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LOAN NUMBER 2473- COO (SF)

LOAN AGREEMENT  
(Special Operations)  
(Avatiu Port Development Project)

between

HER MAJESTY THE QUEEN IN RIGHT OF THE GOVERNMENT OF THE COOK ISLANDS

and

ASIAN DEVELOPMENT BANK

DATED 5 MAY 2009

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LAS:COO 40287

## **LOAN AGREEMENT**

### **(Special Operations)**

LOAN AGREEMENT dated 5 May 2009 between HER MAJESTY THE QUEEN IN RIGHT OF THE GOVERNMENT OF THE COOK ISLANDS (“the Borrower”) and ASIAN DEVELOPMENT BANK (“ADB”).

#### WHEREAS

(A) the Borrower has applied to ADB for a loan for the purposes of the Project described in Schedule 1 to this Loan Agreement (hereinafter called the “Project”);

(B) by an agreement of the even date herewith between the Borrower and ADB (hereinafter called the “Ordinary Operations Loan Agreement”), ADB has agreed to lend to the Borrower from ADB’s ordinary capital resources an amount of eight million six hundred and thirty thousand (\$8,630,000) (hereinafter called the “Ordinary Operations Loan”) for the purposes of the Project;

(C) the Project will be carried out by the Cook Islands Ports Authority (hereinafter called the “CIPA”), and for this purpose the Borrower will make available to CIPA the proceeds of the Loan provided for herein upon terms and conditions satisfactory to ADB; and

(D) ADB has agreed to make a loan to the Borrower from ADB's Special Funds resources (hereinafter called the “Loan”) upon the terms and conditions set forth herein and in the Project Agreement of even date herewith between ADB and CIPA;

NOW THEREFORE the parties agree as follows:

## **ARTICLE I**

### **Loan Regulations; Definitions**

Section 1.01. All the provisions of the Special Operations Loan Regulations of ADB, dated 1 January 2006 (the “Loan Regulations”), are hereby made applicable to this Loan Agreement with the same force and effect as if they were fully set forth herein.

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

(a) “Board” means the board of directors of the Cook Islands Investment Corporation and includes any legal successor thereto;

(b) “CEO” means the chief executive officer of CIPA;

(c) "CFO" means the professionally qualified chief financial officer of CIPA to be appointed by the CEO in accordance with the appointment rules and procedures of CIPA;

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

(e) "EMP" means environment management plan prepared for the Project forming an essential part of the IEE, as may be updated, following the final design of the Project, by agreement between ADB and the Borrower;

(f) "IEE" means initial environmental examination dated 4 July 2008, agreed between the Borrower and ADB, as updated from time to time by agreement between the Borrower and ADB;

(g) "NES" means the Borrower's National Environmental Services formed under the Borrower's Environmental Act 2003;

(h) "PAME" means the professionally qualified port asset management engineer of CIPA to be appointed by the CEO in accordance with the appointment rules and procedures of CIPA;

(i) "PMT" means project management team established in accordance with paragraph 2 of Schedule 5 to this Loan Agreement;

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

(k) "Procurement Plan" means the procurement plan for the Project dated 21 October 2008 and agreed between the Borrower and ADB, as updated from time to time in accordance with Procurement Guidelines, Consulting Guidelines, and other arrangements agreed with ADB;

(l) "Project Executing Agency" or "PEA" for the purposes of, and within the meaning of, the Loan Regulations means CIPA or any legal successor thereto acceptable to ADB, which is responsible for the carrying out of the Project;

(m) "Project facilities" means and includes the facilities, equipment, furniture, and land provided under the Project;

(n) "Resettlement Plan" or "RP" means the Resettlement Plan dated 4 July 2008, agreed between the Borrower and ADB, as may be amended from time to time by agreement between the Borrower and ADB;

(o) "Steering Committee" means the steering committee for the Project established in accordance with paragraph 3 of Schedule 5 to this Loan Agreement;

(p) "Subsidiary Loan Agreement" means the agreement between the Borrower and CIPA referred to in Section 3.01 (a) of this Loan Agreement; and

(q) "Works" means construction or civil works to be financed out of the proceeds of the Loan, 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.

