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LOAN NUMBER 2465-PHI

LOAN AGREEMENT  
(Ordinary Operations)  
(Agrarian Reform Communities Project II)

between

REPUBLIC OF THE PHILIPPINES

and

ASIAN DEVELOPMENT BANK

DATED 8 DECEMBER 2008

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LAL:PHI 37749

**LOAN AGREEMENT  
(Ordinary Operations)**

LOAN AGREEMENT dated 8 December 2008 between REPUBLIC OF THE PHILIPPINES (hereinafter called the Borrower) and ASIAN DEVELOPMENT BANK (hereinafter called 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;

(B) the Borrower has also applied to the OPEC Fund for International Cooperation (hereinafter called the OPEC Fund) for a loan (hereinafter called the OPEC Loan) in an amount equivalent to thirty million dollars (\$30,000,000) to assist in financing a part of the Project, on a joint basis to be administered by ADB in accordance with the terms and conditions set forth in the agreement to be entered into between the Borrower and OPEC Fund (hereinafter called the OPEC Loan Agreement); and

(C) ADB has agreed to make a loan to the Borrower from ADB's ordinary capital resources upon the terms and conditions hereinafter set forth;

NOW THEREFORE the parties hereto agree as follows:

**ARTICLE I**

**Loan Regulations; Definitions**

Section 1.01. All the provisions of the Ordinary Operations Loan Regulations Applicable to LIBOR-Based Loans Made from ADB's Ordinary Capital Resources, dated 1 July 2001, are hereby made applicable to this Loan Agreement with the same force and effect as if they were fully set forth herein, subject, however, to the following modifications thereof (said Ordinary Operations Loan Regulations as so modified being hereinafter called the Loan Regulations):

(a) Section 3.03 is deleted and the following is substituted therefor:

**Commitment Charge; Credit.** (aa) The Borrower shall pay a commitment charge on the unwithdrawn amount of the Loan at the rate and on the terms specified in the Loan Agreement.

(bb) ADB shall provide to the Borrower a credit at the rate specified in the Loan Agreement, which credit shall remain fixed for the term of the Loan. ADB shall apply the amount of the credit against the interest payable by the Borrower.

(b) Section 3.06 is deleted and the following is substituted therefor:

(aa) Following any announcement by ADB that the Fixed Spread applicable to new Loans shall be reduced, ADB shall provide a Rebate to any Borrower with an outstanding Loan on which a higher Fixed Spread is applicable. The amount of the Rebate shall be determined by multiplying (i) the difference between the Fixed Spread applicable to the outstanding Loan and the Fixed Spread that will be applied to new Loans (expressed as a percentage per annum), by (ii) the principal amount of the outstanding Loan on which the Borrower shall pay interest for all interest periods commencing on and after the effective date of the lower Fixed Spread that will be applied to new Loans.

(bb) Following any announcement by ADB that its Funding Cost Margin calculations with respect to any Loan Currency (or Approved Currency) in any Semester resulted in ADB achieving savings, ADB shall provide a Rebate to the Borrower. The amount of the Rebate shall be determined by multiplying (i) the Funding Cost Margin (expressed as a percentage per annum) by (ii) the principal amount of the Loan on which the Borrower shall pay interest for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated. ADB shall apply the amount of the Rebate against the interest payable by the Borrower for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated.

(c) Section 3.07 is deleted and the following is substituted therefor:

(aa) Following any announcement by ADB that the Fixed Spread applicable to new Loans shall be increased, any Borrower with an outstanding Loan on which a lower Fixed Spread is applicable shall pay ADB a Surcharge. The amount of the Surcharge shall be determined by multiplying (i) the difference between the Fixed Spread that will be applied to new Loans and the Fixed Spread applicable to the outstanding Loan (expressed as a percentage per annum), by (ii) the principal amount of the outstanding Loan on which the Borrower shall pay interest for all interest periods commencing on and after the effective date of the higher Fixed Spread that will be applied to new Loans.

(bb) Following any announcement by ADB that its Funding Cost Margin calculations with respect to any Loan Currency (or Approved Currency) in any Semester resulted in ADB incurring additional costs, the Borrower shall pay ADB a Surcharge. The amount of the Surcharge shall be determined by multiplying (i) the Funding Cost Margin (expressed as a

percentage per annum) by (ii) the principal amount of the Loan on which the Borrower shall pay interest for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated. ADB shall add the amount of the Surcharge to the interest payable by the Borrower for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated.

