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GRANT NUMBER 0285-CAM(EF)

GRANT AGREEMENT  
(Flood Damage Emergency Reconstruction Project)

between

KINGDOM OF CAMBODIA

and

ASIAN DEVELOPMENT BANK

DATED 4 APRIL 2012

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CAM 46009

## **GRANT AGREEMENT**

GRANT AGREEMENT dated 4 April 2012 between KINGDOM OF CAMBODIA (the "Recipient") and ASIAN DEVELOPMENT BANK ("ADB").

### **WHEREAS**

(A) the Recipient has requested ADB to apply on its behalf to the Government of Australia, represented by Australian Agency for International Development, (the Government of Australia) for a grant to finance part of Components 1 to 3 of the Project described in Schedule 1 to the Loan Agreement (such expression as defined in Recital B below);

(B) the Recipient has also applied to ADB for a loan for the purposes of the Project and by a loan agreement, dated 4 April 2012, between the Recipient and ADB (hereinafter called the "Loan Agreement"), ADB has agreed to provide to the Recipient, from its Special Funds resources a loan in the amount of thirty-five million three hundred forty-seven thousand Special Drawing Rights (SDR35,347,000) for the purposes of the Project; and

(C) ADB has agreed to administer the Grant from the Government of Australia to the Recipient upon the terms and conditions hereinafter set forth.

NOW THEREFORE the parties agree as follows:

## **ARTICLE I**

### **Grant Regulations; Definitions**

Section 1.01. All provisions of the Externally Financed Grant Regulations of ADB, dated 8 April 2009 (the "Grant Regulations"), are hereby made applicable to this Grant Agreement with the same force and effect as if they were fully set forth herein.

Section 1.02. The definitions set forth in the Grant Regulations and the Loan Agreement are applicable to this Grant Agreement unless the context requires otherwise.

## **ARTICLE II**

### **The Grant**

Section 2.01. ADB agrees to make the Grant from the Government of Australia available to the Recipient on terms and conditions set forth in this Agreement in an amount not exceeding five million two hundred fifty thousand Dollars (\$5,250,000).

## **ARTICLE III**

### **Use of Proceeds of the Grant**

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

Section 3.02. The Goods and Works to be financed out of the proceeds of the Grant and the allocation of amounts of the Grant among different categories shall be in accordance with the provisions of Schedule 1 to this Grant Agreement, as such Schedule may be amended from time to time by agreement between the Recipient and ADB.

Section 3.03. Except as ADB may otherwise agree, all Goods and Works to be financed out of the proceeds of the Grant shall be procured in accordance with the provisions of Schedule 2 to this Grant Agreement.

Section 3.04. Withdrawals from the Grant Account in respect of Goods and Works shall be made only on account of expenditures relating to:

(a) Goods which are produced in and supplied from and Works which are supplied from such member countries of ADB as shall have been specified by ADB from time to time as eligible sources for procurement; and

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

Section 3.05. The Grant Closing Date for the purposes of Section 8.02 of the Grant Regulations shall be 30 September 2015 or such other date as may from time to time be agreed between the Recipient and ADB.

## ARTICLE IV

### Particular Covenants

Section 4.01. In the carrying out of the Project and operation of the Project facilities, the Recipient shall perform, or cause to be performed, all obligations set forth in Schedule 3 to this Grant Agreement and Schedule 5 to the Loan Agreement.

Section 4.02. (a) The Recipient 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 Grant proceeds and compliance with the financial covenants of this Grant Agreement as well as on the use of the procedures for the 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 Recipient shall enable ADB, upon ADB's request, to discuss the Recipient's financial statements for the Project and its financial affairs related to the Project from time to time with the auditors appointed by the Recipient 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 Recipient unless the Recipient shall otherwise agree.

