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LOAN NUMBER 2852-CAM(SF)

LOAN AGREEMENT  
(Special Operations)  
(Flood Damage Emergency Reconstruction Project)

between

KINGDOM OF CAMBODIA

and

ASIAN DEVELOPMENT BANK

DATED 4 APRIL 2012

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CAM 46009

**LOAN AGREEMENT  
(Special Operations)**

LOAN AGREEMENT dated 4 April 2012 between KINGDOM OF CAMBODIA (“Borrower”) and ASIAN DEVELOPMENT BANK (“ADB”).

WHEREAS

(A) the Borrower has applied to ADB for an emergency assistance loan for the purposes of the Project described in Schedule 1 to this Loan Agreement;

(B) the Borrower also requested ADB to apply on its behalf to the Government of Australia, represented by the Australian Agency for International Development (“AusAID”), for a grant (“Grant”) in an amount not exceeding the equivalent of five million two hundred fifty thousand Dollars (\$5,250,000) to be administered by ADB, to finance a part of the Project described in Schedule 1 to this Loan Agreement, upon the terms and conditions set forth in the grant agreement between the Borrower and ADB (“Grant Agreement”); and

(C) ADB has agreed to make an emergency assistance loan to the Borrower from ADB's Special Funds resources upon the terms and conditions set forth herein;

NOW THEREFORE the parties agree as follows:

**ARTICLE I**

**Loan Regulations; Definitions**

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

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

(a) “Component” means a component of the Project as further described in Schedule 1 to this Loan Agreement;

(b) “Consulting Guidelines” means the Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers (2010, as amended from time to time);

(c) “Consulting Services” means the services to be financed out of the proceeds of the Loan as referred to in paragraph 3 of Schedule 1 to this Loan Agreement;

(d) “Environmental Assessment and Review Framework” or “EARF” means the environmental assessment and review framework for the Project, including any update thereto, prepared and submitted by the Borrower and cleared by ADB;

(e) “Environmental Management Plan” or “EMP” means each environmental management plan for a Subproject, including any update thereto, incorporated in the IEE;

(f) “Environmental Safeguards” means the principles and requirements set forth in Chapter V, Appendix 1, and Appendix 4 (as applicable) of the SPS;

(g) “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;

(h) “HIV/AIDS” means human immunodeficiency virus/acquired immune deficiency syndrome;

(i) “Indigenous Peoples Safeguards” means the principles and requirements set forth in Chapter V, Appendix 3, and Appendix 4 (as applicable) of the SPS;

(j) “Initial Environmental Examination” or “IEE” means an initial environmental examination for a Subproject, including any update thereto, prepared and submitted by the Borrower pursuant to the requirements set forth in the EARF and cleared by ADB;

(k) “Involuntary Resettlement Safeguards” means the principles and requirements set forth in Chapter V, Appendix 2, and Appendix 4 (as applicable) of the SPS;

(l) “Labor and Gender Action Plan” or “LGAP” means the labor and gender action plan developed and agreed for the Project;

(m) “Loan Disbursement Handbook” means ADB’s Loan Disbursement Handbook (2007, as amended from time to time);

(n) “MEF” means the Ministry of Economy and Finance of the Borrower, or any successor thereto acceptable to ADB;

(o) “MOWRAM” means the Ministry of Water Resources and Meteorology of the Borrower, including any successor thereto acceptable to ADB;

(p) “MPWT” means the Ministry of Public Works and Transport of the Borrower, including any successor thereto acceptable to ADB;

(q) “MRD” means the Ministry of Rural Development of the Borrower, including any successor thereto acceptable to ADB;

(r) “PAM” means the project administration manual for the Project dated 6 March 2012 and agreed between the Borrower and ADB, as updated from time to time in accordance with the respective administrative procedures of the Borrower and ADB;

(s) “Procurement Guidelines” means ADB’s Procurement Guidelines (2010, as amended from time to time);

(t) “Procurement Manual” means the procurement manual dated 26 February 2007 (as amended from time to time) under the Standard Operating Procedures dated 26 February 2007 (as amended from time to time) prepared by the Borrower providing procurement related policies and procedures applicable to all externally financed projects and programs, and endorsed by ADB;

(u) “Procurement Plan” means the procurement plan for the Project dated 6 March 2012 and agreed between the Borrower and ADB, as updated from time to time in accordance with the Procurement Guidelines, the Consulting Guidelines, and other arrangements agreed with ADB referred to in the Procurement Plan such as the Standard Operating Procedures and Procurement Manual of the Borrower (as amended from time to time);

