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LOAN NUMBER 3603-SRI  
(Additional to Loan No. 2710-SRI and Loan No. 2711-SRI[COL])

LOAN AGREEMENT  
(Ordinary Operations)

(Jaffna and Kilinochchi Water Supply Project – Additional Financing)

between

DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

and

ASIAN DEVELOPMENT BANK

DATED 15 DECEMBER 2017

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SRI 37378

**LOAN AGREEMENT  
(Ordinary Operations)**

LOAN AGREEMENT dated 15 December 2017 between the DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA ("Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

**WHEREAS**

(A) by a loan agreement dated 8 February 2011 between the Borrower and ADB ("Initial Ordinary Operations Loan Agreement"), ADB has made a loan to the Borrower from its ordinary capital resources in an amount of twenty million Dollars (\$20,000,000) for the purposes of the project described in Schedule 1 to the Initial Special Operations Loan Agreement;

(B) by a loan agreement dated 8 February 2011 between the Borrower and ADB ("Initial Special Operations Loan Agreement"), ADB has made a loan to the Borrower from its Special Funds resources in an amount in various currencies equivalent to forty-four million two hundred and eighty-six thousand Special Drawing Rights (SDR44,286,000) for the purposes of the project described in Schedule 1 to the Initial Special Operations Loan Agreement;

(C) the Borrower has applied to ADB for two additional loans for the purposes of the Project described in Schedule 1 to this Loan Agreement, such Project form part of the restructured project as described in the Schedule with ensuing changes to be incorporated through amendments to the Initial Ordinary Operations Loan Agreement and the Initial Special Operations Loan Agreement;

(D) by a loan agreement of even date herewith between the Borrower and ADB ("Ordinary Operations [Concessional] Loan Agreement"), ADB has made a loan to the Borrower from its ordinary capital resources in an amount of twenty-five million Dollars (\$25,000,000) for the purposes of the Project;

(E) the Project will be carried out by the National Water Supply and Drainage Board ("NWSDB"), and for this purpose the Borrower will make available to NWSDB the proceeds of the loan provided for herein upon terms and conditions satisfactory to ADB; and

(F) ADB has agreed to make a loan to the Borrower from ADB's ordinary capital resources upon the terms and conditions set forth herein and in the Project Agreement of even date herewith between ADB and NWSDB;

NOW THEREFORE the parties hereto agree as follows:

## ARTICLE I

### Loan Regulations; Definitions

Section 1.01. All the provisions of ADB's Ordinary Operations Loan Regulations, dated 1 January 2017 ("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 2.01(uu) is deleted and the following is substituted therefor:

"Project Agreement" means the Project Agreement of even date herewith between ADB and the NWSDB, as such agreement may be amended from time to time; and such project agreement includes all schedules to the Project Agreement.

- (b) The term "Project Executing Agency" appearing in Sections 7.01(a)(i), 9.01(d), 9.01(f), 9.01(k), 10.01(c) and 10.02(c) of the Loan Regulations shall be substituted by the term "NWSDB".

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) "Consulting Guidelines" means the Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers (2013, as amended from time to time);
- (b) "Consulting Services" means the services to be financed out of the proceeds of the Loan in support of the Project as described in paragraph 2 of Schedule 1 to this Loan Agreement;
- (c) "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;
- (d) "EIA" means the environmental impact assessment for the Project, including any update thereto, prepared and submitted by the Borrower and cleared by ADB;
- (e) "EMP" means the environmental management plan for the Project, including any update thereto, incorporated in the EIA;
- (f) "Environmental Safeguards" means the principles and requirements set forth in Chapter V, Appendix 1, and Appendix 4 (as applicable) of the SPS;