## **ARTICLE II**

### **The Loan**

Section 2.01. ADB agrees to lend to the Borrower from ADB's Special Funds resources an amount in various currencies equivalent to four million five hundred and twenty four thousand Special Drawing Rights (SDR 4,524,000).

Section 2.02. (a) The Borrower shall pay to ADB an interest charge at the rate of one percent (1%) per annum during the grace period, and one and one-half percent (1.5%) per annum thereafter, on the amount of the Loan withdrawn from the Loan Account and outstanding from time to time.

(b) The term "grace period" as used in paragraph (a) of this Section means the period prior to payment of the first principal amount of the Loan on the payment date in accordance with the amortization schedule set forth in Schedule 2 to this Loan Agreement.

Section 2.03. The interest charge and any other charge on the Loan shall be payable semiannually on 15 May and 15 November in each year.

Section 2.04. The Borrower shall repay the principal amount of the Loan withdrawn from the Loan Account in accordance with the amortization schedule set forth in Schedule 2 to this Loan Agreement.

Section 2.05. The currency of repayment of the principal of the Loan and the currency of payment of the interest charge for the purposes of Sections 4.03(a) and 4.04 of the Loan Regulations shall be dollar.

## **ARTICLE III**

### **Use of Proceeds of the Loan**

Section 3.01. (a) The Borrower shall relend the proceeds of the Loan required for the Project to CIPA under a Subsidiary Loan Agreement upon terms and conditions satisfactory to ADB. Except as ADB may otherwise agree, the terms of the proceeds of the Loan made available to CIPA shall include (i) interest at the rate identical to that applied to the Loan; (ii) the repayment period including the grace period identical to

those applied to the Loan; and (iii) the Borrower bearing the foreign exchange and interest rate variation risks.

(b) The Borrower shall cause CIPA to apply the proceeds of the Loan to the financing of expenditures on the Project in accordance with the provisions of this Loan Agreement and the Project Agreement.

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

Section 3.03. Withdrawals from the Loan Account in respect of Works and consulting services shall be made only on account of expenditures relating to

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

Section 3.04. Except as ADB may otherwise agree, all Works and consulting services to be financed out of the proceeds of the Loan shall be procured in accordance with the provisions of Schedule 4 to this Loan Agreement.

Section 3.05. The Loan Closing Date for the purposes of Section 8.02 of the Loan Regulations shall be 31 December 2012 or such other date as may from time to time be agreed between the Borrower and ADB.

## **ARTICLE IV**

### **Particular Covenants**

Section 4.01. In the carrying out of the Project and operation of the Project facilities, the Borrower shall perform, or cause to be performed, all obligations set forth in Schedule 5 to this Loan Agreement and the Schedule to the Project Agreement.

Section 4.02. The Borrower shall enable ADB's representatives to inspect the Project, the goods and Works financed out of the proceeds of the Loan, all other plants, sites, properties and equipment of the Borrower, and any relevant records and documents.

Section 4.03. The Borrower shall take all action which shall be necessary on its part to enable CIPA to perform its obligations under the Project Agreement, and shall not take or permit any action which would interfere with the performance of such obligations.

Section 4.04. (a) The Borrower shall exercise its rights under the Subsidiary Loan Agreement in such a manner as to protect the interests of the Borrower and ADB and to accomplish the purposes of the Loan.

(b) No rights or obligations under the Subsidiary Loan Agreement shall be assigned, amended, or waived without the prior concurrence of ADB.

## **ARTICLE V**

### **Suspension; Acceleration of Maturity**

Section 5.01. The following are specified as additional events for suspension of the right of the Borrower to make withdrawals from the Loan Account for the purposes of Section 8.01(m) of the Loan Regulations:

(a) the Borrower shall have, in the opinion of ADB, failed to perform any of its obligations under the Ordinary Operations Loan Agreement; and

(b) the Borrower and/or CIPA shall have, in the opinion of ADB, failed to perform any of its obligations under the Subsidiary Loan Agreement.

