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LOAN NUMBER 2618-SRI(SF)  
(Supplementary to Loan No. 2168-SRI(SF))

LOAN AGREEMENT  
(Special Operations)

(North East Community Restoration and Development Project II - Supplementary)

between

DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

and

ASIAN DEVELOPMENT BANK

DATED 7 JUNE 2010

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LAS:SRI 36601

## **LOAN AGREEMENT (Special Operations)**

LOAN AGREEMENT dated 7 June 2010 between the DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA ("Sri Lanka") and ASIAN DEVELOPMENT BANK ("ADB").

### WHEREAS

(A) by a financing agreement (Loan No. 2168-SRI and Grant No. 0007-SRI: North East Community Restoration and Development Project II) dated 28 April 2005, between Sri Lanka and ADB, as amended by a letter agreement dated 6 June 2007 (the "Financing Agreement"), ADB has made a loan (the "Initial Loan") in the amount of sixteen million nine hundred and thirteen thousand Special Drawing Rights (SDR16,913,000) to Sri Lanka from ADB's Special Funds resources for the purposes of the project described in Schedule 1 to the Financing Agreement (the "Project");

(B) Sri Lanka has applied to ADB for a supplementary loan for the purposes of financing incremental activities under the Project;

(C) the Project will be carried out by the Ministry of Economic Development ("MED"), together with the Northern Provincial Council ("NPC") and the Eastern Provincial Council ("EPC"), and for this purpose Sri Lanka will make available to MED the proceeds of the Loan provided for herein upon terms and conditions satisfactory to ADB; and

(D) ADB has agreed to make a supplementary loan to Sri Lanka from ADB's Special Funds resources upon the terms and conditions set forth herein and in the Project Agreement of even date herewith between ADB, NPC, and EPC;

NOW THEREFORE the parties agree as follows:

## **ARTICLE I**

### **Loan Regulations; Definitions**

Section 1.01. All the provisions of the Special Operations Loan Regulations of ADB, dated 1 January 2006 (the "Loan Regulations"), are hereby made applicable to this Loan Agreement with the same force and effect as if they were fully set forth herein, except that for the purposes of this Loan Agreement: the term "Borrower," wherever it appears in the Loan Regulations, shall be substituted by the term "Sri Lanka" as defined in the opening paragraph of this Loan Agreement.

Section 1.02. (a) Wherever used in this Loan Agreement or incorporated into this Loan Agreement by reference, unless the context requires otherwise,

the terms defined in the Financing Agreement and in the Loan Regulations have the respective meanings therein set forth, except that for purposes of this Loan Agreement:

- (i) "Environmental Assessment Review Framework" means the environmental assessment framework developed for the Project by Sri Lanka and approved by ADB, as amended from time to time by agreement between Sri Lanka and ADB;
- (ii) "Implementing Agency" means each of NPC and EPC;
- (iii) "Indigenous Peoples' and Ethnic Minority Framework" means the indigenous peoples' and ethnic minority framework developed for the Project by Sri Lanka and approved by ADB, as amended from time to time by agreement between Sri Lanka and ADB;
- (iv) "Loan" means the loan described in Section 2.01 of this Loan Agreement;
- (v) "Loan Regulations" has the meaning given thereto in Section 1.01 of this Loan Agreement;
- (vi) "Project" has the meaning set forth in Recital A to this Loan Agreement;
- (vii) "Project Executing Agency" for the purposes and within the meaning of the Loan Regulations, means MED, which is responsible for carrying out the Project, and "Executing Agency" shall have the same meaning;
- (viii) "Resettlement Framework" means the resettlement framework developed for the Project by Sri Lanka and approved by ADB, as amended from time to time by agreement between Sri Lanka and ADB; and
- (ix) "Specific Action" means a specific action required under the Indigenous Peoples' and Ethnic Minority Framework or ADB's *Safeguard Policy Statement (2009)*, to address any limited impacts the Project may have on indigenous peoples.

