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LOAN NUMBER \_\_\_\_ - \_\_\_\_ (SF);  
[Supplementary to Loan 2087 - MON]

GRANT NUMBER \_\_\_\_ - \_\_\_\_ (SF)

FINANCING AGREEMENT  
(Special Operations)

(Regional Road Development Project - Supplementary)

between

MONGOLIA

and

ASIAN DEVELOPMENT BANK

DATED \_\_\_\_\_

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FAS: MON 35377

**FINANCING AGREEMENT  
(Special Operations)**

FINANCING AGREEMENT dated \_\_\_\_\_ between MONGOLIA (the "Beneficiary") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) by a loan agreement (Loan No. 2087-MON: Regional Road Development Project), dated 26 January 2005, between the Beneficiary and ADB (the "Initial Loan Agreement"), as later amended by an amendment letter to the Initial Loan Agreement, dated 29 March 2007, ADB made a loan (the "Initial Loan") in the amount of twenty eight million three hundred forty three thousand four hundred fifty six and eighty sixth one hundredth Special Drawing Rights (SDR 28,343,456.86) to the Beneficiary from ADB's Special Funds resources for the purposes of the project described in Schedule 1 to the Initial Loan Agreement (the "Initial Project");

(B) the Beneficiary has applied to ADB for a supplementary loan and grant for the purposes of financing the cost overruns under the Initial Project as described in Schedule 1 to this Loan Agreement (the "Project"); and

(C) ADB has agreed to provide financing by making a supplementary loan and a grant to the Beneficiary from ADB's Special Funds resources upon the terms and conditions hereinafter set forth;

NOW THEREFORE the parties agree as follows:

**ARTICLE I**

**Loan Regulations and Grant Regulations; Definitions**

Section 1.01. All provisions of the Special Operations Loan Regulations of ADB, dated 1 January 2006 (the "Loan Regulations"), are hereby made applicable to the Loan made pursuant to this Financing Agreement with the same force and effect as if they were fully set forth herein, subject, however, to the following modifications:

(a) The term "Loan Agreement", wherever it appears in the Loan Regulations, shall be substituted by the term "Financing Agreement".

(b) The term "Borrower", wherever it appears in the Loan Regulations, shall be substituted by the term "Beneficiary" as defined in the opening paragraph of this Financing Agreement.

Section 1.02. All provisions of the Special Operations Grant Regulations of ADB, dated 7 February 2005 (the "Grant Regulations"), are hereby made applicable to the Grant made pursuant to this Financing Agreement with the same force and effect as if they were fully set forth herein subject, however, to the following modifications:

(a) The term "Grant Agreement", wherever it appears in the Grant Regulations, shall be substituted by the term "Financing Agreement".

(b) The term "Recipient", wherever it appears in the Grant Regulations, shall be substituted by the term "Beneficiary" as defined in the opening paragraph of this Financing Agreement.

Section 1.03. Wherever used in this Financing Agreement, unless the context otherwise requires, the several terms defined in the Loan Regulations, the Grant Regulations and in the Initial Loan Agreement have the respective meanings therein set forth as if they were fully set forth herein, and the following additional terms have the following meanings:

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

(b) "FIDIC" means the Federation Internationale des Ingenieurs-Conseils;

(c) "Ministry of Road, Transportation, Construction and Urban Development" means the Ministry of Road, Transportation, Construction and Urban Development of the Beneficiary or any successor thereto;

(d) "Part" means part of the Initial Project as described in Schedule 1 to the Initial Loan Agreement;

(e) "PIU" means the Project Implementation Unit;

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

(g) "Procurement Plan" means the procurement plan for the Project, dated 11 February 2010, and agreed between the Beneficiary and ADB, as updated from time to time in accordance with Procurement Guidelines and other arrangements agreed with ADB;

(h) "Project Executing Agency" means for the purposes of, and within the meaning of, the Loan Regulations means, the Ministry of Road, Transportation, Construction and Urban Development or any successor thereto acceptable to ADB, which shall be responsible for the carrying out of the Project;

(i) "PSC" means the Project Steering Committee; and

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

## ARTICLE II

### The Loan and the Grant

Section 2.01. ADB agrees to provide to the Beneficiary from ADB's Special Funds resources, on terms and conditions set forth in this Financing Agreement:

(a) a loan in various currencies equivalent to five million one hundred ninety nine thousand Special Drawing Rights (SDR 5,199,000 ) (the "Loan"); and

(b) a grant in the amount of sixteen million Dollars (\$16,000,000) (the "Grant").

