

---

LOAN NUMBER 2608-THA

LOAN AGREEMENT  
(Ordinary Operations)

(Greater Mekong Subregion Highway Expansion Project [Known as the Four-Lane Highway  
Widening Project (Phase II)])

between

KINGDOM OF THAILAND

and

ASIAN DEVELOPMENT BANK

DATED June 11, 2010

---

LAL: THA 41682

**LOAN AGREEMENT  
(Ordinary Operations)**

LOAN AGREEMENT dated June 11, 2010 between the KINGDOM OF THAILAND (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 (hereinafter called the "Project");

(B) the Borrower has also applied to ADB for technical assistance (hereinafter called the "Technical Assistance") for the development of the implementation plan for a strategic intercity motorway network, and ADB has agreed to provide a Technical Assistance grant in an amount not exceeding the equivalent of one million Dollars (\$1,000,000); and

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

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.** (a) 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.

(b) 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:

(a) 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 shall 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 shall be applied to new Loans.

(b) 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:

(a) 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 shall 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.

(b) 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) "Affected Person" means any person whose living environment and/or livelihood activities have been or will be adversely affected by the resettlement activities undertaken or proposed to be undertaken by the Project and specifically including the holders of existing structures which will need to be cleared to make way for Project activities, including Works;

(b) "Bureau of Budget" means the Bureau of Budget within the Prime Minister Office of the Borrower, or any successor thereto;

(c) "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);

(d) "DOH" means the Department of Highways within MOT or any successor thereto;

(e) "EIA" means the environmental impact assessment report prepared by DOH and to be approved prior to award of the relevant contracts under the Project;

(f) "EMP" means the Project's environmental management plan developed based on the IEE;

(g) "Gender Strategy" means the Gender Strategy as set out in Appendix 4 of the RRP;

(h) "GMS" means the Greater Mekong Subregion;

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

(j) "Highway 12" means the national highway from Phitsanulok to Lomsak;

(k) "Highway 359" means the national highway from Phanom Sarakham to Sa Kaeo;

(l) "IEE" means the initial environmental examination developed for the Project and agreed upon between the Borrower and ADB;

(m) "MOF" means the Ministry of Finance of the Borrower, or any successor thereto;

(n) "MOT" means the Ministry of Transport of the Borrower, or any successor thereto;

(o) "Office of National Economic and Social Development Board" means the Office of National Economic and Social Development Board of the Borrower, or any successor thereto;

(p) "Office of Natural Resources and Environmental Policy and Planning" means the Office of Natural Resources and Environmental Policy and Planning of the Borrower, or any successor thereto;

(q) "Office of Transport and Traffic Policy and Planning" means the Office of Transport and Traffic Policy and Planning of the Borrower, or any successor thereto;

(r) "Office of the Attorney General" means the Office of the Attorney General of the Borrower, or any successor thereto;

(s) "PDMO" means Public Debt Management Office within MOF, or any successor thereto;

(t) "PMU" means the Project Management Unit, as further described in paragraph 1 of Schedule 5 to this Loan Agreement;

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

(v) "Procurement Plan" means the procurement plan for the Project, dated 31 July 2009, 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;

(w) "Project Executing Agency" for purposes of, and within the meaning of, this Loan Agreement and the Loan Regulations means DOH, which is responsible for carrying out the Project;

(x) "Project facilities" means any facilities to be constructed, provided and maintained under the Project;

(y) "PSC" means the Project Steering Committee, as further described in paragraph 2 of Schedule 5 to this Loan Agreement;

(z) "Resettlement Plan" means the Resettlement Plan prepared for the Project, which is endorsed by DOH and acceptable to ADB, as may be updated from time to time by agreement between DOH and ADB;

(aa) "RRP" means the Report and Recommendation of the President of ADB to the Board of Directors of ADB for the Loan; and

(bb) "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, 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-seven million one hundred thousand Dollars (\$77,100,000), 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 10 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 June and 15 December 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 or 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, and environmental 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 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 six (6) months after the end of each related fiscal year, certified copies of such audited accounts and financial statements and the report of the auditors relating thereto (including the auditors' opinion on the use of the Loan proceeds and compliance with the financial covenants of this Loan Agreement, 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 authorize and require any representative of such auditors to participate in any such discussions requested by ADB, provided that any such discussion shall be

conducted only in the presence of an authorized officer of the 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, and maintenance and operational practices.

## **ARTICLE V**

### **Effectiveness**

Section 5.01. 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 VI**

### **Miscellaneous**

Section 6.01. The Permanent Secretary of MOF is designated as representative of the Borrower for the purposes of Section 12.02 of the Loan Regulations.

Section 6.02. The following addresses are specified for the purposes of Section 12.01 of the Loan Regulations:

#### For the Borrower

Ministry of Finance  
Public Debt Management Office  
Rama VI Road,  
Bangkok 10400, Thailand

Facsimile Numbers:

(66-2) 273-9058  
(66-2) 618-4705.