- (g) "Involuntary Resettlement Safeguards" means the principles and requirements set forth in Chapter V, Appendix 2, and Appendix 4 (as applicable) of the SPS;
- (h) "Loans" means the loans under this Loan Agreement and the Ordinary Operations (Concessional) Loan Agreement;
- (i) "Loan Disbursement Handbook" means ADB's Loan Disbursement Handbook (2017, as amended from time to time);
- (j) "MCPWS" means the Ministry of City Planning and Water Supply of the Borrower, or any successor thereto acceptable to ADB;
- (k) "MOFMM" means the Ministry of Finance and Mass Media of the Borrower, or any successor thereto;
- (l) "NWSDB" means the National Water Supply and Drainage Board established under the National Water Supply and Drainage Board Law No. 2 of 1974, or any successor thereto acceptable to ADB;
- (m) "O&M" means operations and maintenance;
- (n) "PAM" means the project administration manual for the Project dated 12 September 2017 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;
- (o) "PMCIU" means the project management, coordination and implementation unit established in the NWSDB;
- (p) "Procurement Guidelines" means ADB's Procurement Guidelines (2015, as amended from time to time);
- (q) "Procurement Plan" means the procurement plan for the Project dated 12 September 2017 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;
- (r) "RP" means the resettlement plan for the Project, including any update thereto, prepared and submitted by the Borrower and cleared by ADB;
- (s) "Safeguards Monitoring Report" means each report prepared and submitted by the Borrower to ADB that describes progress with implementation of and compliance with the EMP, the RP and the IPP (as applicable), including any corrective and preventative actions;
- (t) "SPS" means ADB's Safeguard Policy Statement (2009);
- (u) "Subsidiary Loan Agreements" means the subsidiary loan agreement referred to in Section 3.01(a) of this Loan Agreement; and

- (v) "Works" means construction or civil works to be financed out of the proceeds of the Loans, 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 ninety-five million Dollars (\$95,000,000), 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 23 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:

- (a) LIBOR;
- (b) 0.60% as provided by Section 3.02 of the Loan Regulations less a credit of 0.10% as provided by Section 3.03 of the Loan Regulations; and
- (c) a maturity premium 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 15 May and 15 November 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(f) 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. (a) The Borrower shall relend the proceeds of the Loan to NWSDB under a Subsidiary Loan Agreement upon terms and conditions satisfactory to ADB.

(b) The Borrower shall cause the proceeds of the Loan to be applied exclusively 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 proceeds of the Loan shall be allocated and withdrawn in accordance with the provisions of Schedule 3 to this Loan Agreement, as such Schedule may be amended from time to time by agreement between the Borrower and ADB.

Section 3.03. Except as ADB may otherwise agree, the Borrower shall procure, or cause to be procured, the items of expenditure to be financed out of the proceeds of the Loan in accordance with the provisions of Schedule 4 to this Loan Agreement.

Section 3.04. The Loan Closing Date for the purposes of Section 9.02 of the Loan Regulations shall be 30 June 2026 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 and the Project Agreement.

Section 4.02. The Borrower shall enable ADB's representatives to inspect the Project, the Goods and Works, and any relevant records and documents.

Section 4.03. (a) The Borrower shall (i) maintain separate accounts and records for the Project; (ii) prepare annual financial statements for the Project in accordance with financial reporting standards acceptable to ADB; (iii) have such financial statements audited annually by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB, in accordance with auditing standards acceptable to ADB; (iv) as part of each such audit, have the auditors prepare a report, which includes the auditors' opinion(s) on the financial statements and the use of the Loan proceeds, and a management letter (which sets out the deficiencies in the internal control of the Project that were identified in the course of the audit, if any); and (v) furnish to ADB, no later than 6 months after the end of each related fiscal year, copies of such audited financial statements, audit report and management letter, all in the English language, and such other information concerning these documents and the audit thereof as ADB shall from time to time reasonably request.

(b) ADB shall disclose the annual audited financial statements for the Project and the opinion of the auditors on the financial statements within 14 days of the date of ADB's confirmation of their acceptability by posting them on ADB's website.

(c) The Borrower shall enable ADB, upon ADB's request, to discuss the financial statements for the Project and the Borrower's financial affairs where they relate to the Project with the auditors appointed pursuant to subsection (a)(iii) hereinabove, and shall authorize and require any representative of such auditors to participate in any such discussions requested by ADB. This is provided that such discussions shall be conducted only in the presence of an authorized officer of the Borrower, unless the Borrower shall otherwise agree.

