPPMS) established by the IAs (established under Project 1), the respective IA shall undertake periodic Subproject performance review under the Project, as also for the Investment Program, in accordance with the IPPMS to evaluate the scope, implementation arrangements, progress and achievements of objectives of the Project and overall Investment Program.

26. Notwithstanding the generality of Section 2.08 of the Project Agreement:

(a) the State through the IA shall provide monthly progress report of Subprojects implementation under the Project, in such form and detail as required by ADB.

(b) Based on the monthly reports provided by the State, MORD with assistance of NRRDA, shall prepare and provide ADB with quarterly progress reports on subprojects' implementation in the State. Such reports shall summarize the monthly reports and include report on progress made during the period of review, use of Loan funds, achievement of Project objectives, compliance with Loan covenants, changes if any on implementation schedule, problems or difficulties encountered and remedial actions taken, and work to be undertaken in coming quarter. The reports that shall be submitted to ADB within 45 days from close of each quarter shall also include a summary financial account for the Project (including the Subprojects), expenditures to date, and report on benefit monitoring undertaken pursuant to previous paragraph of this Schedule.

Reports and Review

27. (a) Without limiting the generality of Section 2.08(c) of the Project Agreement and Section 7.04(d) of the Loan Regulations, the Borrower will submit to ADB a Project completion report within 3 months of physical completion of the Subprojects financed under the Loan and a Facility completion report within 3 months of physical completion of the Subprojects under the Facility. These reports shall cover a detailed evaluation of the Project and the Investment Program respectively, 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 the Project and Investment Program, for the State as may be requested by ADB.

(b) ADB, the Borrower, and the 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.

(c) A mid-term review of the Project shall be undertaken by ADB, the Borrower and the State, around December 2008. The mid-term review will include review of issues and any problems or weaknesses in implementation arrangements, and agree on any changes needed to achieve the objectives of the Project.

Schedule 5

(d) A similar mid-term review of the Investment Program by ADB, the Borrower and the State shall be undertaken in the third year from date of approval of the Facility by ADB.

Project Implementation Consultants (PIC)

28. The services of domestic consultants financed from the Borrower's own resources (the PIC), shall be utilized in the carrying out of the Project, particularly with regard to assisting the PIUs and the IAs in:

- (a) preparing additional subprojects;
- (b) implementing the CPF provisions;
- (c) monitoring and implementing the EAF (and related IEE) and the relevant provisions of the ECOP (and related IEE); and
- (d) support in social and environmental safeguard.