Section 5.02. The following is specified as an additional event for acceleration of maturity for the purposes of Section 8.07(d) of the Loan Regulations: the events specified in Section 5.01 of this Loan Agreement shall have occurred.

## **ARTICLE VI**

### **Effectiveness**

Section 6.01. The following are specified as additional conditions to the effectiveness of this Loan Agreement for the purposes of Section 9.01(f) of the Loan Regulations:

(a) the Ordinary Operations Loan Agreement shall have been duly executed and delivered on behalf of the Borrower, and all conditions precedent to its effectiveness (other than a condition requiring the effectiveness of this Loan Agreement) shall have been fulfilled; and

(b) The Borrower and CIPA shall have concluded the Subsidiary Loan Agreement, the terms of which shall have the same financial and other terms as required in this Loan agreement.

Section 6.02. The following is specified as an additional matter, for the purposes of Section 9.02(d) of the Loan Regulations, to be included in the opinion or

opinions to be furnished to ADB: the Ordinary Operations Loan Agreement and the Subsidiary Loan Agreement have been duly executed and delivered on behalf of and are legally binding upon the Borrower and CIPA respectively in accordance with its terms.

Section 6.03. A date ninety (90) days after the date of this Loan Agreement is specified for the effectiveness of the Loan Agreement for the purposes of Section 9.04 of the Loan Regulations.

## **ARTICLE VII**

### **Miscellaneous**

Section 7.01. The Minister of Finance and Economic Management of the Borrower is designated as representative of the Borrower for the purposes of Section 11.02 of the Loan Regulations.

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

#### For the Borrower

Ministry of Finance and Economic Management  
PO Box 120,  
MFEM Building, Rarotonga  
Cook Islands

Facsimile Number:

(682) 23877

#### For ADB

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

Facsimile Numbers:

(632) 636-2444

(679) 331-8074

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

HER MAJESTY THE QUEEN IN RIGHT OF  
THE GOVERNMENT OF THE COOK ISLANDS

By \_\_\_\_\_  
TEREPAI MAOATE  
Authorized Representative

ASIAN DEVELOPMENT BANK

By \_\_\_\_\_  
HARUHIKO KURODA  
President

## SCHEDULE 1

### Description of the Project

1. The impact of the Project is expected to be continued economic growth and wellbeing of the population (particularly the disadvantaged). The outcome of the Project is expected to be a secure and efficient port infrastructure in Rarotonga with constraints and safety risks removed. The Project will address existing deficiencies and constraints and bring the port and harbor up to acceptable international maritime safety standards by reconstructing the quay and part of the wharf area, extending its life by 30 years, and by increasing the capacity of the harbor and port for catering larger vessels.
2. The Project will comprise the following physical outputs:
  - (i) dredging of the harbor to 8 meters below chart datum (from the current depth of about 6m);
  - (ii) widening of the harbor entrance by approximately 10m;
  - (iii) demolition of the outer and inner overseas berths and their replacement by a continuous quay (total straight wharf face of 270m);
  - (iv) new sheet piling along the new quay wall;
  - (v) rehabilitation of the wharf deck back to 20m from the wharf face;
  - (vi) demolition of the old slip and patrol boat wharf and facing embankment with rip-rap;
  - (vii) providing protection to the northern end of the quay by repositioning rip-rap at the western end of the breakwater;
  - (viii) allowing for re-arrangement of the petroleum-products pipe and hazardous materials area;
  - (ix) rehabilitating the domestic wharf;
  - (x) relocating cargo storage sheds; and
  - (xi) Providing navigation aids.
3. The Project is expected to be completed by 30 April 2012.