(v) “Project Executing Agency” for the purpose of, and within the meaning of, the Loan Regulations means MEF or any successor thereto acceptable to ADB, which is responsible for carrying out the Project;

(w) “Project facilities” means the facilities to be constructed, rehabilitated or maintained under the Project;

(x) “Project provinces” means Banteay Meanchey, Battambang, Kampong Cham, Kampong Thom, Prey Veng and Siem Reap;

(y) “Resettlement Framework” or “RF” means the resettlement framework for the Project, including any update thereto, prepared and submitted by the Borrower and cleared by ADB;

(z) “Resettlement Plan” or “RP” means each resettlement plan for a Subproject, including any update thereto, prepared and submitted by the Borrower pursuant to the requirements set forth in the RF and cleared by ADB;

(aa) “Risk Assessment and Mitigation Plan” means the risk assessment and mitigation plan developed and agreed for the Project;

(bb) “Safeguard Policy Statement” or “SPS” means ADB’s Safeguard Policy Statement (2009);

(cc) “Safeguards Monitoring Report” means each report prepared and submitted by the Borrower to ADB that describes progress with implementation of, and compliance with, the EMP, the RP and the LGAP (as applicable), including any corrective and preventive actions;

(dd) “Standard Operating Procedures” means the standard operating procedures dated 26 February 2007 (as amended from time to time) prepared by the

Borrower providing procurement related procedures applicable to all externally financed projects and programs and endorsed by ADB;

(ee) "Subproject" means a Subproject under the Project that meets the Subproject eligibility criteria set forth in paragraph 2 of Schedule 5 to this Loan Agreement;

(ff) "UXO" means unexploded ordinances which are explosive weapons that did not explode when they were employed and still pose a risk of detonation; and

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

## **ARTICLE II**

### **The Loan**

Section 2.01. ADB agrees to lend to the Borrower from ADB's Special Funds resources an amount in various currencies equivalent to thirty-five million three hundred forty-seven thousand Special Drawing Rights (SDR35,347,000).

Section 2.02. The Borrower shall pay to ADB an interest charge at the rate of 1% per annum on the amount of the Loan withdrawn from the Loan Account and outstanding from time to time.

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

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

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

## **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 proceeds of the Loan shall be allocated and withdrawn 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, the Borrower shall procure, or cause to be procured, the items of expenditure to be financed out of the proceeds of the Loan in accordance with the provisions of Schedule 4 to this Loan Agreement.

Section 3.04. Except as ADB may otherwise agree, the Borrower shall cause all items of expenditure financed out of the proceeds of the Loan to be used exclusively in the carrying out of the Project.

Section 3.05. Withdrawals from the Loan Account in respect of Goods, Works, and Consulting Services shall be made only on account of expenditures relating to:

- (a) Goods which are produced in and supplied from and Works and Consulting Services which are supplied from such member countries of ADB as shall have been specified by ADB from time to time as eligible sources for procurement; and
- (b) Goods, Works, and Consulting Services which meet such other eligibility requirements as shall have been specified by ADB from time to time.

Section 3.06. The Loan Closing Date for the purposes of Section 8.02 of the Loan Regulations shall be 30 September 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. 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. (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 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 as well as on the use of the procedures for imprest account and 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 subsection (a) hereinabove, 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 4.03. The Borrower shall enable ADB's representatives to inspect the Project, the Goods and Works, and any relevant records and documents.

## **ARTICLE V**

### **Suspension; 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 8.01(m) of the Loan Regulations: the Grant Agreement shall have become liable for suspension or cancellation.

Section 5.02. The following is specified as an additional event for acceleration of maturity for the purposes of Section 8.07(d) of the Loan Regulations: the 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 9.01(f) of the Loan Regulations: the Grant 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. The following is specified as an additional matter, for the purposes of Section 9.02(d) of the Loan Regulations, to be included in the opinion or opinions to be furnished to ADB: the Grant Agreement has been duly authorized or ratified by, and executed and delivered on behalf of the Borrower, and is legally binding upon the Borrower in accordance with terms, subject only to the effectiveness of this Loan Agreement.