For ADB

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

Facsimile Numbers:

(632) 636-2444  
(632) 636-2302.

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.

KINGDOM OF THAILAND  


By \_\_\_\_\_  
PRADIT PHATARAPRASIT  
Deputy Finance Minister  
Ministry of Finance

ASIAN DEVELOPMENT BANK

By \_\_\_\_\_  
  
KUNIO SENGA  
Director General  
Southeast Asia Department

## SCHEDULE 1

### Description of the Project

1. The Project aims to increase efficiency in the transport sector by lowering logistics costs for users of transport infrastructure in the Borrower's territory, and therefore increase the Borrower's competitiveness in the global economy.

#### Scope of the Project

2. The Project comprises the upgrading of about 178 km of the existing 2-lane national highway to a 4-lane divided highway standard in selected sections of the national highway known as Highway 12 and Highway 359 which form part of road system known as the GMS East-West Economic Corridor and the GMS Southern Economic Corridor. The upgrading will include the following components:

#### **A. Road Improvements**

- (i) widening of existing embankments and cut sections;
- (ii) construction of sub-base and base courses and a slope strengthening works;
- (iii) building new bridges;
- (iv) widening existing bridges;
- (v) reinforcing concrete box and pipe culvert improvements;
- (vi) building new asphalt concrete pavement sections; and
- (vii) strengthening and overlaying of existing pavements sections.

#### **B. Road Safety Improvements**

- (i) providing pedestrian overpasses;
- (ii) improving signage and pavement markings; and
- (iii) pavement widening at bus stops.

3. The Project also includes provision of consulting services. The Project is expected to be completed by 31 December 2014.

## SCHEDULE 2

### Amortization Schedule (Greater Mekong Subregion Highway Expansion Project [Known as the Four-Lane Highway Widening Project (Phase 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.

Sequence	Date Payment Due	Installment Share (Expressed as a %)
1	15 Jun 2015	5.000000
2	15 Dec 2015	5.000000
3	15 Jun 2016	5.000000
4	15 Dec 2016	5.000000
5	15 Jun 2017	5.000000
6	15 Dec 2017	5.000000
7	15 Jun 2018	5.000000
8	15 Dec 2018	5.000000
9	15 Jun 2019	5.000000
10	15 Dec 2019	5.000000
11	15 Jun 2020	5.000000
12	15 Dec 2020	5.000000
13	15 Jun 2021	5.000000
14	15 Dec 2021	5.000000
15	15 Jun 2022	5.000000
16	15 Dec 2022	5.000000
17	15 Jun 2023	5.000000
18	15 Dec 2023	5.000000
19	15 Jun 2024	5.000000
20	15 Dec 2024	5.000000
	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 (2) 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.)

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.

Reallocation

3. 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

4. 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.

TABLE

<b>ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS</b> <b>(Greater Mekong Subregion Highway Expansion Project [Known as the Four-Lane Highway Widening Project (Phase II)])</b>			
<b>CATEGORY</b>			<b>ADB FINANCING BASIS</b>
<b>Number</b>	<b>Item</b>	<b>Total Amount Allocated for ADB Financing \$'000 Category</b>	<b>Percentage of ADB Financing from the Loan Account</b>
1.	Works	68,500	50 percent of total expenditure*
2.	Consulting Services	1,600	50 percent of total expenditure*
3.	Unallocated	7,000	
	<b>Total</b>	<b>77,100</b>	

\* ADB Financing is exclusive of local taxes and 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

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. Domestic Preference. The Borrower may grant a margin of preference in the evaluation of bids under international competitive bidding in accordance with paragraphs 2.55(a) and 2.56 of the Procurement Guidelines for domestically manufactured Goods.
5. National Competitive Bidding. The Borrower and ADB shall ensure that, prior to the commencement of any procurement activity under national competitive bidding, the Borrower's national competitive bidding procedures are consistent with the Procurement Guidelines. Any modifications or clarifications to such procedures agreed between the Borrower and ADB shall be set out in the Procurement Plan. Any subsequent change to the agreed modifications and clarifications shall become effective only after written approval of such change by the Borrower and ADB.

#### C. Conditions for Award of Contract

6. The Borrower shall not award any Works contract related to sections 2, 3 and 4 of Highway 12 financed under the Loan, prior to receipt of all environmental approvals required under the Borrower's applicable rules.

#### D. Selection of Consulting Services

7. 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**

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.