Section 4.04. The Borrower shall take all actions which shall be necessary on its part to enable the Project Executing Agency to perform its obligations under the Project Agreement, and shall not take or permit any action which would interfere with the performance of such obligations.

Section 4.05. (a) The Borrower shall exercise its rights under the Subsidiary Loan Agreement in such a manner as to protect the interests of the Borrower and ADB and to accomplish the purposes of the Loan.

(b) No rights or obligations under the Subsidiary Loan Agreement shall be assigned, amended, abrogated or waived without the prior concurrence of ADB.

## ARTICLE V

### Effectiveness

Section 5.01. The following is specified as an additional condition to the effectiveness of this Loan Agreement for the purposes of Section 10.01(f) of the Loan Regulations: the execution and delivery of the Ordinary Operations (Concessional) Loan Agreement on behalf of the Borrower shall have been duly authorized by all necessary action and all conditions precedent to its effectiveness (other than a condition requiring the effectiveness of this Loan Agreement) shall have been fulfilled.

Section 5.02. The following is specified as an additional matter, for the purposes of Section 10.02(d) of the Loan Regulations, to be included in the opinion or opinions to be furnished to ADB: that the Ordinary Operations (Concessional) Loan Agreement has been duly authorized, executed and delivered on behalf of the Borrower, and is legally binding in accordance with its terms.

Section 5.03. A date 90 days after the date of this Loan Agreement is specified for the effectiveness of this Loan Agreement for the purposes of Section 10.04 of the Loan Regulations.

## ARTICLE VI

### Miscellaneous

Section 6.01. Each of the Secretary of the Ministry of Finance and Mass Media, the Deputy Secretary to the Treasury and the Director General of the Department of External Resources of the Guarantor is designated as representative of the Borrower for the purposes of Section 12.02 of the Loan Regulations.

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

#### For the Borrower

Secretary  
Ministry of Finance and Mass Media  
Colombo 1  
Sri Lanka

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

Facsimile Numbers:

(94 11) 243-3349  
(94 11) 244-7633

For ADB

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

Facsimile Numbers:

(632) 636-2444  
 (632) 636-2340.


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.

DEMOCRATIC SOCIALIST REPUBLIC  
 OF SRI LANKA

**DR. R. H. S. SAMARATUNGA**  
 Secretary  
 Ministry of Finance and Mass Media  
 Colombo 01,  
 Sri Lanka.

By   
 Authorized Representative

ASIAN DEVELOPMENT BANK

By   
 Authorized Representative  
 SRI WIDOWATI  
 COUNTRY DIRECTOR  
 SRI LANKA RESIDENT MISSION

**SCHEDULE 1****Description of the Project**

1. The objective of the Project is to support the restructuring of the original Jaffna and Kilinochchi Water Supply and Sanitation Project ("Overall Project") for the improvement of access to safe drinking water in targeted urban and suburban areas, and security of water resources, in the Jaffna Peninsula. The Overall Project shall comprise:

- (a) improvement of the water supply infrastructure and service in the Jaffna Peninsula, consisting of: (i) installation of a desalination plant of 24,000 cubic meters per day capacity; (ii) installation of approximately 700 km of water mains and distribution pipes; (iii) installation of approximately 60,000 metered new water connections; and (iv) O&M for the desalination plant for 5 years;
- (b) improvement of the Iranamadu water tank headworks to increase its water storage capacity to 148 million cubic meters; and
- (c) development of a water resource management plan, and capacity enhancement for NWSDB, including: (i) development of a detailed action plan for ground and surface water monitoring and rehabilitation in Jaffna; (ii) awareness-raising campaign on water sharing from the Iranamadu water tank; (iii) completion of a water resources management plan for the Iranamadu water tank; and (iv) community development in Vadamarachchi village, where the desalination plant will be located, through construction of local roads and facilities.

2. The Project shall comprise:

- (a) additional financing, as described in subparagraphs 1(a)(ii) and (iii) of this Schedule for cost overrun under the Overall Project ("Component A"); and
- (b) financing of additional activities under the Overall Project, as described in subparagraphs 1(a) and (c) of this Schedule ("Component B").