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

## **ARTICLE VII**

### **Miscellaneous**

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

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

#### For the Borrower

Ministry of Economy and Finance  
St. 92 Sangkat Wat Phnom  
Khan Daun Penh  
Phnom Penh, Cambodia

Facsimile Numbers:

+855 23 427 798  
+855 23 428 424.

#### For ADB

Asian Development Bank  
6 ADB Avenue  
Mandaluyong City  
1550 Metro Manila  
Philippines

Facsimile Number:

(632) 636-2444.



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 as of the day and year first above written and to be delivered at the principal office of ADB.

KINGDOM OF CAMBODIA

By   
\_\_\_\_\_  
H.E. KEAT CHHON  
Deputy Prime Minister  
Minister of Economy and Finance

ASIAN DEVELOPMENT BANK

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

## SCHEDULE 1

### Description of the Project

1. The objective of the Project is the restoration of critical public and social infrastructure assets necessary to restore livelihoods and access in the Project provinces.

2. The Project shall be comprised of the following Components:

#### **Component 1: National and Provincial Road Restoration**

This Component will support the reconstruction of flood damaged national and provincial roads and bridges in the following provinces: Kampong Cham, Banteay Meanchey, Battambang and Prey Veng.

#### **Component 2: Rural Road Restoration**

This Component will support the reconstruction of flood damaged rural roads in the following provinces: Kampong Cham, Kampong Thom, Siem Reap, Banteay Meanchey and Prey Veng.

#### **Component 3: Irrigation and Flood Control**

This Component will support the reparation of flood damaged irrigation schemes in the following provinces: Kampong Cham, Kampong Thom, Siem Reap, Battambang and Prey Veng and possibly other provinces that will be identified during implementation and agreed between the Borrower and ADB.

#### **Component 4: Project and Flood Management**

This Component will support the Project Executing Agency to carry out the overall oversight and management of the Project. This Component will also support damage and flood management activities.

3. The Project also includes provision of consulting services.

4. The Project is expected to be completed by 31 March 2015.

**SCHEDULE 2****Amortization Schedule****(Flood Damage Emergency Reconstruction Project)**

<u>Date Payment Due</u>	<u>Payment of Principal</u> (expressed in Special Drawing Rights) *
15 August 2022	353,500
15 February 2023	353,500
15 August 2023	353,500
15 February 2024	353,500
15 August 2024	353,500
15 February 2025	353,500
15 August 2025	353,500
15 February 2026	353,500
15 August 2026	353,500
15 February 2027	353,500
15 August 2027	353,500
15 February 2028	353,500
15 August 2028	353,500
15 February 2029	353,500
15 August 2029	353,500
15 February 2030	353,500
15 August 2030	353,500
15 February 2031	353,500
15 August 2031	353,500
15 February 2032	353,500
15 August 2032	706,900
15 February 2033	706,900
15 August 2033	706,900
15 February 2034	706,900
15 August 2034	706,900
15 February 2035	706,900
15 August 2035	706,900
15 February 2036	706,900
15 August 2036	706,900
15 February 2037	706,900
15 August 2037	706,900
15 February 2038	706,900
15 August 2038	706,900
15 February 2039	706,900
15 August 2039	706,900
15 February 2040	706,900

<u>Date Payment Due</u>	<u>Payment of Principal</u> <u>(expressed in Special</u> <u>Drawing Rights)*</u>
15 August 2040	706,900
15 February 2041	706,900
15 August 2041	706,900
15 February 2042	706,900
15 August 2042	706,900
15 February 2043	706,900
15 August 2043	706,900
15 February 2044	706,900
15 August 2044	706,900
15 February 2045	706,900
15 August 2045	706,900
15 February 2046	706,900
15 August 2046	706,900
15 February 2047	706,900
15 August 2047	706,900
15 February 2048	706,900
15 August 2048	706,900
15 February 2049	706,900
15 August 2049	706,900
15 February 2050	706,900
15 August 2050	706,900
15 February 2051	706,900
15 August 2051	706,900
15 February 2052	707,900
Total	<u>35,347,000</u>

\* The arrangements for payment are subject to the provisions of Sections 3.04 and 4.03 of the Loan Regulations.

### SCHEDULE 3

#### Allocation and Withdrawal of Loan Proceeds

##### General

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

##### Percentages of ADB Financing

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

##### Interest Charge

3. The amount allocated to Category 5 is for financing the interest charge on the Loan during the implementation period of the Project.