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

Section 4.04. Notwithstanding any other provision of this Grant Agreement, ADB is neither obligated to make any disbursement from the Grant Account, except to the extent that ADB has received the Government of Australia Grant funds, nor is it acting as a representative of the Government of Australia. ADB assumes no liability for any exchange rate fluctuations during ADB's administration of the Grant.

## **ARTICLE V**

### **Suspension and Cancellation**

Section 5.01. The following is specified as an additional event for suspension of the right of the Recipient to make withdrawals from the Grant Account for the purposes of Section 8.01(k) of the Grant Regulations or cancellation of the Grant pursuant to Section 8.02 of the Grant Regulations: the loan financed under the Loan Agreement shall have become liable for suspension or cancellation or shall have become repayable prior to its agreed maturity date.

## **ARTICLE VI**

### **Effectiveness**

Section 6.01. The following is specified as an additional condition to the effectiveness of this Grant Agreement for the purposes of Section 9.01(e) of the Grant Regulations: the Loan Agreement, shall have been duly executed and delivered, and all conditions precedent to its effectiveness, other than a condition requiring the effectiveness of this Grant Agreement, shall have been fulfilled or arrangements satisfactory to ADB shall have been made for the fulfillment thereof within a period of time satisfactory to ADB.

Section 6.02. The following is specified as an additional matter, for the purposes of Section 9.02(c) of the Grant Regulations, to be included in the opinion or opinions to be furnished to ADB: the Loan Agreement has been duly authorized or ratified by, and executed and delivered on behalf of the Recipient, and is legally binding upon the Recipient in accordance with its terms, subject only to the effectiveness of this Grant Agreement.

Section 6.03. A date 90 days after the date of this Grant Agreement is specified for the effectiveness of the Grant Agreement for the purposes of Section 9.04 of the Grant Regulations.

## **ARTICLE VII**

### **Miscellaneous**

Section 7.01. The Minister of Economy and Finance of the Recipient is designated as representative of the Recipient for the purposes of Section 11.02 of the Grant Regulations.

Section 7.02. The following addresses are specified for the purposes of Section 11.01 of the Grant Regulations:

For the Recipient

Ministry of Economy and Finance  
 St. 92 Sangkat Wat Phnom  
 Khan Daun Penh  
 Phnom Penh, Cambodia

## Facsimile Numbers:

+855 23 427 798  
 +855 23 428 424.

For ADB

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

## Facsimile Number:

(632) 636-2444.

IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Grant 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.

KINGDOM OF CAMBODIA

By   
 H.E. KEAT CHHON  
 Deputy Prime Minister  
 Minister of Economy and Finance

ASIAN DEVELOPMENT BANK

By   
 HARUHIKO KURODA  
 President

**SCHEDULE 1****Allocation and Withdrawal of Grant Proceeds**General

1. The table attached to this Schedule sets forth the Categories of items of expenditures to be financed out of the proceeds of the Grant and the allocation of amounts of the Grant to each such Category ("Table"). (Reference to "Category" in this Schedule is to a Category or Subcategory of the Table.)

Percentages of Grant 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 Grant on the basis of the percentages set forth in the Table.

Reallocation

3. Notwithstanding the allocation of Grant proceeds and the withdrawal percentages set forth in the Table,

(a) if the amount of the Grant allocated to any Category appears to be insufficient to finance all agreed expenditures in that Category, ADB may, in consultation with the Recipient, (i) reallocate to such Category, to the extent required to meet the estimated shortfall, amounts of the Grant 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 Grant then allocated to any Category appears to exceed all agreed expenditures in that Category, ADB may, in consultation with the Recipient, reallocate such excess amount to any other Category.

Disbursement Procedures

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

Statement of Expenditures

5. The statement of expenditures procedure may be used for reimbursement of eligible expenditures, in accordance with the Loan Disbursement Handbook and detailed arrangements agreed upon between the Recipient and ADB. Any individual payment to be reimbursed under the statement of expenditures procedure shall not exceed the equivalent of \$100,000.

