
LOAN NUMBER 2921-AZE

LOAN AGREEMENT
(Ordinary Operations)

(Second Road Network Development Investment Program – Project 1)

between

REPUBLIC OF AZERBAIJAN

and

ASIAN DEVELOPMENT BANK

DATED 22 April 2013

AZE 45389

**LOAN AGREEMENT
(Ordinary Operations)**

LOAN AGREEMENT dated 22 April 2013 between the REPUBLIC OF AZERBAIJAN ("Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) by a framework financing agreement dated 16 August 2012 between the Borrower and ADB ("FFA"), ADB has agreed to provide a multitranche financing facility ("Facility") to the Borrower for purposes of financing projects under the Second Road Network Development Investment Program ("Investment Program");

(B) by a periodic financing request dated 16 August 2012 ("PFR"), the Borrower has applied to ADB for a loan for the purposes of the Project described in Schedule 1 to this Loan Agreement; and

(C) ADB has agreed to make a loan to the Borrower from ADB's ordinary capital resources upon the terms and conditions set forth herein;

NOW THEREFORE the parties hereto agree as follows:

ARTICLE I

Loan Regulations; Definitions

Section 1.01. All the provisions of the Ordinary Operations Loan Regulations Applicable to LIBOR-Based Loans Made from ADB's Ordinary Capital Resources, dated 1 July 2001 ("Loan Regulations"), are hereby made applicable to this Loan Agreement with the same force and effect as if they were fully set forth herein, subject, however, to the following modifications:

(a) Section 3.03 is deleted and the following is substituted therefor:

Commitment Charge; Credit. (a) The Borrower shall pay a commitment charge on the unwithdrawn amount of the Loan at the rate and on the terms specified in the Loan Agreement.

(b) ADB shall provide to the Borrower a credit at the rate specified in the Loan Agreement, which credit shall remain fixed for the term of the Loan. ADB shall apply the credit against the interest payable by the Borrower.

(b) Section 3.06 is deleted and the following is substituted therefor:

Rebate. (a) Following any announcement by ADB that the Fixed Spread applicable to new Loans shall be reduced, ADB shall provide a Rebate to any Borrower with an outstanding Loan on which a higher Fixed Spread is applicable. The amount of the Rebate shall be determined by multiplying (i) the difference between the Fixed Spread applicable to the outstanding Loan and the Fixed Spread that will be applied to new Loans (expressed as a percentage per annum), by (ii) the principal amount of the outstanding Loan on which the Borrower shall pay interest for all interest periods commencing on and after the effective date of the lower Fixed Spread that will be applied to new Loans.

(b) Following any announcement by ADB that its Funding Cost Margin calculations with respect to any Loan Currency (or Approved Currency) in any Semester resulted in ADB achieving savings, ADB shall provide a Rebate to the Borrower. The amount of the Rebate shall be determined by multiplying (i) the Funding Cost Margin (expressed as a percentage per annum) by (ii) the principal amount of the Loan on which the Borrower shall pay interest for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated. ADB shall apply the amount of the Rebate against the interest payable by the Borrower for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated.

(c) Section 3.07 is deleted and the following is substituted therefor:

Surcharge. (a) Following any announcement by ADB that the Fixed Spread applicable to new Loans shall be increased, any Borrower with an outstanding Loan on which a lower Fixed Spread is applicable shall pay ADB a Surcharge. The amount of the Surcharge shall be determined by multiplying (i) the difference between the Fixed Spread that will be applied to new Loans and the Fixed Spread applicable to the outstanding Loan (expressed as a percentage per annum), by (ii) the principal amount of the outstanding Loan on which the Borrower shall pay interest for all interest periods commencing on and after the effective date of the higher Fixed Spread that will be applied to new Loans.

