

---

LOAN NUMBER 2458-IND

LOAN AGREEMENT  
(Ordinary Operations)

(Uttarakhand State-Road Investment Program – Project 2)

between

INDIA

and

ASIAN DEVELOPMENT BANK

DATED 10 February 2009

---

LAL:IND 38255

## **LOAN AGREEMENT (Ordinary Operations)**

LOAN AGREEMENT dated 10 February 2009 between INDIA, acting by its President (hereinafter called the "Borrower") and ASIAN DEVELOPMENT BANK (hereinafter called "ADB").

### **WHEREAS**

(A) by a framework financing agreement dated 14 November 2006 between the Borrower and ADB (hereinafter called the "FFA"), ADB has provided a multi-tranche financing facility to the Borrower to finance projects under the Borrower's Uttarakhand State-Road Investment Program (hereinafter called the "Investment Program");

(B) by a periodic financing request dated 9 July 2008, the Borrower has applied to ADB for a loan from ADB's ordinary capital resources for the purposes of the Project that is described in Schedule 1 to this Loan Agreement and forms part of the Investment Program;

(C) the Project will be carried out by the State of Uttarakhand (hereinafter called the "State") through its Public Works Department (hereinafter called "PWD"), and for this purpose the Borrower will make available to the State the proceeds of the Loan provided for herein upon terms and conditions satisfactory to ADB; and

(D) ADB has agreed to make a loan to the Borrower from ADB's ordinary capital resources upon the terms and conditions set forth herein and in the Project Agreement of even date herewith between ADB 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.** (aa) The Borrower shall pay a commitment charge on the unwithdrawn amount of

the Loan at the rate and on the terms specified in the Loan Agreement.

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

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

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

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

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

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

pay interest for all interest periods commencing on and after the effective date of the higher Fixed Spread that will be applied to new Loans.

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

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

(a) "Component" means each and any of the components described under Schedule 1 to this Loan Agreement;

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

(c) "Consulting Services" means consulting services to be financed out of the proceeds of the Loan, and excludes ancillary services rendered under a contract for the supply of Goods or Works;

(d) "EARF" means the Environmental Impact Assessment Review Framework as attached under Schedule 5 to the FFA;

(e) "EMP" means each and any of the Environmental Management Plans and Environmental Monitoring Plans that PWD has developed for the Project in accordance with the FFA, and that have been approved by ADB as part of the IEE;

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

(g) "FFA" has the meaning given thereto in recital (A) of this Loan Agreement;

(h) "Goods" means materials and equipment to be financed out of the proceeds of the Loan, and includes ancillary services rendered under a contract for the

supply of these materials and equipment, such as transportation, insurance, installation, commissioning, training, and initial maintenance;

(i) "IEE" means the Initial Environmental Examination developed for the Project by PWD in accordance with the FFA and approved by ADB;

(j) "Investment Program" has the meaning given thereto in recital (A) of this Loan Agreement;

(k) "Loan Disbursement Handbook" means ADB's Loan Disbursement Handbook (2007, as amended from time to time);

(l) "MIPMS" means the management information and project management system introduced at PWD as part of the Investment Program;

(m) "PFR" means the periodic financing request to be submitted by the Borrower for purposes of each loan under the FFA, and for purposes of this Loan Agreement means the PFR dated 9 July 2008;

(n) "PIU" means a Project Implementation Unit established and maintained for the Project in accordance with paragraph 4 of Schedule 5 to this Loan Agreement;

(o) "PMU" means the Project Management Unit established within PWD for purposes of the Investment Program and maintained for the Project in accordance with the provisions of paragraph 3 of Schedule 5 to this Loan Agreement;

(p) "Procurement Guidelines" means ADB's Procurement Guidelines (2007, as amended from time to time);

(q) "Procurement Plan" means the procurement plan dated 30 May 2008 for the Project as attached to the PFR and as updated from time to time in accordance with the Procurement Guidelines, the Consulting Guidelines, and other arrangements agreed with ADB;

(r) "Project", as generally defined under the Loan Regulations, means the Project described in Schedule 1 to this Loan Agreement;

(s) "Project Agreement" means the project agreement referred to in Recital (D) of this Loan Agreement;

(t) "Project Executing Agency" for the purposes of, and within the meaning of, the Loan Regulations means the State through PWD or any legal successor thereto acceptable to ADB;

