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GRANT NUMBER 0167-AFG (SF)

GRANT AGREEMENT  
(Special Operations)

(Water Resources Development Investment Program – Tranche 1)

between

ISLAMIC REPUBLIC OF AFGHANISTAN

and

ASIAN DEVELOPMENT BANK

DATED 11 NOVEMBER 2009

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GAS:AFG 42091

## **GRANT AGREEMENT (Special Operations)**

GRANT AGREEMENT dated 11 November 2009 between ISLAMIC REPUBLIC OF AFGHANISTAN (hereinafter called the "Recipient") and ASIAN DEVELOPMENT BANK (hereinafter called as "ADB").

### WHEREAS

(A) the Recipient and ADB have entered into a Framework Financing Agreement, dated 18 August 2009, (hereinafter called the "FFA") for the purposes of assisting the Recipient in financing projects under a Water Resources Development Investment Program (hereinafter called the "Investment Program") through a multitranches financing facility to be provided by ADB;

(B) by a periodic financing request dated 18 August 2009 (hereinafter called the "PFR") submitted by the Recipient pursuant to the FFA, the Recipient has applied to ADB for a grant for the purposes of financing the project as described in Schedule 1 to this Grant Agreement (hereinafter called the "Project");

(C) the Recipient has also applied to the Government of the United Kingdom for a grant (hereinafter called the "UK Grant"), and the UK Grant when approved will be provided to the Recipient through ADB in accordance with the terms and conditions set forth in a Grant Agreement (Externally Financed) of even date herewith between the Recipient and ADB (hereinafter called the "UK Grant Agreement"), to finance the project described in Schedule 1 to the UK Grant Agreement; and

(D) ADB, on the basis of inter alia of the foregoing, has agreed to provide a grant to the Recipient from ADB's Special Funds resources upon the terms and conditions hereinafter set forth.

NOW THEREFORE the parties agree as follows:

## **ARTICLE I**

### **Grant Regulations; Definitions**

Section 1.01. All provisions of the Special Operations Grant Regulations of ADB, dated 7 February 2005 (hereinafter called the "Grant Regulations"), are hereby made applicable to this Grant Agreement with the same force and effect as if they were fully set forth herein.

Section 1.02. The definitions set forth in the Grant Regulations are applicable to this Grant Agreement unless the context requires otherwise. In addition, the following terms shall have the meanings respectively defined below:

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

(b) "EARF" means the Environmental Assessment and Review Framework as agreed between the Recipient and ADB and attached as Annex 5 to the PFR;

(c) "EMP" means an environmental management plan;

(d) "Goods" means equipment and materials to be financed out of the proceeds of the Grant; and including related services such as transportation, insurance, installation, commissioning, training, and initial maintenance, but excluding consulting services;

(e) "IEE" means an initial environmental examination;

(f) "LARF" means the land acquisition and resettlement frameworks, which the Project is subject to;

(g) "Loan Disbursement Handbook" means ADB's *Loan Disbursement Handbook* dated January 2007, as amended from time to time;

(h) "M&E" means monitoring and evaluation;

(i) "MAIL" means the Ministry of Agriculture, Irrigation, and Livestock of the Recipient, and any successor thereto;

(j) "MEW" means the Ministry of Energy and Water of the Recipient, and any successor thereto;

(k) "*mirab*" means traditional community managers of irrigation systems in the territory of the Recipient, who are responsible for overseeing the management, operation and maintenance of relevant irrigation systems;

(l) "MOF" means the Ministry of Finance of the Recipient, and any successor thereto;

(m) "NBD" means the Northern Basins Development in the territory of the Recipient;

(n) "NVDA" means the Nangahar Valley Development Authority of the Recipient, and any successor thereto;

(o) "O&M" means operation and maintenance;

(p) "Part" means a part of the Project as described in Schedule 1 to this Grant Agreement;

(q) "PCO" means the Project Coordination Office established by MOF, as more fully described in Schedule 4 to this Grant Agreement;

(r) "PDF" means the Project Development Facility, as more fully described in Schedule 4 to this Grant Agreement;

(s) "PIO" means a Project Implementation Office established by MEW under the Project, as more fully described in Schedule 4 to this Grant Agreement;

(t) "PMO" means a Project Management Office established under the Project, as more fully described in Schedule 4 to this Grant Agreement;