**SCHEDULE 2****Amortization Schedule****(Avatiu Port Development Project)**

Period	Date	<u>Payment of Principal</u> (expressed in Special Drawing Rights)*
1	15-May-2017	94,250.00
2	15-Nov-2017	94,250.00
3	15-May-2018	94,250.00
4	15-Nov-2018	94,250.00
5	15-May-2019	94,250.00
6	15-Nov-2019	94,250.00
7	15-May-2020	94,250.00
8	15-Nov-2020	94,250.00
9	15-May-2021	94,250.00
10	15-Nov-2021	94,250.00
11	15-May-2022	94,250.00
12	15-Nov-2022	94,250.00
13	15-May-2023	94,250.00
14	15-Nov-2023	94,250.00
15	15-May-2024	94,250.00
16	15-Nov-2024	94,250.00
17	15-May-2025	94,250.00
18	15-Nov-2025	94,250.00
19	15-May-2026	94,250.00
20	15-Nov-2026	94,250.00
21	15-May-2027	94,250.00
22	15-Nov-2027	94,250.00
23	15-May-2028	94,250.00
24	15-Nov-2028	94,250.00
25	15-May-2029	94,250.00
26	15-Nov-2029	94,250.00
27	15-May-2030	94,250.00
28	15-Nov-2030	94,250.00
29	15-May-2031	94,250.00
30	15-Nov-2031	94,250.00
31	15-May-2032	94,250.00
32	15-Nov-2032	94,250.00
33	15-May-2033	94,250.00
34	15-Nov-2033	94,250.00
35	15-May-2034	94,250.00
36	15-Nov-2034	94,250.00
37	15-May-2035	94,250.00
38	15-Nov-2035	94,250.00
39	15-May-2036	94,250.00
40	15-Nov-2036	94,250.00

Period	Date	<u>Payment of Principal</u> (expressed in Special Drawing Rights)*
41	15-May-2037	94,250.00
42	15-Nov-2037	94,250.00
43	15-May-2038	94,250.00
44	15-Nov-2038	94,250.00
45	15-May-2039	94,250.00
46	15-Nov-2039	94,250.00
47	15-May-2040	94,250.00
48	15-Nov-2040	94,250.00
	Total	<u>4,524,000.00</u>

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\* The figures in this column represent SDR equivalents determined as of the respective dates of withdrawal. The arrangements for payment of each maturity are subject to the provisions of Sections 3.04 and 4.03 of the Loan Regulations.

### SCHEDULE 3

#### Allocation and Withdrawal of Loan Proceeds

##### General

1. The table attached to this Schedule sets forth the Categories of Works and consulting services and other items of expenditure to be financed out of the proceeds of the Loan and the allocation of amounts of the Loan to each such Category (hereinafter called the Table). (Reference to "Category" or "Categories" in this Schedule is to a Category or Categories of the Table).

##### Percentages of ADB Financing

2. Except as ADB may otherwise agree, the items of the Categories listed in the Table shall be financed out of the proceeds of the Loan on the basis of the percentages set forth in the Table.

##### Interest Charge

3. The amount allocated to Category 3 is for financing the interest charge on the Loan during the implementation period of the Project.

##### Reallocation

4. Notwithstanding the allocation of Loan proceeds and the withdrawal percentages set forth in the Table,

(a) if the amount of the Loan allocated to any Category appears to be insufficient to finance all agreed expenditures in that Category, ADB may, by notice to the Borrower, (i) reallocate to such Category, to the extent required to meet the estimated shortfall, amounts of the Loan which have been allocated to another Category but, in the opinion of ADB, are not needed to meet other expenditures, and (ii) if such reallocation cannot fully meet the estimated shortfall, reduce the withdrawal percentage applicable to such expenditures in order that further withdrawals under such Category may continue until all expenditures thereunder shall have been made; and

(b) if the amount of the Loan then allocated to any Category appears to exceed all agreed expenditures in that Category, ADB may, by notice to the Borrower, reallocate such excess amount to any other Category.

##### Disbursement Procedures

5. Except as ADB may otherwise agree, the Loan proceeds for financing goods, Works, consulting services and other items shall be disbursed in accordance with ADB's "Loan Disbursement Handbook" dated January 2007 (ADB's Loan Disbursement Handbook), as amended from time to time.