(b) Following any announcement by ADB that its Funding Cost Margin calculations with respect to any Loan Currency (or Approved Currency) in any Semester resulted in ADB incurring additional costs, the Borrower shall pay ADB a Surcharge. The amount of the Surcharge shall be determined by multiplying (i) the Funding Cost Margin (expressed as a percentage per annum) by (ii) the principal amount of the Loan on which the Borrower shall pay interest for the Interest Period

commencing immediately after the Semester for which the Funding Cost Margin was calculated. ADB shall add the amount of the Surcharge to the interest payable by the Borrower for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated.

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

(a) “ARS” means AzerRoadService Open Joint-Stock Company (a state-owned company under the Project Executing Agency), or any successor thereto acceptable to ADB, which is responsible for implementation of the Project;

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

(c) “Consulting Services” means the services to be financed out of the proceeds of the Loan as described in paragraph 2(b) of Schedule 1 to this Loan Agreement;

(d) “EARF” means the environmental assessment and review framework for the Investment Program, including any update thereto, agreed between the Borrower and ADB and incorporated by reference in the FFA;

(e) “EIA” means an environmental impact assessment for the Project, including any update thereto, prepared and submitted by the Borrower pursuant to the requirements set forth in the EARF and cleared by ADB;

(f) “EMP” means an environmental management plan for the Project, including any update thereto, incorporated in the EIA;

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

(h) “FAM” means the Facility administration manual dated 14 August 2012 and agreed between the Borrower and ADB, as updated from time to time in accordance with the respective administrative procedures of the Borrower and ADB;

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

(j) “LARF” means the land acquisition and resettlement framework for the Investment Program, including any update thereto, agreed between the Borrower and ADB and incorporated by reference in the FFA;

(k) “LARP” means a land acquisition resettlement plan for the Project, including any update thereto, prepared and submitted by the Borrower pursuant to the requirements set forth in the LARF and cleared by ADB;

(l) “Loan Disbursement Handbook” means ADB’s Loan Disbursement Handbook (2012, as amended from time to time);

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

(n) “Procurement Plan” means the procurement plan for the Project dated 14 August 2012 and agreed between the Borrower and ADB, as updated from time to time in accordance with the Procurement Guidelines, the Consulting Guidelines, and other arrangements agreed with ADB;

(o) “Project Executing Agency” for the purposes of, and within the meaning of, the Loan Regulations means the Ministry of Transport of the Borrower, or any successor thereto acceptable to ADB, which is responsible for the carrying out of the Project;

(p) “Project facilities” means the equipment, material, supplies and facilities provided, rehabilitation or reconstructed or to be provided, rehabilitated or reconstructed under the Project;

(q) “Project Road” means the road section to be constructed under the Project, as described in more detail in paragraph 2(a) of Schedule 1 to this Loan Agreement;

(r) “Road MFFs” means, collectively, (i) the Facility and (ii) ADB’s multitranchise financing facility to the Borrower for purposes of financing projects under the Road Network Development Program, which facility was approved by the ADB Board in September 2007;

(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 and the LARP (as applicable), including any corrective and preventative actions;

(t) “SPS” means ADB’s Safeguard Policy Statement (2009); and

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

ARTICLE II

The Loan

Section 2.01. (a) ADB agrees to lend to the Borrower from ADB’s ordinary capital resources an amount of two hundred fifty million Dollars (\$250,000,000), 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 17 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; and
- (b) 0.60% as provided by Section 3.02 of the Loan Regulations less a credit of 0.20% as provided by Section 3.03 of the Loan Regulations.

Section 2.03. The Borrower shall pay a commitment charge of 0.15% per annum. Such charge shall accrue on the full amount of the Loan (less amounts withdrawn from time to time), commencing 60 days after the date of this Loan Agreement.

Section 2.04. Interest and other charges on the Loan shall be payable semiannually on 1 April and 1 October in each year.

Section 2.05. The Borrower shall repay the principal amount of the Loan withdrawn from the Loan Account in accordance with the provisions of Schedule 2 to this Loan Agreement.

