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LOAN NUMBER 2836-PHI

LOAN AGREEMENT  
(Ordinary Operations)

(Road Improvement and Institutional Development Project)

between

REPUBLIC OF THE PHILIPPINES

and

ASIAN DEVELOPMENT BANK

DATED 12 March 2012

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PHI 41076

**LOAN AGREEMENT  
(Ordinary Operations)**

LOAN AGREEMENT dated 12 March 2012 between the  
REPUBLIC OF THE PHILIPPINES ("Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

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

(B) the Borrower has also applied to the OPEC Fund for International Development ("OFID") for a loan in an aggregate amount of thirty million Dollars (\$30,000,000) to finance the Project, on a joint basis, to be administered by ADB ("OFID Loan"); 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 ("Loan Regulations"), 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:

(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 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.

(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 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.

(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, 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) “Anticorruption Action Plan” means the Anticorruption Action Plan developed for the Project and set out as one of the supplementary appendices to the RRP;

(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;

(d) “DPWH” means the Department of Public Works and Highways or any successor thereto;

(e) “EMP” means the environmental management plan prepared for the Project detailing the mitigation measures and monitoring activities to avoid or mitigate negative environmental impacts arising from the Project;

(f) “fiscal year” means the period from 1 January to 31 December;

(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 immunodeficiency syndrome;

(i) “IEE” means the initial environmental examination prepared for the Project;

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

(k) “OFID Loan Agreement” means the agreement to be entered into between OFID and the Borrower, which will govern the terms and conditions of the OFID Loan;

(l) “PAM” means the project administration manual for the Project dated 24 November 2011 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;

(m) “Part” means part of the Project, as described in Schedule 1 to this Loan Agreement;

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

(o) “Procurement Plan” means the procurement plan for the Project dated 24 November 2011 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;

(p) “Project Executing Agency” for the purposes of, and within the meaning of, the Loan Regulations means DPWH or any successor thereto acceptable to ADB, which shall be responsible for the carrying out of the Project;

(q) “Project facilities” means the facilities to be provided or constructed under the Project;

(r) “RRP” means the Report and Recommendation of the President of ADB to the Board of Directors of ADB for the Loan;

(s) “SPS” means ADB’s Safeguard Policy Statement dated 2009; and

(t) “Works” means construction or civil works to be financed out of the proceeds of the Loan, including services such as drilling or mapping, and project related services that are provided as part of a single responsibility or turnkey contract, but excluding Consulting Services.

## **ARTICLE II**

### **The Loan**

Section 2.01. (a) ADB agrees to lend to the Borrower from ADB's ordinary capital resources an amount of sixty-two million Dollars (\$62,000,000) 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 20 years, and a grace period as defined in subsection (c) hereinafter.

(c) The term “grace period” as used in subsection (b) hereinabove 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 0.20% 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 60 days after the date of this Loan Agreement.

Section 2.04. Interest and other charges on the Loan shall be payable semiannually on 1 June and 1 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 subsection (a) hereinabove 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 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. ADB may refuse to finance a contract where any such item has 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 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. The Loan Closing Date for the purposes of Section 9.02 of the Loan Regulations shall be 30 June 2016 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 applicable technical, financial, business, and development 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 and on terms and conditions acceptable to ADB, the funds, facilities, services, land and other resources, as 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) Whenever applicable, 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 the Borrower and ADB, as applicable. 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 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 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 4.06. The Borrower shall enable ADB's representatives to inspect the Project, the Goods and Works, and any relevant records and documents.

Section 4.07. The Borrower shall ensure that any facilities relevant to the Project are operated, maintained and repaired in accordance with sound applicable technical, financial, business, development, operational and maintenance practices.

## **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 9.01(l) of the Loan Regulations: the OFID 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 shall have occurred.



**ARTICLE VI**

**Effectiveness**

Section 6.01. 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 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

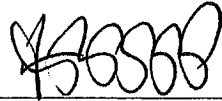
Asian Development Bank  
6 ADB Avenue  
Mandaluyong City  
1550 Metro Manila  
Philippines

Facsimile Numbers:

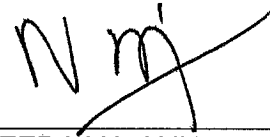
(632) 636-2444  
(632) 636-2015.

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.

REPUBLIC OF THE PHILIPPINES

By   
\_\_\_\_\_  
CESAR V. PURISIMA  
Authorized Representative

ASIAN DEVELOPMENT BANK

By   
\_\_\_\_\_  
NEERAJ K. JAIN  
Country Director  
Philippines Country Office

## SCHEDULE 1

### Description of the Project

1. The impact of the Project shall be improved accessibility of transport infrastructure and services. The outcome of the Project shall be more effective management by DPWH of the road network in the Project area.