Imprest Account: Statement of Expenditures

6. (a) Except as ADB may otherwise agree, the Borrower shall establish immediately after the Effective Date, an imprest account at a commercial bank acceptable to ADB. The imprest account shall be established, managed, replenished and liquidated in accordance with ADB's Loan Disbursement Handbook and detailed arrangements agreed upon between the Borrower and ADB. The currency of the imprest account shall be dollar. The initial amount to be deposited into the imprest account shall not exceed the lower of (i) the estimated expenditure to be financed from the imprest account for the first six months of Project implementation, or (ii) \$50,000.

(b) The statement of expenditures (SOE) procedure may be used for reimbursement of eligible expenditures and to liquidate advances provided into the imprest account for individual payments equivalent to \$25,000 and below, in accordance with ADB's Loan Disbursement Handbook and detailed arrangements agreed upon between the Borrower and ADB.

Retroactive Financing

7. Withdrawals from the Loan Account may be made for reimbursement of reasonable eligible expenditures incurred under the Project before the Effective Date, but not earlier than 12 months before the date of this Loan Agreement in connection with Project management, including consulting services to be retroactively financed, subject to a maximum amount equivalent to 5 percent of the Loan amount.

Conditions of Withdrawals from Loan Account

8. Notwithstanding any other provision of this Loan Agreement, no withdrawals shall be made from the Loan Account until:

(a) the Subsidiary Loan Agreement has been duly executed and delivered on behalf of and is legally binding upon the Borrower and CIPA in accordance with its terms; and

(b) a legal opinion has been issued, on behalf of the Borrower, showing the legal and valid ownership by the Borrower or its agencies of the land to be utilized for the Project.

**TABLE**

<b>ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (Avatiu Port Development Project)</b>			
<b>CATEGORY</b>			<b>ADB FINANCING BASIS</b>
<b>Number</b>	<b>Item</b>	<b>Total Amount Allocated for ADB Financing (SDR)</b>	<b>Percentage of ADB Financing from the Loan Account</b>
1	Works	2,446,000	30.4 percent of total expenditure
2	Consulting Services	973,000	100 percent of total expenditure
3	Interest Charge	40,000	100 percent of amounts due
4	Unallocated	1,065,000	
	Total	4,524,000	

## SCHEDULE 4

### Procurement of Works, and Consulting Services

#### A. General

1. All Works and consulting services to be financed out of the proceeds of the Loan shall be subject to and governed by the Procurement Guidelines, and the Consulting Guidelines, respectively.
2. All terms used and not otherwise defined in this Loan Agreement have the meanings provided in the Procurement Guidelines and/or the Consulting Guidelines, as applicable.

#### B. Procurement for Works

3. Except as ADB may otherwise agree, Works shall only be procured on the basis of the method of procurement set forth below:

International Competitive Bidding

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

#### C. Conditions for Award of Contract

4. The Borrower shall not award any Works contracts financed under the Loan until:
  - (a) the RP, required for the Project, shall have been amended and updated in accordance with the final design, approved by ADB, and disclosed to the affected people;
  - (b) environmental assessment report for the Project shall have been approved by NES and Project consent shall have been issued by NES; and
  - (c) the PEA report shall have been submitted to and approved by ADB, in case of any material changes in the EMP.

#### D. Selection of Consulting Services

5. Quality- and Cost-Based Selection. Except as ADB may otherwise agree, the Borrower shall apply quality- and cost-based selection for selecting and engaging consulting services.

#### E. Industrial or Intellectual Property Rights

6. (a) The Borrower shall ensure that all Project facilities and Works procured (including without limitation all computer hardware, software and systems, whether

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separately procured or incorporated within other goods and services procured) do not violate or infringe any industrial property or intellectual property right or claim of any third party.

(b) The Borrower shall ensure that all contracts for the procurement of Project facilities and Works contain appropriate representations, warranties and, if appropriate, indemnities from the contractor or supplier with respect to the matters referred to in subparagraph (a) of this paragraph.