Section 2.06. (a) The Borrower may at any time request any of the following Conversions of the terms of the Loan in order to facilitate prudent debt management:

- (i) a change of the Loan Currency of all or any portion of the principal amount of the Loan, whether withdrawn and outstanding or unwithdrawn, to an Approved Currency;
- (ii) a change of the interest rate basis applicable to all or any portion of the principal amount of the Loan withdrawn and outstanding from a Floating Rate to a Fixed Rate, or vice versa; and
- (iii) the setting of limits on the Floating Rate applicable to all or any portion of the principal amount of the Loan withdrawn and outstanding by the establishment of an Interest Rate Cap or Interest Rate Collar on said Floating Rate.

(b) Any conversion requested pursuant to subsection (a) hereinabove that is accepted by ADB shall be considered a “Conversion”, as defined in Section 2.01(6) of the Loan Regulations, and shall be effected in accordance with the provisions of Article V of the Loan Regulations and the Conversion Guidelines.

ARTICLE III

Use of Proceeds of the Loan

Section 3.01. The Borrower shall cause the proceeds of the Loan to be applied to the financing of expenditures on the Project in accordance with the provisions of this Loan Agreement.

Section 3.02. The proceeds of the Loan shall be allocated and withdrawn in accordance with the provisions of Schedule 3 to this Loan Agreement, as such Schedule may be amended from time to time by agreement between the Borrower and ADB.

Section 3.03. Except as ADB may otherwise agree, the Borrower shall procure, or cause to be procured, the items of expenditure to be financed out of the proceeds of the Loan in accordance with the provisions of Schedule 4 to this Loan Agreement. ADB may refuse to finance a contract where any such item has not been procured under procedures substantially in accordance with those agreed between the Borrower and ADB or where the terms and conditions of the contract are not satisfactory to ADB.

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

Section 3.05. The Loan Closing Date for the purposes of Section 9.02 of the Loan Regulations shall be 31 December 2016 or such other date as may from time to time be agreed between the Borrower and ADB.

ARTICLE IV

Particular Covenants

Section 4.01. (a) The Borrower shall cause the Project to be carried out with due diligence and efficiency and in conformity with sound applicable technical, financial, business, and development practices.

(b) In the carrying out of the Project and operation of the Project facilities, the Borrower shall perform, or cause to be performed, all obligations set forth in Schedule 5 to this Loan Agreement.

Section 4.02. The Borrower shall make available, promptly as needed and on terms and conditions acceptable to ADB, the funds, facilities, services, land and other resources, as required, in addition to the proceeds of the Loan, for the carrying out of the Project and for the operation and maintenance of the Project facilities.

Section 4.03. (a) Whenever applicable, in the carrying out of the Project, the Borrower shall cause competent and qualified consultants and contractors,

acceptable to ADB to be employed to an extent and upon terms and conditions satisfactory to the Borrower and ADB.

(b) The Borrower shall cause the Project to be carried out in accordance with plans, design standards, specifications, work schedules and construction methods acceptable to the Borrower and ADB, as applicable. The Borrower shall furnish, or cause to be furnished, to ADB, promptly after their preparation, such plans, design standards, specifications and work schedules, and any material modifications subsequently made therein, in such detail as ADB shall reasonably request.

Section 4.04. The Borrower shall ensure that the activities of its departments and agencies with respect to the carrying out of the Project and operation of the Project facilities are conducted and coordinated in accordance with sound administrative policies and procedures.

Section 4.05. (a) The Borrower shall (i) maintain separate accounts and records for the Project; (ii) prepare annual financial statements for the Project in accordance with accounting principles 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 international standards for auditing or the national equivalent acceptable to ADB; (iv) as part of each such audit, have the auditors prepare a report (which includes the auditors' opinion on the use of the Loan proceeds and compliance with the financial covenants of this Loan Agreement) 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 30 days of the date of their receipt 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 4.06. The Borrower shall enable ADB's representatives to inspect the Project, the Goods and Works, and any relevant records and documents.