Section 1.02. Wherever used in this Loan Agreement, unless the context otherwise requires, the several terms defined in the Loan Regulations have the respective meanings therein set forth, and the following additional terms have the following meanings:

(a) "ARB" means an agrarian reform beneficiary as defined and designated under the CARP;

(b) "ARC" means an agrarian reform community in which a critical mass of the population consists of ARBs;

(c) "ARC Cluster" means an area consisting of 2 or more ARCs, including the non-ARC barangays in the delineated area/cluster. This is a term that has been variously adopted by DAR since 2006 as a concept that allows inclusion of ARBs in non-ARC barangays in the vicinity of designed ARCs as well as within DARs programs and plans and non ARB populations within and outside ARCs;

(d) "ARMM" means the Autonomous Region in Muslim Mindanao within the territory of the Borrower;

(e) "CARP" means the Borrower's Comprehensive Agrarian Reform Program;

(f) "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);

(g) "CSO" means a civil society organization;

(h) "DAR" means the Borrower's Department of Agrarian Reform, or any successor thereof;

(i) "DAR-ARMM" means DAR established and located in ARMM;

(j) "DOF" means the Borrower's Department of Finance, or any successor thereof;

(k) "FAPsO" means Foreign-Assisted Projects Office within DAR, or any successor thereof;

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

(m) "LGU" means a local government unit of the Borrower at provincial, city or municipal level;

(n) "MDFO" means the Municipal Development Fund Office of DOF, or any successor thereto;

(o) "NGO" means non government organization;

(p) "NPC" means a national project coordinator to be appointed for the Project, as described in paragraph 3 of Schedule 5 to this Loan Agreement;

(q) "NPCO" means a national project coordination office to be established for the Project, as described in paragraph 3 of Schedule 5 to this Loan Agreement;

(r) "NSAC" means a national subproject appraisal committee to be established by DAR;

(s) "PEC" means the Project Executive Committee to be established for the Project, as more fully described in paragraph 2 of Schedule 5 to this Loan Agreement;

(t) "Procurement Guidelines" means ADB's Procurement Guidelines (2007, as amended from time to time);

(u) "Procurement Plan" means the procurement plan for the Project dated 2 September 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;

(v) "Project Provinces" means the provinces within the territory of the Borrower in which the Project will be carried out as agreed between the Borrower and ADB;

(w) "RSAC" means a regional subproject appraisal committee to be established by a DAR regional office at the regional level; and

(x) "Works" means construction or civil works to be financed out of the proceeds of the Loan, and 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. (a) ADB agrees to lend to the Borrower from ADB's ordinary capital resources an amount of seventy million dollars (\$70,000,000), as such amount may be converted from time to time through a Currency Conversion in accordance with the provisions of Section 2.06 of this Loan Agreement.

(b) The Loan has a principal repayment period of 19 years, and a grace period as defined in paragraph (c) of this Section.

(c) The term "grace period" as used in paragraph (b) 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 Loan Agreement.

Section 2.02. The Borrower shall pay to ADB interest on the principal amount of the Loan withdrawn and outstanding from time to time at a rate for each Interest Period equal to the sum of LIBOR and 0.60% as provided by Section 3.02 of the Loan Regulations, less a credit of 0.40% as provided by Section 3.03 of the Loan Regulations.

Section 2.03. The Borrower shall pay a commitment charge of 0.15% per annum. Such charge shall accrue on the full amount of the Loan (less amounts withdrawn from time to time), commencing sixty (60) days after the date of this Loan Agreement.

Section 2.04. Interest and other charges on the Loan shall be payable semiannually on 15 May and 15 November in each year.

Section 2.05. The Borrower shall repay the principal amount of the Loan withdrawn from the Loan Account in accordance with the provisions of Schedule 2 to this Loan Agreement.

Section 2.06. (a) The Borrower may at any time request any of the following Conversions of the terms of the Loan in order to facilitate prudent debt management:

- (i) a change of the Loan Currency of all or any portion of the principal amount of the Loan, whether withdrawn and outstanding or unwithdrawn, to an Approved Currency;
- (ii) a change of the interest rate basis applicable to all or any portion of the principal amount of the Loan withdrawn and outstanding from a Floating Rate to a Fixed Rate, or vice versa; and

- (iii) the setting of limits on the Floating Rate applicable to all or any portion of the principal amount of the Loan withdrawn and outstanding by the establishment of an Interest Rate Cap or Interest Rate Collar on said Floating Rate.

(b) Any conversion requested pursuant to paragraph (a) of this Section that is accepted by ADB shall be considered a "Conversion", as defined in Section 2.01(6) of the Loan Regulations, and shall be effected in accordance with the provisions of Article V of the Loan Regulations and the Conversion Guidelines.

### **ARTICLE III**

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

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

Section 3.02. The Goods, 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 Goods, 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. Except as ADB may otherwise agree, all Goods, 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. ADB may refuse to finance a contract where Goods, Works or consulting services have not been procured under procedures substantially in accordance with those agreed between the Borrower and ADB or where the terms and conditions of the contract are not satisfactory to ADB.

