LOAN NUMBER 2264-INO(SF)

LOAN AGREEMENT
(Special Operations)
(Infrastructure Reform Sector Development Project)

between

REPUBLIC OF INDONESIA

and

ASIAN DEVELOPMENT BANK

DATED 23 November 2006
LOAN AGREEMENT
(Special Operations)

LOAN AGREEMENT dated 23 November 2006 between REPUBLIC OF INDONESIA (the “Borrower”) and ASIAN DEVELOPMENT BANK (“ADB”).

WHEREAS

(A) the Borrower has applied to ADB for a loan for the purposes of the Infrastructure Reform Sector Development Project described in Schedule 1 to this Loan Agreement (hereinafter called the Project);

(B) the Project will be carried out by Badan Perencanaan Pembangunan Nasional (hereinafter called BAPPENAS) and selected ministries and agencies of the Borrower and provincial, town, and district governments under the Project (hereinafter called Implementing Agencies) and for this purpose the Borrower shall make available to BAPPENAS and the Implementing Agencies the proceeds of the Loan provided for herein upon terms and conditions satisfactory to ADB;

(C) the Borrower has also applied to ADB for a loan for the purposes of the Infrastructure Reform Sector Development Program to support the first subprogram of a cluster of three subprograms forming the Infrastructure Reform Program Cluster (hereinafter called Subprogram 1), and by a Loan Agreement (hereafter called the Program Loan Agreement) of even date herewith, ADB has agreed to lend to the Borrower from ADB’s ordinary resources the amount of four hundred million dollars ($400,000,000);

(D) the Government of Indonesia (hereinafter called GOI) has also applied to the Government of the Netherlands (hereinafter called GON) for a grant in an amount equivalent to seven million five hundred sixty thousand dollars ($7,560,000) (hereafter called the Dutch Funding), to assist in undertaking the Project. Subject to approval to provide the Dutch Funding, ADB will administer the Dutch Funding, pursuant to a letter of agreement between ADB and GON;

(E) GOI has also applied to ADB for technical assistance to support the effective implementation of Subprogram 1 and the Project, including the risk management framework, the establishment of various infrastructure funds, with focus on ensuring their fiduciary governance, the development of an effective communication strategy and social marketing to disseminate information and build support for reforms, and to support preliminary technical preparations for the project development facility and for such purposes ADB has agreed to provide a technical assistance grant not exceeding the equivalent of two million dollars ($2,000,000); and

(F) ADB has agreed to make a loan to the Borrower from ADB’s Special Funds resources upon the terms and conditions hereinafter set forth;

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 (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.

Section 1.02. The definitions set forth in the Loan Regulations and Section 1.02 (a) to (m) of the Program Loan Agreement are applicable to this Loan Agreement, unless the context requires otherwise. In addition, the following terms have the following meanings:

(a) “Bank Indonesia” means the central bank of the Borrower, and any successor thereto;

(b) “CMEA” means the Coordinating Ministry of Economic Affairs of the Borrower, and any successor thereto;

(c) "Consulting Guidelines" means ADB’s “Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers” dated April 2006, as amended from time to time;

(d) “DPPP” means the Directorate of Public-Private Partnerships of BAPENAS, and any successor thereto;

(e) "financial or fiscal year" means the financial or fiscal year of the Borrower commencing each year on 1 January and ending on the following 31 December;

(f) “Goods” means equipment and materials to be financed out of the proceeds of the Loan including related services such as installation, training, and initial maintenance, but excluding consulting services;

(g) “Implementation Agreement” means an agreement as more specifically referred to in paragraph 12 of Schedule 5 hereto, between the PMU and each Participating Regional Government, as amended from time to time;

(h) "Implementing Agencies" means the Participating Ministries and Participating Regional Governments which are responsible for N-PPP and R-PPP Projects respectively;

(i) "Imprest Account" means an imprest account, as more specifically referred to in paragraph 5 of Schedule 3 hereto;

(j) “KKPPI Secretariat” means the secretariat of the KKPPI which is headed by the Deputy Minister for Infrastructure and Regional Development in CMEA and the Deputy Minister for Infrastructure Affairs in BAPPENAS and is subject to the CMEA Decree No. 5/2006 issued in May 2006;
(k) “National PDF” means that part of the Project Development Facility that deals with and funds N-PPP Projects;

(l) “N-PPP Project” means a national level project selected under the Project for financing by the National PDF;

(m) “Operational Guidelines Manual” means the operational guidelines manual issued by the KKPPI to elucidate the application of Perpres No 67/2005;

(n) “Part” means a reference to a part of the Project as more particularly described in Schedule 1 hereto;