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

10. All contracts procured under international or national 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

### Project Management and Operation of Project Facilities; Other Matters

#### Project Management

1. DOH shall be the Project Executing Agency with overall responsibility for the implementation of the Project. DOH shall establish a PMU that will act as the focal point for inter-agency coordination and communication with ADB and the other relevant agencies of the Borrower. The PMU shall also: (a) carry out the procurement activities; (b) supervise the consultants and contractors under the Project; (c) prepare the necessary documentation for the withdrawal of Loan proceeds; and (d) prepare periodic reports to ADB. DOH shall appoint its deputy director general - engineering as the Project director to head the PMU and supervise the overall Project implementation. The Project director shall be assisted by the director of Highway Construction Bureau who shall act as the deputy Project director. In addition, DOH shall appoint the director of its International Highways Cooperation Bureau to act as the assistant Project director of the PMU and assume responsibility for the day-to-day implementation of the Project. The assistant Project director shall be assisted by an adequate number of qualified administrative staff.

2. Within two (2) months of the Effective Date, the Borrower shall also establish a Project Steering Committee (PSC), to be chaired by the director general of DOH and with members consisting of senior representatives from DOH, PDMO, Office of National Economic and Social Development Board, the Office of Transport and Traffic Policy and Planning, the Bureau of Budget, the Office of Natural Resources and Environmental Policy and Planning, and the Office of the Attorney General. The PSC shall: (a) provide policy guidance to PMU; (b) review progress of the Project implementation; and (c) handle cross-sectoral issues related to the Project.

#### Counterpart funding

3. The Borrower shall ensure that throughout the implementation of the Project, adequate budgetary allocation of the required counterpart funds are requested, approved and released in a timely manner to ensure proper implementation of the Project.

#### Resettlement

4. The Borrower shall ensure that: (a) any involuntary resettlement is carried out in accordance with the agreed Resettlement Plan, *ADB's Involuntary Resettlement Policy* (1995), and the Borrower's laws and regulations on involuntary resettlement; (b) adequate resources are made available for the implementation of the Resettlement Plan; (c) the Resettlement Plan is implemented effectively and in a timely manner; (d) the Works contractors shall assist DOH in the resettlement activities and do not commence construction work in a particular geographic area until the Affected Persons in that area are assisted and relocated in accordance with the Resettlement Plan; and (e) monitoring of the resettlement activities is carried out and related reports are prepared and submitted to ADB every quarter and uploaded onto the Borrower's website within two (2) weeks of their submission until the Affected Persons have been resettled and their income restored.

5. In case of differences between the Borrower's laws and regulations and ADB's Involuntary Resettlement Policy, then ADB's Involuntary Resettlement Policy shall prevail.

6. The Borrower shall not issue any notice to commence the Works for any section under the Project until: (a) the Resettlement Plan has been implemented in accordance with its terms and the section of road concerned is clear of all encumbrances; and (b) the respective EMP for such section has been submitted to, and been approved by, ADB.

#### Social Protection

7. The Borrower shall ensure that all Works contracts under the Project incorporate provisions and budgets that shall cause the contractors to: (a) comply with the Borrower's labor laws and applicable international treaty obligations and do not employ child labor; (b) provide safe working conditions and water and sanitation facilities for male and female workers; (c) provide equal wages to male and female workers for work of equal value; (d) provide day-care services for child-care needs of the female construction workers; and (e) carry out HIV/AIDS and human trafficking education and awareness campaigns in the construction campsites with such campaigns being held in coordination with the Borrower's related programs and other initiatives.

8. The Borrower shall, prior to construction of the community infrastructure such as footbridges, pedestrian refuges and bus shelters under the Project, carry out consultations with the local communities concerned to appropriately identify their needs and determine the optimal location of such infrastructures.

#### Gender

9. The Borrower shall ensure that measures outlined in the Gender Strategy are undertaken to maximize Project benefits to women. The Borrower shall: (a) develop disaggregated monitoring indicators by gender and ethnic group for purposes of monitoring and reporting; and (b) conduct gender sensitization training on gender and resettlement for its staff concerned. Where land is granted to Affected Persons for compensation purposes, the Borrower shall, when applicable, ensure joint registration of land or land use rights in the names of both the husband and wife.

#### Environment

10. The Borrower shall ensure that: (a) the Project is implemented in accordance with the Borrower's laws and regulations on environment, as well as *ADB's Environment Policy (2002)*, and that there is no significant damage to the natural environment as a result of the design, construction, operation and maintenance of the Project facilities; (b) the Works contracts under the Project include specific measures to mitigate negative environmental impacts caused by the construction activities in accordance with the requirements of the EMP prepared for the Project, and the EMP shall be included in the bidding documents as a basis for the contractors to prepare site specific EMPs; (c) adequate budget and staff resources are allocated for the EMP implementation; (d) the contractors engaged under the Works contracts are in strict compliance with all environmental impact mitigation and monitoring requirements set out in the EMP and contract documents; (e) quarterly progress reports cover the implementation of the EMP and include updates on the development and

implementation of mitigation measures, including any approved changes to the EMP; and (f) in case of any future substantial changes in the Project design that may cause significant environmental impact, if required, additional environmental study shall be undertaken and corresponding approval from the Borrower's Office of Natural Resources and Environmental Policy and Planning and the Environment National Board, shall be obtained in a timely manner. Such changes shall be screened for environmental significance and determination of the environmental category as per the requirements of ADB's Environment Policy. The respective EIA/summary EIA or IEE/summary IEE, where applicable, shall be submitted to ADB for evaluation.