3. The Project is expected to be completed by 31 December 2025.

## SCHEDULE 2

### Amortization Schedule

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.

<u>Payment Due</u>	<u>Installment Share</u> (Expressed as a %)
15 May 2025	2.173913
15 November 2025	2.173913
15 May 2026	2.173913
15 November 2026	2.173913
15 May 2027	2.173913
15 November 2027	2.173913
15 May 2028	2.173913
15 November 2028	2.173913
15 May 2029	2.173913
15 November 2029	2.173913
15 May 2030	2.173913
15 November 2030	2.173913
15 May 2031	2.173913
15 November 2031	2.173913
15 May 2032	2.173913
15 November 2032	2.173913
15 May 2033	2.173913
15 November 2033	2.173913
15 May 2034	2.173913
15 November 2034	2.173913
15 May 2035	2.173913
15 November 2035	2.173913
15 May 2036	2.173913
15 November 2036	2.173913
15 May 2037	2.173913
15 November 2037	2.173913
15 May 2038	2.173913
15 November 2038	2.173913
15 May 2039	2.173913
15 November 2039	2.173913
15 May 2040	2.173913
15 November 2040	2.173913
15 May 2041	2.173913
15 November 2041	2.173913
15 May 2042	2.173913

<u>Payment Due</u>	<u>Installment Share</u> (Expressed as a %)
15 November 2042	2.173913
15 May 2043	2.173913
15 November 2043	2.173913
15 May 2044	2.173913
15 November 2044	2.173913
15 May 2045	2.173913
15 November 2045	2.173913
15 May 2046	2.173913
15 November 2046	2.173913
15 May 2047	2.173913
15 November 2047	<u>2.173915</u>
<b>TOTAL</b>	<b>100.000000</b>

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; and
- (b) any withdrawal made after the first Principal Payment Date shall be repaid on each Principal Payment Date falling after the date of such withdrawal in amounts determined by ADB by multiplying the amount of each such withdrawal by a fraction, the numerator of which shall be the original Installment Share specified in the table in paragraph 1 of this Schedule for said Principal Payment Date (the Original Installment Share) and the denominator of which shall be the sum of all remaining Original Installment Shares for Principal Payment Dates falling on or after such date, such repayment amounts to be adjusted, as necessary, to deduct any amounts referred to in paragraph 4 of this Schedule, to which a Currency Conversion applies.

3. Withdrawals made within two 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).

Basis for Withdrawal from the Loan Account

2. Except as ADB may otherwise agree, the proceeds of the Loan shall be allocated to items of expenditure, and disbursed on the basis of the withdrawal percentage for each item of expenditure set forth in the Table.

Interest and Commitment Charges

3. The amount allocated to Category "Interest and Commitment Charges" 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, in consultation with the Borrower, (i) reallocate to such Category, to the extent required to meet the estimated shortfall, amounts of the Loan which have been allocated to another Category but, in the opinion of ADB, are not needed to meet other expenditures, and (ii) if such reallocation cannot fully meet the estimated shortfall, reduce the withdrawal percentage applicable to such expenditures in order that further withdrawals under such Category may continue until all expenditures thereunder shall have been made; and
- (b) if the amount of the Loan allocated to any Category appears to exceed all agreed expenditures in that Category, ADB may, in consultation with the Borrower, reallocate such excess amount to any other Category.

Disbursement Procedures

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

Retroactive Financing

6. Withdrawals from the Loan Account may be made to finance eligible expenditures incurred under the Project before the Effective Date, but not earlier than 12 months before the date of this Loan Agreement in connection with Works, Goods and Consulting Services, subject to a maximum amount equivalent to 20% of the Loan amount.

Condition for Withdrawals from Loan Account

7. Notwithstanding any other provision of this Loan Agreement, no withdrawals shall be made from the Loan Account until the Borrower has entered into a valid and legally binding Subsidiary Loan Agreement with the NWSDB upon terms and conditions satisfactory to ADB.