(u) "Project Facilities" means the road sections that are or will be improved and maintained under Component 2(a);

(v) "PWD" means the Public Works Department of the State;

(w) "RDP" means the Road Development Plan of the State, as described more fully in Schedule 1 to the FFA;

(x) "RP" means each and any of the Resettlement Plans developed for the Project by PWD in accordance with the requirements of the FFA and approved by ADB;

(y) "RF" means the Resettlement Framework as attached under Schedule 5 to the FFA;

(z) "State" means the State of Uttarakhand, India; and

(aa) "Works" means construction or civil works to be financed out of the proceeds of the Loan, and includes ancillary services rendered under a contract to perform these works, such as drilling or mapping, and project-related services that are provided as part of a single responsibility or turnkey contract.

## **ARTICLE II**

### **The Loan**

Section 2.01. (a) ADB agrees to lend to the Borrower from ADB's ordinary capital resources an amount of one hundred and forty million Dollars (\$140,000,000), 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, 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 June and 15 December 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 the State upon terms and conditions satisfactory to ADB. The Borrower 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.

Section 3.02. The Goods, Works and Consulting Services and other items of expenditure to be financed out of the proceeds of the Loan and the allocation of amounts of the Loan among different categories of such Goods, Works and Consulting Services and other items of expenditure shall be in accordance with the provisions of Schedule 3 to this Loan Agreement, as such Schedule may be amended from time to time by agreement between the Borrower and ADB.

Section 3.03. Except as ADB may otherwise agree, all Goods, Works and Consulting Services to be financed out of the proceeds of the Loan shall be procured in accordance with the provisions of Schedule 4 to this Loan Agreement. ADB may refuse to finance a contract where Goods, Works or Consulting 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 31 March 2013 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 to carry out the Project with due diligence and efficiency and in conformity with sound administrative, financial, engineering, environmental, and state road 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 by the State, all obligations set forth in Schedule 5 to this Loan Agreement.

Section 4.02. The Borrower shall make available to the State, promptly as needed and on terms and conditions acceptable to ADB, 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 the State to perform its 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 funding arrangements referred to in Section 3.01 of this Loan Agreement, in such a manner as to protect the interests of the Borrower and ADB and to accomplish the purposes of the Loan.

(b) The Borrower shall promptly notify ADB of any assignment, amendment, abrogation or waiver of rights or obligations under the funding arrangements referred to in Section 3.01 of this Loan Agreement.



## ARTICLE V

### Effectiveness

Section 5.01                      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 VI

### Miscellaneous

Section 6.01.                      Any of 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 6.02.                      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 Numbers:

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

#### For ADB

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

Facsimile Numbers:

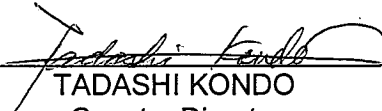
(632) 636-2444  
(632) 636-2340.

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

INDIA

By   
SHRI GOVIND MOHAN  
Director (Infra)  
Department of Economic Affairs

ASIAN DEVELOPMENT BANK

By   
TADASHI KONDO  
Country Director  
India Resident Mission

## SCHEDULE 1

### Description of the Project

1. The objective of the Investment Program is to promote economic growth and reduce poverty in the State by (i) increasing the efficiency of inter- and intrastate transport services, (ii) developing a sustainable road network maintenance system, (iii) improving PWD's governance and transparency, and (iv) promoting synergies in the RDP.
  
2. The Project shall comprise the following Components:
  - (a) Infrastructure Improvement Component, comprising improvement and maintenance of State roads totaling approximately 966 kilometers in length; and
  
  - (b) Infrastructure Management Component: to improve PWD's policies and operational procedures and increase its staffs skills in the areas of (i) setting performance targets and monitoring performance, (ii) developing and using performance based contracts for routine maintenance, (iii) procurement of initial contracts and the use of model contract documents and guidelines, (iv) human resources development, and (v) adapting the organization for outsourcing road design, construction and maintenance services;

and program support to assist PWD with coordination of the Investment Program activities, including – without limitation - updating the RDP, preparing performance based contracts and PFRs for subsequent tranches, carrying out technical and safeguards compliance reviews of subproject designs, and preparing reports for submission to ADB, all as more fully described in the PFR.
  