Section 3.04. Except as ADB may otherwise agree, the Borrower shall cause all Goods, Works and consulting services financed out of the proceeds of the Loan to be used exclusively in the carrying out of the Project.

Section 3.05. The closing date for withdrawals from the Loan Account for the purposes of Section 9.02 of the Loan Regulations shall be 30 June 2015 or such other date as may from time to time be agreed between the Borrower and ADB.

## ARTICLE IV

### Particular Covenants

Section 4.01. (a) The Borrower shall cause the Project to be carried out with due diligence and efficiency and in conformity with sound administrative, financial, engineering, environmental and agrarian reform practices.

(b) 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.

Section 4.02. The Borrower shall make available, promptly as needed, the funds, facilities, services, land and other resources which are required, in addition to the proceeds of the Loan, for the carrying out of the Project and for the operation and maintenance of the Project facilities.

Section 4.03. (a) In the carrying out of the Project, the Borrower shall cause competent and qualified consultants and contractors, acceptable to ADB, to be employed to an extent and upon terms and conditions satisfactory to the Borrower and ADB.

(b) The Borrower shall cause the Project to be carried out in accordance with plans, design standards, specifications, work schedules and construction methods acceptable to ADB. The Borrower shall furnish, or cause to be furnished, to ADB, promptly after their preparation, such plans, design standards, specifications and work schedules, and any material modifications subsequently made therein, in such detail as ADB shall reasonably request.

Section 4.04. The Borrower shall ensure that the activities of its departments and agencies with respect to the carrying out of the Project and operation of the Project facilities are conducted and coordinated in accordance with sound administrative policies and procedures.

Section 4.05. (a) The Borrower 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 9 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 Loan proceeds and compliance with the financial covenants of this Loan Agreement as well as on the use of the procedures for imprest account/statement of expenditures), 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 Borrower shall enable ADB, upon ADB's request, to discuss the Borrower's financial statements for the Project and its financial affairs related to the Project from time to time with the auditors appointed by the Borrower pursuant to Section 4.05(a)

hereabove, and shall make necessary arrangements for 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 Borrower unless the Borrower shall otherwise agree.

Section 4.06. The Borrower shall enable ADB's representatives to inspect the Project, the Goods and Works financed out of the proceeds of the Loan, and any relevant records and documents.

Section 4.07. The Borrower shall ensure that the Project facilities are operated, maintained and repaired in accordance with sound administrative, financial, engineering, environmental, agrarian reform and maintenance and operational practices.

## **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 Borrower to make withdrawals from the Loan Account for the purposes of Section 9.01(l) of the Loan Regulations: the OPEC Fund Loan shall have become liable for suspension for at least 6 months or cancellation or shall have become repayable prior to its agreed maturity date.

Section 5.02. The following is specified as an additional event for acceleration of maturity for the purposes of Section 9.07(a)(iv) of the Loan Regulations: the event specified in Section 5.01 of this Loan Agreement shall have occurred.

## **ARTICLE VI**

### **Effectiveness**

Section 6.01. The following is specified as an additional condition to the effectiveness of this Loan Agreement for the purposes of Section 10.01(f) of the Loan Regulations: the OPEC Fund Loan Agreement shall have been duly executed and delivered, and all conditions precedent to its effectiveness (other than a condition requiring the effectiveness of this Loan Agreement) shall have been fulfilled or arrangements satisfactory to ADB shall have been made for the fulfillment thereof within a period of time satisfactory to ADB;

Section 6.02. 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 10.04 of the Loan Regulations.

**ARTICLE VII**

**Miscellaneous**

Section 7.01. The Secretary of Finance of the Borrower is designated as representative of the Borrower for the purposes of Section 12.02 of the Loan Regulations.

Section 7.02. The following addresses are specified for the purposes of Section 12.01 of the Loan Regulations:

For the Borrower

Department of Finance  
DOF Building  
Roxas Boulevard  
Manila, Philippines

Facsimile Numbers:

(632) 523-9216  
(632) 521-9495.

For ADB

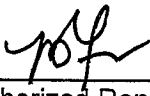
Asian Development Bank  
P.O. Box 789  
0980 Manila, Philippines

Facsimile Numbers:

(632) 636-2444  
(632) 636-2403.

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.