TABLE

ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS			
Number	Item	Total Amount Allocated for ADB Financing (\$)	Basis for Withdrawal from the Loan Account
		Category	
1	Works (Component B)	68,640,000	78% of total expenditure claimed*
2	Equipment and Consulting Services (Project Management, Design Supervision and Incremental Costs)	6,949,000	86.2% of total expenditure claimed*
3	Interest and Commitment Charges	14,617,000	100% of amounts due
4	Unallocated	4,794,000	100% of amounts due
	<b>TOTAL</b>	<b>95,000,000</b>	

\* Subject to the condition for withdrawal described in paragraph 7 of Schedule 3.

**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. Except as ADB may otherwise agree, Goods and Works shall be procured and Consulting Services shall be selected and engaged only on the basis of the procurement methods and the selection methods set forth below. These methods are subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. The Borrower may only modify the procurement methods and the selection methods or threshold values with the prior agreement of ADB, and modifications must be set out in updates to the Procurement Plan.
3. 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**

4. Goods and Works shall be procured on the basis of the procurement methods of procurement set forth below:
  - (a) international competitive bidding;
  - (b) national competitive bidding; and
  - (c) shopping.

**Domestic Preference**

5. The Borrower may grant a margin of preference in the evaluation of bids under international competitive bidding in accordance with paragraphs 2.55(a) and 2.56 of the Procurement Guidelines for domestically manufactured Goods

**National Competitive Bidding**

6. The Borrower and ADB shall ensure that, prior to the commencement of any procurement activity under national competitive bidding, the Borrower's national competitive bidding procedures are consistent with the Procurement Guidelines. Any modifications or clarifications to such procedures agreed between the Borrower and ADB shall be set out in the Procurement Plan. Any subsequent change to the agreed modifications and clarifications shall become effective only after approval of such change by the Borrower and ADB.

**Conditions for Award of Contract**

7. The Borrower shall not award any Works contract which involves environmental impacts until:

- (a) the Borrower has obtained the final approval of the EIA; and
- (b) the Borrower has incorporated the relevant provisions from the EMP into the Works contract.

8. The Borrower shall not award any Works contract which involves involuntary resettlement impacts, until the Borrower has prepared and submitted to ADB the final RP based on the Project's detailed design, and obtained ADB's clearance of such RP.

#### Consulting Services

9. Except as set forth in the paragraph below or agreed between the Borrower and ADB, the Borrower shall apply Quality- and Cost-Based Selection for Consulting Services.

10. The Borrower shall apply the following selection method for the specified Consulting Services, in accordance with, among other things, the procedures set forth in the Procurement Plan: Consultants' Qualifications Selection for the environmental consultancy services.

11. The Borrower shall recruit the individual consultants in accordance with procedures acceptable to ADB for recruiting individual consultants.

#### Industrial or Intellectual Property Rights

12. (a) The Borrower shall ensure that all Goods and Works procured (including without limitation all computer hardware, software and systems, whether separately procured or incorporated within other goods and services procured) do not violate or infringe any industrial property or intellectual property right or claim of any third party.

(b) The Borrower shall ensure that all contracts for the procurement of Goods and Works contain appropriate representations, warranties and, if appropriate, indemnities from the contractor or supplier with respect to the matters referred to in subparagraph (a) of this paragraph.

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

#### ADB's Review of Procurement Decisions

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

**SCHEDULE 5****Execution of Project; Financial Matters**Implementation Arrangements

1. The Borrower, the MCPWS and the NWSDB 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 Ordinary Operations (Concessional) Loan Agreement or the Project Agreement, the provisions of this Loan Agreement, the Ordinary Operations (Concessional) Loan Agreement or the Project Agreement shall prevail.