(b) In addition to the terms referred to in paragraph (a) of this Section, the following terms, wherever used in this Loan Agreement, have the following meanings:

- (i) "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);
- (ii) "EPC" has the meaning set forth in Recital C to this Loan Agreement;
- (iii) "Goods" means equipment and materials to be financed out of the proceeds of the Loan; and including related services such as transportation, insurance, installation, commissioning, training, and initial maintenance, but excluding consulting services;

- (iv) "NPC" has the meaning set forth in Recital C to this Loan Agreement;
- (v) "Procurement Guidelines" means ADB's Procurement Guidelines (2007, as amended from time to time);
- (vi) "Procurement Plan" means the procurement plan for the Project dated 17 February 2010 and agreed between Sri Lanka and ADB, as updated from time to time in accordance with the Procurement Guidelines, the Consulting Guidelines, and other arrangements agreed with ADB; and
- (vii) "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. ADB agrees to lend to Sri Lanka from ADB's Special Funds resources an amount in various currencies equivalent to eight million three hundred thirty three thousand Special Drawing Rights (SDR 8,333,000).

Section 2.02. Sri Lanka 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. (a) The Loan has a term of 40 years including a grace period of 10 years, with repayment of principal at 2% a year for the first 10 years after the grace period, and 4% a year thereafter, as provided in the amortization schedule set forth in Schedule 1 to this Loan Agreement. Sri Lanka shall repay the principal amount of the Loan withdrawn from the Loan Account in accordance with this amortization schedule.

(b) The term "grace period" as used in paragraph (a) of this Section means the period prior to payment of the first principal amount of the Loan on the payment date in accordance with the amortization schedule set forth in Schedule 1 to this Loan Agreement.

Section 2.04. The interest charge and any other charge on the Loan shall be payable semiannually on 1 September and 1 March in each year.

Section 2.05. The currency of repayment of the principal 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. Sri Lanka shall make the proceeds of the Loan available to MED upon terms and conditions satisfactory to ADB and shall cause MED to apply such proceeds to the financing of expenditures on the Project in accordance with the provisions of this Loan Agreement and the Project 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 provided in accordance with the provisions of Schedule 2 to this Loan Agreement, as such Schedule may be amended from time to time by agreement between Sri Lanka and ADB.

Section 3.03. 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 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 3.04. 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 3 to this Loan Agreement.

Section 3.05. The Loan Closing Date for the purposes of Section 8.02 of the Loan Regulations shall be 30 June 2012 or such other date as may from time to time be agreed between Sri Lanka and ADB.

## ARTICLE IV

### Particular Covenants

Section 4.01. In the carrying out of the Project and operation of the Project facilities, Sri Lanka shall perform, or cause to be performed, all obligations set forth in Schedule 4 to this Loan Agreement.

Section 4.02. (a) Sri Lanka 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 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/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) Sri Lanka shall enable ADB, upon ADB's request, to discuss Sri Lanka's financial statements for the Project and its financial affairs related to the Project from time to time with the auditors appointed by Sri Lanka pursuant to Section 4.02(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 Sri Lanka unless Sri Lanka shall otherwise agree.

Section 4.03. Sri Lanka 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 4.04. Sri Lanka shall take all action which shall be necessary on its part to enable NPC and EPC to perform their obligations under the Project Agreement and shall not take or permit any action which would interfere with the performance of such obligations.

## ARTICLE V

### Suspension; Acceleration of Maturity

Section 5.01. The following are specified as additional events for suspension of the right of Sri Lanka to make withdrawals from the Loan Account for the purposes of Section 8.01(m) of the Loan Regulations:

- (a) NPC and/or EPC shall have failed to perform any of their obligations under the Project Agreement; or

(b) the Financing Agreement shall have been suspended or terminated.

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: either of the events 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 Project Agreement, in a form satisfactory to ADB, shall have been duly executed and delivered on behalf of NPC and EPC, and shall have become legally binding upon NPC and EPC in accordance with its terms, subject only to the effectiveness of this Loan Agreement.

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: that the Project Agreement has been duly authorized or ratified by, and executed and delivered on behalf of, NPC and EPC, and is legally binding upon NPC and EPC in accordance with its 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 the Loan Agreement for the purposes of Section 9.04 of the Loan Regulations.

## **ARTICLE VII**

### **Miscellaneous**

Section 7.01. The Secretary, MOFP; the Deputy Secretary to the Treasury, MOFP; and the Director General, External Resources Department, MOFP, are designated as representative of Sri Lanka 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 Sri Lanka

The Secretary  
Ministry of Finance and Planning  
Secretariat  
Colombo 1, Sri Lanka

Copy: Deputy Secretary to the Treasury  
Director General, Department of External Resources

Facsimile Numbers:

(94-11) 244-9823  
(94-11) 244-7633.