REPUBLIC OF THE PHILIPPINES

By   
Authorized Representative  
006944 14 nov. 2008

ASIAN DEVELOPMENT BANK

By 

## SCHEDULE 1

### Description of the Project

1. The overall goal of the Project is to enable ARBs in the target ARCs and ARC Clusters in the Project provinces to reduce poverty, and have sustained improvements in incomes and quality of life, through the design and implementation of an integrated and complementary package of development investments, involving support for community driven development, support to new and expanded ARC organizations and their business oriented activities, increased agency of the poor in community planning and decision making, agri-enterprise development, infrastructural support, and mainstreaming of Project management

2. The scope of the Project comprises:

#### **Component 1: Community Driven Development**

Component 1.a. Supporting social capital formation through:

- Mobilizing communities;
- Building organizations with socially inclusive membership; and
- Identifying the training and capacity building needs of organizations of the ARBs, and drawing up training and development plans for the ARCs.

Component 1.b. Carrying out participatory ARC planning through:

- Training planning teams in the Project provinces;
- Developing comprehensive ARC plans to be prepared through the target communities through workshops, focus group discussions, and meetings including in particular all vulnerable sections such as Indigenous Peoples, rural poor households, women, with assistance of Barangay CARP Implementing Teams already established pursuant to CARP; and
- Facilitating LGU participation in ARC planning and the incorporation of ARC plans into rural development plans of LGUs.

Component 1.c. Implementing ARC and LGU organizational development for improved governance through:

- Reinvigorating CARP Implementing Teams already established under CARP and LGU structures at all levels;
- Developing and training ARC cooperatives, microfinance groups and farmer associations, and establishing and operationalizing user associations for social services and infrastructure; and
- Providing training on fiduciary policies and management, and safeguard policies.

#### **Component 2: Agriculture and Enterprise Development**

Component 2.a. Improving agricultural productivity through:

- Supporting training, demonstrations and cross learning visits by farmer groups for peer group learning based on their needs and priorities identified in the detailed ARC plans.

Component 2.b. Developing agri-enterprise and market through:

- Implementing selected subprojects that include market assessments and marketing plans;
- Providing business advisory services to ARC organizations; and
- Setting up a market information system at provincial level.
- Supporting ARC Cluster development.

Component 2.c. Improving land tenure through:

- Supporting social preparation, surveys and segregation or stabilization of the land titles of ARBs, especially focusing on collective certificates of land ownership awards.

Component 2.d. Improving access to sustainable rural financial services through:

- Developing community based financial services including microfinance lending and savings programs through socially homogenous and self selected groups, as well as suitable options for meeting farmer credit needs, through contracted NGOs, CSOs and microfinance institutions.

### **Component 3: Rural Infrastructure Development**

Implementing rural infrastructure subprojects to be selected in accordance with the agreed criteria and general conditions, as more fully described in paragraphs 8 and 9 of Schedule 5 to this Loan Agreement.

### **Component 4: Project Implementation Management**

Providing support to the necessary national and field management structures, including the required consulting services to provide technical assistance to the Project staff at all levels in Project management and implementation; transport/mobility and equipment support; among others.

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

## SCHEDULE 2

### Amortization Schedule (Agrarian Reform Communities Project II)

1. The following table sets forth the Principal Payment Dates of the Loan and the percentage of the total principal amount of the Loan payable on each Principal Payment Date (Installment Share). If the proceeds of the Loan shall have been fully withdrawn as of the first Principal Payment Date, the principal amount of the Loan repayable by the Borrower on each Principal Payment Date shall be determined by ADB by multiplying: (a) the total principal amount of the Loan withdrawn and outstanding as of the first Principal Payment Date; by (b) the Installment Share for each Principal Payment Date, such repayment amount to be adjusted, as necessary, to deduct any amounts referred to in paragraph 4 of this Schedule, to which a Currency Conversion applies.

Date Payment Due	Installment Share <sup>1</sup> (Expressed as a % based on 10% annuity)
15 May 2015	0.928423
15 Nov 2015	0.974844
15 May 2016	1.023586
15 Nov 2016	1.074766
15 May 2017	1.128504
15 Nov 2017	1.184929
15 May 2018	1.244176
15 Nov 2018	1.306384
15 May 2019	1.371704
15 Nov 2019	1.440289
15 May 2020	1.512303
15 Nov 2020	1.587918
15 May 2021	1.667314
15 Nov 2021	1.750680
15 May 2022	1.838214
15 Nov 2022	1.930125
15 May 2023	2.026631
15 Nov 2023	2.127963
15 May 2024	2.234361
15 Nov 2024	2.346079
15 May 2025	2.463383
15 Nov 2025	2.586552
15 May 2026	2.715879
15 Nov 2026	2.851673
15 May 2027	2.994257
15 Nov 2027	3.143970

Date Payment Due	Installment Share <sup>1</sup> (Expressed as a % based on 10% annuity)
15 May 2028	3.301168
15 Nov 2028	3.466227
15 May 2029	3.639538
15 Nov 2029	3.821515
15 May 2030	4.012591
15 Nov 2030	4.213220
15 May 2031	4.423881
15 Nov 2031	4.645075
15 May 2032	4.877329
15 Nov 2032	5.121196
15 May 2033	5.377255
15 Nov 2033	5.646098
TOTAL	100.000000

2. If the proceeds of the Loan shall not have been fully withdrawn as of the first Principal Payment Date, the principal amount of the Loan repayable by the Borrower on each Principal Payment Date shall be determined as follows:

(a) To the extent that any proceeds of the Loan shall have been withdrawn as of the first Principal Payment Date, the Borrower shall repay the amount withdrawn and outstanding as of such date in accordance with paragraph 1 of this Schedule.