(o) “Participating Ministry” means a ministry or agency of the Borrower which is approved to receive support under the Project pursuant to the procedure set out in paragraph 7 of Schedule 5 hereto, and any successor thereto;

(p) “Participating Regional Government” means a provincial, town, or district government which is approved to receive support under the Project, and any successor thereto;

(q) “Perpres No. 67/2005” means Presidential Regulation No. 67/2005 on Private Sector Participation in Infrastructure Provision of the Borrower as amended from time to time;

(r) “PMU” means the Project management unit established within BAPPENAS as more particularly described in paragraph 1 of Schedule 5 hereto;

(s) “PPP” means public-private partnership;

(t) “PPP Arrangement” means a contractual arrangement between a Participating Ministry or a Participating Regional Government and a private sector party for delivery by the private sector, of public infrastructure services and which may include financing, management, leasing, or concession agreements, build-own-operate contracts, and other agreements suitable for infrastructure PPP projects;

(u) “PPP-CU” means the public private partnerships central unit that is to be established under the BAPPENAS Directorate for Public Private Partnerships;

(v) “PPP-RU” means the unit established within a Participating Regional Government to support the preparation and transaction execution and subsequent implementation monitoring of the relevant R-PPP Project as more particularly described in paragraph 14 of Schedule 5 hereto;

(w) “Procurement Guidelines” means ADB’s “Procurement Guidelines” dated April 2006, as amended from time to time;

(x) “Procurement Plan” means the procurement plan for the Project dated 20 October 2006 and agreed between the Borrower and ADB, as updated from time to time in accordance with Procurement Guidelines, Consulting Guidelines, and other arrangements agreed with ADB;
(y) "Program Loan Agreement" has the meaning specified in Recital (C) to this Loan Agreement;

(z) "Project Area" refers to areas impacted by N-PPP Projects and provinces, districts, and towns in the Republic of Indonesia, which are selected for R-PPP Projects under the Project;

(aa) "Project Development Facility" or "PDF" means the Project development facility to be established under Part A of the Project;

(bb) "Project Executing Agency" for the purposes of, and within the meaning of, the Loan Regulations means BAPPENAS which is responsible for the carrying out of the Project;

(cc) "Project facilities" means the equipment, materials, and facilities to be provided under the Project;

(dd) "PSC" or "Steering Committee" means the Project steering committee as more particularly described in paragraph 4 of Schedule 5 hereto;

(ee) "Regional PDF" means that part of the Project Development Facility that deals with and funds R-PPP Projects;

(ff) "R-PPP Project" means a decentralized regional urban project selected under the Project for financing by the Regional PDF; and

(gg) "Strategic Campaign" means the public relations program to be conducted under Part B to promote R-PPP Projects to potential investors, donors, and other stakeholders.

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 eighteen million twenty five thousand Special Drawing Rights (SDR18,025,000).

Section 2.02. (a) The Borrower shall pay to ADB an interest charge at the rate of one percent (1%) per annum during the grace period, and one and one-half percent (1.5%) per annum thereafter, on the amount of the Loan withdrawn from the Loan Account and outstanding from time to time.

(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 2 to this Loan Agreement.
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 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 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 Goods 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 and consulting services and other items of expenditure shall be in accordance with the provisions of Schedule 3 to this Loan Agreement, as such Schedule may be amended from time to time by agreement between the Borrower and ADB.

Section 3.03. Except as ADB may otherwise agree, all Goods and consulting services to be financed out of the proceeds of the Loan shall be procured in accordance with the provisions of Schedule 4 to this Loan Agreement.

Section 3.04. Withdrawals from the Loan Account in respect of Goods and consulting services shall be made only on account of expenditures relating to

(a) Goods which are produced in and supplied from 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

(a) Goods and consulting services which meet such other eligibility requirements as shall have been specified by ADB from time to time.

Section 3.05. The Loan Closing Date for the purposes of Section 8.02 of the Loan Regulations shall be 30 September 2012 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/statement of expenditures), all in the English language; and (iv) furnish to ADB such other information concerning such accounts and financial statements and the audit thereof as ADB shall from time to time reasonably request.

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

Section 4.03.  The Borrower shall enable ADB's representatives to inspect the Project, the Goods financed out of the proceeds of the Loan and any relevant records and documents.