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

ARTICLE V**Effectiveness**

Section 5.01. A date 30 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. The Minister of Finance of the Borrower 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

Ministry of Finance
S. Vurgun Street, 83
AZ1022 Baku
Republic of Azerbaijan

Facsimile Number:

(994-12) 404 4720
(994-12) 404 4721.

For ADB

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

Facsimile Numbers:

(632) 636-2444
(632) 636-2428.

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

REPUBLIC OF AZERBAIJAN

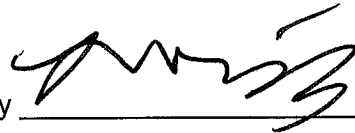
By



ZIYA MAMMADOV
Authorized Representative

ASIAN DEVELOPMENT BANK

By



OLLY NOROJONO
Authorized Representative

SCHEDULE 1

Description of the Project

1. The objective of the Investment Program and the Project is to build an adequate, efficient, safe and sustainable road network in Azerbaijan connecting the country domestically and internationally.
2. The Project shall consist of the following components:
 - (a) construction of an approximately 30 km four-lane road section between the cities of Masalli and Jalilabad on the new Masalli – Shorsulu road; and
 - (b) project implementation support for construction supervision and program management covering planning, procurement, project implementation, financial management and compliance with safeguard requirements,in each case as more fully described in the PFR.
3. The Project is expected to be completed by 30 June 2016.

SCHEDULE 2**Amortization Schedule****(Second Road Network Development Investment Program – Project 1)**

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 %)
01 April 2017	2.941176
01 October 2017	2.941176
01 April 2018	2.941176
01 October 2018	2.941176
01 April 2019	2.941176
01 October 2019	2.941176
01 April 2020	2.941176
01 October 2020	2.941176
01 April 2021	2.941176
01 October 2021	2.941176
01 April 2022	2.941176
01 October 2022	2.941176
01 April 2023	2.941176
01 October 2023	2.941176
01 April 2024	2.941176
01 October 2024	2.941176
01 April 2025	2.941176
01 October 2025	2.941176
01 April 2026	2.941176
01 October 2026	2.941176
01 April 2027	2.941176
01 October 2027	2.941176
01 April 2028	2.941176
01 October 2028	2.941176
01 April 2029	2.941176
01 October 2029	2.941176

<u>Payment Due</u>	<u>Installment Share</u> (Expressed as a %)
01 April 2030	2.941176
01 October 2030	2.941176
01 April 2031	2.941176
01 October 2031	2.941176
01 April 2032	2.941176
01 October 2032	2.941176
01 April 2033	2.941176
01 October 2033	2.941192
TOTAL	100.000000

2. If the proceeds of the Loan shall not have been fully withdrawn as of the first Principal Payment Date, the principal amount of the Loan repayable by the Borrower on each Principal Payment Date shall be determined as follows:

(a) To the extent that any proceeds of the Loan shall have been withdrawn as of the first Principal Payment Date, the Borrower shall repay the amount withdrawn and outstanding as of such date in accordance with paragraph 1 of this Schedule.

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

3. Withdrawals made within 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 of the Table.)

Basis for Withdrawal from the Loan Account

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

Reallocation

3. 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

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

TABLE

ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (Second Road Network Development Investment Program – Project 1)			
CATEGORY			ADB FINANCING
Number	Item	Total Amount Allocated for ADB Financing (\$)	Basis for Withdrawal from the Loan Account
1	Works	180,000,000	100% of total expenditure claimed*
2	Consulting Services	10,000,000	100% of total expenditure claimed*
3	Unallocated	60,000,000	
	Total	250,000,000	

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

SCHEDULE 4

Procurement of Goods, Works and Consulting Services

General

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

Works

3. Except as ADB may otherwise agree, Works shall only be procured on the basis of International Competitive Bidding.
4. The method of procurement is subject to, among other things, the detailed arrangements and threshold values 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.

