

LOAN NUMBER 3024 IN

(Nathpa Jhakri Power Project)

between

INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT

and

STATE OF HIMACHAL PRADESH

Dated May 18, 1989

LOAN NUMBER 3024 IN

HIMACHAL PRADESH AGREEMENT

AGREEMENT, dated May 18, 1989, between INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (the Bank) and STATE OF HIMACHAL PRADESH, acting by its Governor (Himachal Pradesh).

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 eighty-five million dollars (\$485,000,000), on the terms and conditions set forth in the Loan Agreement, but only on condition that Himachal Pradesh agree to undertake such obligations toward the Bank as are set forth in this Agreement;

(B) Part A of the Project will be carried out by the Nathpa Jhakri Power Corporation Limited (the Corporation), with the Borrower's and Himachal Pradesh's assistance and, as part of such assistance, an amount not less than the equivalent to \$437,000,000 out of the proceeds of the Loan provided for under the Loan Agreement will be relented by the Borrower to the Corporation;

(C) Part B of the Project will be carried out by Himachal Pradesh through the Himachal Pradesh State Electricity Board (the Board) with the Borrower's assistance and, as part of such assistance, an amount equivalent to \$43,000,000 out of the proceeds of the Loan provided for under the Loan Agreement will be made available to Himachal Pradesh by the Borrower for relending to the Board; and

WHEREAS Himachal Pradesh, 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) Himachal Pradesh declares its commitment to the objectives of the Project as set forth in Schedule 2 to the Loan Agreement, and, to this end, shall cause the Board to carry out Part B of the Project 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 any limitation or restriction upon any of its other obligations under this Agreement, Himachal Pradesh shall cause the Corporation to perform in accordance with the provisions of the Project Agreement all the obligations of the Corporation therein set forth, shall take or cause to be taken all action, including the provision of funds, facilities, services and other resources, necessary or appropriate to enable the Corporation to perform such obligations, and shall not take or permit to be taken any action which would prevent or interfere with such performance.

Section 2.02. Himachal Pradesh shall relend an amount equivalent to \$43,000,000 to the Board out of the proceeds of the Loan made available by the Borrower to Himachal Pradesh, 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 of not less than 10.5% per annum on the principal amount so relent 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 the Schedule to the Project Agreement.

Section 2.04. Himachal Pradesh 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 Himachal Pradesh Agreement and Part B of the Project.

Section 2.05. (a) Himachal Pradesh 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, and other matters relating to the purposes of the Loan.

(b) Himachal Pradesh shall promptly inform the Bank of any condition which interferes or threatens to interfere with the progress of Part B of the Project, the accomplishment of the

purposes of the Loan, or the performance by Himachal Pradesh of its obligations under this Agreement.

Section 2.06. Himachal Pradesh shall cause the Board to apply by June 30, 1989, to the appropriate authorities for the clearance under the Forests (Conservation) Act, 1980 of the Borrower in respect of the construction of transmission lines and associated substations under the Project.

ARTICLE III

Management and Operations of the Board

Section 3.01. Himachal Pradesh shall cause the Board to: (i) carry on its operations and conduct its affairs in accordance with sound administrative, financial, engineering 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. Himachal Pradesh shall, not later than December 31, 1989, furnish to the Bank for its review and comment, the recommendations arising from the utility management study to be carried out under Part B (iv) of the Project, including a timetable for implementation of such recommendations, and thereafter, shall implement the agreed recommendations in accordance with the timetable agreed with the Bank.

Section 3.03. Himachal Pradesh shall, not later than September 30, 1989, furnish to the Bank for its comment a five year staffing plan and training program in respect of the Board, and shall, thereafter, implement said plan and the program as agreed with the Bank in accordance with an agreed timetable.

ARTICLE IV

Financial Covenants

Section 4.01. Himachal Pradesh 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 financial 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: (i) certified copies of its financial statements for such year as so audited, and (ii) 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 4.02. (a) Himachal Pradesh shall cause the Board to take from time to time all such measures as may be necessary including, 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 payable on all debentures, bonds and loans; produce such surplus as is not less than 2.9% in FY 90, 3.8% in FY 91, 4.3% in FY 92, 4.7% in FY 93, 4.9% in FY 94 and FY 95, and 7% thereafter, of the net fixed assets of the Board in service 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 Himachal Pradesh, state electricity duties received, 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 and duties 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.R. 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 payable 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 in service" means:
 - (A) the original cost of such fixed assets, as reduced by the aggregate of the cumulative depreciation in respect of such assets, less, and
 - (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 4.03. Himachal Pradesh shall cause the Board to furnish to the Bank by December 31 each year (i) an updated five year investment plan; and (ii) a report of the Board's forecast of operational and financial performance for the ensuing five financial years specifying the actions that will be taken to ensure fulfillment of the requirements of Section 4.02 of this Agreement.

Section 4.04. Without limiting the generality of Section 4.02 of this Agreement, Himachal Pradesh shall, and shall cause the Board to, implement the Action Plan set forth in the Schedule to this Agreement.

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 Himachal Pradesh thereunder shall terminate on the date on which the Loan Agreement shall terminate in accordance with its terms, and the Bank shall promptly notify Himachal Pradesh 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 Himachal Pradesh:

Secretary to the Government
of Himachal Pradesh
Department of Multipurpose Projects and Power
Shimla, Himachal Pradesh, India

Cable address:

HIMPOWER
Shimla

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 Himachal Pradesh may be taken or executed by a Secretary to the Government of Himachal Pradesh or such other person or persons as Himachal Pradesh shall designate in writing, and Himachal Pradesh 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 HIMACHAL PRADESH

By /s/ Anil Kumar
Authorized Representative

SCHEDULE

Action Plan

1. Himachal Pradesh shall, prior to March 31, 1989, write off payments due from the Board to Himachal Pradesh on account of interest charges due as of March 31, 1988 in respect of loans provided to the Board by Himachal Pradesh.

2. (a) Himachal Pradesh shall modify the terms of all loans to the Board by Himachal Pradesh outstanding as of March 31, 1988 to conform to the following: (i) no repayment of principal; and (ii) interest rate of 10.5% per annum.

(b) All loans, except proceeds of any loan made by the Bank, provided to the Board by Himachal Pradesh during FY 1989 through FY 1995 shall include the following terms: (i) no repayment of principal; (ii) interest rate of 10.5% per annum.

(c) All loans, except proceeds of any loan made by the Bank, provided to the Board by Himachal Pradesh during FY 1996 and thereafter shall include the following terms: (i) repayment period of 15 years including a grace period of 3 years; and (ii) interest rate of 10.5%.

3. (a) Himachal Pradesh shall, in each FY1990 through FY1995, pay to the Board, no later than the close of each said FY, the full amount payable to the Board on account of rural electrification subsidies.

(b) Himachal Pradesh shall cause the Board to write off the claims of the Board to payments due to the Board on account of rural electrification subsidies for the period ending FY 1988.

4. Himachal Pradesh shall, commencing financial year 1988/89, cause the Board to maintain its accounts receivable with respect to electricity sales at no more than six months average monthly sales of electricity in FY89, three months average monthly sales of electricity in FY90 and two months average monthly sales of electricity in FY91 and thereafter.

5. Himachal Pradesh shall provide additional loans to the Board as necessary to fully fund the financing gap of the Board's budget in FY 1989 and FY 1990.