ARTICLE V

Suspension; Cancellation; Acceleration of Maturity

Section 5.01.  The following are specified as additional events 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:

(a) the Borrower has, in the opinion of ADB, failed to perform or breached any of its obligations under the Program Loan Agreement; or

(b) the Dutch Funding shall have become liable for suspension or cancellation prior to its complete disbursement.
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 are specified as additional conditions to the effectiveness of this Loan Agreement for the purposes of Section 9.01(f) of the Loan Regulations:

(a) the Program Loan Agreement shall have been duly executed and delivered on behalf of the Borrower, and all conditions precedent to its effectiveness (other than a condition requiring the effectiveness of this Loan Agreement) shall have been fulfilled; and

(b) The PMU shall have been established and key staff appointed as provided in paragraph 1 of Schedule 5 to 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; the execution and delivery of the Program Loan Agreement shall have been duly authorized or ratified by all necessary corporate and government actions on behalf of the Borrower, and the Program Loan Agreement shall have become legally binding upon the Borrower in accordance with its terms, subject only to the effectiveness of this Loan Agreement.

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

ARTICLE VII

Miscellaneous

Section 7.01. The Minister of 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 Finance
Directorate General of Treasury
Jl. Lapangan Banteng Timur 2-4
Jakarta 10710, Indonesia

Facsimile Number:

(62 21) 381 2859.

For ADB

Asian Development Bank
Indonesian Resident Mission
Gedung BRI II, Level 7
Jln Jenderal Sudirman, Kav 44-46
Jakarta, Indonesia

Facsimile Number:

(62 21) 251 2749.

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

REPUBLIC OF INDONESIA

\[Signature\]

By \(\text{Dr. Rahmat Waluyanto}\)
Authorized Representative

ASIAN DEVELOPMENT BANK

\[Signature\]

By \(\text{Edgar A. Cua}\)
Country Director
Indonesia Resident Mission
SCHEDULE 1

Description of the Project

1. The objective of the Project is to accelerate infrastructure development, improve living conditions and economic development in the Project Area, and increase national and municipal infrastructure construction by targeting private sector participation. The Project will accelerate finalization of PPP Arrangements for infrastructure projects by enabling Participating Ministries and Participating Regional Governments to design and prepare infrastructure project proposals to accommodate private sector funding requirements. The Project will provide support to formulate such project proposals, undertake the related bidding process, award of contract, and negotiations with investors and financial institutions, and implement related capacity building programs to alleviate current constraints.

2. The Project consists of the following Parts:

Part A: Project Preparation and Transaction Execution

Establishment and operation of the Project Development Facility comprised of the National PDF and the Regional PDF and provision of external consulting services to assist Participating Ministries and Participating Regional Governments to: (a) prepare about 10 national level large-scale projects mostly in the power, toll road, and transport sectors and about 40 smaller-scale decentralized regional infrastructure projects for PPP Arrangements, (b) undertake the bidding process and award of relevant contracts, and (c) monitor the development of the N-PPP and R-PPP Projects.

Part B: Technical Advisory Services and Capacity Building

Provision of technical advisory services support:

(a) to the PMU to (i) refine project selection criteria, (ii) assess PDF funding requests, (iii) undertake technical evaluation of consultants’ proposals, (iv) link PPP venture proponents with financial institutions capable of funding the proposed projects, and (v) study and implement reflow funding mechanisms within the Borrower's legal framework;

(b) to KKPPI covering cross-cutting policy and regulatory measures in the areas of anti-corruption, transparency, and dispute resolution;

(c) for PPP project promotion and to undertake a Strategic Campaign; and

(d) for institutional capacity building including (i) delivery of a project appraisal training module for PMU staff, (ii) stakeholder training in regional infrastructure development covering PPP and private sector participation basics, feasibility studies, guidelines for tariff setting in full cost recovery projects, and PPP project financing options, and (iii) advanced study and training programs, delivered nationally and internationally in fields related to PPP for selected government officials from Participating Ministries and Participating Regional Governments.
Part C: Procurement and Administrative Services

 Provision of consulting services to:

(a) the PMU to exercise its administrative and procurement functions, to operate the Project Development Facility, and to manage the Project, including coordinating the quality assurance process, managing the Project funds; developing a database and information system for project management, monitoring and evaluating project development; and developing project management manuals, work-plans and budgets;

(b) assist the PMU, Participating Ministries and Participating Regional Governments in refining technical Requests for Proposals for infrastructure projects; and

(c) support procurement teams formed under the National PDF and Regional PDF to conduct consultants’ selection process.

3. Project implementation will also be supported through the establishment of accounting, monitoring and reporting systems and supervision support.

4. The Project is expected to be completed by 31 March 2012.
SCHEDULE 2
Amortization Schedule
(Infrastructure Reform Sector Development Project)

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<th>Date Payment Due</th>
<th>Payment of Principal (expressed in Special Drawing Rights)*</th>
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* 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.
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<thead>
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<th>Date</th>
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<td>15-Aug-2038</td>
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<td>Total</td>
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<td>18,025,000</td>
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* 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 3

Allocation and Withdrawal of Loan Proceeds

General

1. The table attached to this Schedule sets forth the Categories of goods, services and other items to be financed out of the proceeds of the Loan and the allocation of amounts of the Loan to each such Category (hereinafter called the Table). (Reference to "Category" or "Categories" in this Schedule is to a Category or Categories of the Table.)

