

CONFORMED COPY

LOAN NUMBER 3096 IN

(Maharashtra Power Project)

between

INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT

and

STATE OF MAHARASHTRA

Dated September 11, 1989

LOAN NUMBER 3096 IN

PROJECT AGREEMENT

AGREEMENT, dated September 11, 1989, between INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (the Bank) and STATE OF MAHARASHTRA, acting by its Governor (Maharashtra).

WHEREAS (A) by the Loan Agreement of even date herewith between India, acting by its President (the Borrower) and the Bank, the Bank has agreed to make available to the Borrower an amount in various currencies equivalent to four hundred million dollars (\$400,000,000), on the terms and conditions set forth in the Loan Agreement, but only on condition that Maharashtra agree to undertake such obligations toward the Bank as are set forth in this Agreement;

(B) for the purpose of carrying out of the Project, the proceeds of the loan provided for under the Loan Agreement will be made available by the Borrower to Maharashtra as provided for in the Loan Agreement; and

WHEREAS Maharashtra, in consideration of the Bank's entering into the Loan Agreement with the Borrower, has agreed to undertake

the obligations set forth in this Agreement;

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

Definitions

Section 1.01. Unless the context otherwise requires, the several terms defined in the Loan Agreement, the Preamble to this Agreement and the General Conditions (as so defined) have the respective meanings therein set forth.

ARTICLE II

Execution of the Project

Section 2.01. (a) Maharashtra declares its commitment to the objectives of the Project as set forth in Schedule 2 to the Loan Agreement, and, to this end, shall carry out: (i) Part A of the Project; and (ii) cause to be carried out Part B of the Project through the Board, with due diligence and efficiency and in conformity with appropriate administrative, financial, engineering and public utility practices, and shall provide, or cause to be provided, promptly as needed, the funds, facilities, services and other resources required for the Project.

(b) Without limitation upon the provisions of paragraph (a) of this Section and except as the Bank and Maharashtra shall otherwise agree, Maharashtra shall carry out or cause to be carried out the Project in accordance with the Implementation Program set forth in Schedule 2 to this Agreement.

Section 2.02. Maharashtra shall relend an amount equivalent to \$170,000,000 to the Board out of the proceeds of the Loan made available by the Borrower to Maharashtra, under terms and conditions which shall have been approved by the Bank, which shall, except as the Bank may otherwise agree, include interest at a rate not less than the prevailing standard rate of interest applicable to loans from Maharashtra to the Board (and in no event less than 9% per annum) on the principal amount so relend and withdrawn by the Board and outstanding from time to time, and repayment over a period of twenty years, including therein a period of grace of five years.

Section 2.03. Except as the Bank shall otherwise agree, procurement of the goods, works and consultants' services required for the Project and to be financed out of the proceeds of the Loan shall be governed by the provisions of Schedule 1 to this Agreement.

Section 2.04. Maharashtra shall carry out or cause to be carried out the obligations set forth in Sections 9.04, 9.05, 9.06, 9.07, 9.08 and 9.09 of the General Conditions (relating to insurance, use of goods and services, plans and schedules, records and reports, maintenance and land acquisition, respectively) in respect of the Project Agreement.

Section 2.05. (a) Maharashtra shall, at the request of the Bank, exchange views with the Bank with regard to progress of the Project, the performance of its obligations under this Agreement other matters relating to the purposes of the Loan.

(b) Maharashtra shall promptly inform the Bank of any condition which interferes or threatens to interfere with the progress of the Project, the accomplishment of the purposes of the Loan, or the performance by Maharashtra of its obligations under this Agreement.

ARTICLE III

Management and Operations of the Board

Section 3.01. Maharashtra shall cause the Board to: (i) carry on its operations and conduct its affairs in accordance with sound administrative, financial and public utility practices under the supervision of qualified and experienced management assisted by competent staff in adequate numbers; (ii) at all times operate and maintain its plant, machinery, equipment and other property, and from time to time, promptly as needed, make all necessary repairs and renewals thereof, all in accordance with sound engineering, financial and public utility practices; and (iii) take out and maintain with responsible insurers, or make other provision satisfactory to the Bank for, insurance against such risks and in such amounts as shall be consistent with appropriate practice.