For ADB

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


Facsimile Number:

(632) 636-2444.

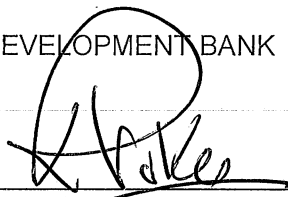


IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Loan Agreement to be signed in their respective names and to be delivered at the principal office of ADB, as of the day and year first above written.

DEMOCRATIC SOCIALIST REPUBLIC  
OF SRI LANKA

By   
PUNCHI BANDARA JAYASUNDERA  
Secretary  
Ministry of Finance and Planning

ASIAN DEVELOPMENT BANK

By   
RICHARD VOKES  
Country Director  
Sri Lanka Resident Mission

## SCHEDULE 1

### Amortization Schedule

**(North East Community Restoration and Development Project II – Supplementary)**

<u>Date Payment Due</u>	<u>Payment of Principal</u> (expressed in Special Drawing Rights)*
01-September-2020	83,300.00
01-March-2021	83,300.00
01-September-2021	83,300.00
01-March-2022	83,300.00
01-September-2022	83,300.00
01-March-2023	83,300.00
01-September-2023	83,300.00
01-March-2024	83,300.00
01-September-2024	83,300.00
01-March-2025	83,300.00
01-September-2025	83,300.00
01-March-2026	83,300.00
01-September-2026	83,300.00
01-March-2027	83,300.00
01-September-2027	83,300.00
01-March-2028	83,300.00
01-September-2028	83,300.00
01-March-2029	83,300.00
01-September-2029	83,300.00
01-March-2030	83,300.00
01-September-2030	166,700.00
01-March-2031	166,700.00
01-September-2031	166,700.00
01-March-2032	166,700.00
01-September-2032	166,700.00
01-March-2033	166,700.00
01-September-2033	166,700.00
01-March-2034	166,700.00
01-September-2034	166,700.00
01-March-2035	166,700.00
01-September-2035	166,700.00
01-March-2036	166,700.00
01-September-2036	166,700.00
01-March-2037	166,700.00
01-September-2037	166,700.00
01-March-2038	166,700.00
01-September-2038	166,700.00
01-March-2039	166,700.00
01-September-2039	166,700.00
01-March-2040	166,700.00

<u>Date Payment Due</u>	<u>Payment of Principal</u> (expressed in Special Drawing Rights)*
01-September-2040	166,700.00
01-March-2041	166,700.00
01-September-2041	166,700.00
01-March-2042	166,700.00
01-September-2042	166,700.00
01-March-2043	166,700.00
01-September-2043	166,700.00
01-March-2044	166,700.00
01-September-2044	166,700.00
01-March-2045	166,700.00
01-September-2045	166,700.00
01-March-2046	166,700.00
01-September-2046	166,700.00
01-March-2047	166,700.00
01-September-2047	166,700.00
01-March-2048	166,700.00
01-September-2048	166,700.00
01-March-2049	166,700.00
01-September-2049	166,700.00
01-March-2050	165,700.00
Total	8,333,000.00

\* The figures in this column represent SDR equivalents determined as of the respective dates of withdrawal. The arrangements for payment of each maturity are subject to the provisions of Sections 3.04 and 4.03 of the Loan Regulations.

## SCHEDULE 2

### Allocation and Withdrawal of Loan Proceeds

#### General

1. The table attached to this Schedule sets forth the Categories of 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 to each such Category (the "Table"). (Reference to "Category" or "Categories" in this Schedule is to a Category or Categories of the Table.)

#### Percentages of ADB Financing

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

#### Interest Charge

3. The amount allocated to Category 4 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, Sri Lanka, (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, in consultation with, Sri Lanka, reallocate such excess amount to any other Category.

#### Disbursement Procedures

5. Except as ADB may otherwise agree, the Loan proceeds for financing Goods, Works, consulting services and other items shall be disbursed in accordance with ADB's "Loan Disbursement Handbook" dated January 2007 (ADB's Loan Disbursement Handbook), as amended from time to time.

Imprest Accounts; Statement of Expenditures

6. Except as ADB may otherwise agree, the arrangements set out in paragraph 9 through paragraph 11 of Schedule 3A to the Financing Agreement shall continue to apply.

