

FORM-RAPDRP-_____

LOAN NO.____TO____ (Total Loan:____Nos.)
(Applicable to RTL to State/Central sector borrowers)

MEMORANDUM OF AGREEMENT

BETWEEN

POWER FINANCE CORPORATION LIMITED

AND

(Utility)

DATED

MEMORANDUM OF AGREEMENT

This agreement is made on this day of 2009 BETWEEN POWER FINANCE CORPORATION LIMITED, A Government Company, having its Registered Office at 'Urja Nidhi Building', 1, Barakhamba Lane, Connaught Place, New Delhi - 110001 (hereinafter referred to as "the Corporation") of the one part

AND

M/s (Name of Electricity Board) /
Utility.....

having its Head/Registered Office at (hereinafter referred to "**the Borrower**") of the other part.

WHEREAS the Central Government has launched Restructured Accelerated Power Development & Reform Programme (hereinafter referred to as "**R-APDRP**") during the XI Five Year Plan with revised terms and conditions as a Central Sector Scheme to establish base line data system and reduce AT&C loss.

AND WHEREAS the Borrower intends to undertake execution of various distribution projects under R-APDRP on the terms & conditions contained in the Order dated 19.09.2008 and Guideline for R-APDRP issued by Ministry of Power on 22.12.2008

AND WHEREAS the Borrower has undertaken implementation of Projects under Part-A of R-APDRP (Loan Nos..... to.....) as per the list attached herewith as **Annexure-I** (hereinafter collectively referred to as "**the Project**") AND WHEREAS the Borrower by its letter datedmade an application to the Corporation for grant of total loan of Rs.....(Rupees only) to be utilised for executing the Project (list of individual loan amount sanctioned for the project is listed in Annexure-I).

AND WHEREAS (a) the Ministry of Power, Government of India, (b) Corporation, (c) State Government and (d) the Borrower has entered into a Memorandum of Agreement

(Quadripartite Agreement) dated (hereinafter referred to as the “**R-APDRP Quadripartite Agreement**” which forms a part and parcel of this Agreement)

AND WHEREAS, the Corporation acting as a Nodal Agency has agreed to disburse the funds on behalf of the Ministry of Power, Govt. of India as financial assistance to the Borrower to implement the ‘Project’ on the terms and conditions set out therein.

AND WHEREAS the Corporation has sanctioned total loan of Rs.....(Rupees only) to the Borrower for the purpose of the execution of the said Project towards Loan Nos..... to on the terms and conditions contained in the Corporation’s Sanction Letter dated *and any amendments thereof* to the Borrower and hereunder written (list of individual loan amount sanctioned for the project is listed in **Annexure-I**).

AND WHEREAS the Borrower by its Resolution dated day of passed at the meeting of its Board on theday of2009 has agreed to accept the said terms and conditions of the Loan Nos. to

AND WHEREAS according to one of the conditions of the loans the Borrower is required to ensure timely debt service for which the state government shall make necessary annual budgetary allocation for payment of principal, interest and other charges as applicable **[Applicable in case of Electricity or Power departments]**.

AND WHEREAS according to one of the conditions of the loans the Borrower is required to ensure timely debt service for payment of principal, interest and other charges as applicable. In the event of default, the entire sum released directly to the Borrower for implementation of Project under R-APDRP shall be deemed to have been released out of Central Plan Assistance to the State Government **[Applicable in case of Power Utility/ SEB]**.

OR

~~AND~~

the Borrower shall ensure that the State Government shall furnish a Government Guarantee, in terms of the ‘R-APDRP Quadripartite Agreement’, with a provision that *in case of default by the Borrower, the Corporation shall be entitled to receive/recover all outstanding dues from the Borrower* on account of principal, interest including penal interest, commitment charges, fees, other charge/costs and any other money due and payable by the Borrower to the Corporation, from the Central Plan Assistance due to the State. *The State Government Guarantee in the form of recovery from Central Plan Assistance due to State may be invoked after invoking the escrow account and the pari-passu charge on assets.*

AND

the Borrower shall ensure to open an Escrow Account in the bank to ensure debt servicing of principal, interest and other charges for the entire pendency of the loan to the satisfaction of the nodal agency.

AND

~~the Borrower shall ensure first charge, in favour of the Corporation (on pari-passu basis, if in syndication) shall be taken by way of hypothecation on the newly financed assets under the Project as securities for loans both present and future, as per details enclosed. Wherever this is not possible or value of such assets is not adequate, charge can be taken on / extended to other assets of the Borrower. Existing assets shall be valued on depreciated replacement cost basis.~~

Security shall be determined by applying coverage factor of 1.1 times of value of asset(s). Thus, where the assets financed under the loan do not cover the said factor, the Borrower shall have to provide other assets to meet the said factor within a period of to the satisfaction of the Corporation.