2. The Project shall comprise the following Parts:

#### Part 1: Asset Preservation

Under this Part, the Project shall carry out periodic maintenance on about 340 km of 9 national roads consisting of 11 distinct road sections, located in the (a) the west coast of Luzon; (b) Visayas; and (c) the northern coast of Mindanao.

#### Part 2: Institutional Capacity Development and Governance

Under this Part, the Project shall undertake institutional capacity development and governance improvement through (a) institutionalization of the road maintenance and management system; (b) enhancement of the traffic accident recording and analysis system and improvement of the road safety audit system; (c) development and installation of a Project management information system; (d) strengthening DPWH's environmental and social assessment capability and gender mainstreaming in DPWH's infrastructure development; (e) improvement of communication between the DPWH central office and 47 district engineering offices within DPWH; (f) improvement of information technology capacity through procurement of computer equipment and software for 47 district engineering offices within DPWH; (g) comprehensive human resource development; and (h) support for infrastructure development and quality assurance system within DPWH.

#### Part 3: Detailed Design

Under this Part, the Project shall prepare detailed engineering design of 3 road sections under Part 1 and other roads to be improved in future projects.

3. The Project is expected to be completed by 31 December 2015.

**SCHEDULE 2****Amortization Schedule****(Road Improvement and Institutional Development Project)**

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 (Expressed as a % based on 10% annuity)
1 June 2017	0.827816
1 December 2017	0.869207
1 June 2018	0.912667
1 December 2018	0.958301
1 June 2019	1.006216
1 December 2019	1.056526
1 June 2020	1.109353
1 December 2020	1.164820
1 June 2021	1.223061
1 December 2021	1.284214
1 June 2022	1.348425
1 December 2022	1.415846
1 June 2023	1.486639
1 December 2023	1.560971
1 June 2024	1.639019
1 December 2024	1.720970
1 June 2025	1.807019
1 December 2025	1.897369
1 June 2026	1.992238
1 December 2026	2.091850
1 June 2027	2.196442
1 December 2027	2.306264
1 June 2028	2.421578
1 December 2028	2.542657
1 June 2029	2.669789
1 December 2029	2.803279
1 June 2030	2.943443
1 December 2030	3.090615

Schedule 2

1 June 2031	3.245146
1 December 2031	3.407403
1 June 2032	3.577773
1 December 2032	3.756662
1 June 2033	3.944495
1 December 2033	4.141720
1 June 2034	4.348806
1 December 2034	4.566246
1 June 2035	4.794558
1 December 2035	5.034286
1 June 2036	5.286000
1 December 2036	5.550311
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 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 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 and Commitment Charges

3. The amount allocated to Category 4 is for financing interest and commitment charges 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 charges.

##### 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 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 shall be disbursed in accordance with the Loan Disbursement Handbook.

Conditions of Withdrawal of Loan Account

6. Notwithstanding any other provision of this Loan Agreement, no withdrawals shall be made for Works until the OFID Loan Agreement shall have been duly executed and delivered, and all conditions precedent to its effectiveness (other than a condition requiring 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.



**TABLE**

<b>ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (Road Improvement and Institutional Development Project)</b>			
<b>CATEGORY</b>			<b>ADB FINANCING</b>
<b>Number</b>	<b>Item</b>	<b>Total Amount Allocated for ADB Financing (\$) Category</b>	<b>Percentage and Basis for Withdrawal from the Loan Account</b>
1	Works	19,100,000	30% of total expenditure claimed*
2	Consulting Services	13,320,000	100% of total expenditure claimed*
3	Institutional Capacity Development	18,590,000	100% of total expenditure claimed*
4	Interest and Commitment Charges	3,520,000	100% of amount due
5	Unallocated	7,470,000	
	<b>Total</b>	<b>62,000,000</b>	

\*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; and
  - (b) National Competitive Bidding.
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.

#### National Competitive Bidding

5. 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.

#### Consulting Services

6. Except as ADB may otherwise agree, the Borrower shall apply quality- and cost-based selection for selecting and engaging Consulting Services.

#### Industrial or Intellectual Property Rights

7.
  - (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.

8. 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

9. 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 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.

#### Environment

2. The Borrower shall, and shall cause the Project Executing Agency to ensure, that:

(a) all the Project facilities shall be designed, constructed, operated, and monitored in strict conformity with: (i) all applicable environmental laws and regulations, policies, procedures and guidelines of the Borrower, (ii) SPS, (iii) the agreed initial environmental examination, and (iv) the environmental mitigation and monitoring measures detailed in the EMP. In case of any discrepancy between the Borrower's laws and regulations, and the SPS, the SPS shall prevail;

(b) it adequately supervises and monitors the construction works carried out by contractors to ensure timely compliance with the environmental mitigation and monitoring measures set forth in the EMP, to minimize any adverse environmental impacts arising from the construction and operation of the Project;

(c) all bidding and contract documents for Consulting Services and Works contain provisions that require compliance with the mitigation and monitoring measures set forth in the initial environmental examination and the EMP and allocate a budget for all such environmental mitigation measures; and

(d) semiannual environmental monitoring reports are submitted to ADB in a timely manner.