Percentages of ADB Financing

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

Interest Charge

3. The amount allocated to Category 3 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, by notice to the Borrower, (i) reallocate to such Category, to the extent required to meet the estimated shortfall, amounts of the Loan which have been allocated to another Category but, in the opinion of ADB, are not needed to meet other expenditures, and (ii) if such reallocation cannot fully meet the estimated shortfall, reduce the withdrawal percentage applicable to such expenditures in order that further withdrawals under such Category may continue until all expenditures thereunder shall have been made; and

   (b) if the amount of the Loan then allocated to any Category appears to exceed all agreed expenditures in that Category, ADB may, by notice to the Borrower, reallocate such excess amount to any other Category.
Imprest Account; Statement of Expenditures

5.  (a) Except as ADB may otherwise agree, the Borrower shall establish immediately after the Effective Date, an imprest account at Bank Indonesia, or a reputable commercial bank acceptable to ADB. The imprest account shall be established, managed, replenished and liquidated in accordance with ADB's "Loan Disbursement Handbook" dated January 2001, as amended from time to time, and detailed arrangements agreed upon between the Borrower and ADB. The currency of the imprest account shall be Dollar. The initial amount to be deposited into the imprest account and the imprest account ceiling shall not exceed the equivalent of $40,000. The imprest account limit shall be $40,000 and any individual payment shall not exceed the equivalent of $10,000.

   (b) The statement of expenditures (SOE) procedure may be used for reimbursement of eligible expenditures and to liquidate advances provided into the imprest account, in accordance with ADB's "Loan Disbursement Handbook" dated January 2001, as amended from time to time, and detailed arrangements agreed upon between the Borrower and ADB. Any individual payment to be reimbursed or liquidated under the SOE procedure shall not exceed the equivalent of $10,000.

Conditions of Withdrawal

6. The Borrower shall ensure that no withdrawals shall be made for expenditures:

   (a) under Part A until consultants’ work under Part B has commenced, and

   (b) for funding from the Regional PDF until the Steering Committee is established as provided in paragraph 4 of Schedule 5 to this Loan Agreement.

7. Notwithstanding any other provision of this Loan Agreement, the Borrower shall ensure that no disbursement of Loan proceeds shall be made to the PMU until any misprocurement or other irregularity has been corrected to the satisfaction of the Borrower and ADB, in circumstances where any misprocurement has occurred or other procurement action by the PMU or a specified Participating Ministry or Participating Regional Government has been identified by ADB as irregular.

8. For the purposes of this Schedule 3, “misprocurement” means any action relating to the procurement of Goods that is not conducted in accordance with this Loan Agreement and the Procurement Guidelines; or any action relating to the selection and engagement of consulting services that is not conducted in accordance with this Loan Agreement and the Consulting Guidelines.
## TABLE

### ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS

**(Infrastructure Reform Development Project)**

<table>
<thead>
<tr>
<th>Number</th>
<th>Item</th>
<th>Amount Allocated (SDR ‘000)</th>
<th>Category</th>
<th>Subcategory</th>
<th>Percentage and Basis for Withdrawal from the Loan Account</th>
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<td>1</td>
<td>Consulting Services</td>
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<td>1A</td>
<td>Part A National Project</td>
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<td>Category</td>
<td>Subcategory</td>
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<td>Development Facility</td>
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<td>1B</td>
<td>Part A Regional Project</td>
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<td>1C</td>
<td>Part B Technical Advisory</td>
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<td>Services and Capacity Building</td>
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<td>1D</td>
<td>Part B PPP Study</td>
<td>177</td>
<td>Category</td>
<td>Subcategory</td>
<td>70 percent of total expenditure</td>
</tr>
<tr>
<td>1E</td>
<td>Part B PPP Strategic Campaign</td>
<td>101</td>
<td>Category</td>
<td>Subcategory</td>
<td>40 percent of total expenditure</td>
</tr>
<tr>
<td>1F</td>
<td>Part B PPP-CU Support</td>
<td>629</td>
<td>Category</td>
<td>Subcategory</td>
<td>90 percent of total expenditure</td>
</tr>
<tr>
<td>1G</td>
<td>Part C Project Management</td>
<td>798</td>
<td>Category</td>
<td>Subcategory</td>
<td>40 percent of total expenditure</td>
</tr>
<tr>
<td>2</td>
<td>Equipment</td>
<td>150</td>
<td>Category</td>
<td>Subcategory</td>
<td>65 percent of total expenditure</td>
</tr>
<tr>
<td>3</td>
<td>Interest</td>
<td>521</td>
<td>Category</td>
<td>Subcategory</td>
<td>100 percent of amounts due</td>
</tr>
<tr>
<td>4</td>
<td>Unallocated</td>
<td>748</td>
<td>Category</td>
<td>Subcategory</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>18,025</td>
<td>Category</td>
<td>Subcategory</td>
<td></td>
</tr>
</tbody>
</table>
SCHEDULE 4
Provisions on Procurement and Consulting Services
Procurement of Goods and Consulting Services