Section 3.02. Without limiting the generality of the foregoing provisions of this Article, Maharashtra shall under arrangements satisfactory to the Bank, cause the dams and related structures constructed under Part A of the Project to be periodically inspected in accordance with sound engineering practice in order to determine whether there are any deficiencies in the condition of such structures, or in the quality and adequacy of maintenance or methods of operations of the same, which may endanger their safety. To this end, Maharashtra shall propose to the Bank appropriate arrangements for the Bank's review no later than one year before the expected completion of such structures.

Section 3.03. Maharashtra shall cause the Board to: (i) reduce total commercial accounts receivables less any disputed amount to less than 2.5 months of revenues effective March 31, 1990 and thereafter; and (ii) reduce commercial accounts payables to less than 3.5 months of consumption of fuel and consumables, plus purchases of power, effective March 31, 1990, 3.0 months by March 31, 1991 and 2.0 months by March 31, 1992 and thereafter.

ARTICLE IV

Financial Covenants

Section 4.01. (a) Maharashtra shall maintain or cause to be maintained records and accounts adequate to reflect in accordance with sound engineering practices the operations, resources and expenditures, in respect of Part A of the Project, of the departments or agencies of Maharashtra responsible for carrying out Part A of the Project.

(b) Maharashtra shall:

- (i) have the records and accounts referred to in paragraph (a) of this Section for each fiscal year audited, in accordance with appropriate auditing principles consistently applied, by independent auditors acceptable to the Bank;
- (ii) furnish to the Bank as soon as available, but in any case not later than nine months after the end of each such year, the report of such audit by said auditors, of such scope and in such detail as the Bank shall have reasonably requested; and
- (iii) furnish to the Bank such other information concerning said records and accounts and the audit thereof as the Bank shall from time to time reasonably request.

Section 4.02. Maharashtra shall cause the Board to:

(a) maintain records and accounts adequate to reflect in accordance with sound accounting practices its operations and financial condition.

(b) have its records, accounts and financial statements (balance sheets, statements of income and expenses and related statements) for each fiscal year audited, in accordance with appropriate auditing principles consistently applied, by independent auditors acceptable to the Bank;

(c) furnish to the Bank as soon as available, but in any case not later than nine months after the end of each such year: (A) certified copies of its financial statements for such year as so audited, and (B) the report of such audit by said auditors of such scope and in such detail as the Bank shall have reasonably requested; and

(d) furnish to the Bank such other information concerning said records, accounts and financial statements as well as the audit thereof, as the Bank shall from time to time reasonably request.

Section 4.03. (a) Maharashtra shall cause the Board to take from time to time all such measures as may be necessary including the implementation of a financial action plan and a managerial development action plan, both agreed with the Bank, and if necessary, adjustment of tariffs of the Board to ensure that the total revenues in any financial year shall, after meeting: (i) all expenses properly chargeable to revenues, including operating, maintenance and management expenses; (ii) taxes on income and profits; (iii) depreciation; and (iv) interest charged on all debentures, bonds and loans; produce such surplus as is not less than 3% in financial years 1989/90 and 1990/91, 3-1/2% in financial years 1991/92 and 1992/93, and 4% thereafter, of the net fixed assets of the Board at the beginning of such year.