##### Reallocation

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

(a) if the amount of the Loan allocated to any Category appears to be insufficient to finance all agreed expenditures in that Category, ADB may, in consultation with 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 allocated to any Category appears to exceed all agreed expenditures in that Category, ADB may, in consultation with the Borrower, reallocate such excess amount to any other Category.

##### Disbursement Procedures

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

##### Imprest Account and Statement of Expenditures

6. (a) Except as ADB may otherwise agree, the Borrower shall establish, and cause to be established, immediately after the Effective Date, (i) a first generation imprest account at the National Bank of Cambodia, and (ii) second generation imprest accounts for

MPWT, MRD and MOWRAM, respectively, at the National Bank of Cambodia or commercial banks acceptable to ADB (collectively, imprest accounts). 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 imprest accounts shall only be used for the purposes of the Project. The currency of the first generation imprest account shall be the Dollar, and the currency of the second generation imprest accounts shall be the Dollar. The aggregate amount to be deposited into the imprest accounts shall not exceed the lower of (i) the estimated expenditure to be financed from the imprest accounts for the first 6 months of Project implementation, or (ii) the equivalent of 10% of the Loan amount.

(b) The statement of expenditures procedure may be used for reimbursement of eligible expenditures and to liquidate advances provided into the imprest account, in accordance with the Loan Disbursement Handbook and detailed arrangements agreed upon between the Borrower and ADB. Any individual payment to be reimbursed or liquidated under the statement of expenditures procedure shall not exceed the equivalent of \$100,000.

#### Retroactive Financing

7. Withdrawals from the Loan Account may be made for reimbursement of eligible expenditures incurred under the Project before the Effective Date, subject to a maximum amount equivalent to 30% of the Loan amount; provided that the expenditures have been incurred and paid for after 30 September 2011 but not earlier than 12 months before the date of this Loan Agreement.

TABLE

<b>ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (Flood Damage Emergency Reconstruction Project)</b>				
<b>CATEGORY</b>				<b>ADB FINANCING</b>
<b>Number</b>	<b>Item</b>	<b>Total Amount Allocated for ADB Financing (SDR)</b>		<b>Percentage and Basis for Withdrawal from the Loan Account</b>
		<b>Category</b>	<b>Subcategory</b>	
1	Works	26,064,000		
1A	Component 1		13,076,000	100% of total expenditure claimed*
1B	Component 2		8,056,000	100% of total expenditure claimed*
1C	Component 3		4,932,000	100% of total expenditure claimed*
2	Equipment	258,000		
2A	Component 1		92,000	100% of total expenditure claimed*
2B	Component 2		50,000	100% of total expenditure claimed*
2C	Component 3		77,000	100% of total expenditure claimed*
2D	Component 4		39,000	100% of total expenditure claimed*
3	Consulting Services	4,039,000		
3A	Component 1		1,588,000	100% of total expenditure claimed*
3B	Component 2		970,000	100% of total expenditure claimed*
3C	Component 3		887,000	100% of total expenditure claimed*
3D	Component 4		594,000	100% of total expenditure claimed*
4	Incremental Administrative Costs	817,000		
4A	Component 1		290,000	100% of total expenditure claimed
4B	Component 2		181,000	100% of total expenditure claimed
4C	Component 3		271,000	100% of total expenditure claimed
4D	Component 4		75,000	100% of total expenditure claimed

5	Interest Charge	559,000		100% of amounts due
6	Unallocated	3,610,000		
	Total	35,347,000		

\* Exclusive of taxes and duties imposed within the territory of the Borrower.



## SCHEDULE 4

### Procurement of Goods, Works and Consulting Services

#### General

1. The procurement of Goods, Works and Consulting Services shall be subject to and governed by the Procurement Guidelines, and the Consulting Guidelines, respectively.
2. All terms used in this Schedule and not otherwise defined in this Loan Agreement have the meanings provided in the Procurement Guidelines and/or the Consulting Guidelines, as applicable.

#### 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:
  - (a) International Competitive Bidding;
  - (b) National Competitive Bidding;
  - (c) Shopping; and
  - (d) Direct Contracting.
4. 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.

#### Domestic Preference

5. 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 and paragraphs 2.55(b) and 2.56 of the Procurement Guidelines for domestic Works.

#### National Competitive Bidding

6. 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 approval of such change by the Borrower and ADB.