A. General
1. All Goods and consulting services, to be financed out of the proceeds of the Loan shall be subject to and governed by the Procurement Guidelines, and the Consulting Guidelines, respectively.

2. All terms used and not otherwise defined in this Loan Agreement have the meanings provided in the Procurement Guidelines and/or the Consulting Guidelines, as applicable.

B. Procurement for Goods
3. Except as ADB may otherwise agree, Goods shall only be procured on the basis of the methods of procurement set forth in this Part B of Schedule 4.

4. **Shopping.** The Recipient may use shopping for Goods estimated to cost not more than or the equivalent of $50,000.

5. The method of procurement is subject to, among other things, the detailed arrangements set forth in the Procurement Plan. The Borrower may only modify the method of procurement or threshold values with the prior agreement of ADB, and modifications must be set out in updates to the Procurement Plan.

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

7. The Borrower shall apply the following methods for selecting and engaging the specified consulting services, in accordance with, among other things, the procedures set forth in the Procurement Plan:

<table>
<thead>
<tr>
<th>Quality Based Selection for Parts A and B</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consultants’ Qualifications Selection for highly specialized expertise for Parts A and B; and</td>
</tr>
<tr>
<td>Least-Cost Selection for Parts A and B.</td>
</tr>
</tbody>
</table>

D. Industrial or Intellectual Property Rights
8. (a) The Borrower shall ensure that all Goods 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 contain appropriate representations, warranties and, if appropriate, indemnities from the contractor or supplier with respect to the matters referred to in subparagraph (a) of this paragraph.

9. The Borrower shall ensure that all ADB-financed contracts with consultants contain appropriate representations, warranties and, if appropriate, indemnities from the consultants to ensure that the consulting services provided do not violate or infringe any industrial property or intellectual property right or claim of any third party.

E. ADB’s Review of Procurement Decisions

10. All contracts for consulting services shall be subject to prior review by ADB, unless otherwise agreed between the Borrower and ADB and set forth in the Procurement Plan.
SCHEDULE 5
Implementation of Project; Selection of Infrastructure Projects; Financial Matters

I. Implementation Arrangements

Project Executing Agency and Implementing Agencies

1. BAPPENAS as Project Executing Agency shall establish the Project Management Unit (PMU) in its Directorate of Public-Private Partnerships (DPPP). The DPPP Director shall be responsible for, and oversee, the PMU and the Project Development Facility (PDF). The Borrower shall cause the PMU, under the guidance of the KKPPI Secretariat, to be (i) provided with a Project director and full-time qualified technical and administrative staff, adequate resources, and specialist consultants, advisors, and qualified personnel acceptable to ADB to support the PDF operations, and (ii) responsible for ensuring that activities under the Project fully adhere to the Borrower’s PPP legal and regulatory framework, that procurement policies of the Borrower are applied consistently, and that competitive and transparent selection processes are adopted.

2. The PMU shall be responsible for the day to day implementation of the Project including: (i) assessing proposals for PDF funding; (ii) managing the PDF including authorizing and monitoring disbursements from, and repayments to, the PDF; (iii) coordinating the recruitment and performance monitoring of consultants under Part A by the Participating Ministries; (iv) linking PPP venture proponents with appropriate financial institutions; (v) overseeing and monitoring the development of N-PPP and R-PPP Projects, including assessing technical experts/consultants’ performance; (vi) providing advisory support to the KKPPI on cross-cutting policy or regulatory measures in the areas of anti-corruption, transparency, and dispute resolution; and (vii) Project promotion. The Borrower shall ensure that the relevant staff of the PMU, the Participating Ministries, and the Participating Regional Governments are trained in screening, preparation, transaction execution and monitoring activities for PPP projects, including environmental, social, and resettlement safeguard requirements.

3. The PMU shall be responsible for recruiting and managing technical advisors under Part B to support the PMU, the Participating Ministries, and PPP Regional Units (PPP-RUs) to: (i) establish and manage the PDF, including preparing model funding proposals, and related documentation; (ii) train Participating Regional Government staff to optimize their resources and expertise; (iii) undertake social assessment and resettlement planning training; (iv) promote the PDF; and (v) prepare the PDF long-term strategy.