3. Prior to commencement of site Works, the Borrower shall, and shall cause the Project Executing Agency to obtain the necessary environmental approval and permits for the Project and if required, submit copies of such approvals and permits shall to ADB upon issuance.

4. The Borrower shall, and shall cause the Project Executing Agency to: (a) establish or adapt an environmental grievance redress mechanism, acceptable to ADB and the Borrower, to receive and facilitate resolution of the concerns, complaints, and grievances of the affected people about the Project's environmental performance; (b) make public the existence of this grievance redress mechanism through public awareness campaigns; (c) review and address environmental grievances of stakeholders in relation to the Project, any of the service providers, or any person responsible for carrying out any aspect of the Project; and (d) proactively and constructively respond to such grievances.

5. The Borrower shall, and shall cause the Project Executing Agency to (a) update, in a form and manner satisfactory to ADB, (i) the EMP, if any unanticipated environmental risks and impacts arise, and (ii) the IEE, if there are any changes to Project design that would cause environmental risks or impacts not within the scope of the IEE and submit such updated IEE to ADB for clearance prior to the implementation of such changes; and (b) prepare a new environmental assessment report in compliance with the SPS in the event there are additional components that are expected to result in adverse environmental impacts, Such report shall be submitted to ADB for clearance prior to the implementation of the additional component.

#### Social Safeguards

6. The Borrower shall ensure that the Project shall not involve or implement any Works that will require involuntary resettlement or impacts on indigenous peoples. If unanticipated impacts are found during Project implementation, the Borrower shall conduct social impact assessment and prepare the resettlement or indigenous peoples plan in accordance with the SPS and the Borrower's relevant laws. In case of differences between the Borrower's laws and regulations and the SPS, the SPS shall prevail.

#### Labor and Gender

7. The Borrower shall ensure that the Project shall not involve or implement any Works that will require involuntary resettlement or impacts on indigenous peoples. If unanticipated impacts are found during project implementation, the Borrower shall conduct social impact assessment and prepare the resettlement or indigenous peoples plan in accordance with the SPS and the Borrower's relevant laws. In case of differences between the Borrower's laws and regulations and the SPS, the SPS shall prevail.

8. The Borrower shall and shall cause the Project Executing Agency to include a specific provision in bidding documents to ensure that Works contractors (a) comply with applicable core labor standards, labor laws, and incorporate applicable workplace occupational safety norms; (b) do not differentiate payment between men and women for work of equal value; (c) do not employ child labor in the construction and maintenance activities; and (d) to the extent possible, maximize employment of local poor and disadvantaged persons for project construction purposes, provided that the requirements for job and efficiency are adequately met. The Borrower shall and shall cause the Project Executing Agency to ensure that appropriate entities disseminate information on the risks of sexually-transmitted diseases, including to the employees of civil the contractors engaged under the Project and to members of the local communities surrounding the Project road.

9. The Borrower shall and shall cause the Project Executing Agency to implement the Project in accordance with ADB's Policy on Gender and Development (1998) and ensure that shall women shall have equal access to Project information and benefits, including the opportunities to participate in Project planning and implementation.

Road Safety

10. The Borrower shall and shall cause the Project Executing Agency to ensure that road safety measures including road safety audits are implemented during and after Project implementation with the related information posted on the Project website in a timely manner.

Maintenance of Project Facilities

11. The Borrower shall and shall cause the Project Executing Agency to maintain the Project facilities through proper technical supervision and adequate fund allocation. The Borrower shall ensure that annually, adequate budget is made available for maintenance during and after the Project and that the completed Project roads are maintained to a standard consistent with the standard adopted for the Borrower's national road network.

12. The Borrower shall and shall ensure that the Project Executing Agency develop a program agreed with ADB, to control the overloading of vehicles along the Borrower's national roads under the Project by the time Works have been completed, including maintaining a database on the incidence of vehicle overloading for a minimum of 3 years following Project completion, and such information is posted on the Project website in a timely manner.

Governance and Anticorruption

13. The Borrower and the Project Executing Agency 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; (b) cooperate with any such investigation and extend all necessary assistance for satisfactory completion of such investigation; and (c) monitor the implementation of the Anticorruption Action Plan.

14. The Borrower and the Project Executing Agency shall ensure that the anticorruption provisions acceptable to ADB are included in all bidding documents and contracts, including provisions specifying the right of ADB to audit and examine the records and accounts of the executing and implementing agencies and all contractors, suppliers, consultants, and other service providers as they relate to the Project.