Retroactive Financing

6. Withdrawals from the Grant Account may be made for reimbursement of eligible expenditures incurred under the Project before the Effective Date, subject to a maximum amount equivalent to 30% of the Grant amount; provided that the expenditures have been incurred and paid for after 30 September 2011 but not earlier than 12 months before the date of this Grant Agreement.



TABLE

ALLOCATION AND WITHDRAWAL OF GRANT PROCEEDS (Flood Damage Emergency Reconstruction Project)				
CATEGORY				GOVERNMENT OF AUSTRALIA FINANCING
Number	Item	Total Amount Allocated for Financing (\$)		Percentage and Basis for Withdrawal from the Grant Account
		Category	Subcategory	
1	Works	5,000,000		
1A	Component 1		2,500,000	100% of total expenditure claimed*
1B	Component 2		1,500,000	100% of total expenditure claimed*
1C	Component 3		1,000,000	100% of total expenditure claimed*
2	Unallocated	250,000		
	Total	5,250,000**		

\* Exclusive of local taxes and duties imposed within the territory of the Recipient.

\*\* This amount shall have deducted from it ADB's administration fee, audit cost, bank charges, and a provision for foreign exchange fluctuations (if any), to the extent that these items are not covered by interest and investment income earned by ADB on this or any additional Grant from the Government of Australia.

## **SCHEDULE 2**

### **Procurement of Goods and Works**

#### General

1. The procurement of Goods and Works shall be subject to and governed by the Procurement Guidelines.
2. All terms used in this Schedule and not otherwise defined in this Grant Agreement have the meanings provided in the Procurement Guidelines.

#### Goods and Works

3. Except as ADB may otherwise agree, Goods and Works shall only be procured on the basis of the methods of procurement set forth below:
  - (a) International Competitive Bidding
  - (b) National Competitive Bidding;
  - (c) Shopping; and
  - (d) Direct Contracting.
4. The methods of procurement are subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. The Recipient may only modify the methods of procurement or threshold values with the prior agreement of ADB, and modifications must be set out in updates to the Procurement Plan.

#### Domestic Preference

5. The Recipient 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 and paragraphs 2.55(b) and 2.56 of the Procurement Guidelines for domestic Works.

#### National Competitive Bidding

6. The Recipient and ADB shall ensure that, prior to the commencement of any procurement activity under national competitive bidding, the Recipient's national competitive bidding procedures are consistent with the Procurement Guidelines. Any modifications or clarifications to such procedures agreed between the Recipient 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 Recipient and ADB.

#### Conditions for Award of Contract

7. The Recipient shall not award any Works contracts for a Subproject which involves environmental impacts until MPWT, MRD or MOWRAM, as the case may be, has:

- (a) obtained all required government approvals, and prepared and submitted to ADB the final IEE and EMP based on the Subproject's detailed design, and obtained ADB's clearance of such IEE and EMP; and
- (b) incorporated the relevant provisions from the Environmental Management Plan into the Works contract.

8. The Recipient shall not award any Works contract involving involuntary resettlement impacts for a Subproject until MPWT, MRD or MOWRAM, as the case may be, has prepared and submitted to ADB the final RP for such Subproject based on the Subproject's detailed design, and obtained ADB's clearance of such RP.

9. The Recipient shall not award any Works contract for a Subproject which involves impacts on indigenous peoples.

#### Industrial or Intellectual Property Rights

10. (a) The Recipient 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 Recipient 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.

#### ADB's Review of Procurement Decisions

11. Contracts procured under international competitive bidding procedures shall be subject to prior review by ADB, unless otherwise agreed between the Recipient and ADB and set forth in the Procurement Plan.

**SCHEDULE 3****Execution of Project**Implementation Arrangements

1. The Recipient and the Project Executing Agency 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 Recipient and ADB. In the event of any discrepancy between the PAM and this Grant Agreement, the provisions of this Grant Agreement shall prevail.