3. The Project is expected to be completed by 30 September 2012.

## SCHEDULE 2

### Amortization Schedule (Uttarakhand State-Road 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.

Sequence	Date Payment Due	Installment Share <sup>1</sup> (Expressed as a % based on 10% annuity)
1	15 Jun 2014	0.827816
2	15 Dec 2014	0.869207
3	15 Jun 2015	0.912667
4	15 Dec 2015	0.958301
5	15 Jun 2016	1.006216
6	15 Dec 2016	1.056526
7	15 Jun 2017	1.109353
8	15 Dec 2017	1.164820
9	15 Jun 2018	1.223061
10	15 Dec 2018	1.284214
11	15 Jun 2019	1.348425
12	15 Dec 2019	1.415846
13	15 Jun 2020	1.486639
14	15 Dec 2020	1.560971
15	15 Jun 2021	1.639019
16	15 Dec 2021	1.720970
17	15 Jun 2022	1.807019
18	15 Dec 2022	1.897369
19	15 Jun 2023	1.992238
20	15 Dec 2023	2.091850
21	15 Jun 2024	2.196442
22	15 Dec 2024	2.306264
23	15 Jun 2025	2.421578
24	15 Dec 2025	2.542657
25	15 Jun 2026	2.669789

Schedule 2

Sequence	Date Payment Due	Installment Share <sup>1</sup> (Expressed as a % based on 10% annuity)
26	15 Dec 2026	2.803279
27	15 Jun 2027	2.943443
28	15 Dec 2027	3.090615
29	15 Jun 2028	3.245146
30	15 Dec 2028	3.407403
31	15 Jun 2029	3.577773
32	15 Dec 2029	3.756662
33	15 Jun 2030	3.944495
34	15 Dec 2030	4.141720
35	15 Jun 2031	4.348806
36	15 Dec 2031	4.566246
37	15 Jun 2032	4.794558
38	15 Dec 2032	5.034286
39	15 Jun 2033	5.286000
40	15 Dec 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

Schedule 2

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.

##### 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, (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

4. Except as ADB may otherwise agree, the Loan proceeds for financing Goods, Works, and Consulting Services shall be disbursed in accordance with the Loan Disbursement Handbook.

##### Statement of Expenditures

5. The statement of expenditures (SOE) procedure may be used for reimbursement of eligible expenditures in accordance with ADB's Loan Disbursement Handbook and detailed arrangements agreed upon between the Borrower and ADB. Any individual payment under SOE procedures shall not exceed one hundred thousand Dollars (\$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, subject to a maximum amount equivalent to 20 percent of the Loan amount.



**TABLE**

<b>ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (Uttarakhand State-Road Investment Program - Project 2)</b>			
<b>CATEGORY</b>			<b>ADB FINANCING BASIS</b>
<b>Number</b>	<b>Item</b>	<b>Total Amount Allocated for ADB Financing \$ Category</b>	<b>Percentage of ADB Financing from the Loan Account</b>
1	Works	126,800,000	83 percent of total expenditure claimed
2	Consulting Services	13,200,000	100 percent of total expenditure claimed*
	Total	140,000,000	

\* Exclusive of local taxes and duties

## SCHEDULE 4

### Procurement of Goods and Works, and Consulting Services

#### General

1. All Goods, Works, and Consulting Services 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.

#### Procurement of 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 (ICB)
Limited International Bidding (LIB)
National Competitive Bidding (NCB)

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. The Borrower may allow the State to grant a margin of preference in the evaluation of bids under international competitive bidding in accordance with paragraphs 2.55(b) and 2.56 of the Procurement Guidelines for domestic Works.
5. The Borrower acknowledges that any procurement activity under national competitive bidding must be consistent with the Procurement Guidelines. In line with the practice developed under the previous tranche for the Investment Program, the Borrower shall ensure that any such procurement activity will be conducted only in accordance with any modifications and clarifications to the State's bidding procedures required by ADB and set out in the Procurement Plan.

#### Conditions for Award of Contract

6. The Borrower shall ensure that the State shall not award any Works contracts financed under the Loan until all requirements as referred to in this Schedule and in paragraphs 7 through 12 of Schedule 5 to this Loan Agreement have been complied with.

#### Selection of Consulting Services

7. Except as ADB may otherwise agree, and except as set forth in the paragraph below, the Borrower shall apply quality- and cost-based selection for selecting and engaging Consulting Services.