NOW IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO as follows:-

1. The Corporation will lend and advance to the Borrower the total sum of Rs.....(Rupees only) on the terms and conditions set out in the Corporation's Sanction letter dated *and any amendments thereof* and on the terms and conditions herein set out. The list of loans sanctioned w.r.t. each of the approved projects is enclosed as Annexure-I. The said letters shall form an integral part of this Agreement as Annexure-II as if fully set forth hereunder and all the terms and conditions set out in the said letter *and amendments thereof* will be binding on the Borrower.
2. ~~The Borrower shall repay to the Corporation the amount of the said loan with interest,~~ interest tax, commitment charges, penal interest, etc. thereon and costs, charges, expenses, losses and other moneys, etc. due and payable to the Corporation in accordance with the terms and conditions set out in that behalf in the said letter of the Corporation dated *and any amendments thereof*. The Borrower shall make all payments of principal, interest, interest tax, commitment charges, penal interest, etc. other expenses etc. to the Corporation at its Registered Office at New Delhi.
3. The Borrower shall implement the said Project and shall also adhere to and comply with all such amendments thereto as are approved by the Corporation.
4. The Borrower agrees and undertakes to complete the work in the manner and according to the time schedule envisaged in terms and conditions of loan sanction and to the satisfaction of the Corporation or the Consultant appointed by the Corporation to review the Project as per the R-APDRP Quadripartite Agreement.
5. The Borrower has represented to and assured the Corporation that the loans applied for and being granted by the Corporation to the Borrower is within the borrowing powers of the Borrower in accordance with the laws and bye-laws applicable to it and all formalities, required by the laws and bye-laws and rules regulating the work and conduct of the Borrower in respect of such borrowing have been fully complied with.
6. The Borrower has further agreed to furnish to the Corporation a guarantee from the Government of the State of for due fulfillment of the obligations of the Borrower in terms of the R-APDRP Quadripartite Agreement, with a provision that in case of default by the Borrower, the Corporation shall be entitled to receive all outstanding dues of the Borrower from the Central Plan Assistance due to the State of _____. The state Government Guarantee in the form of recovery from Central Plan Assistance due to State may be invoked after invoking the escrow account and the pari-passu charge on assets.

The Borrower agreed to create charge on assets by way of :

- (a) FIRST charge by way of hypothecation in favour of the Corporation (on pari-passu basis if in syndication) on the newly financed assets under the project as securities for each of the loans on the Borrower's movable assets (save and except book debts), including movable machinery, machinery spares, tools and accessories, fuel stock, spares and material at project site, present and future. Wherever this is not possible or value of such assets is not adequate, charge can be taken on / extended to other assets of the Borrower's Existing assets shall be valued on depreciated replacement cost basis.;

Security shall be determined by applying coverage factor of 1.1 times of value of asset(s) of individual projects. Thus, where the assets financed under the each of the individual loans do not cover the said factor, the Borrower shall have to provide other assets to meet the said factor within days to the satisfaction of the Corporation.

AND

- I* The Borrower shall make out good marketable title to its properties to the satisfaction of the Corporation and keep the said properties in marketable and good condition and insure the same in the manner provided for and covering the risks mentioned in the Deed of Hypothecation/Indenture of Mortgage and comply with all such formalities as may be necessary or required for the said purpose.
- II* Creation of additional security: The Borrower undertakes that if, at any time during the subsistence of this Agreement, the Corporation is of the opinion that the security provided by the Borrower has become inadequate to cover the balance of the each of the loans then outstanding, the Borrower shall provide and furnish to the Corporation additional security as may be acceptable to the Corporation to cover such deficiency.
- III.* Registration of charge : The Borrower shall have the particulars of charge registered with the Registrar of companies (ROC) as per the Companies Act within stipulated time, and shall submit a certificate from the ROC certifying the registration of charge.
- 6(b) The Borrower shall open and maintain an Escrow Account with a scheduled bank as acceptable to the Corporation to escrow the funds, loans and any other monies receivable during the tenor of the Project.
The Borrower shall ensure that an amount equivalent to the (....) installment of the Principal amount along with interest and other charges shall be maintained for ensuring debt servicing for the loans under Part-A of R-APDRP.
7. The Borrower shall furnish to the Corporation such periodical reports of the utilisation of the amount of the loans and the progress of the Project as may be required by the Corporation.
8. The Borrower shall make available for the inspection of the Corporation all its books of account and other books and documents maintained by it and/or required to be maintained by it under any law, bye-laws or rules of the Borrower and allow all facilities to the Corporation or any persons authorised by it for the purpose of carrying out such inspection. The Corporation or a consultant appointed by the Corporation in terms of the APDRP Quadripartite Agreement shall have the right to inspect the project and all the books of accounts, records and documents relating thereto at any time without any objections from the Borrower.