(u) "Procurement Guidelines" means ADB's *Procurement Guidelines* dated February 2007, as amended from time to time;

(v) "Procurement Plan" means the procurement plan for the Project dated 18 August 2009 and agreed between the Recipient and ADB, as updated from time to time in accordance with Procurement Guidelines, Consulting Guidelines, and other arrangements agreed with ADB;

(w) "Project Executing Agency" for the purposes of, and within the meaning of, the Grant Regulations means MOF, which is responsible for the overall implementation of the Project;

(x) "Project facilities" means the facilities to be constructed and the equipment to be procured pursuant to this Grant Agreement;

(y) "PSC" means the Project Steering Committee established by the Recipient in June 2007 to oversee all ADB-supported water sector activities in the territory of the Recipient, as more fully described in Schedule 4 to this Grant Agreement;

(z) "R&U" means rehabilitation and upgrading;

(aa) "RBA" means a River Basin Agency established in the territory of the Recipient;

(bb) "RBC" means a River Basin Council established in the territory of the Recipient;

(cc) "Works" means construction or civil works to be financed out of the proceeds of the Grant, including services such as drilling or mapping, and Project related services that are provided as part of a single responsibility or turnkey contract, but excluding consulting services; and

(dd) "WUA" means a Water Users' Association established in the territory of the Recipient.

## **ARTICLE II**

### **The Grant**

Section 2.01. ADB agrees to make available to the Recipient from ADB's Special Funds resources on terms and conditions set forth in this Grant Agreement an amount of eighty six million and six hundred thousand Dollars (\$86,600,000).

## **ARTICLE III**

### **Use of Proceeds of the Grant**

Section 3.01. The Recipient shall cause the proceeds of the Grant to be applied to the financing of expenditures on the Project in accordance with the provisions of this Grant Agreement.

Section 3.02. The Goods, Works, consulting services and other items of expenditure to be financed out of the proceeds of the Grant and the allocation of amounts of the Grant among different categories of such Goods, Works, consulting services and other items of expenditure shall be in accordance with the provisions of Schedule 2 to this Grant Agreement, as such Schedule may be amended from time to time by agreement between the Recipient 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 Grant shall be procured in accordance with the provisions of Schedule 3 to this Grant Agreement.

Section 3.04. Withdrawals from the Grant Account in respect of Goods, Works and consulting services shall be made only on account of expenditures relating to

(a) Goods which are produced in and supplied from, and Works and consulting services which are supplied from, such member countries of ADB as shall have been specified by ADB from time to time as eligible sources for procurement, and

(b) Goods, Works and consulting services which meet such other eligibility requirements as shall have been specified by ADB from time to time.

Section 3.05. The Grant Closing Date for the purposes of Section 8.02 of the Grant Regulations shall be 30 June 2015 or such other date as may from time to time be agreed between the Recipient and ADB.

## ARTICLE IV

### Particular Covenants

Section 4.01. In the carrying out of the Project and operation of the Project facilities, the Recipient shall perform, or cause to be performed, all obligations set forth in Schedule 4 to this Grant Agreement.

Section 4.02. (a) The Recipient shall (i) maintain, or cause to be maintained, separate accounts for the Project; (ii) have such accounts and related financial statements audited annually, in accordance with appropriate auditing standards consistently applied, by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB; (iii) furnish to ADB, as soon as available but in any event not later than 6 months after the end of each related fiscal year, certified copies of such audited accounts and financial statements and the report of the auditors relating thereto (including the auditors' opinion on the use of the Grant proceeds and compliance with the financial covenants of this Grant Agreement as well as on the use of the imprest accounts and the statement of expenditures procedures), all in the English language; and (iv) furnish to ADB such other information concerning such accounts and financial statements and the audit thereof as ADB shall from time to time reasonably request.

(b) The Recipient shall enable ADB, upon ADB's request, to discuss the Recipient's financial statements for the Project and its financial affairs related to the Project from time to time with the auditors appointed by the Recipient pursuant to Section 4.02(a) hereabove, and shall authorize and require any representative of such auditors to participate in any such discussions requested by ADB, provided that any such discussion shall be conducted only in the presence of an authorized officer of the Recipient unless the Recipient shall otherwise agree.

Section 4.03. The Recipient shall enable ADB's representatives to inspect the Project, the Goods financed out of the proceeds of the Grant, and any relevant records and documents.