Schedule 4

8. The Borrower shall cause the State to apply following methods for selecting and engaging specified consulting services, in accordance with, among other things, the procedures set forth in the Procurement Plan.

Quality and Cost Based Selection (QCBS)
Consultants' Qualifications Selection (CQS)
Least Cost Selection (LCS)

Industrial or Intellectual Property Rights

9. (a) The Borrower shall cause the State to 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 cause the State to 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.

10. The Borrower shall cause the State to 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.

ADB's Review of Procurement Decisions

11. 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, the State and ADB and set forth in the Procurement Plan.

## SCHEDULE 5

### Execution of Project and Operation of Project Facilities

#### Project Execution

1. The Borrower designates the State as the Project Executing Agency. The Borrower shall cause the State, through PWD, to undertake all activities required for implementation of the Project in accordance with the provisions of this Loan Agreement and the Project Agreement.

2. If and to the extent the provisions of this Loan Agreement and the Project Agreement assign duties and obligations to any other party than the Borrower (including, without limitation, the State), the Borrower shall ensure that such party observes those duties and performs those obligations in accordance with the relevant provisions of this Loan Agreement and/or the Project Agreement.

#### PMU

3. (a) The State shall ensure that the PMU remains adequately staffed and functional for the duration of the Project. The PMU shall comprise at least one Project Director at a Chief Engineer level; one procurement specialist; one finance manager; one environmental specialist to assist with the implementation of the EARF, the IEE and the EMPs; and one social and resettlement specialist to assist with the implementation of the RF and the RPs. The Project Director shall report to the Chief Engineer of the PWD. The Secretary of PWD shall be responsible for interdepartmental coordination and overall supervision of the Investment Program and the Project.

(b) The PMU shall be responsible for day to day operation of the Project and the Investment Program, and periodic functions such as preparation of PFRs for projects under the Facility, engagement of consultants and contractors, preparation of reports, approvals from relevant authorities and ADB, and overall supervision of consultants.

(c) Within two months after the Effective Date, the State shall engage consultants for the program support activities referred to in Schedule 1 to this Loan Agreement.

#### PIUs

4. (a) At least one month prior to the award of the first Works contract under the Project and no later than one month after the Effective Date, whichever is earlier, the State shall establish and maintain an adequate number of PIUs in close proximity to the relevant sites as and when required to effectively manage the Works contracts.

(b) Each PIU shall be headed by an engineer of appropriate rank (but not lower than the rank of executive engineer), assisted by an engineer not below the rank of assistant engineer, at least two other technical staff including staff with expertise in social development and environmental management, an accounts officer and two support/administrative staff. The Head of each PIU shall coordinate and liaise with the

Project Director of the PMU, and shall be supported as needed, by the Investment Program support consultants.

#### Steering Committee

5. (a) The State shall ensure that the Steering Committee established for the purposes of the Investment Program will remain fully functional for the duration of the Project. The Steering Committee is headed by the Chief Secretary of the State and comprises Secretaries of key State agencies.

(b) The Steering Committee shall monitor and guide the Investment Program and the implementation of the Project to ensure its effectiveness and timeliness.

(c) The State shall ensure that the composition of the Steering Committee, PMU and PIUs, agreed with ADB, remain fixed for the entire duration of the Project and the Facility.

#### Counterpart funding

6. The Borrower shall make available, and shall cause the State to make available, all counterpart funds required for timely and effective implementation of the Project, including any funds required to meet additional costs arising from design changes, price escalation and/or unforeseen circumstances, and shall ensure that the resources thus required are made available on an annual basis for each fiscal year.

#### Environment

7. The State shall implement the Project in accordance with the EARF, the IEE, the EMPs, ADB's *Environment Policy* (2002), and applicable laws and regulations of the Borrower and the State. The State shall provide adequate training to the engineers that will be assigned with this task so as to ensure that the requirements of the EARF, IEE and EMPs are fully implemented in consultation with the relevant contractors and construction supervision consultants.

#### Social and other matters

8. The State shall:

- (a) implement the Project in accordance with the RF, the RPs, ADB's *Involuntary Resettlement Policy* (1995) and applicable laws and regulations of the Borrower and the State;
- (b) in case of any changes in the Project roads due to detailed design or change of alignment, ensure that the RPs for the Project are updated on the basis of the final design and submitted to ADB for review and approval prior to award of the related Works contracts; and
- (c) monitor and submit to ADB quarterly progress and completion reports on land acquisition, environment management, resettlement and other issues.