9. The Borrower agrees and undertakes to execute, sign, seal and deliver all documents, papers, acknowledgements and other writings as may be required by the Corporation at any time during the pendency of this Agreement, for fully and effectively securing the moneys due and payable or to become due and payable by the Borrower to the Corporation in terms of these presents.
10. The Borrower must be and continue to be the owner and in physical possession of the Project at the time of disbursement of each installment of loan amount and till all the money due to the Corporation are fully liquidated by the Borrower.
11. The Borrower shall not transfer or abandon the Project at any stage without written consent of the Corporation. In case at any stage or on a future date, the project is proposed to be transferred to any other organisation or to be abandoned, the entire outstanding (e.g. principal, interest, interest tax, commitment charges, penal interest, etc.) due from the Borrower shall be paid to the Corporation before any such transfer is affected.
12. ~~In the event of a default on the part of the Borrower or any breach of the terms and conditions of these presents, the Borrower shall be liable to pay to the Corporation all costs, charges and expenses incurred/to be incurred by the Corporation in connection with the negotiations for the Agreement and in respect of the Agreement including legal expenses incurred for realisation/recovery of the outstanding dues.~~
13. The Corporation shall without prejudice to its other rights and remedies are entitled to recall the loan at any time before the due date for repayment thereof, if the Borrower fails to fulfill its obligations under this Agreement and/or in the event of its committing a breach of any of the terms thereof. The decision of the Chairman & Managing Director of the Corporation as to whether a breach of the terms of this Agreement has been committed by the Borrower or not shall be final and binding on the Borrower.
14. Every notice, demand, request, consent, approval, waiver or agreement to be given or made hereunder shall, save as otherwise herein specifically provided, be in writing and in the English Language and shall be delivered by hand or sent by mail (Registered/Speed Post) or by Email and shall be deemed to have been given and received, if delivered by hand, upon delivery, if sent by mail, the 3rd day (excluding Saturday, Sunday and other closed days) following the date of mailing, and if sent by Email, the 2nd day (excluding Saturday, Sunday and other closed days) following the date of transmission. The mailing address, Email Id of the Borrower and the Corporation for purposes shall respectively be :

for the Borrower,

for POWER FINANCE CORPORATION LTD

‘Urja Nidhi Building’,
1, Barakhamba Lane,
Connaught Place,
New Delhi-110001

or such other mailing or Email Id as to which the Borrower or the Corporation may, for itself, from time to time notify the other as aforesaid.

15. This Agreement is executed in New Delhi and the loans as per Annexure-I will be advanced by the Corporation to the Borrower in New Delhi. The Agreement shall be governed by the Indian laws and civil Courts in Delhi/New Delhi alone shall have jurisdiction to entertain any suit or matter/or proceedings arising out of or in relation to this Agreement.

IN WITNESS whereof the parties hereto have executed these presents the day, month and year first herein written.

SIGNED AND DELIVERED BY
(on behalf of POWER FINANCE CORPORATION LIMITED)

Signature

Name & Designation
.....

Address
.....

in the presence of

Signature

Name & Designation
.....

Address
.....

SIGNED AND DELIVERED BY
(on behalf of Electricity Board/borrower)

Signature

Name & Designation
.....

Address
.....

in the presence of

Signature

Name & Designation
.....

Address
.....

SCHEDULE ABOVE REFERRED TO(Change as per case to case)

The whole of the movable properties of the Borrower's _____ of the Borrower, consisting its movable plant & machinery, machinery spares, tools and accessories, plant turbine and other various equipments etc. including associated balance of plant equipment/items) and other movables, both present and future whether installed or not and whether now lying loose or in cases or which are not lying or stored in or about or shall hereafter from time to time during the continuance of the security of these presents be brought into or upon or be stored or be in or about the borrower's factories, premises and godowns situated at "_____" or wherever else the same may be or be held by any party to the order or disposition of the borrower or in the course of transit or on high seas or on order, or delivery, howsoever, and wheresoever in the possession of the borrower and either by way of substitution or addition.

ANNEXURE-I

List of individual loan amount sanctioned for the Part-A Projects under R-APDRP in(Name of State)

(Amount in Rs. Crore)

Sl. No.	Name of Town/Project Area	Loan No.	Project Cost	Loan Amount

ANNEXURE-II

Sanction Letter along with Terms and Conditions