11. If there is any discrepancy between the Borrower's laws and regulations, and ADB's Environment Policy, then ADB's Environmental Policy requirements shall apply.

### Governance

12. The Borrower shall: (a) undertake necessary measures to create and sustain a corruption-free environment for activities under the Project; (b) comply with ADB's *Anticorruption Policy* (1998, as amended to date); and (c) where appropriate, ensure that relevant provisions of ADB's Anticorruption Policy are included in all bidding documents for the Project. The Borrower: (a) acknowledges ADB's right to investigate, directly or through its agents, any alleged corrupt, fraudulent, collusive and coercive practices relating to the Project; and (b) agrees to cooperate fully with any such investigation and to extend all necessary assistance, including providing access to all relevant books and records, as may be necessary for the satisfactory completion of any such investigation. All external costs related to such investigations shall be met by the Project resources or by the Borrower.

13. Without limiting the generality of the preceding paragraph, the Borrower shall: (a) conduct periodic inspections on the suppliers', contractors', consultants' and other service providers' activities related to the Loan proceeds, fund withdrawals and settlements; and (b) ensure that all contracts financed by ADB in connection with the Project include provisions specifying the right of ADB to audit and examine the records and accounts of the Borrower, and all suppliers, contractors, consultants and other service providers as they relate to the Project.

14. In addition to the above requirements, the Borrower shall set up a Project website that shall disclose how the Loan proceeds are being used and the contracts awarded, including: (a) the list of participating bidders; (b) the name of the winning bidder; (c) basic details on bidding procedures adopted; (d) the amount of the contract awarded; (e) the list of goods and/or services purchased; and (f) the resettlement monitoring reports. The website shall be updated within two weeks after: (a) each award of contract; and (b) each submission of the quarterly monitoring reports on resettlement.

### Operational and Maintenance of Project Facilities

15. DOH shall be responsible for the operation and maintenance of the Project facilities by providing proper technical supervision and ensuring adequate fund allocation. The Borrower shall ensure that adequate budget is requested and made available annually for the operation and maintenance of the Project facilities during and after the Project.

Project Review

16. The Borrower together with ADB shall undertake semi-annual review to assess: (a) progress of the resettlement and Works; (b) environmental impact mitigation works; (c) disbursement progress; (d) compliance with the loan covenants; and (e) potential risks for achieving the Project outcome. In addition, the Borrower and ADB shall undertake, at the end of the second year of Project implementation, a comprehensive midterm review. At the conclusion of the mid-term review, ADB and the Borrower may agree on changes in both Project scope and implementation arrangements, as deemed necessary.

Project Performance Monitoring System

17. The Borrower through DOH shall establish within six (6) months of the Effective Date, a Project performance monitoring and evaluation system that shall operate throughout the life of the Project. The system shall be integrated with the existing management information system. At the initial stage, the Borrower shall develop and conduct sample surveys to establish baseline data for subsequent performance monitoring and establish pre-project social and economic living conditions for the direct beneficiaries of the Project. The Borrower shall ensure that sufficient data is gathered to monitor the indicators set out in the design and monitoring framework for the Project. The baseline and impact surveys shall include areas impacted by the Project and assess all interventions under the Project, including resettlement and other safeguard interventions that affect the livelihood of Project beneficiaries. The Borrower shall also ensure that a set of indicators reflecting transport costs, tariffs, and mobility shall be developed to assess the effects of improved access as well as district-level improvements on agricultural productivity, economic activity, and health and education sectors. These baseline surveys shall be carried out within twelve (12) months of the Effective Date. A second survey shall be carried out upon Project completion and a third survey shall be carried out not earlier than five (5) years after Project completion.

Project Reports

18. The Borrower through DOH shall submit monthly progress reports on the Project. The reports shall include a description of the physical progress, status of implementation of Updated Resettlement Plans, status of work subject to provisions of the EMP, procurement and contractual status, and highlights of any implementation issues. The progress reports shall also contain a summary of project accounts, including details of the latest project expenditures and contract amounts. These reports will include an evaluation of progress in implementing the Project. Within six (6) months of physical completion of the Project, the Borrower through DOH shall submit to ADB a Project completion report that includes information on: (a) Project implementation; (b) the use of Loan proceeds; and (c) the accomplishments in relation to the Project's outcome and impact.