Retroactive Financing

7. Withdrawals from the Loan Account may be made for reimbursement of reasonable expenditures incurred under the Project before the Effective Date, but not earlier than 4 months before the Loan Agreement is signed, subject to a maximum amount equivalent to 20% of the Loan amount.

Condition for Withdrawals from Loan Account

8. Notwithstanding any other provision of this Loan Agreement, no withdrawals shall be made from the Loan Account:

- (a) for any Subproject that requires an IEE and/or clearance from any authority of Sri Lanka under the Environmental Assessment Review Framework until such IEE shall have been completed and/or such clearance obtained;
- (b) for any Subproject that requires a resettlement plan under the Resettlement Framework until such Resettlement Plan shall have been approved by ADB; or
- (c) for any Subproject that requires an indigenous peoples' plan or Specific Action under the Indigenous Peoples' and Ethnic Minority Framework until such indigenous peoples' plan or Specific Action shall have been approved by ADB.

**TABLE**

<b>ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (North East Community Restoration and Development Project II - Supplementary)</b>			
<b>CATEGORY</b>			<b>ADB FINANCING</b>
<b>Number</b>	<b>Item</b>	<b>Amount Allocated SDR Category</b>	<b>Percentage and Basis for Withdrawal from the Loan Account</b>
1	Civil Works	5,872,000	83.33 percent of total expenditure
2	Equipment	1,305,000	100 percent of total expenditure*
3	Incremental Operating Cost	652,000	100 percent of total expenditure*
4	Interest Charge	504,000	100 percent of amount due
	<b>Total</b>	<b>8,333,000</b>	

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

### SCHEDULE 3

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

##### 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.

##### Procurement of 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
Direct Contracting
Shopping
Force Account

4. The methods of procurement are subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. Sri Lanka 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.
5. Sri Lanka and ADB shall ensure that, prior to the commencement of any procurement activity under national competitive bidding, Sri Lanka's national competitive bidding procedures are consistent with the Procurement Guidelines. Any modifications or clarifications to such procedures agreed between Sri Lanka 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 Sri Lanka and ADB.

##### Selection of Consulting Services

6. Except as ADB may otherwise agree and set out in updates to the Procurement Plan, Sri Lanka shall apply quality- and cost-based selection for selecting and engaging consulting services.
7. Sri Lanka shall select and engage consulting services in accordance with, among other things, the procedures set forth in the Procurement Plan.

Industrial or Intellectual Property Rights

8. (a) Sri Lanka 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) Sri Lanka 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. Sri Lanka 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

10. All contracts procured under international competitive bidding procedures and contracts for consulting services shall be subject to prior review by ADB, unless otherwise agreed between Sri Lanka and ADB and set forth in the Procurement Plan.



**SCHEDULE 4****Execution of Project and Operation of  
Project Facilities; Financial Matters**

1. Sri Lanka, NPC and EPC shall execute the Project in accordance with the provisions of Schedule 6 to the Financing Agreement, with the express understanding that for the purposes of this Loan Agreement:

- (a) the terms "Ministry of Relief, Rehabilitation and Reconciliation" and "M3R", wherever they appear in that Schedule, shall be substituted by the term "MED";
- (b) the term "NEPC", wherever it appears in that Schedule, shall be replaced by the phrase "NPC and EPC" or, when the context so requires, the phrase "NPC or EPC"; and
- (c) the terms "ADB's *Environment Policy (2002)*", "ADB's *Policy on Involuntary Resettlement (1995)*" and "ADB's *Policy on Indigenous Peoples (1998)*", wherever they appear in that Schedule, shall be substituted by the term "ADB *Safeguard Policy Statement (2009)*".

2. Sri Lanka shall grant, and ensure that NPC, EPC and any of Sri Lanka's other government bodies or agencies shall grant, access to any relevant books and records that ADB staff or consultants may reasonably require to complete an audit on the statement of expenditures procedures applied for the Project within 6 months of the Effective Date.

3. (a) Section 3.05 of the Financing Agreement is hereby amended by replacing the existing paragraph 3.05 with the following: "The Loan Closing Date for the purposes of the Section 8.02 of the Loan Regulations shall be 30 June 2012, or such other date as may from time to time be agreed between Sri Lanka and ADB.

(b) Paragraph 3 of Schedule 1 to the Financing Agreement is hereby amended by replacing the existing paragraph 3 with the following: "The Project is expected to be completed by 31 December 2011."