Section 2.02. (a) The Beneficiary 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 the first Principal Payment Date in accordance with the amortization schedule set forth in Schedule 2 to this Financing Agreement.

Section 2.03. The interest charge and any other charge on the Loan shall be payable semiannually on 1 April and 1 October in each year.

Section 2.04. The Beneficiary 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 Financing Agreement.

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

## ARTICLE III

### Use of Proceeds of the Loan and the Grant

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

Section 3.02. The Works and other items of expenditure to be financed out of the proceeds of the Loan and the Grant and the respective allocation of amounts of the Loan and the Grant among different categories of such goods and services and other items of expenditure shall be in accordance with the provisions of Schedule 3A and Schedule 3B, respectively, to this Financing Agreement, as such Schedule 3A and

Schedule 3B may be amended from time to time by agreement between the Beneficiary and ADB.

Section 3.03. Except as ADB may otherwise agree, all Works to be financed out of the proceeds of the Loan and the Grant shall be procured in accordance with the provisions of Schedule 4 to this Financing Agreement.

Section 3.04. Withdrawals from the Loan Account and the Grant Account in respect of Works shall be made only on account of expenditures relating to:

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

Section 3.05. The Loan Closing Date for the purposes of Section 8.02 of the Loan Regulations and the Grant Closing Date for the purposes of Section 8.02 of the Grant Regulations shall be 31 December 2013 or, in each case, such other date as may from time to time be agreed between the Beneficiary and ADB.

## **ARTICLE IV**

### **Particular Covenants and Incorporation of the Provisions of the Initial Loan Agreement**

Section 4.01. (a) In the carrying out of the Project and operation of the Project facilities, the Beneficiary shall perform, or cause to be performed, all obligations set forth in Schedule 6 of the Initial Loan Agreement (other than the obligation set forth in paragraph 5 of the schedule) and Schedule 5 to this Financing Agreement.

(b) Subject to the provisions of this Financing Agreement, all of the provisions of Sections 4.02, 4.03, 4.04 and Schedule 6 (other than the provision set forth in paragraph 5 of the schedule) to the Initial Loan Agreement are hereby incorporated in this Financing Agreement and shall have the same force as if they were fully set forth therein.

## **ARTICLE V**

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

Section 5.01. The following is specified as an additional event for suspension of the right of the Beneficiary to make withdrawals from (a) the Loan Account for the purposes of Section 8.01(m) of the Loan Regulations, and (b) the Grant Account for the purposes of Section 8.01(k) of the Grant Regulations, respectively: the Beneficiary shall have failed to perform any of its obligations under the Initial Loan Agreement.

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

## **ARTICLE VI**

### **Effectiveness**

Section 6.01. A date ninety (90) days after the date of this Financing Agreement is specified for the effectiveness of the Financing Agreement for the purposes of Section 9.04 of the Loan Regulations and Section 9.04 of the Grant Regulations.

## **ARTICLE VII**

### **Miscellaneous**

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

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

#### For the Beneficiary

Ministry of Finance  
United Nations Street 5/1  
Ulaanbaatar 15160  
Mongolia

Facsimile Number:

(976-51) 262-272.

#### For ADB

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

Facsimile Numbers:

(632) 636-2444  
(632) 636-2426.

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

MONGOLIA

By \_\_\_\_\_  
Authorized Representative

ASIAN DEVELOPMENT BANK

By \_\_\_\_\_

## SCHEDULE 1

### Description of the Project

1. The Project will assist in achieving the objectives of the Initial Project by financing cost overruns related to the following Parts of the Initial Project:

#### **Part A – Initial Project Road**

- (a) The construction of the remaining sixty-two (62) kilometers (km) of the two-lane road section of about four hundred thirty (430) km from Choyr to the border near Zamyn-Uud.
- (b) The price adjustment for the contracts related to the construction of the road sections from (i) 35th Railway Crossing to 18th Khudag, and (ii) 18th Khudag to 62.2 km mile post.