(b) For the purposes of this Section:

- (i) "total revenues" means revenues of the Board from the sale of electricity and other services, miscellaneous income, rural electrification subsidies received from Maharashtra, and such other subventions as shall be made in respect of extraordinary costs which are borne by the Board and which should not reasonably be borne by customers of the Board;
- (ii) "expenses" means the cost of power generated as well as purchased, fuel, operating, maintenance, management and administrative expenses, and all taxes accruing during the financial year, other than taxes on income and profits of the Board;
- (iii) "taxes on income and profits" consists of income taxes and other levies accrued by the Board according to the provisions of any legislation or regulation applicable in this respect;
- (iv) "depreciation" means a provision derived in accordance with the straight-line method based on the useful life of assets as stipulated in the Borrower's notification G.S.F. No. 1330 (E) dated December 12, 1986, issued under the provisions of Section 68 of the Electricity (Supply) Act 1948, of the Borrower, based on the gross value of the Board's fixed assets in service at the beginning of each year;
- (v) "interest charged on all debentures, bonds and loans" means all interest, excluding interest during construction, accrued by the Board during the financial year and all other charges on debt; and
- (vi) "net fixed assets of the Board" means: (A) the original cost of such fixed assets, as reduced by

the aggregate of the cumulative depreciation in respect of such assets; less (B) consumers' contribution for service lines, also reduced by the aggregate of the cumulative depreciation in respect of such portion of the service lines as has been financed by consumer contributions.

Section 4.04. (a) Except as the Bank shall otherwise agree, Maharashtra shall cause the Board to take all steps within its power necessary to ensure that commencing financial year 1990/91, its internal cash generation for each year shall be at least 1.00 times the debt service requirements of its debt for financial year 1990/91 and, at least 1.20 times the debt service requirements of its debt for each of the following financial years.

(b) For the purposes of this Section:

- (i) The term "debt" means any indebtedness of the Board maturing by its terms more than one year after the date on which it is originally incurred.
- (ii) Debt shall be deemed to be incurred under: (A) a loan contract, or agreement or other instrument providing for such debt or for the modification of its terms of payment, on the date, and to the extent, the amount of such debt has become outstanding pursuant to such contract, agreement or instrument; and (B) a guarantee agreement, on the date the agreement providing for such guarantee has been entered into but only to the extent that the guaranteed debt shall be outstanding.
- (iii) The term "equity" means the aggregate amount of the total unimpaired paid-up capital, retained earnings and reserves not allocated to cover specific liabilities of the Board.
- (iv) The term "internal cash generation" means the aggregate amount of the gross revenues of the Board from all sources, less the aggregate amount of the operating expenses of the Board, including expenses accountable to administration, maintenance and taxes (or payments in lieu of taxes), but before provision for depreciation of assets and interest and other charges on debt.
- (v) The term "debt service requirement" means the aggregate amount of amortization (including sinking fund payments, if any) of, and interest accrued and chargeable to revenue during the relevant financial year and other charges on debt.
- (vi) Whenever for the purposes of this Section it shall be necessary to value, in terms of currency of the Borrower, debt payable in another currency, such valuation shall be made on the basis of the prevailing rate of exchange notified by the Reserve Bank of India at which such other currency is, at the time of such valuation, obtainable for the purposes of servicing such debt, or, in the absence of such rate, on the basis of a rate of exchange acceptable to the Bank.

ARTICLE V

Effective Date; Termination;
Cancellation and Suspension

Section 5.01. This Agreement shall come into force and effect on the date upon which the Loan Agreement becomes effective.

Section 5.02. This Agreement and all obligations of the Bank

and of Maharashtra thereunder shall terminate on the date on which the Loan Agreement shall terminate in accordance with its terms, and the Bank shall promptly notify Maharashtra thereof.

Section 5.03. All the provisions of this Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the General Conditions.

ARTICLE VI

Miscellaneous Provisions

Section 6.01. Any notice or request required or permitted to be given or made under this Agreement and any agreement between the parties contemplated by this Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand or by mail, telegram, cable, telex or radiogram to the party to which it is required or permitted to be given or made at such party's address hereinafter specified or at such other address as such party shall have designated by notice to the party giving such notice or making such request. The addresses so specified are:

For the Bank:

International Bank for
Reconstruction and Development
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Cable address:

INTBAFRAD
Washington, D.C.