Conditions for Award of Contract

5. The Borrower shall not award any Works contract for the Project which involves environmental impacts until the Project Executing Agency has:
 - (a) obtained the final approval of the EIA from the Ministry of Ecology and Natural Resources; and
 - (b) incorporated the relevant provisions from the EMP into the Works contract.
6. The Borrower shall not award any Works contract involving involuntary resettlement impacts for the Project until the Borrower has prepared and submitted to ADB the final LARP for the Project based on the Project's detailed design, and obtained ADB's clearance of such LARP.

Consulting Services

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

Industrial or Intellectual Property Rights

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

9. 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

10. 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.

11. The Borrower shall seek ADB's approval before it:

(a) grants any extension of the stipulated time for completion of a contract for Works; or

(b) agrees to any modification or waiver of the conditions of a contract for Works, including any change order that falls under (c) or (d) below; or

(c) issues any change order under a contract for Works that will in aggregate increase the original contract price (for the avoidance of doubt, such aggregate shall take into account any previous or simultaneous change order or orders under such contract); or

(d) issues any change order under a contract for Works that will affect more than 15% of the original contract price (either through increases or decreases), even if the net effect of such change order will not in aggregate increase the original contract price. For the avoidance of doubt, such aggregate shall take into account any previous or simultaneous change order or orders under such contract.

12. ADB shall respond to each request for approval under paragraph 11 above within 10 business days (in Manila) of ADB's receipt of such request. Such response will indicate that the request is (a) approved, (b) declined, (c) pending receipt of additional information or documentation, or (d) pending consideration by ADB's Procurement Committee, in each case as determined by ADB. If ADB fails to respond within 10 business days (in Manila) of ADB's receipt of such request, the request shall be deemed to have been approved by ADB (except if it relates to consideration by the Procurement Committee). In the case of (c), the Borrower shall promptly provide the requested information or documentation to ADB and ADB shall respond to the relevant request within 10 business days (in Manila) upon receipt of such requested information or documentation satisfactory to ADB. In the case of (d), ADB shall notify the Borrower of the decision by the Procurement Committee within 10 business days (in Manila) of such decision by the Procurement Committee.

13. The Borrower shall, or shall ensure that the Project Executing Agency will:
- (a) provide to ADB within 7 days a copy of all time extensions, modifications or waivers to the contracts (including change orders) following ADB's approval in accordance with paragraph 11 above and amendment of the contracts; and
 - (b) maintain a record of all change orders under all contracts for Works which do not require ADB's prior approval under paragraph 11 above and submit such record for ADB's review every 6 months.

SCHEDULE 5

Execution of Project; Financial Matters

Implementation Arrangements

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

Construction Quality

2. The Borrower shall, and shall cause the Project Executing Agency and ARS to, ensure that: (a) the Project facilities comply with the technical specifications of the design; and (b) construction, supervision, quality control and project management are performed according to internationally accepted standards and practices.

Counterpart Support

3. The Borrower shall, and shall cause the Project Executing Agency and ARS to, make available on a timely basis all necessary financial, technical and human resources necessary for implementation of the Project, including the LARP and EMP.

Road Maintenance

4. The Borrower shall, and shall cause the Project Executing Agency and ARS to, develop, in consultation with ADB, and approve a road maintenance plan for the fiscal years 2015-2022 by 31 December 2014, which such plan shall (a) establish a system for efficient planning and prioritization of road maintenance works, (b) provide funding modalities to finance the maintenance of relevant roads acceptable to ADB, (c) develop or adopt adequate road maintenance standards and prepare relevant road maintenance planning and operational manuals, and (d) provide training to strengthen the capacity of local maintenance units. The Borrower shall, and shall cause the Project Executing Agency and ARS to, ensure that a road maintenance program covering the country's entire road network is implemented.