Environment

2. The Borrower through the MCPWS shall ensure that the preparation, design, construction, implementation, and operation of the Project and all Project facilities comply with (a) all applicable laws and regulations of the Government relating to environment, health and safety; (b) the Environmental Safeguards as set out in the SPS; and (c) all measures and requirements set forth in the EIA, the EMP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

Land Acquisition and Involuntary Resettlement

3. The Borrower through the MCPWS and the NWSDB shall ensure that all land and all rights-of-way required for the Project are made available to the Works contractor in accordance with the schedule agreed under the related Works contract and all land acquisition and resettlement activities are implemented in compliance with (a) all applicable laws and regulations of the Borrower relating to land acquisition and involuntary resettlement; (b) the Involuntary Resettlement Safeguards; and (c) all measures and requirements set forth in the RP, and any corrective or preventative actions set forth in the safeguards monitoring report.

4. Without limiting the application of the Involuntary Resettlement Safeguards or the RP, the Borrower through the MCPWS and the NWSDB shall ensure that no physical or economic displacement takes place in connection with the Project until:

- (a) compensation and other entitlements have been provided to affected people in accordance with the RP; and
- (b) a comprehensive income and livelihood restoration program has been established in accordance with the RP.

Indigenous Peoples

5. The Borrower through the MCPWS and the NWSDB shall ensure that the Project does not have any indigenous peoples impacts within the meaning of the SPS. In the event that the Project does have any such impact, the Borrower through the MCPWS and the NWSDB shall take all steps required to ensure that the Project complies with the applicable laws and regulations of the Borrower and the SPS

Human and Financial Resources to Implement Safeguards Requirements

6. The Borrower through the MCPWS and the NWSDB shall make available necessary budgetary and human resources to fully implement the EMP and the RP.

Safeguards – Related Provisions in Bidding Documents and Works Contracts

7. The Borrower through the MCPWS and the NWSDB shall ensure that all bidding documents and contracts for Works contain provisions that require contractors to:

- (a) comply with the measures relevant to the contractor set forth in the EIA, the EMP and the RP (to the extent they concern impacts on affected people during construction), and any corrective or preventative actions set forth in a Safeguards Monitoring Report;
- (b) make available a budget for all such environmental and social measures;
- (c) provide the Borrower with a written notice of any unanticipated environmental, resettlement or indigenous peoples risks or impacts that arise during construction, implementation or operation of the Project that were not considered in the EIA, the EMP and the RP;
- (d) adequately record the condition of roads, agricultural land and other infrastructure prior to starting to transport materials and construction; and
- (e) reinstate pathways, other local infrastructure, agricultural land to at least their pre-project condition upon the completion of construction.

Safeguards Monitoring and Reporting

8. The Borrower through the MCPWS and the NWSDB shall do the following:

- (a) submit Safeguards Monitoring Reports to ADB (quarterly during construction and semi-annually during implementation in relation to the environment safeguards requirements, and semi-annually in relation to the social safeguards requirements) and disclose relevant information from such reports to affected persons promptly upon submission;
- (b) if any unanticipated environmental and/or social risks and impacts arise during construction, implementation or operation of the Project that were not considered in the EIA, the EMP and the RP, promptly inform ADB of the occurrence of such risks or impacts, with detailed description of the event and proposed corrective action plan;
- (c) no later than commencement of construction activities under the Works contract, engage qualified and experienced external experts under a selection process and terms of reference acceptable to ADB, to verify information produced through the Project monitoring process, and

facilitate the carrying out of any verification activities by such external experts;

- (d) no later than the award of the Works contract engage an independent advisory panel to monitor and report upon Project implementation, and facilitate the carrying out of any monitoring activities by such panel; and
- (e) report any actual or potential breach of compliance with the measures and requirements set forth in the EMP or the RP promptly after becoming aware of the breach.

#### Prohibited List of Investments

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

#### Labor Standards, Health and Safety

10. The Borrower shall ensure that the core labor standards and the Borrower's applicable laws and regulations are complied with during Project implementation. The Borrower through the MCPWS and the NWSDB shall include specific provisions in the bidding documents and contracts financed by ADB under the Project requiring that the contractors, among other things: (a) comply with the Borrower's applicable labor law and regulations and incorporate applicable workplace occupational safety norms; (b) do not use child labor; (c) do not discriminate workers in respect of employment and occupation; (d) do not use forced labor; and (e) disseminate, or engage appropriate service providers to disseminate, information on the risks of sexually transmitted diseases, including HIV/AIDS, to the employees of contractors engaged under the Project and to members of the local communities surrounding the Project area, particularly women.