4. A Project Steering Committee (PSC), chaired by BAPPENAS Deputy Chairman for Infrastructure Affairs, shall be established to serve as a high-level decision-making and guiding forum for the National PDF and Regional PDF and shall comprise senior representatives of the CMEA, MOF, Ministry of Home Affairs and the concerned Participating Ministries of the Borrower, with a representative of the associations of regional governments to participate as a resource person. The Chairman may invite representatives of donor organizations and relevant experts to join PSC meetings as observers. The PMU shall act as secretariat for the PSC.
II. Project Development Facility

5. The Borrower shall ensure that the PDF, comprising the National PDF and the Regional PDF, is established within 6 months of the Effective Date and supported by the PMU.

National PDF

6. The Borrower shall ensure that the National PDF provides funding for N-PPP Project preparation and transaction execution to support the conclusion of appropriate PPP Arrangements and undertakes the contracting out of consulting and PPP transaction advisory services in an open, transparent, and competitive manner in accordance with the national procurement regulations.

7. The Borrower shall ensure that the selection procedures, as set out below together with relevant criteria specified in the Operational Guidelines Manual, are fully complied with for each N-PPP Project proposal, subject to periodic modifications as may be required and approved by the PSC:

(a) Proposed Participating Ministries prioritize their potential N-PPP Projects using the prioritization criteria specified in the Operational Guidelines Manual and submit the evaluation, together with a request for support for their top priority projects for consideration by the PMU;

(b) where proposals require financial assistance from the Borrower, the PMU will coordinate with the MOF;

(c) the PMU ranks each proposal against all National PDF proposals, taking into account the following criteria and stage of completion of relevant activities:

(i) inclusion of the proposal in the proposed Participating Ministry’s masterplan for infrastructure development and in the KKPPI database which records potential national projects seeking PPP;

(ii) quality of the demand forecast or other studies indicating the need for the proposed project;

(iii) the results of a rapid preliminary assessment of the technical, economic and financial prospects of the project;

(iv) the level of private sector interest, including an assessment of the project's prospects for attracting wide international private sector participation if a comprehensive pre-feasibility study is prepared using NPDF resources;

(v) completion of all necessary initial steps in accordance with Perpres No.67/2005, including public notification and consultation;

(vi) submission by the proposed Participating Ministry of a comprehensive Request for Proposal for consulting services for project preparation and transaction execution, with a written and binding commitment to KKPPI that the proposed Participating Ministry has complied with all applicable national laws, regulations and policies, and all relevant environmental and social safeguard requirements;
(vii) resource requirements for the necessary consulting services, availability of counterpart support, and extent of commitment from the proposed Participating Ministry to provide such support;
(viii) prospects for meeting initial public investment requirements for project implementation, such as land acquisition; and
(ix) the need for, and extent of risk-sharing support for project implementation and/or operation by the Borrower.

(d) Following assessment by the PMU that the priority ranking of the proposed N-PPP Project meets the appropriate ranking level, the PMU shall forward the proposal together with the PMU evaluation and recommendation to the Deputy Chairman for Infrastructure Affairs of BAPPENAS for approval.

(e) The Deputy Chairman for Infrastructure Affairs of BAPPENAS shall (i) review and decide on each submitted proposal; (ii) report the decision and reasons for the decision to the Chairman of KKPPI; and (iii) authorize funding from the National PDF for each approved project.

(f) Further stages of processing of the N-PPP Project shall be in compliance with the Borrowers’ funding procedures.

8. Following the approval of a proposal, the Borrower shall require (a) each Participating Ministry to put in place appropriate implementation arrangements, such as establishing a project implementation unit, to be supported by full-time qualified technical and administrative staff and adequate resources, and (b) the PMU to support each Participating Ministry to manage the relevant N-PPP Project preparation and transaction execution and subsequent implementation monitoring.

Regional PDF

9. The Borrower shall ensure that the Regional PDF provides funds to finance consulting services for R-PPP Project preparation, bidding, evaluation, negotiations and contract award and implementation monitoring.

10. The procedures for a R-PPP Project proposal to be financed from the Regional PDF are as follows: (a) the PMU reviews and where appropriate, confirms that the R-PPP Project proponent meets the eligibility criteria outlined in paragraph 11 below, (b) the PMU reviews and where appropriate, confirms that the R-PPP Project proposal meets the eligibility criteria outlined in paragraph 12 below, (c) the PMU forwards the proposal, its evaluation of issues in (a) and (b) above, and a recommendation to the DPPP Director. The Borrower shall ensure that the DPPP Director: (i) reviews and decides on each proposal, and (ii) reports the decision and the reasons for the decision to the Chairman of the PSC; and (iii) authorizes the funding.