#### **Part D – Area Development**

- (a) The price adjustment for contract related to the construction of the access road to Urgun Soum.

2. The Project is expected to be completed by 30 June 2013.

## SCHEDULE 2

### Amortization Schedule

(Regional Road Development Project - Supplementary)

<u>Date Payment Due</u>	<u>Payment of Principal (expressed in Special Drawing Rights)</u>
DATE	AMOUNT
1-Oct-2018	108,313.00
1-April-2019	108,313.00
1-Oct-2019	108,313.00
1-April-2020	108,313.00
1-Oct-2020	108,313.00
1-April-2021	108,313.00
1-Oct-2021	108,313.00
1-April-2022	108,313.00
1-Oct-2022	108,313.00
1-April-2023	108,313.00
1-Oct-2023	108,313.00
1-April-2024	108,313.00
1-Oct-2024	108,313.00
1-April-2025	108,313.00
1-Oct-2025	108,313.00
1-April-2026	108,313.00
1-Oct-2026	108,313.00
1-April-2027	108,313.00
1-Oct-2027	108,313.00
1-April-2028	108,313.00
1-Oct-2028	108,313.00
1-April-2029	108,313.00
1-Oct-2029	108,313.00
1-April-2030	108,313.00
1-Oct-2030	108,313.00
1-April-2031	108,313.00
1-Oct-2031	108,313.00
1-April-2032	108,313.00
1-Oct-2032	108,313.00
1-April-2033	108,313.00
1-Oct-2033	108,313.00
1-April-2034	108,313.00
1-Oct-2034	108,313.00
1-April-2035	108,313.00
1-Oct-2035	108,313.00
1-April-2036	108,313.00

<b><u>Date Payment Due</u></b>	<b><u>Payment of Principal</u> <u>(expressed in Special Drawing Rights)</u></b>
DATE	AMOUNT
1-Oct-2036	108,313.00
1-April-2037	108,313.00
1-Oct-2037	108,313.00
1-April-2038	108,313.00
1-Oct-2038	108,313.00
1-April-2039	108,313.00
1-Oct-2039	108,313.00
1-April-2040	108,313.00
1-Oct -2040	108,313.00
1-April-2041	108,313.00
1-Oct -2041	108,313.00
1-April-2042	108,289.00
Total	5,199,000.00

\* 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 3A****Allocation and Withdrawal of Loan Proceeds**General

1. The table attached to this Schedule sets forth the Categories to be financed out of the proceeds of the Loan and the allocation of amounts of the Loan to each such Category (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, (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 Beneficiary, reallocate such excess amount to any other Category.

Disbursement Procedures

5. Except as ADB may otherwise agree, the Loan proceeds for financing Works shall be disbursed in accordance with ADB's Loan Disbursement Handbook.

Imprest Account; Statement of Expenditures

6. (a) Except as ADB may otherwise agree, the Beneficiary 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 Beneficiary and ADB. The currency of the imprest account shall be Dollars. 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) five hundred thousand Dollars (\$500,000).

b) The statement of expenditures (SOE) procedure may be used for reimbursement of eligible expenditures, in accordance with ADB's Loan Disbursement Handbook and detailed arrangements agreed upon between the Beneficiary and ADB. Any individual payment to be reimbursed or liquidated under the SOE procedure shall not exceed the equivalent of one hundred thousand Dollars (\$100,000).

#### Retroactive Financing

7. Withdrawals from the Loan Account may be made for reimbursement of reasonable expenditures incurred under the Project before the Effective Date, but not earlier than twelve (12) months before the date of this Financing Agreement, subject to a maximum amount equivalent to twenty (20) percent of the Loan amount.