## ARTICLE V

### Suspension and Cancellation

Section 5.01. The following is specified as an additional event for suspension of the right of the Recipient to make withdrawals from the Grant Account for the purposes of Section 8.01(k) of the Grant Regulations or cancellation of the Grant pursuant to Section 8.02 of the Grant Regulations: the Recipient shall have failed to perform any of its obligations under the UK Grant Agreement.

## ARTICLE VI

### Effectiveness

Section 6.01. The following is specified as an additional condition to the effectiveness of this Grant Agreement for the purposes of Section 9.01(e) of the Grant Regulations: the UK Grant Agreement shall have been duly executed and delivered on behalf of, and shall have become legally binding upon, the Recipient, and all conditions precedent to its effectiveness, other than a condition requiring the effectiveness of this Grant Agreement, shall have been fulfilled.

Section 6.02. A date thirty (30) days after the date of this Grant Agreement is specified for the effectiveness of the Grant Agreement for the purposes of Section 9.04 of the Grant Regulations.

## ARTICLE VII

### Miscellaneous

Section 7.01. The Minister of Finance of the Recipient is designated as representative of the Recipient for the purposes of Section 11.02 of the Grant Regulations.

Section 7.02. The following addresses are specified for the purposes of Section 11.01 of the Grant Regulations:

#### For the Recipient

Ministry of Finance  
Pashtonistan Watt, Kabul  
Afghanistan

Facsimile Number:

+93 202 103 258

#### For ADB

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

Facsimile Numbers:

(632) 636-2444  
(632) 636-2428

IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Grant 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.

ISLAMIC REPUBLIC OF  
AFGHANISTAN

By   
Omar Zakhilwal  
Minister of Finance

ASIAN DEVELOPMENT BANK

By   
Craig M. Steffensen  
Country Director  
Afghanistan Resident Mission

## SCHEDULE 1

### Description of the Project

1. The Investment Program is expected to increase the productivity of irrigated agriculture by improving water resources management through infrastructure development, capacity building, and institutional strengthening.

2. As part of the Investment Program, the Project comprises the following Parts:

Part 1: NBD

- (a) Financing infrastructure for water resources management and irrigation in the Lower Balkh River Basin, which includes construction of the Bangala weir, R&U for the Samarkandian weir, and operational control improvements for the Samarkandian and Narhi Shahi weirs;
- (b) Providing R&U of about 250 main canal structures in the Lower Balkh Basin;
- (c) Improving secondary and tertiary canal irrigation structures in the Lower Balkh Basin on a pilot basis;
- (d) Supporting, among others, the development of improved canal access points for women to do washing and collect water for household use;
- (e) Supporting the development of the Northern Basin RBA, which includes, among others, assisting with the preparation of a Northern Basin Water Resources Management and Development master plan to further develop the Northern Basins and the establishment of relevant RBCs;
- (f) Developing and implementing relevant policies and procedures regarding the collection of users' fees to support O&M for water resources and irrigation infrastructure; and
- (g) Developing and implementing a plan for the establishment of WUAs based on the traditional *mirab* system in the Lower Balkh Basin, including a training program.

Part 2: NVDA Improvement

- (a) Providing R&U of the main canal, secondary structures, and larger tertiary structures in the Nangahar Valley area;
- (b) Supporting, among others, the development of improved canal access points for women to do washing and collect water for household use;
- (c) Assisting with the preparation of an institutional reform and business plan with associated adjustment cost for restructuring of NVDA on a corporate basis; and
- (d) Mobilizing and establishing WUAs on the privately managed lands and on lands with lease holders, including developing a training program for WUAs and farmers.

Part 3: Flood Management

- (a) Constructing flood protection works for Yangi Qala town and the Yetim Tapa irrigation system in Takhar Province along the south bank of the

Amu Darya, which includes, among other things, 5 km long earthen embankment to protect the town and irrigation system from major flooding;

- (b) Constructing a permanent gated head regulator to protect the intake and main canal from the flood damage for the Yetim Tapa irrigation system;
- (c) Constructing gabions and other small works to protect river bank from erosion;
- (d) Assisting with the establishment of a National Flood Management Program within MEW in Kabul; and
- (e) Preparing additional flood management works to be financed under subsequent tranches under the Investment Program.