7. The Borrower 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.

**F. ADB's Review of Procurement Decisions**

8. All contracts procured under international competitive bidding procedures and contracts for consulting services shall be subject to prior review by ADB, unless otherwise agreed between the Borrower and ADB and set forth in the Procurement Plan.

## SCHEDULE 5

### Execution of Project and Operation of Project Facilities; Financial Matters

#### Project Executing Agency

1. CIPA shall be the Project Executing Agency responsible for the carrying out of the Project. CIPA shall strengthen its administrative capacity by recruiting a professionally qualified CFO and a PAME. The CEO of CIPA shall establish a Project office within CIPA for the overall implementation and coordination of the Project.

#### Project Management Team

2. CIPA shall establish a PMT consisting of the CEO, CFO and the PAME. The core responsibility of the PMT shall be the oversight and financial management of the Project.

#### Steering Committee

3. The Board shall be the Steering Committee for the Project. The CEO shall present reports on technical and financial progress of the Project to the regular meetings of the Board, and to such other special meetings that the Board shall deem necessary to convene. As the Steering Committee, the Board shall be responsible to (i) review the progress of the Project; (ii) propose the remedial action in relation to any issues or concerns; and (iii) keep the Borrower cognizant of any such issues or concerns and the remedial action proposed therefor.

#### Counterpart Financing

4. The Borrower shall ensure that throughout the implementation of the Project, adequate budgetary allocations of the required counterpart funds are made, approved, and released in a timely manner in order to ensure the proper implementation of the Project.

#### Infrastructure Asset Management

5. The Borrower shall, by 31 December 2012, ensure, and shall cause CIPA to ensure that CIPA satisfactorily implements its asset management plans, including but not limited to, providing resources, exclusively for the purpose of asset maintenance, that are adequate for sustaining the investment for its intended purpose and life, and shall verify the same through annual audits.

#### Investment in Public Infrastructure

6. The Borrower shall, by 31 December 2011, implement a transparent framework for preparing public sector investments and providing for the maintenance of public assets under a multi-year fiscal framework.

Community Service Obligations

7. The Borrower shall, and shall cause CIPA to identify, by 30 June 2009, all services required to be provided by CIPA for community services and for which CIPA is required to levy no charge or a charge below the cost of providing the service. The commercial cost of providing the services shall be met by the Borrower.

Project Management

8. The Borrower shall ensure, and shall cause CIPA to ensure that CIPA is adequately staffed and resourced, including but not limited to the appointment of a professionally qualified CFO and PAME. The Borrower shall, and shall cause CIPA to further ensure that the detailed engineering design and construction supervision be undertaken by appropriately experienced personnel, approved by the ADB and having extensive international experience in similar works.

Construction Quality

9. The Borrower shall ensure, and shall cause CIPA to ensure, that (i) ADB's no objection to contractors' mobilization for Works construction shall have been obtained; (ii) the Project is built in accordance with the technical design specifications; and (iii) the construction supervision, quality control, and contract management shall have been implemented in accordance with internationally accepted standards.

Land Acquisition and Resettlement

10. The Borrower shall ensure, and shall cause CIPA to ensure, that (i) all land acquisition and resettlement activities under the Project shall have been implemented in accordance with the applicable laws and regulations of the Borrower, ADB's *Involuntary Resettlement Policy (1995)* and the Project RP; (ii) evidence of compliance with the RP shall have been submitted to ADB for review and approval before any resettlement activities are initiated; and (iii) where applicable, resettlement compensation is paid to the effected people as soon as it can be determined.