TABLE

<b>ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS</b>			
<b>(Regional Road Development Project - Supplementary)</b>			
<b>CATEGORY</b>			<b>ADB FINANCING</b>
<b>Number</b>	<b>Item</b>	<b>Amount Allocated SDR</b>	<b>Percentage and Basis for Withdrawal from the Loan Account</b>
1	Works	2,847,000	100 percent of total expenditure*
2	Project Management	195,000	100 percent of total expenditure*
3	Interest	162,000	100 percent of amount due
4	Unallocated	1,995,000	
	Total	5,199,000	

\* Exclusive of local taxes and duties

**SCHEDULE 3B****Allocation and Withdrawal of Grant Proceeds**General

1. The table attached to this Schedule sets forth the Category to be financed out of the proceeds of the Grant and the allocation of amounts of the Grant to such Category (the "Table"). (Reference to "Category" in this Schedule is to a Category of the Table.)

Percentages of ADB Financing

2. Except as ADB may otherwise agree, Category item 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.

Disbursement Procedures

3. Except as ADB may otherwise agree, the Grant proceeds for financing Works shall be disbursed in accordance with ADB's Loan Disbursement Handbook.

Imprest Account: Statement of Expenditures

4. (a) Except as ADB may otherwise agree, the Beneficiary 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 Beneficiary and ADB. The currency of the imprest account shall be Dollars. 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) five hundred thousand Dollars (\$500,000).

b) The statement of expenditures (SOE) procedure may be used for reimbursement of eligible expenditures, in accordance with ADB's Loan Disbursement Handbook and detailed arrangements agreed upon between the Beneficiary and ADB. Any individual payment to be reimbursed or liquidated under the SOE procedure shall not exceed the equivalent of one hundred thousand Dollars (\$100,000).

Retroactive Financing

5. 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 twelve (12) months before the date of this Financing Agreement subject to a maximum amount equivalent to twenty (20) percent of the Grant amount.

TABLE

<b>ALLOCATION AND WITHDRAWAL OF GRANT PROCEEDS</b>			
<b>(Regional Road Development Project - Supplementary)</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>
1	Works	16,000,000	100 percent of total expenditure*
	Total	16,000,000	

\* Exclusive of local taxes and duties

## SCHEDULE 4

### Procurement of Works

#### A. General

1. All Works to be financed out of the proceeds of the Loan and Grant shall be subject to and governed by the Procurement Guidelines.
2. All terms used and not otherwise defined in this Financing Agreement have the meanings provided in the Procurement 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 Beneficiary 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. Domestic Preference. The Beneficiary may grant a margin of preference in the evaluation of bids under international competitive bidding in accordance with paragraphs 2.55(b) and 2.56 of the Procurement Guidelines for domestic Works

#### E. Industrial or Intellectual Property Rights

5. (a) The Beneficiary shall ensure that all Works procured do not violate or infringe any industrial property or intellectual property right or claim of any third party.

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

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

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

## SCHEDULE 5

### Execution of Project and Operation of Project Facilities

#### Project Executing Agency

1. The Beneficiary shall appoint the Ministry of Road, Transportation, Construction and Urban Development as the Project Executing Agency, which shall assume responsibility for oversight and coordination of Project implementation. The PSC and the PIU established under the Initial Project pursuant to the requirements under the Initial Loan Agreement shall continue to assume the same roles and functions under this Project.

#### Project Implementation

2. The Beneficiary shall ensure that the one hundred seventy six (176) km road section from Choyr to 35<sup>th</sup> railway crossing shall be completed by 30 June 2013. The Beneficiary shall further ensure that the technical standards of the railway crossing in terms of width, pavement structure, safety and environment measures shall be in accordance to (a) the measures set out in the feasibility study and road safety audit; and (b) international practices, including those of FIDIC, notably with respect to the use of an external supervision consultant.

3. The Beneficiary shall deploy its best efforts during contract bidding and implementation to ensure that the Project can be completed by 30 June 2013, including undertaking timely bid evaluation, prompt signing of contracts and issuance of the notice to proceed, and timely settlement of contractors' claims.

4. The Beneficiary shall further ensure that (a) the contractors shall receive their work permits within twenty (20) working days from the date of application; and (b) the construction equipment shall be cleared from custom within twenty (20) working days from the date of application.