Part 4: Investment Program Management and Development

Establishing overall Investment Program management arrangements to ensure effective Project implementation and preparation of subsequent tranches under the Investment Program.

3. The Project is expected to be completed by 31 December 2014.

## SCHEDULE 2

### Allocation and Withdrawal of Grant Proceeds

#### General

1. The table attached to this Schedule (as shown in Attachment hereto) sets forth the Categories of Goods, Works, consulting services and other items of expenditure to be financed out of the proceeds of the Grant and the allocation of amounts of the Grant to each such Category (hereinafter called the "Table"). (Reference to "Category" 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 Grant on the basis of the percentages set forth in the Table.

#### Reallocation

3. Notwithstanding the allocation of Grant proceeds and the withdrawal percentages set forth in the Table,

(a) if the amount of the Grant allocated to any Category appears to be insufficient to finance all agreed expenditures in that Category, ADB may, by notice to the Recipient, (i) reallocate to such Category, to the extent required to meet the estimated shortfall, amounts of the Grant 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 Grant then allocated to any Category appears to exceed all agreed expenditures in that Category, ADB may, by notice to the Recipient, reallocate such excess amount to any other Category.

#### Disbursement Procedures

4. Except as ADB may otherwise agree, the Grant proceeds for financing Goods, Works, consulting services and other items of expenditure hereunder shall be disbursed in accordance with the Loan Disbursement Handbook.

#### Imprest Account; Statement of Expenditures

5. (a) Except as ADB may otherwise agree, for the utilization of the Grant proceeds, the Recipient immediately after the Effective Date shall: (i) set up two first generation imprest accounts at commercial banks acceptable to ADB, one to be established in Kabul for the use of the PMO at MEW and the other in Jalalabad for the use of the PMO at MAIL; and (ii) cause MEW to set up two second generation imprest accounts at commercial banks acceptable to ADB for the use of the PIOs of MEW, one to be established in Mazar-i-

Sharif and the other in Taloqan. The aggregate initial amount to be deposited in the two first generation imprest accounts shall not exceed the estimated expenditures to be financed from such imprest accounts for the first 6 months of Project implementation, or 10% of the Grant amount, whichever is lower. The amount to be deposited into the second generation imprest accounts shall be based on the first 6 months of the projected expenditure of the PIOs of MEW to be funded from such accounts, and shall not exceed \$500,000. The currency for each of the aforesaid imprest accounts shall be Dollar. All imprest accounts shall be established, managed, replenished, and liquidated in accordance with the Loan Disbursement Handbook and detailed arrangements as agreed between the Recipient and ADB.

(b) The statement of expenditure procedures shall be used for reimbursing eligible expenditures and liquidating of advances to each imprest account in accordance with the Loan Disbursement Handbook, and detailed arrangements as agreed between the Recipient and ADB. The maximum payment for any individual items using these procedures shall be \$100,000 equivalent per individual payment.

#### Retroactive Financing

6. Withdrawals from the Grant 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 Grant Agreement, subject to a maximum amount equivalent to 20 percent of the Grant amount.

TABLE

<b>ALLOCATION AND WITHDRAWAL OF GRANT PROCEEDS (Water Resources Development Investment Program – Tranche 1)</b>			
<b>CATEGORY</b>			<b>ADB FINANCING</b>
<b>Number</b>	<b>Item</b>	<b>Amount Allocated (\$)</b>	<b>Percentage and Basis for Withdrawal from the Grant Account</b>
		<b>Category</b>	
1	Civil Works	48,200,000	100% of the total expenditure*
2	Machinery and Equipment	800,000	100% of the total expenditure*
3	Vehicles	320,000	100% of the total expenditure*
4	Survey, Design and Monitoring for Northern Basins Water Resources Development	900,000	100% of the total expenditure*
5	Training and Workshops	2,900,000	100% of the total expenditure*
6	Monitoring and Evaluation	400,000	100% of the total expenditure*
7	Consulting Services	18,900,000	100% of the total expenditure*
8	Project Management (including PCO, PIOs, PMOs and associated costs)	3,900,000	100% of the total expenditure*
9	Security Costs	1,200,000	100% of the total expenditure*
10	Recurrent Costs – Operation and Maintenance support for larger infrastructure	600,000	100% of the total expenditure*
11	Unallocated	8,480,000	
	Total	86,600,000	

\* Exclusive of local taxes and duties.