#### Conditions for Award of Contract

7. The Borrower shall not award any Works contracts for a Subproject which involves environmental impacts until MPWT, MRD or MOWRAM, as the case may be, has:

(a) obtained all required government approvals, and prepared and submitted to ADB the final IEE and EMP based on the Subproject's detailed design, and obtained ADB's clearance of such IEE and EMP; and

(b) incorporated the relevant provisions from the Environmental Management Plan into the Works contract.

8. The Borrower shall not award any Works contract involving involuntary resettlement impacts for a Subproject until MPWT, MRD or MOWRAM, as the case may be, has prepared and submitted to ADB the final RP for such Subproject based on the Subproject's detailed design, and obtained ADB's clearance of such RP.

9. The Borrower shall not award any Works contract for a Subproject which involves impacts on indigenous peoples.

#### Consulting Services

10. The Borrower shall apply the following method for selecting and engaging the specified Consulting Services, in accordance with, among other things, the procedures set forth in the Procurement Plan: Single Source Selection of consulting firms for Project management/design and construction supervision for each of MPWT, MRD and MOWRAM.

11. The Borrower shall recruit the individual consultants for such services as agreed by ADB in accordance with procedures acceptable to ADB for recruiting individual consultants.

#### Industrial or Intellectual Property Rights

12. (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.

13. 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.

#### ADB's Review of Procurement Decisions

14. Contracts procured under international competitive bidding procedures and contracts for Consulting Services shall be subject to prior review by ADB, unless otherwise agreed between the Borrower and ADB and set forth in the Procurement Plan.

## SCHEDULE 5

### Execution of Project; Financial Matters

#### Implementation Arrangements

1. The Borrower and the Project Executing Agency shall ensure that the Project is implemented in accordance with the detailed arrangements set forth in the PAM. Any subsequent change to the PAM shall become effective only after approval of such change by the Borrower and ADB. In the event of any discrepancy between the PAM and this Loan Agreement, the provisions of this Loan Agreement shall prevail.

#### Subproject Selection and Monitoring

2. The Borrower will ensure that all Subprojects meet, to the satisfaction of ADB, the agreed selection criteria as set out in Appendix 1 of the PAM and that all Subprojects are properly approved, controlled and monitored to the satisfaction of ADB.

#### Environment

3. The Borrower shall ensure and cause each of MWPT, MRD and MOWRAM to ensure that the preparation, design, construction, implementation, operation and decommissioning of each Subproject comply with (a) all applicable laws and regulations of the Borrower relating to environment, health, and safety; (b) the Environmental Safeguards; (c) the EARF; and (d) all measures and requirements set forth in the respective IEE and EMP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

#### Land Acquisition and Involuntary Resettlement

4. The Borrower shall ensure and cause each of MWPT, MRD and MOWRAM to ensure that all land and all rights-of-way required for each Subproject are made available to the Works contractor in accordance with the schedule agreed under the related Works contract and all land acquisition and resettlement activities are implemented in compliance with (a) all applicable laws and regulations of the Borrower relating to land acquisition and involuntary resettlement; (b) the Involuntary Resettlement Safeguards; (c) the RF; and (d) all measures and requirements set forth in the respective RP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

5. Without limiting the application of the Involuntary Resettlement Safeguards, the RF or the RP, the Borrower shall ensure and cause each of MWPT, MRD and MOWRAM to ensure that no physical or economic displacement takes place in connection with the Subprojects until:

(a) compensation and other entitlements have been provided to affected people in accordance with the RP; and

(b) a comprehensive income and livelihood restoration program has been established, if required, in accordance with the RP.

6. The Borrower shall ensure and cause MWPT, MRD and MOWRAM to ensure that the preparation, design, construction, implementation and operation of each Subproject comply with all applicable laws and regulations of the Borrower relating to indigenous peoples and the Indigenous Peoples Safeguards.

#### Human and Financial Resources to Implement Safeguards Requirements

7. The Borrower shall make available necessary budgetary and human resources to fully implement the EMP, the RP, and the LGAP.

#### Bidding Documents and Works Contracts

8. The Borrower shall ensure and cause each of MWPT, MRD and MOWRAM to ensure that all bidding documents and contracts for Works contain provisions that require contractors to:

(a) comply with the measures and requirements relevant to the contractor set forth in the IEE, the EMP, the RP, and the LGAP, to the extent they concern impacts on affected people during construction, and any corrective or preventive actions set out in a Safeguards Monitoring Report;

(b) make available a budget for all such environmental and social measures; and

(c) provide the Borrower with a written notice of any unanticipated environmental, resettlement or indigenous peoples risks or impacts that arise during construction, implementation or operation of the Project that were not considered in the IEE, the EMP, the RP, and the LGAP.