Executions of Works Contracts

9. Whenever possible, Works contracts under the Infrastructure Improvement Component shall include an obligation on the part of the contractor to conduct performance-based maintenance services on the improved road section(s) for three years from completion of the relevant Works in accordance with ADB's standard bidding documents, and other reference documents acceptable to ADB.

10. The State shall ensure that:

- (a) subject to compliance with the requirements of the RF, EARF and related RPs and IEE/EMPs, respectively, it shall (i) make available land and rights in land, free from encumbrances, and (ii) clear the utilities, trees, and any obstruction on such land, on a timely basis, i.e., strictly in accordance with the schedule as agreed under the related Works contract, as required for activities relating to each road or section of a road in the Works contract; and
- (b) subsequent to the award of a contract package to a contractor, ensure that roads or sections of roads (sites) in that package are not handed over to the contractor unless all provisions of the RF, EARF and related RPs and IEE/EMPs (as applicable) respectively, are satisfied.

11. The State shall provide adequate funding for independent monitoring of activities relating to land acquisition, resettlement, environment and other social issues under the Project.

12. For the purposes of this Project, the State shall ensure that the Works contractors incorporate provisions to the effect that the contractor shall (i) carry out HIV/AIDS awareness and prevention programs for labor, (ii) not employ or use children as labor, (iii) disseminate information at work sites on risks of sexually transmitted diseases and HIV/AIDS as part of health and safety measures for those employed during construction, and (iv) follow and implement all statutory provisions on labor including equal pay for equal work), health, safety, welfare, sanitation, and working conditions. The Works contracts shall also provide for termination of the contract by the State in case of breach of any stated provisions by the contractors.

Road Maintenance

13. The State shall ensure adequate and timely funds for maintaining the network of roads developed under the Project in good condition during and after completion of the Project and Investment Program.

Road Safety

14. The State shall ensure strict adherence by contractors to national and State road safety standards on signage, road markings, roadside structures, and maintenance, as well as to good practices in construction zone traffic management.

Performance Monitoring and Reporting

15. Within three months of the Effective Date, the State shall develop a Project Performance Monitoring System (PPMS) for the Project. The PPMS shall monitor and evaluate the impacts, outcomes, outputs and activities in relation to the targets and milestones set for the Project.

16. Notwithstanding the generality of Section 2.08 of the Project Agreement, the State shall provide ADB:

- (a) within 45 days from the close of each quarter, with quarterly progress reports on all components of the Project and the Investment Program. Such reports shall include information on progress made during the period of review pursuant to the preceding paragraph of this Schedule, a summary financial account for the Project and Investment Program, changes, if any, in the implementation schedule, problems or difficulties encountered and remedial actions taken, anticipated problems and the proposed remedial measures, and work to be undertaken in the following period; and
- (b) a Project completion report within 3 months of completion of the Project, and a Facility completion report within 3 months of completion of the Investment Program. 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, and other details as may be requested by ADB.

Review

17. (a) ADB, the Borrower, and the State 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 its objectives and that of the Investment Program.

(b) ADB, the Borrower and the State shall undertake a mid-term review of the Project between 18 and 24 months after the date that the first contract package for Works under the Project has been awarded. The review will focus on issues related to implementation arrangements, and agree on changes, if needed, to achieve the objectives of the Project and of the Investment Program respectively.

Audits

18. The State shall ensure that all contracts financed by ADB in connection with the Project include provisions specifying the right of ADB to audit and examine the records and accounts of PWD and of all contractors, suppliers, consultants, and other service providers as they relate to the Project.

19. Notwithstanding the generality of Section 2.09 of the Project Agreement, the State shall ensure that an independent private audit firm is engaged (in consultation with

ADB) and annual audits of consolidated accounts of the Project including for procurement are conducted, prior to the audit performed by the Comptroller and Auditor General of India.

Infrastructure Management

20. The State shall ensure that the consultants for the Infrastructure Management Component under the previous tranche of the Investment Program complete their assignments in accordance with their terms of reference, and recruit the consultants for the Infrastructure Management Component under this Project in a timely manner to ensure continuity in the implementation of this Component.