### SCHEDULE 3

#### Provisions on Procurement and Consulting Services

##### A. General

1. All Goods, Works and consulting services to be financed out of the proceeds of the Grant 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 Grant Agreement shall have the meanings provided in the Procurement Guidelines and/or the Consulting Guidelines, as applicable.

##### B. Procurement for 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
National Competitive Bidding
Shopping
Direct Contracting
Community Participation

The methods of procurement are subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. The Recipient may only modify the methods of procurement or threshold values with the prior agreement of ADB, and modifications must be set out in updates to the Procurement Plan.

4. National Competitive Bidding. The Recipient shall ensure that, prior to the commencement of any procurement activity under national competitive bidding, the Recipient's national competitive bidding procedures to be utilized for the purposes of this Project are consistent with the Procurement Guidelines. Any modifications or clarifications to such procedures agreed between the Recipient and ADB shall be set out in the Procurement Plan. Any subsequent change to the agreed modifications and clarifications shall become effective only after written approval of such change by the Recipient and ADB.

5. Community Participation in Procurement. The Recipient, in accordance with the agreed procedures set forth in the Procurement Plan and any other Project document approved by ADB, may use the community participation method in procurement for Works contracts in relation to the Project activities for Parts 1(c), 1(d) and 2(b) described in Schedule 1 to the Agreement.

##### C. Selection of Consulting Services

6. Except as set forth in this Schedule below or otherwise agreed by ADB, the Recipient shall apply the Quality- and Cost-Based Selection method for selecting and engaging consulting services.

7. The Recipient shall apply the following methods for selecting and engaging the specified consulting services, in accordance with, among other things, the procedures set forth in the Procurement Plan:

Quality-Based Selection: implementation consultants in PMOs; feasibility study for preparing subsequent tranches under the Investment Program.

8. Subject to the prior agreement of ADB on relevant terms of reference and budget, the Recipient shall recruit individual consultants in accordance with relevant procedures acceptable to ADB to assist in implementing relevant Project activities as necessary and appropriate as well as conducting feasibility study for preparing subsequent tranches under the Investment Program.

**D. Industrial or Intellectual Property Rights**

9. (a) The Recipient shall 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 Recipient shall 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 Sub-paragraph (a) above.

10. The Recipient shall ensure that all ADB-financed contracts with consultants contain appropriate representations, warranties and, if appropriate, indemnities from the consultants to ensure that the consulting services provided do not violate or infringe any industrial property or intellectual property right or claim of any third party.

**E. 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 Recipient and ADB and set forth in the Procurement Plan.

## SCHEDULE 4

### Execution of Project; Financial Matters; Implementation Covenants

#### A. PROJECT IMPLEMENTATION

##### Executing Agency, Implementing Agency, Investment Program and Project Management

1. As the Project Executing Agency, MOF shall have the overall responsibility for the implementation of the Project. MEW shall be the Implementing Agency for Parts 1, 3 and 4 of the Project, while MAIL shall be the Implementing Agency for Part 2 of the Project.
  
2. The Recipient shall cause and ensure that:
  - (a) within 3 month from the Effective Date, MOF establishes the PCO to perform the functions described in Paragraph 5 of Schedule 4 below, and within 4 months from the Effective Date, appoints a PCO Coordination Officer and a monitoring and evaluation officer;
  
  - (b) within 3 months from the Effective Date, MEW and MAIL each establishes a PMO, with the PMO of MEW located in Kabul and the PMO of MAIL in Jalalabad, to carry out their respective implementation responsibilities;
  
  - (c) within 3 months from the Effective Date, a full-time Program Director is appointed by MEW and a full-time Project Director by MAIL to head their respective PMOs;
  
  - (d) both PMOs are supported by teams of full time specialists for technical/engineering, legal, finance and administration, safeguards and gender, M&E and reporting, and capacity and institutional development along with administrative staff;
  
  - (e) the aforesaid teams of specialists include counterpart staff as well as international and national consultants to provide needed support and ensure effective Project implementation;
  
  - (f) within 3 months from the Effective Date, the PMO of MEW establishes a PIO at each of Mazar-i-Sharif and Taloqan to implement the relevant tasks of Parts 1 and 3 of the Project respectively;
  
  - (g) within 3 months from the Effective Date, a full-time Project Director is appointed to head each PIO, who shall be supported by implementation consultants and counterpart staff to be appointed within 4 months from the Effective Date;
  
  - (h) all Program and Project Directors appointed hereunder and counterpart staff serve on a full-time basis and are competitively selected and remunerated, free and clear of any restrictions applicable to Afghanistan's public servants, and acceptable to ADB; and
  
  - (i) adequate and functional office space with utilities is made available by MEW and MAIL to house PMOs, PIOs and the PDF, including space for implementation consultants and support staff.