(b) Any withdrawal made after the first Principal Payment Date shall be repaid on each Principal Payment Date falling after the date of such withdrawal in amounts determined by ADB by multiplying the amount of each such withdrawal by a fraction, the numerator of which shall be the original Installment Share specified in the table in paragraph 1 of this Schedule for said Principal Payment Date (the Original Installment Share) and the denominator of which shall be the sum of all remaining Original Installment Shares for Principal Payment Dates falling on or after such date, such repayment amounts to be adjusted, as necessary, to deduct any amounts referred to in paragraph 4 of this Schedule, to which a Currency Conversion applies.

3. Withdrawals made within two calendar months prior to any Principal Payment Date shall, for the purposes solely of calculating the principal amounts payable on any Principal Payment Date, be treated as withdrawn and outstanding on the second Principal Payment Date following the date of withdrawal and shall be repayable on each Principal Payment Date commencing with the second Principal Payment Date following the date of withdrawal.

4. Notwithstanding the provisions of paragraphs 1 and 2 of this Schedule, upon a Currency Conversion of all or any portion of the withdrawn principal amount of the Loan to an Approved Currency, the amount so converted in said Approved Currency that shall be repayable on any Principal Payment Date occurring during the Conversion Period, shall be determined by ADB by multiplying such amount in its currency of denomination immediately prior to said Conversion by either: (i) the exchange rate that reflects the amounts of principal

in said Approved Currency payable by ADB under the Currency Hedge Transaction relating to said Conversion; or (ii) if ADB so determines in accordance with the Conversion Guidelines, the exchange rate component of the Screen Rate.

5. If the principal amount of the Loan withdrawn and outstanding from time to time shall be denominated in more than one Loan Currency, the provisions of this Schedule shall apply separately to the amount denominated in each Loan Currency, so as to produce a separate amortization schedule for each such amount.

**SCHEDULE 3****Allocation and Withdrawal of Loan Proceeds**General

1. The table attached to this Schedule sets forth the Categories of Goods, Works, consulting services and other items 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 and reference to "Subcategory" or "Subcategories" in this Schedule is to a Subcategory or Subcategories of a Category.)

Percentages of ADB Financing

2. Except as ADB may otherwise agree, the items of the Categories and Subcategories 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 and Commitment Charge

3. The amount allocated to Category 5 is for financing interest and commitment charge on the Loan during the implementation period of the Project. ADB shall be entitled to withdraw from the Loan Account and pay to itself, on behalf of the Borrower, the amounts required to meet payments, when due, of such interest and commitment charge/interest charge.

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, and 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, two imprest accounts at Bangko Sentral ng Pilipinas, one managed by MDFO for Component 3 of the Project and the other managed by DAR for all other Project activities. The imprest accounts 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 dollars. The initial amount to be deposited into the imprest account with MDFO shall not exceed the lower of (i) the estimated amount of rural infrastructure subprojects financing for the first six months of Project implementation, or (ii) the equivalent of ten (10) percent of the total rural infrastructure subprojects financing amount. The initial amount to be deposited into the imprest account with DAR shall not exceed the lower of (i) the estimated expenditure for Project activities other than rural infrastructure subprojects for the first six months of Project implementation, or (ii) the equivalent of ten (10) percent of the total amount of expenditures for Project activities other than rural infrastructure subprojects.

(b) The statement of expenditures (SOE) procedure may be used for reimbursement of eligible expenditures not more than the equivalent of \$100,000 and to liquidate advances provided into the imprest account, in accordance with ADB's Loan Disbursement Handbook and detailed arrangements agreed upon between the Borrower and ADB.