11. Upon receipt of a R-PPP Project proposal, the PMU shall evaluate the eligibility of a provincial, town or district government to be a Participating Regional Government based on the criteria agreed with ADB. Where the evaluation is positive, then the PMU shall proceed to evaluate the eligibility of the R-PPP Project proposal.
12. Each R-PPP Project proposal must meet the following eligibility criteria, subject to periodic modifications as may be required and approved by the PSC:

(a) be approved by the head of the applicant Participating Regional Government;

(b) have potential to generate revenue sufficient to cover all R-PPP Project operating and capital costs and be proposed by an applicant Participating Regional Government which has either no outstanding arrears to the Borrower or a clear plan to reschedule arrears which is acceptable to the Borrower;

(c) have written agreement between the Participating Regional Government and the PMU (the Implementing Agreement) to abide by the conditions of the Project Development Facility including adopting a competitive process to select private sector partners, and complying with applicable environmental laws, regulations and standards of the Borrower, in broad accordance with the principles and objectives of ADB’s *Environment Policy 2002*, and applicable laws, regulations, policies and standards of the Borrower for resettlement, in broad accordance with the principles and objectives of ADB’s *Involuntary Resettlement Policy*;

(d) is a small to medium scale urban infrastructure project valued up to and including $10 million, for which required regulatory frameworks requirements and financing needs are limited in complexity; and

(e) meets project-specific selection criteria as determined by the PSC and agreed with ADB.

13. The PMU shall provide a free, public access website that publishes the eligibility, selection and ranking criteria, updated details of R-PPP Projects from when they are approved, the financing priority list showing R-PPP Project ranking, and relevant information pertaining to each R-PPP Project.

14. Following approval by the DPPP Director of a proposal, the Borrower shall require each Participating Regional Government to establish a PPP Regional Unit (PPP-RU) to be supported by appropriate full-time qualified technical and administrative staff and adequate resources. Each PPP-RU shall be responsible for supporting the Regional PDF Projects which are part of the relevant regional PPP program. The Borrower shall ensure that each PPP-RU is appropriately supported by the PMU to manage the relevant Regional PDF Project preparation and transaction execution and subsequent implementation monitoring.

15. The Borrower shall cause the PMU to ensure that prior to receiving any financial assistance under the Regional PDF, each Participating Regional Government shall have agreed in writing that detailed ‘in kind’ contribution will be provided and in the event that the contribution is not made on a timely basis, financial assistance will be suspended.


17. The Borrower shall ensure that the mandate of the Regional PDF provides for:
Schedule 5

(a) financing consulting services for the preparation of eligible projects in: (i) water supply, (ii) wastewater treatment and sanitation, (iii) solid waste management and disposal facilities, (iv) passenger transport terminals, (v) markets, (vi) regional government-owned air and seaports, and (vii) other urban facilities as deemed appropriate by the PSC;

(b) identical conditions to apply to its different financing arrangements to ensure a consistent and equitable approach to funding applications; and

(c) subject to the introduction of the revolving funding mechanism, operating the Regional PDF as a revolving financing facility, using the reflow of funds from the R-PPP Projects.

III. Implementation Issues

Technical Advisory Services and Capacity Building

18. The Borrower shall ensure that the PMU provides assistance at both central and regional government levels to assist in developing concepts of PPP implementation by: (a) disseminating information to, and dialogue with, prospective investors and potential providers of finance, (b) encouraging the use of rating agencies and schemes of appropriate financing for R-PPP Project implementation, and (c) adopting and implementing regulations that can augment the efficacy of PPP in an effort to accelerate urban infrastructure development.

19. Within 18 months of the Effective Date, the Borrower shall ensure or cause to ensure that a study is completed of appropriate cost recovery arrangements for the N-PPP and R-PPP Projects, including reflow fund mechanisms, and recommendations for appropriate mechanisms which are in accordance with the Borrower’s budget and finance laws and regulations, and proposals for necessary amendments to related regulations. Within 24 months of the Effective Date, the Borrower shall ensure or cause to ensure that (a) in order to make the PDF sustainable, the KKPPI will consider the recommendations from the study and if feasible and appropriate, endorse a proposal for cost recovery arrangements for consideration and adoption by MOF; and (b) subject to the introduction of cost recovery arrangements, requirements to comply with the applicable cost recovery arrangements are inserted into the bidding documents and final PPP Arrangements.

20. The Borrower shall ensure or cause to ensure that: (a) (i) international training programs relating to PPP are delivered for around 75 persons, and similar national training programs are delivered for around 600 persons that result in the awarding of a recognized diploma or certificate; and (ii) international workshops are held for around 50 persons, and national workshops are held for about 200 persons, both relating to PPP; and (b) the beneficiaries of training selected are the most appropriate and that they are selected on a transparent basis from staff of the ministries and agencies of the Borrower and regional governments.