3. PMOs and PIOs shall be responsible for management, execution, and coordination of all Project activities. Their responsibilities include, among other things: (a) recruitment of consultants; (b) supervising the design and implementation consultants; (c) coordination and monitoring of the civil works to ensure they are implemented in accordance with the provisions of safeguard requirements; (d) coordinating with MEW, MAIL, concerned RBA, RBCs, and WUAs to ensure that progress related to institutional development and capacity building will be in line with the pace of related Works; and (e) carrying out financial management.

4. Within 3 months from the Effective Date, the Recipient shall cause MEW to establish the PDF, which shall be headed by a full time Project Director to be appointed within 2 months from the Effective Date and supported by consultants and counterpart staff to be appointed within 3 months from the Effective Date. The PDF shall be responsible for the identification, screening, feasibility preparation, and detailed design of the subsequent tranches under the Investment Program. Further, in addition to relevant Project activities, the PMO of MEW shall also oversee the management of the Investment Program, including monitoring and evaluating the overall progress of the Investment Program.

5. The Recipient shall cause the PSC to oversee the activities of the Investment Program and the Project. The PSC shall be chaired by the Minister MEW and have both PMOs serving as its secretariat. The members of the PSC include representatives from MOF, MEW, MAIL, the Ministry of Mines as well as the Ministry of Rural Reconstruction and Development of the Recipient. The PSC shall meet at least once every 6 months or more often if required to provide policy guidance and review the performance of the Project and the Investment Program. In addition, the Recipient shall cause the PCO to be established by MOF to facilitate coordination among MOF, MEW, and MAIL and to support the PSC as required. The PCO shall also provide support to the PMOs and subsequent Investment Program implementation with regard to: (a) progress reporting; (b) M&E; and (c) facilitating financial processing requirements within MOF on behalf of PMOs.

6. The Recipient shall ensure that: (a) all staff involved in implementing the Project are fully aware of, and comply with, the Recipient's and ADB's relevant procedures, including, but not limited to, procedures for implementation, procurement, use of consultants, disbursement, reporting, monitoring, and prevention of fraud and corruption; (b) coordination and consultation among all government agencies concerned during Project implementation are effectively carried out; and (c) stringent oversight is maintained on all the consultants and contractors engaged under the Project so as to cause that the services and Works produced under the contracts conform to the relevant standards and specifications required by the Project, and are of high quality.

#### Project Monitoring, Review and Evaluation

7. Within 6 months from the Effective Date, the Recipient shall cause a Project Performance Management System for the Project to be established. The M&E program for the Project shall be tailored to the needs of, and prepared in consultation with, MOF, MEW, and MAIL as well as concerned RBCs, RBAs, and WUAs. The Recipient shall cause and ensure that participatory M&E systems are introduced as part of the activities relating to WUA and RBA under the Project and appropriate capacity is developed to support such activities. A database of key benchmark indicators shall be established by PMOs and become a part of the Project monitoring system. The key indicators selected shall be monitored at least twice a year during the Project implementation period.

8. During the first 2 years after the Effective Date, a Project review shall be carried out every 6 months to: (a) assess the effectiveness of the Project implementation arrangements and propose adjustments to improve their effectiveness; (b) monitor implementation progress relative to the agreed implementation schedule, identify constraints to progress, and define an action plan to improve the pace of critical activities; (c) ensure that ADB safeguards and other conditions set out in the Grant Agreement and the FFA are complied with; and (d) assess the ongoing preparatory work for subsequent tranches under the Investment Program to avoid delays in the submission by the Recipient of subsequent PFRs. Two years after the Effective Date, a comprehensive Project mid-term review shall be carried out to assess Project performance, identify problems affecting Project implementation, and reach formal agreement on changes in the scope of work or to implementation arrangements required to address any shortcomings so identified. The full terms of reference for such Project mid-term review shall be developed jointly by MOF, MEW, MAIL, and ADB during the second year of Project implementation. Prior to fielding each of the review missions mentioned above, MEW and MAIL each shall submit detailed progress reports in relation to the Parts of the Project for which they are respectively responsible.