11. The Borrower shall strictly monitor compliance with the requirements set forth in paragraph 10 above and submit monitoring reports to ADB for review on a quarterly basis during construction and semi-annual during implementation.

#### Gender and Development

12. The Borrower shall ensure that (a) the GAP is implemented in accordance with its terms; (b) the bidding documents and contracts include relevant provisions for contractors to comply with the measures set forth in the GAP; (c) adequate resources are allocated for implementation of the GAP; (d) progress on implementation of the GAP, including progress toward achieving key gender targets, are regularly monitored and reported to ADB; and (e) key gender targets include, but are not limited to: (i) at least 40% of participants in community/stakeholder consultations conducted in relation to the Project are female, and consultations with women's organizations are conducted; (ii) at least 20% of committee members of water resource management committees in the Project Area are female; and (iii) at least 2 training sessions on gender mainstreaming are delivered to stakeholders of the Project and 3 training sessions on gender mainstreaming are delivered to PMCIU staff.

Counterpart Support

13. The Borrower through the MCPWS shall provide counterpart funds for Project implementation on time. The MCPWS shall make timely submission of annual budgetary appropriation requests to the MOF and the MOF shall ensure prompt disbursement of appropriated funds during each year of implementation. In addition to the foregoing, the Borrower shall ensure that the MCPWS and the NWSDB have sufficient funds to satisfy their liabilities arising from any Works, Goods and/or Consulting Services contract.

14. The Borrower, the MCPWS and the NWSDB shall ensure that the PMCIU is provided with adequate staff, resources, and facilities to implement the Project.

Financial Covenants

15. The Borrower ensure that the NWSDB remains financially sustainable through necessary tariff adjustments or other means, including ensuring that the NWSDB's operating ratio (being its operating expenses in cash divided by its total revenue collected in cash) is less than 90% in financial years 2018 and 2019, and less than 85% from financial year 2020 onwards.

16. The Borrower shall ensure that the MCPWS and the NWSDB submit to ADB at the latest by 28 February of each year: (a) the NWSDB's end-of-year income statement for the previous year (inclusive of O&M, debt service, and depreciation); and (b) NWSDB's annual projections of net revenue (inclusive of O&M, debt service and depreciation) for the forthcoming year. In the event an annual project of net revenue shows a negative value, the NWSDB shall implement, at the latest by 31 August of the same year, the water tariff revisions required to secure a positive net income in the sector.

17. The Borrower through MCPWS and the NWSDB shall ensure that the internal audit division of the NWSDB is adequately staffed with qualified personnel by 31 December 2018.

Operational Covenants

18. In line with the Cabinet Decision No. 017/0762/714/016 dated 2 May 2017, the Borrower shall ensure that the Public Utilities Commission of Sri Lanka is conferred the requisite authority, and will exercise such authority, to act as the regulator of the water services industry, including to review and approve water tariff adjustments proposed by the NWSDB from time to time in accordance with its prevailing tariff policy and any applicable tariff regulations.

19. The Borrower shall ensure that the NWSDB maintains the Project facilities and that proper technical supervision and adequate routine funds for this purpose are provided. The Borrower shall ensure that the NWSDB provides funds required for the O&M of the Project facilities as identified in the annual projections (except in relation to the O&M provided by the design-build-operate contractor of the contract for the period prior to the Loan Closing Date financed by ADB). Such funds for the O&M shall be allocated annually and released on a timely basis. Furthermore, all equipment and spare parts financed under the Project shall be used for the O&M of the Project.

Governance and Anticorruption

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

21. The Borrower through the MCPWS and the NWDSB 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.

22. Within 1 month after the Effective Date, the Borrower through the MCPWS shall create a project website to disclose information about various matters of the Project. With regard to procurement, the website shall include information on the list of participating bidders, name of the winning bidders, basic details on bidding procedures adopted, amounts of contract awarded, and the list of items procured.