Accounts and Audit

21. Without prejudice to the generality of Section 4.02 of this Loan Agreement, the Borrower shall ensure that all Project accounts, including financial statements, statements of
expenditures and account records, shall be audited annually, with consolidated audit reports (in English) submitted to ADB in accordance with the requirements and within the deadlines stated in Section 4.02(a) of this Loan Agreement and the audit opinion including: (a) an assessment of the adequacy of accounting and internal controls systems with respect to Project expenditures and other financial transactions, and to ensure safe custody of Project financed assets; (b) a determination as to whether the Borrower, the Project Executing Agency and Implementing Agencies have maintained adequate documentation for all financial transactions, specifically including the SOE and imprest account procedures; and (c) confirmation of compliance with this Loan Agreement's financial covenants and ADB requirements for Project financial management. ADB reserves the right to investigate, directly or through its agents, any alleged corrupt, fraudulent, collusive, or coercive practices relating to the Project.

Progress Reports

22. Without limiting the generality of Section 6.05 of the Loan Regulations, the Borrower, during the implementation period of the Project, shall submit to ADB, through the PMU: (a) quarterly progress reports on the Project, and (b) a Project completion report within three months after completion of the Project summarizing: (i) progress made against established targets; (ii) delays and problems encountered, and actions taken to resolve issues; (iii) compliance with covenants in this Agreement; (iv) proposed program of activities for the next six months; (v) expected progress during the succeeding period; and (vi) status of activities in the Project Area.

Project Review and Monitoring:

23. The Borrower shall ensure or cause to ensure that:

(a) annual reviews of the Project are undertaken jointly with ADB to assess progress and to identify constraints and ways to address identified constraints, with the first review commencing within six months following the Effective Date to enable adjustments in N-PPP or R-PPP Project design or implementation as needed;
(b) each review will cover the status of N-PPP and R-PPP Project proposal preparation and transaction execution, the performance of the Project consultants, and any necessary changes in Project scope, implementation arrangements and/or reallocation of Loan proceeds;
(c) a midterm review will be conducted within three years of the Effective Date, to ensure that N-PPP and R-PPP Projects are implemented and managed effectively and that benefits are maximized;
(d) a Project performance management system (PPMS) is developed in accordance with ADB's PPMS Handbook and Project objectives to monitor PDF inputs, progress in assistance, outcomes and impacts, with indicators of capacity building and information dissemination for agencies of the Borrower, financial institutions, potential investors and other stakeholders incorporated in the design of the PPMS to facilitate the monitoring and evaluation of Project benefits; and
(e) data collection for the PPMS will be undertaken by the PMU, Participating Ministries and Participating Regional Governments.
IV. Environmental and Social Safeguards

24. The Borrower shall ensure, or shall cause the PMU to ensure, that:

(a) N-PPP or R-PPP Projects shall be designed and carried out in compliance with the Borrower’s environmental, safety, social safeguard, procurement, labor and social protection laws, standards, regulations and requirements, and, to the extent possible, in accordance with ADB’s environmental and social safeguard policies including ADB’s Policy on Involuntary Resettlement, ADB’s Policy on Gender and Development, ADB’s Social Protection Strategy, ADB’s Indigenous Peoples’ Policy and any Action Plan for Indigenous Peoples and any Specific Plans for Indigenous Peoples, and the relevant Participating Ministry or Participating Regional Government shall undertake measures to address any adverse effects; and

(b) the public has free and ready access to environmental information produced for a N-PPP or R-PPP Project funded by the Project Development Facility, including via a free access website.

V. Counterpart Funding and Sustainability of the PDF

25. The Borrower shall, during the Project, cause the Participating Ministries and the Participating Regional Governments to prepare an annual work plan for the next year to ensure that during each year of the relevant N-PPP or R-PPP Project preparation, adequate budgetary allocation of required counterpart support (in-kind or cash) is made and such funds are released by the relevant authorities on a timely and regular basis to facilitate N-PPP or R-PPP Project preparation and transaction execution. Each annual work plan shall include (a) the specific allocations of sufficient counterpart funds for the current year; and (b) a financing plan for N-PPP or R-PPP Project activities for the succeeding year.

26. In order to ensure sustainability of the technical, procurement and administrative support to be provided to the Borrower’s ministries and agencies and regional governments for project preparation and transaction execution after the completion of the Project, the Borrower shall, during the Project, cause the PMU to prepare and implement annual work plans for the smooth and efficient transition of the support functions into the operations of the planned PPP-CU.