#### Auditing and Reporting

9. Without any prejudice to the provisions of (a) Section 4.02 of the Grant Agreement and (b) the Grant Regulations, the Recipient shall ensure that all entities involved in Project implementation, including PMOs and PIOs, maintain separate records and accounts for the utilization of the respective proceeds of the Grant and the UK Grant. The Recipient shall cause each PMO to consolidate and review relevant accounts, and after auditing submit such accounts to MEW or MAIL as the case may be, and to MOF and ADB. In addition to the requirements set forth in Section 6.04 of the Grant Regulations, the Recipient shall cause the PCO to support and coordinate PMOs to prepare, and submit to MOF, MEW and MAIL and ADB (a) within 30 days after each quarter, a quarterly report, and (b) within 30 days after each year, an annual report, all on the implementation status and progress of the Project. Each of such reports shall be submitted in such form and in such details as ADB shall reasonably require.

#### Policy Dialogue

10. The Recipient shall keep ADB informed about its policies and projects related to the water resources sector that are expected to materially affect the financial viability of the Project and subsequent tranches under the Investment Program, and in particular about the issues that are expected to affect the implementation, management, operations, and maintenance of existing assets and planned development in the water resources sector.

### **B. FINANCIAL MATTERS**

#### Operation and Maintenance

11. The Recipient shall ensure that: (a) MEW and MAIL budget and allocate sufficient funds to carry out regular O&M on the infrastructure built under the Investment Program and the Project; (b) sufficient funds are budgeted and allocated to RBAs for a specified timeframe to enable them to undertake relevant O&M activities; and (c) adequate

ongoing support is provided to WUAs to enable them to carry out relevant O&M for the physical structures maintained by WUAs.

### **C. COVENANTS RELATING TO WORKS**

#### Construction Quality

12. The Recipient shall ensure that any and all infrastructure rehabilitated or newly developed under the Project complies with the technical specifications required by the Project.

#### Execution of Works Contracts

13. Without prejudice to Paragraphs 18, 19, and 20 of Schedule 4 hereof, the Recipient shall cause MEW and MAIL to ensure that, subsequent to the award of any Works contract under the Project, no notice to proceed shall be issued to the relevant contractor in relation to any section or part of such Works unless the applicable provisions of the LARF and related plan, as well as the EARF and the EMP have been complied with. Any changes to the location, route, alignment, or environment impacts resulting from the changes introduced during detailed design of the Project shall be subject to the prior approval by ADB and, as the case may be, MEW or MAIL.

#### Conditions for Commencement of Certain Works

14. Prior to the commencement of the Works for the rehabilitation of the main canal of NVDA, the following conditions shall have been satisfied: (a) MAIL, in consultation of ADB, shall have endorsed a plan for the corporatization of NVDA; and (b) such plan shall, among others, define a structure that can support an irrigation service agency for the sustainable operation and maintenance of the main canal as well as the secondary and tertiary areas, which is covered under the NVDA-managed irrigation system, with a modality for requisite funding to support relevant recurrent costs.

### **D. OTHER IMPLEMENTATION COVENANTS**

#### Security

15. The Recipient shall: (a) provide overall security and protection in the Project areas to ensure the smooth and uninterrupted implementation of each Part of the Project; (b) be responsible for the removal of mines and unexploded ordnance in the areas in which the relevant Project activities are undertaken; and (c) cause and ensure that each of the contractors under the Project prepares, and includes such as part of the contract, a security plan together the required budget that will ensure the smooth and uninterrupted implementation of the relevant Project activities contemplated under such contract.