5. *This paragraph 5 shall amend and restate in its entirety paragraph 8 of Schedule 5 to the Loan Agreement for Loan No. 2354-AZE dated 15 January 2008 ("Loan 2354-AZE Loan Agreement") between the Borrower and ADB:* The Borrower shall, and shall cause the Project Executing Agency and ARS to, in consultation with ADB, (a) undertake a study to develop an independent set of road standards and specifications for pavement layers design for all motorway roads to be financed under the Road MFFs and (b) use such study as the basis for preparing and entering into performance-based maintenance contracts covering all such motorway roads, each such contract to be entered into prior to the opening of the relevant motorway road based on bidding documents and a framework approved by ADB.

Road Safety

6. The Borrower shall, and shall cause the Project Executing Agency and ARS to, undertake, in consultation with ADB, a road safety audit for each motorway road to be financed under the Road MFFs and shall ensure that the recommendations included in such audit, as approved by ADB, are incorporated into the design, operation and maintenance of such motorway roads.

7. The Borrower, acting through the relevant government authorities, shall ensure that the Project Road is at all times patrolled by traffic police who will enforce national laws and regulations on the Project Road. The Borrower shall, and shall cause the Project Executing Agency and ARS to, ensure monitoring of the accident rate and traffic volume on the Project Road and shall institute appropriate safety enforcement measures.

Axle Loads

8. The Borrower shall, and shall cause the Project Executing Agency and ARS to, establish vehicle weighing stations within the Project Road to control axle overloading and shall institute appropriate procedures and regulations to enforce the axle load control on the Project Road.

Tolling

9. *This paragraph 9 shall amend and restate in its entirety paragraph 12 of Schedule 5 to the Loan 2354-AZE Loan Agreement:* At least six months prior to the opening for operation of the first completed motorway road financed under the Road MFFs, the Borrower shall cause ARS to have provided ADB with an Project Executing Agency-endorsed framework and definitive action plan for establishing tolling roads along all motorway roads to be financed under the Road MFFs. By 31 December 2015, the Borrower shall have caused ARS to review and inform ADB of any significant difficulties in establishing tolls on expressway roads under the Borrower's laws and regulations.

Vehicle Emissions

10. *This paragraph 10 shall amend and restate in its entirety paragraph 13 of Schedule 5 to the Loan 2354-AZE Loan Agreement:* At least six months prior to the opening of the first completed motorway road financed under the Road MFFs, the Borrower shall cause ARS, jointly with the concerned government agencies, to provide to ADB the Borrower's emission standards and the penalties for infringement of such standards. The Borrower shall ensure, through the relevant agencies, that such vehicle emission standards are enforced.

Policy Dialogue

11. The Borrower shall, and shall cause the Project Executing Agency and ARS to, ensure that: (a) ADB is kept informed of the policies and programs of the Borrower for the road sector, including those under discussion with other multilateral and bilateral agencies and those that may materially affect the economic viability of any motorway road financed

under the Road MFFs; and (b) ADB is given an opportunity to comment on any proposed new transport sector policies or programs.

Change in Ownership and Operation

12. In the event the Borrower, the Project Executing Agency or ARS proposes (a) any change in ownership of the Project Road or Project facilities, (b) any sale, transfer, or assignment of interest or control in the Project Road or Project facilities, or (c) a lease or other contract or other modification of the Project Executing Agency or ARS's functions or authority over implementation and operation of the Project Road or Project facilities, the Borrower shall, and shall cause the Project Executing Agency and ARS to, at least 6 months prior to the implementation of such proposal, consult with ADB and obtain its consent. The Borrower shall, and shall cause the Project Executing Agency and ARS to, ensure that any such proposal is carried out in a legal and transparent manner.