Telex:

440098 (ITT)
248423 (RCA) or
64145 (WUI)

For Maharashtra:

Secretary to the Government of Maharashtra
Department of Energy
Mantralaya, Bombay
India

Cable address:

ENRG
Mantralaya, Bombay

Section 6.02. Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement on behalf of Maharashtra may be taken or executed by a Secretary to the Government of Maharashtra or such other person or persons as Maharashtra shall designate in writing, and Maharashtra shall furnish to the Bank sufficient evidence of the authority and the authenticated specimen signature of each such person.

Section 6.03. This Agreement may be executed in several counterparts, each of which shall be an original, and all collectively but one instrument.

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives, have caused this Agreement to be signed in their respective names in the District of Columbia, United States of America, as of the day and year first above written.

INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT

By /s/ Attila Karaosmanoglu
Regional Vice President
Asia

STATE OF MAHARASHTRA

By /s/ Anil Kumar
Authorized Representative

SCHEDULE 1

Procurement and Consultants' Services

Section I: Procurement of Goods and Works

Part A: International Competitive Bidding

Except as provided in Part D hereof, goods and works shall be procured under contracts awarded in accordance with procedures consistent with those set forth in Sections I and II of the "Guidelines for Procurement under IBRD Loans and IDA Credits" published by the Bank in May 1985 (the Guidelines).

Part B: Preference for Domestic Manufacturers

In the procurement of goods in accordance with the procedures described in Part A hereof, goods manufactured in India may be granted a margin of preference in accordance with, and subject to, the provisions of paragraphs 2.55 and 2.56 of the Guidelines and paragraphs 1 through 4 of Appendix 2 thereto.

Part C: Preference for Domestic Contractors

In the procurement of works in accordance with the procedures described in Part A hereof, Maharashtra may grant a margin of preference to domestic contractors in accordance with, and subject to, the provisions of paragraphs 2.55 and 2.56 of the Guidelines and paragraph 5 of Appendix 2 thereto.

Part D: Other Procurement Procedures

1. Contracts for equipment and civil works estimated to cost the equivalent of \$200,000 and \$5,000,000 each or less, respectively, may be procured on the basis of competitive bidding advertised locally in accordance with procedures satisfactory to the Bank.

2. Contracts for survey equipment, laboratory instruments and equipment, specialized office engineering equipment, and computer hardware and software upto an aggregate amount of \$5,000,000 equivalent may be procured on the basis of comparison of price quotations solicited from a list of at least three suppliers eligible under the Guidelines, in accordance with procedures acceptable to the Bank.

Part E: Review by the Bank of Procurement Decisions

1. Review of invitations to bid and of proposed awards and final contracts:

(a) With respect to each contract for civil works and equipment estimated to cost the equivalent of \$5,000,000 and

\$1,000,000 or more, respectively, the procedures set forth in paragraphs 2 and 4 of Appendix 1 to the Guidelines shall apply. Where payments for such contract are to be made out of the Special Account, such procedures shall be modified to ensure that the two conformed copies of the contract required to be furnished to the Bank pursuant to said paragraph 2 (d) shall be furnished to the Bank prior to the making of the first payment out of the Special Account in respect of such contract.

(b) With respect to each contract not governed by the preceding paragraph, the procedures set forth in paragraphs 3 and 4 of Appendix 1 to the Guidelines shall apply. Where payments for such contract are to be made out of the Special Account, such procedures shall be modified to ensure that the two conformed copies of the contract together with the other information required to be furnished to the Bank pursuant to said paragraph 3 shall be furnished to the Bank as part of the evidence to be furnished pursuant to paragraph 4 of Schedule 4 to the Loan Agreement.

(c) The provisions of the preceding subparagraphs (a) and (b) shall not apply to contracts on account of which the Bank has authorized withdrawals from the Loan Account on the basis of statements of expenditure. Such contracts shall be retained in accordance with Section 4.01 (a) (ii) of the Loan Agreement.