#### Anti-corruption

16. The Recipient shall comply with, and shall cause any and all other government offices, organizations and entities involved in implementing the Project to comply with, ADB's *Anticorruption Policy* (1998, as amended) and ADB's policy relating to *Enhancing the Asian Development Bank's Role in Combating Money Laundering and the Financing of Terrorism* (2003). The Recipient: (a) acknowledges ADB's right to investigate, directly or

through its agents, any alleged corrupt, fraudulent, collusive or coercive practices relating to the Project; (b) agrees to cooperate, and to cause any and all other government offices, organizations and entities involving in implementing the Project to cooperate, fully with any such investigation and to extend all necessary assistance, including providing access to all relevant books and records, as may be necessary for the satisfactory completion of any such investigation; (c) agrees to refrain, and cause any and all other government offices, organizations and entities involving in implementing the Project to refrain, from engaging in money laundering activities or financing of terrorism; and (d) shall allow, and cause any and all other government offices, organizations and entities involving in implementing the Project to allow, ADB to investigate any violation or potential violation of the aforesaid undertakings concerning combating money laundering and the financing of terrorism.

#### Transparency and Good Governance

17. The Recipient shall cause and ensure that the respective internal controls of MEW and MAIL shall be designed and carried out in accordance with the National Accounting Standards of the Recipient.

#### Environment

18. The Recipient shall cause MEW and MAIL to ensure that (a) the Project is designed and implemented, and the Project facilities constructed and operated, in accordance with all applicable laws and regulations of the Recipient and ADB's *Environment Policy* (2002); (b) the design and implementation of the Project strictly follows the mitigation measures set forth in the IEE for the Project, including the EMP and the EARF; (c) mitigation measures identified in the EMP, if any, are incorporated in bidding documents and related contracts under the Project; (d) bidding documents include a reference to the EMP to ensure that environmental issues are covered comprehensively; and (iv) an environmental performance report is submitted to ADB on a semiannual basis during the Project implementation period in the format and containing such details as required by ADB. If there is any discrepancy between the Recipient's relevant laws and regulations, and the requirements of ADB's *Environment Policy* (2002), ADB's policy shall apply.

#### Land Acquisition and Resettlement

19. The Recipient shall cause MEW and MAIL to ensure that: (a) the Project is designed and implemented in accordance with the Recipient's relevant laws and regulations, the requirements of ADB's *Policy on Involuntary Resettlement* (1995), and the LARF as agreed with ADB; (b) all land and rights-of-way required for implementing the Project are made available in a timely manner; (c) where land acquisition and resettlement are necessary, the related Works commence and contractors are mobilized only after that the related land acquisition and resettlement plan as approved by ADB has been disclosed to the affected people and properly carried out; and (d) the activities of all relevant contractors are in compliance with the requirements of the related land acquisition and resettlement plan. If there is any discrepancy between the Recipient's relevant laws and regulations, and the requirements of ADB's *Policy on Involuntary Resettlement* (1995), ADB's policy shall apply. The Recipient shall engage an external agency or a non-governmental organization, acceptable to ADB, to conduct the external monitoring of resettlement process and the evaluation of relevant impacts. Reports of the independent monitoring agency so engaged shall be submitted to ADB on a semiannual basis.

Indigenous Peoples

20. The Recipient shall ensure that the Project and its implementation do not negatively affect indigenous peoples in the territory of the Recipient. In the event that any such indigenous people is negatively affected or otherwise involved in any of the Project activities, the Recipient shall take all necessary actions required by, or otherwise comply with, ADB's *Policy on Indigenous Peoples* (1998).

Gender

21. The Recipient shall cause and ensure that MEW and MAIL: (a) comply with ADB's *Policy on Gender and Development* (1998), including taking all necessary actions to encourage women living in the Project area to participate in planning and implementing relevant Project activities, and (b) monitor the effects and impacts of the Project on women through gender-disaggregated data collected pursuant to the PPMS.

Labor and Health Standards

22. The Recipient shall cause MEW and MAIL to ensure that: (a) each and all contractors under the Project comply with applicable labor laws of the Recipient, and use their best efforts to employ women and local residents negatively affected by the relevant Project activities or living in the vicinity of the relevant Project areas; (b) each Works contract contains provisions prohibiting use of child labor and differentiation in wages between male and female workers for work of equal value; (c) such contract also includes mandatory provisions on health, sanitation and appropriate working conditions; and (d) the relevant contractors and their workers observe local protocols concerning acceptable behavior toward the local population.

23. The Recipient shall ensure that MEW and MAIL, with assistance of relevant local authorities, cause each and all contractors under the Project to distribute to their workers information on the risks of sexually transmitted diseases, including the human immunodeficiency virus and the acquired immune deficiency syndrome.