Environmental Management

11. The Borrower shall ensure, and shall cause CIPA to ensure, that the Project facilities shall have been designed, constructed, operated, and maintained in accordance with all applicable laws and regulations of the Borrower, ADB's *Environment Policy (2002)* and the Project IEE. The Borrower shall further ensure, and shall cause CIPA to ensure, that (i) bidding documents shall have been issued only after NES approval of an environmental assessment report and issuance of Project consent; (ii) in the case of any material changes in the EMP, the PEA report shall have been submitted to ADB for review and clearance prior to issuance of bidding documents; and (iii) proper mitigation action shall have been taken regarding any unanticipated negative environmental impacts and ADB shall have been informed about any such unanticipated negative environmental impacts and mitigation action taken therefor.

Labor Standards

12. The Borrower shall ensure, and shall cause CIPA to ensure that (i) the provisions shall have been stipulated in all Works contracts requiring Project contractors to incorporate minimum workplace occupational safety norms, including the core labor standards as identified by the fundamental International Labor Organization conventions; (ii) the Project contractors, employed under the Works contracts, comply with all applicable labor laws; (iii) the Project contractors shall refrain from employing child labor in any Works related activity; (iv) the Project contractors provide appropriate training, and information materials, for workers on HIV/AIDS prevention by engaging an NGO with established capacity to provide such training; (v) the Project contractors and their workers observe local protocols concerning acceptable behavior toward the local population; (vi) the Project contractors shall pay equal wages to men and women for work of equal value; and (vii) specific clauses, concerning above specified labor standards, shall have been included in bidding documents, and compliance shall be strictly monitored during project implementation.

Governance and Anticorruption

13. The Borrower shall ensure, and shall cause CIPA to ensure that (i) the Project shall have been carried out in accordance with all applicable anti-corruption laws and regulations of the Borrower and ADB's *Anti-corruption Policy* (1998, as amended to date); and (ii) a Project website shall have been developed within two months of the Effective Date, to maintain and disclose information about various matters concerning the Project, including the audited Project financial accounts, Project progress reports, and procurement activities.

14. The Borrower shall, within two months of the Effective Date, establish a complaint and problem management cell under the Borrower's Ministry of Finance and Economic Management to (i) review and address grievances of project stakeholders, in relation to either the Project, any of the service providers, or any person responsible for carrying out the Project; and (ii) set the threshold criteria and procedures for handling such grievances, for proactively responding to them, and for providing the stakeholders with notice of the chosen mechanism or action.

Accounting, Auditing, and Reporting

15. The Borrower shall provide ADB, within 3 months of physical completion of the Project, a completion report covering project implementation details, costs and benefits, and any other information that may be required by ADB.

16. Without prejudice to the generality of Section 2.09 (a) of the Project Agreement, the Borrower shall ensure and shall cause CIPA to ensure that (i) separate records and accounts are maintained for the Project identifying the Works and services financed from the Loan, expenditures incurred for the Project, and use of counterpart funds; (ii) the Project accounts shall be established and maintained in accordance with internationally accepted accounting standards; (iii) the Project accounts and annual financial statements shall be subject to annual external audit by auditors acceptable to ADB; (iv) the annual audit reports shall include an auditor's opinion on the use of the Loan proceeds and compliance with the financial covenants included in the Loan and Project agreements; (v) A separate opinion shall be provided on the use of the imprest account and SOE procedures;

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and (vi) the annual audited financial statements, audited project accounts, audit reports, and management letters and other related statements shall be provided to ADB in English, no later than 6 months after the end of each fiscal year for the entire implementation period.

17. ADB shall issue a formal warning to the Borrower for accounts more than 6 months overdue and shall suspend the disbursement for accounts that are 12 months overdue.

Project Review

18. Semi-annual and midterm reviews of the Project shall be undertaken by the Borrower, CIPA, and ADB to consider (i) compliance with the loan covenants; (ii) physical achievements against milestones; (iii) loan disbursements and financial progress; and (iv) Project implementation issues requiring resolution or action. The midterm review will be undertaken within 15 months of the Effective Date. At the midterm review, the Borrower and ADB shall review in detail the Project design and implementation progress to identify areas for strengthening and improvement to ensure smooth implementation and achievement of the Project objectives. All assumptions and risks noted in the design and monitoring framework shall also be reviewed at the midterm review.