#### Health, Gender and Labor Standards

9. The Borrower shall ensure and cause each of MWPT, MRD and MOWRAM to ensure that any bidding document for Works contracts includes provisions to require the contractors to (a) use local unskilled labor and prioritized employment of women and the poor based on targets set forth in the LGAP; (b) provide equal pay for equal work; (c) provide the timely payment of wages; (d) comply with all core labor standards and the applicable labor laws and regulations, including stipulations related to employment; and (e) not employ child labor.

#### Safeguards Monitoring and Reporting

10. The Borrower shall cause each of MWPT, MRD and MOWRAM to do the following:

(a) set up grievance redress mechanisms with outreach for all Subprojects funded by ADB;

(b) submit semiannual Safeguards Monitoring Reports to ADB and disclose them on ADB's website promptly upon submission;

(c) if any unanticipated environmental and/or social risks and impacts arise during construction, implementation or operation of the Project that were not considered in the IEE, the EMP, the RP, or the LGAP, promptly inform ADB of the occurrence of such risks or impacts, with detailed description of the event and proposed corrective action plan; and

(d) report any actual or potential breach of compliance with the measures and requirements set forth in the EMP, the RP, or the LGAP promptly after becoming aware of the breach.

#### Prohibited List of Investments

11. The Borrower shall ensure that no proceeds of the Loan are used to finance any activity included in the list of prohibited investment activities provided in Appendix 5 of the SPS.

#### Governance and Anticorruption

12. The Borrower, MEF, MPWT, MRD and MOWRAM shall (a) comply with ADB's Anticorruption Policy (1998, as amended to date) and acknowledge that ADB reserves the right to investigate directly, or through its agents, any alleged corrupt, fraudulent, collusive or coercive practice relating to the Project; and (b) cooperate with any such investigation and extend all necessary assistance for satisfactory completion of such investigation.

13. Without limiting the generality of the preceding paragraph, the Borrower shall (a) cause MEF, MPWT, MRD and MOWRAM to conduct periodic inspections of contractors' activities related to fund withdrawals and settlements; (b) ensure that the auditors engaged by the Borrower have the right to conduct random and spot audits of contract implementation activities under the Project; and (c) cause MEF, MPWT, MRD and MOWRAM to ensure that all bidding documents and contracts financed by ADB or financed by Australia and administered by ADB in connection with the Project include provisions specifying ADB's right to audit and examine the records and accounts of all contractors, suppliers, consultants, and other service providers as they relate to the Project.

14. The Borrower shall publicly disclose or cause MEF (through the Project coordination and monitoring unit), MPWT, MRD and MOWRAM to disclose on their respective websites information on how the Loan and Grant proceeds are being used, presenting (a) procurement contract awards, including for each such contract (i) the list of participating bidders, (ii) the name of the winning bidder, (iii) basic details on bidding procedures adopted, (iv) list of goods and/or services purchased, and (v) intended and actual utilization of Loan and Grant proceeds under the contract; and (b) internal and external resettlement reports.

15. The Borrower shall comply with and cause MEF, MPWT, MRD and MOWRAM to comply with the Risk Assessment and Mitigation Plan.

#### UXO Clearance

16. The Borrower shall ensure that all Works contracts contain a provision that, in the event UXO clearance is needed, the services of a reputable and experienced mine

security organization, acceptable to ADB, will be engaged to carry out and then certify that the Subproject area is clear of UXO.

#### Operation and Maintenance of Project Facilities

17. The Borrower shall ensure that the facilities to be provided or financed under each Subproject are operated and maintained appropriately, and that adequate budgetary and other resources are provided for their operations and maintenance.

#### Gender and Development

18. The Borrower shall ensure and cause each of MEF, MWPT, MRD and MOWRAM to ensure that the preparation, design, construction, implementation and operation of each Subproject comply with all measures and requirements set forth in the Labor and Gender Action Plan.

#### Special Review for Potential Reallocation

19. The Borrower shall undertake and cause MEF, MPWT, MRD and MOWRAM to undertake an in-depth review of progress of the Project jointly with ADB within 9 months of the Effective Date to determine and agree on potential reallocation of Loan proceeds on the basis of progress and readiness of remaining Subprojects under Components 1 to 3.