Environment

13. The Borrower shall, and shall cause the Project Executing Agency and ARS to, ensure that the preparation, design, construction, implementation, operation and decommissioning of the Project and all Project facilities comply with (a) all applicable laws and regulations of the Borrower relating to environment, health, and safety; (b) the Environmental Safeguards; (c) the EARF; and (d) all measures and requirements set forth in the respective EIA and EMP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

Land Acquisition and Involuntary Resettlement

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

15. Without limiting the application of the Involuntary Resettlement Safeguards, the LARF or the LARP, the Borrower shall, and shall cause the Project Executing Agency and ARS to, 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 LARP;
- (b) a comprehensive income and livelihood restoration program has been established in accordance with the LARP; and

- (c) a due diligence report prepared by an external expert in accordance with the LARP has been cleared by ADB.

Indigenous Peoples

16. The Borrower shall, and shall cause the Project Executing Agency and ARS to, ensure that the Project does not cause any impact on indigenous people within the meaning of the SPS. In the event that the Project does have any such impact, the Borrower shall, and shall cause the Project Executing Agency and ARS to, take all steps required to ensure that the Project complies with the applicable laws and regulations of the Borrower and the Safeguard Policy Statement.

Human and Financial Resources to Implement Safeguards Requirements

17. The Borrower shall, and shall cause the Project Executing Agency and ARS to, make available necessary budgetary and human resources to fully implement the EMP and the LARP.

Safeguards – Related Provisions in Bidding Documents and Works Contract

18. The Borrower shall, and shall cause the Project Executing Agency and ARS to, ensure that all bidding documents and contracts for Works contain provisions that require contractors to:

- (a) comply with the measures and requirements relevant to the contractor set forth in the EIA, the EMP and the LARP (to the extent they concern impacts on affected people during construction), and any corrective or preventative actions set out 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 or the LARP;
- (d) adequately record the condition of roads, agricultural land and other infrastructure prior to starting to transport materials and construction; and
- (e) fully reinstate pathways, other local infrastructure, and agricultural land to at least their pre-project condition upon the completion of construction.

Safeguards Monitoring and Reporting

19. The Borrower shall, and shall cause the Project Executing Agency and ARS to, do the following:

- (a) submit semi-annual Safeguards Monitoring Reports to ADB 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 or the LARP, promptly inform ADB of the occurrence of such risks or impacts, with detailed description of the event and proposed corrective action plan;
- (c) prior to the award of the Works contract, engage qualified and experienced external expert or qualified NGO 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; and
- (d) report any actual or potential breach of compliance with the measures and requirements set forth in the EMP or the LARP promptly after becoming aware of the breach.

Prohibited List of Investments

20. The Borrower shall, and shall cause the Project Executing Agency and ARS to, ensure that no proceeds of the Loan are used to finance any activity included in the list of prohibited investment activities provided in Appendix 5 of the SPS.

Health and Labor Standards

21. The Borrower shall, and shall cause the Project Executing Agency and ARS to, ensure that all contractors: (a) comply with all laws and mandated provisions on labor, health, safety, sanitation and working conditions; (b) use their best efforts to employ women and local people negatively affected by, or living in the vicinity of, the Project; (c) disseminate information at worksites and campsites on the risks of sexually transmitted diseases and HIV/AIDS for those employed during construction; (d) are required not to differentiate between men and women's wages or benefits for work of equal value; (e) provide accommodation to construction workers at campsites during the constructions period and ensure that all work sites and campsites are safe for all employees, service providers, the public and road users; (f) eliminate all forms of forced or compulsory labor; (g) allow freedom of association and right of assembly; and (h) abstain from engaging persons below the legally employable age in Azerbaijan.

22. The Borrower shall, and shall cause the Project Executing Agency and ARS to, undertake concrete measures including border controls and road patrols to prevent

trafficking of humans, wildlife, endangered species and illegal substances on the Project facilities.

Governance and Anticorruption

23. The Borrower shall, and shall cause the Project Executing Agency and ARS to, (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.

24. The Borrower shall, and shall cause the Project Executing Agency and ARS to, 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.