TABLE

<b>ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (Agrarian Reform Communities Project II)</b>				
<b>CATEGORY</b>				<b>ADB FINANCING BASIS</b>
<b>Number</b>	<b>Item</b>	<b>Total Amount Allocated for ADB Financing [\$]</b>		<b>Percentage of ADB Financing from the Loan Account</b>
		<b>Category</b>	<b>Subcategory</b>	
1	Works	40,243,000		56 percent of total expenditure*
2	Equipment	1,590,000		
2A	Vehicles		743,000	100 percent of total expenditure*
2B	Motorcycles		326,000	100 percent of total expenditure*
2C	Computers		177,000	100 percent of total expenditure*
2D	Other Office Equipment		344,000	100 percent of total expenditure*
3	Consulting Services	10,465,000		100 percent of total expenditure*
4	NGO Contracting	1,806,000		100 percent of total expenditure*
5	Interest and Commitment Charge	8,325,000		100 percent of amounts due
6	Unallocated	7,571,000		
	Total	70,000,000		

Note: \* Excluding taxes/duties

## SCHEDULE 4

### Procurement of Goods and Works, and Consulting Services

#### A. General

1. All Goods, 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 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
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 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.

4. National Competitive Bidding. The procedures to be followed for national competitive bidding shall be those set forth in Republic Act 9184 of the Republic of the Philippines, effective 26 January 2003, and Implementing Rules and Regulations, effective 8 October 2003, incorporating amendments as of August 2006, with the clarifications and modifications described in the following paragraphs required for compliance with the provisions of the Procurement Guidelines:
  - i. Eligibility
    - (a) Eligibility screening as described in the Implementing Rules and Regulations shall not be applied. However, bids that do not contain the following documents will not pass the documentary compliance check if they are a specific requirement of the bidding documents: (i) evidence of the required financial, technical or production capacity; (ii) audited financial statements; (iii) credit line or cash deposit certificate; (iv) bid security; and (v) authority of the bid signatory.
    - (b) National sanction list may be applied only with prior approval of ADB.

ii. Advertising

Bidding of National Competitive Bidding contracts estimated at \$500,000 or more for Goods or \$1,000,000 or more for Works shall be advertised concurrently with the general procurement notices on ADB's website.

iii. Price Ceiling

The approved budget for the contract (ABC) may be published, but it shall not be stated or implied that bid prices shall not exceed the ABC, or that bid evaluation will in any way take into account the ABC. The ABC, budgetary allocation, ceiling price, or similar estimates of contract value shall not be used to reject bids without prior concurrence of ADB.

iv. Domestic Preference

(a) No preference of any kind shall be given to domestic bidders or for domestically manufactured goods.

(b) Suppliers and contractors shall not be required to purchase domestically manufactured goods, supplies or materials.

(c) Foreign suppliers and contractors from ADB member countries shall be allowed to participate, if interested, without being required to associate with, or enter into joint venture with, local firms.

(d) Foreign suppliers and contractors from ADB member countries shall be allowed to bid, without registration, licensing, or other government authorizations, leaving compliance with these requirements until after award and before signing of a contract.

v. Experience Qualification

For a Works contract, the experience qualification requirement shall be : (i) at least one previous contract at 80% of the estimated cost of the contract being procured; and (ii) an annual turnover from all Works average over the last three years equal to 100% of the estimated cost of the contract being procured.

vi. Bid Security

Bid Security shall be in the form of a bank guarantee from a reputable bank.

vii. Contract Amendment

ADB's concurrence shall be obtained before approving modifications to contracts under implementation where (i) the value of the modification exceeds 15% of contract amount, or (ii) it results in material changes to the conditions of contract.

viii. ADB Member Country Restrictions

Bidders must be nationals of member countries of ADB, and offered Goods and Works must be produced in and supplied from member countries of ADB.

5. Community Participation in Procurement. The Borrower may use community participation in procurement for Works contracts for small civil works in accordance with the agreed procedures set out in the Procurement Plan.

**C. Selection of Consulting Services**

6. Quality- and Cost-Based Selection. Except as ADB may otherwise agree, and except as set forth in the paragraph below, the Borrower shall apply quality- and cost-based selection for selecting and engaging consulting services through eligible firms.

7. The Borrower may recruit, in consultation with ADB, consultants for project Implementation and management as individual consultants in accordance with procedures acceptable to ADB for recruiting individual consultants.

**D. Industrial or Intellectual Property Rights**

8. (a) The Borrower 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 Borrower 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 subparagraph (a) of this paragraph.

9. 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.

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

10. First five contracts for civil works procured in accordance with the National Competitive Bidding and all 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 Other Matters

#### A. Project Management

1. DAR shall be the Project Executing Agency. DAR, working under the supervision of the PEC, shall supervise Project implementation through its FAPsO, and shall be responsible for overseeing the coordination of Project implementation, review, monitoring and evaluation.