2. The figure of 15% is hereby specified for purposes of paragraph 4 of Appendix 1 to the Guidelines.

Section II: Employment of Consultants

1. In order to assist Maharashtra in carrying out the Project, Maharashtra shall employ or cause to be employed by the Board, consultants whose qualifications, experience and terms and conditions of employment shall be satisfactory to the Bank. Such consultants shall be selected in accordance with principles and procedures satisfactory to the Bank on the basis of the "Guidelines for the Use of Consultants by World Bank Borrowers and by the World Bank as Executing Agency" published by the Bank in August 1981.

2. Consultants for the preparation of final engineering and technical specifications, inspection of manufacturing of the generating units and erection and testing of said units, shall be appointed no later than December 31, 1989.

SCHEDULE 2

Implementation Program

1. Maharashtra shall cause the Board to: (i) furnish to the Bank by December 31, 1989, a copy of the final report of the Tariff Study; and (ii) by June 30, 1990, afford the Bank an opportunity to comment on the Board's proposals for load management initiatives and tariff adjustments based, inter alia, on the recommendations of the Tariff Study before said proposals are implemented.

2. Maharashtra shall take necessary steps to carry out a review of the technical aspects of Koyna IV in accordance with terms of reference agreed with the Bank through a panel of experts with qualifications and experience agreed with the Bank.

3. Maharashtra shall, by December 31, 1989, furnish to the Bank for its comments a roster of specialists and their qualifications to be appointed by Maharashtra on the panel of experts referred to in paragraph 2 above.

4. Maharashtra shall: (a) by December 31, 1989 appoint a panel of experts to review the present condition of the existing Koyna dam, determine the scope of additional investigations, review said

investigations and repairs of said dam; (b) furnish to the Bank by December 31, 1990 a report on the recommendations of said panel; and (c) if so recommended by said panel, retain consultants by June 30, 1991 to assist Maharashtra in the implementation of recommendations of said panel.

5. Maharashtra shall: (a) revise suitably the organizational structure and appoint adequate staff of the project implementing unit of its Department of Irrigation; and (b) give the Bank an opportunity to comment on any substantial changes in the organizational structure of the said unit.

6. Maharashtra shall, by December 31, 1989, furnish to the Bank a report on all persons, whether land owning or landless, to be displaced by the proposed construction of Koyna IV, and shall compensate and resettle eligible persons in accordance with the provisions of the Maharashtra Project Displaced Persons Act, 1976.

7. Maharashtra shall, in the event of not receiving the clearance under the Forest (Conservation) Act, 1980 of the Borrower by December 31, 1989 for the construction of access road to the surge tank for Koyna IV, propose satisfactory alternative solution for access to said tank.

8. Maharashtra shall cause the Board to furnish to the Bank, by December 31, 1989, a timetable for key actions for the construction of transmission lines to connect the Koyna IV power station to the transmission system of Maharashtra, and shall implement the construction of said lines in accordance with the agreed timetable.

9. Maharashtra shall cause the Board to establish, by December 31, 1989, a Project Cell under the charge of its Member (Technical) to monitor implementation of the Project, to serve as a liaison with other government agencies on matters relating to the implementation of the Project, to prepare periodic progress reports as required, and to coordinate preparation of withdrawal applications under the Loan.

10. Maharashtra shall cause the Board to furnish to the Bank, by March 1 of each year, a work plan adequate to facilitate the monitoring and supervision of the Project which shall include, inter alia: (a) a list of transmission lines and substations to be financed out of the proceeds of the Loan during the following financial year; (b) a list of contract packages for which tenders are to be invited and an associated timetable for procurement of equipment and material to be financed out of the proceeds of the Loan; and (c) a plan to be carried out for the resettlement and rehabilitation of persons displaced or to be displaced by the construction of any sub-station under the Project, based on an actual survey of the land.

11. Maharashtra shall cause the Board to furnish to the Bank, by December 31 each year, revisions, if any, to its provisional capital investment and financing plan for the next five years.