2. The Project shall be implemented by all participating municipal LGUs, DAR offices at regional and provincial levels, as well as CARP implementing partner agencies, the roles and responsibilities of which shall be governed by memoranda of agreement/subproject agreements. The memoranda of agreement/subproject agreements, in the form and substance acceptable to ADB, shall be signed between DAR and:

- (i) each of the following agencies, or their respective successors: the Department of Agriculture, Bureau of Local Government Finance of DOF, MDFO, Department of Interior and Local Government, Department of Environment and Natural Resources, Department of Public Works and Highways, National Irrigation Administration, Land Bank of the Philippines, the National Commission on Indigenous Peoples, and ARMM/DAR-ARMM,
- (ii) Government financial institutions/microfinance institutions, or any successors thereof, and
- (iii) LGUs participating in the Project.

3. The PEC, chaired by the Secretary of DAR, shall comprise the Undersecretary/Project Implementation officer for FAPsO as the vice chair, representatives of oversight agencies and partner agencies, or their respective successors, namely; the National Economic and Development Authority, DOF (MDFO and Bureau of Local Government Finance), Department of Budget and Management, the Departments of Agriculture, Interior and Local Government, Environment and Natural Resources, Public Works and Highways, National Irrigation Administration, Land Bank of the Philippines and the National Commission on Indigenous Peoples. It shall be responsible for reviewing and approving annual work plans and budget, flow of funds, cost sharing with LGUs, use of consultant services, review and monitor progress, and all other relevant Project activities. The PEC shall meet once every quarter for the Project's first year and at least once every six months thereafter. The Technical Secretariat to the PEC shall be headed by the NPC, with the supervision and guidance of Director, Project Development and Management Service/ FAPsO-Monitoring and Evaluation Staff. The Secretariat shall coordinate PEC meetings and prepare and submit all Project related documents for PEC's review.

4. The Borrower, through DAR, shall ensure that (i) the NPCO, established in FAPsO, shall be responsible for supervising, monitoring and coordinating Project implementation, and (ii) the NPCO shall be headed by the NPC, who will be assisted by regular DAR staff and national consultants in the areas of project management, administration, finance, and accounting, and shall report to the Undersecretary/Project Implementation Officer for FAPsO.

5. At the regional level, regional project offices shall be established in the DAR Regional Offices under the overall direction of the DAR Regional Directors. In each of the Project provinces, a provincial project office shall be established in the DAR Provincial Offices under the supervision of the provincial agrarian reform officers, who will function as the provincial project managers.

6. For Project activities carried out in the ARMM, the DAR-ARMM Secretary shall be the regional project manager and shall report regularly to the respective ARMM-Governor on the progress and implementation of the Project. The Assistant Secretary for Operations, DAR-ARMM shall be the ARMM regional deputy project manager.

7. At the municipal and ARC level, municipal agrarian reform officers, assisted by technical experts and administrative and financial specialists and staff from the regional offices and the provincial project implementation offices, shall be responsible for Project implementation at ARC and municipal levels. Local project offices, to be established by the concerned LGUs and headed by the Municipal Mayors, shall be responsible for ARC planning, subproject planning, and provision of required equity for the relevant project activities. The local project offices shall facilitate and monitor project implementation and address project-related concerns at the municipal and ARC levels, in close collaboration with the municipal agrarian reform officers. At the local project office level, the municipal engineer's office shall be the designated project unit for infrastructure development, while the municipal agriculture office shall be responsible for agriculture, agri-enterprise development, and livelihoods development activities

#### B. Subproject Selection Procedures and Criteria for Component 3 of the Project

8. At the national level, NSAC shall be established by the FAPsO, while RSACs shall be established by DAR regional offices at the regional level. Subprojects proposals costing more than \$75,000 shall be submitted to, and approved by, NSAC, and those costing not more than \$75,000 shall be submitted to, and approved by the respective RSACs.

9. A subproject shall be planned and selected in accordance with the project guidelines agreed between the Borrower and ADB. The project guidelines shall include, among others, the following selection criteria:

- (i) a subproject is identified and prioritized by poor rural communities through the community driven development approach;
- (ii) the concerned LGU provides concurrence to carry out the subproject;
- (iii) the concerned LGU shows willingness to put up the required equity in accordance with the Borrower's National Government and Local Government Unit Cost-Sharing Policy approved by the Investment Coordination Committee on 12 December 2002;
- (iv) the concerned LGU shows willingness to carry out (a) the necessary surveys, (b) individual subproject feasibility studies by which technical and economic viability are verified, and (c) detailed planning, and preparation of detailed engineering plans including all required clearances;
- (v) the concerned LGU shows willingness to abide by ADB and the Borrower's procurement, safeguard and anti corruption policies;
- (vi) a subproject complies with applicable social safeguard and environment policies of the Borrower and ADB, and concerned LGUs

- commit to resolving any social or environmental problems in accordance with such policies;
- (vii) the concerned LGU shows willingness to promote organizations within the concerned ARCs for operation and maintenance (O&M) of the facilities;
- (viii) Project resources are available; and
- (ix) proposed subprojects are not to be financed from any other foreign or local projects.

#### C. Performance Based Grant System

10. The Borrower shall ensure that LGUs which will participate in the Project and implement policy reform initiatives shall receive additional grant to be set forth in the Performance Grant Agreement between DOF-MDFO and LGUs. Such reform shall be certified by the MDFO's Technical Committee and Steering Committee of the Performance Based Grant System.

#### D. Environment and Other Social Matters

11. The Borrower, through DAR, shall ensure that Project activities, including those under subprojects, will comply with (i) applicable laws and regulations of the Philippines; (ii) ADB environment policies and regulations, specifically ADB's Environment Policy, 2002; (iii) Environment Assessments and Review Framework as prepared and agreed for the Project; and (iv) the environmental monitoring plan as set out in the summary initial environmental examination, including preparing initial environmental examination for subprojects. The Borrower, through DAR, shall report any compliance with ADB's Environment Policy in DAR's quarterly progress reports to ADB.

12. The Borrower, through DAR, shall ensure that land required for the Project is free of occupation and any involuntary resettlement, as defined in ADB's Policy on Involuntary Resettlement, will be avoided under the Project. If, due to an unforeseeable circumstance, such involuntary resettlement is unavoidable, the Borrower, through DAR, shall prepare a resettlement plan in accordance with ADB's Policy on Involuntary Resettlement and the Project's Resettlement Framework as agreed between the Borrower and ADB. The Borrower, through DAR, shall disclose to the public, and submit to ADB for approval, such resettlement plans prior to submission of external monitoring reports to ADB and commencing land acquisition activities.

13. The Borrower, through DAR, shall ensure that for an ARC/ ARC Cluster which includes ancestral domains or indigenous peoples areas, or with significant indigenous peoples population, an indicative indigenous peoples development plan will be prepared, or existing plans shall be reviewed, and included in the ARC/cluster development plans for endorsement to the LGU for implementation under the Project and other ongoing/proposed development projects/programs, in accordance with the Project's Indigenous Peoples Development Framework as agreed between the Borrower and ADB, existing national guidelines, applicable policies and guidelines of the Borrower, and ADB's Policy on Indigenous Peoples, 1998. The Borrower, through DAR, shall submit indigenous peoples development plan for ADB's review and approval prior to implementation of the relevant subprojects in accordance with the ADB's Policy on Indigenous Peoples. The indigenous peoples development plans and monitoring reports shall be made available on ADB website

and information contained in such documents shall also be made available at municipal and ARC level to all target communities and other stakeholders. The Borrower, through DAR, shall regularly report on the status of indigenous peoples under the Project. In all ARCs with substantial indigenous peoples, indigenous peoples shall form a significant portion of all project beneficiaries under community driven development, capacity building of ARC organizations, agriculture and enterprise development, land tenure improvement, and development of rural infrastructure.

14. The Borrower, through DAR, shall ensure that the Project's Gender and Development Action Plan is implemented, and equal access to all project activities and training opportunities is provided for men and women. Among other things, the Borrower, through DAR, shall ensure that women will form at least 33% of all beneficiaries of training programs, microfinance groups, and in membership of Project offices. All monitoring reports shall include information and analysis of the outputs/results of gender sensitive project interventions.

#### E. Anti-Corruption

15. The Borrower shall ensure that all Project activities will comply with ADB's Anti Corruption Policy (1998, as amended from time to time) particularly in respect of the sections of the Procurement Guidelines and Consulting Guidelines that relate to fraud and corruption. The Borrower shall develop safeguards to protect assets from fraud, wastage and abuse, and submit them to ADB for approval.

16. The Borrower shall ensure that DAR and Project Implementing Agencies will monitor and inspect all contractors' activities related to fund withdrawals and settlements. The Borrower shall further ensure that all contracts financed by the Loan proceeds will include provisions specifying the ADB's right to audit and examine the records and accounts of contractors, suppliers, consultants and other service providers as they relate to the Project.

#### F. Monitoring and Evaluation

17. The Borrower shall cause DAR to identify the target reform areas and develop indicators to monitor the progress in the targeted agrarian reform areas, as agreed between the Borrower and ADB. Such indicators shall cover, among other things, (a) financial management improvements, (b) anti corruption measures, and (c) capacity on implementation of safeguard policies on environment, indigenous peoples, and involuntary resettlement.

#### G. Use of NGOs/microfinance institutions

18. The Borrower, through DAR, shall ensure that appropriate NGOs/microfinance institutions will be contracted to provide specialized services for the community driven development project implementation management, and for other specialized services as may be deemed necessary by DAR and agreed with ADB.