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LOAN NUMBER 3708-MON

LOAN AGREEMENT  
(Ordinary Operations)

(Upscaling Renewable Energy Sector Project)

between

MONGOLIA

and

ASIAN DEVELOPMENT BANK

DATED 2-Nov-2018

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MON 50088

**LOAN AGREEMENT  
(Ordinary Operations)**

LOAN AGREEMENT dated 2-Nov-2018 between MONGOLIA ("Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) the Borrower has applied to ADB for a loan for the purposes of the Project described in Schedule 1 to this Loan Agreement;

(B) the Project will be carried out by the Borrower's Ministry of Energy ("MOE") and implemented by the Western Region Energy System State-Owned Joint Stock Company ("WRES"), the Altai-Uliastai Region State-Owned Joint Stock Company ("AUES") and the National Renewable Energy Center ("NREC", together with WRES and AUES "Project Implementing Agencies"), and for this purpose the Borrower will make available to WRES and AUES the proceeds of the loan provided for herein upon terms and conditions satisfactory to ADB;

(C) the Borrower has also applied to the Strategic Climate Fund for a grant ("SCF Grant") in an amount of fourteen million six hundred thousand Dollars (\$14,600,000) to assist in financing a part of the Project and to be administered by ADB, upon the terms and conditions set forth in a grant agreement between the Borrower and ADB ("SCF Grant Agreement");

(D) the Borrower has also applied to the Japan Fund for Joint Credit Mechanism for a grant ("JFJCM Grant", and together with SCF Grant, "Grants") in an amount of six million Dollars (\$6,000,000) to assist in financing a part of the Project and to be administered by ADB, upon the terms and conditions set forth in a grant agreement between the Borrower and ADB ("JFJCM Grant Agreement", together with the SCF Grant Agreement, "Grant Agreements"); and

(D) 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 the Project Implementing Agencies;

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 Western Region Energy System State-Owned Joint Stock Company, the Altai-Uliastai Region State-Owned Joint Stock Company and the National Renewable Energy Center, 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 "the Western Region Energy System State-Owned Joint Stock Company, the Altai-Uliastai Region State-Owned Joint Stock Company and the National Renewable Energy Center".

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 to carry out activities as described in Schedule 1 to this Loan Agreement;
- (c) "ESARF" means the environmental and social assessment and review framework for the Project, including any update thereto, prepared and submitted by the Borrower and cleared by ADB;
- (d) "EMP" means each environmental management plan for a Subproject, including any update thereto, incorporated in the respective IEE;
- (e) "Environmental Safeguards" means the principles and requirements set forth in Chapter V, Appendix 1, and Appendix 4 (as applicable) of the SPS;
- (f) "HIV/AIDS" means human immunodeficiency virus/acquired immune deficiency syndrome;
- (g) "IEE" means each initial environmental examination for a Subproject, including any update thereto, prepared and submitted by the Borrower and cleared by ADB;
- (h) "Loan Disbursement Handbook" means ADB's Loan Disbursement Handbook (2017, as amended from time to time);

- (i) "MOF" means the Borrower's Ministry of Finance, or any successor thereto;
- (j) "MW" means megawatt;
- (k) "O&M" means operation and maintenance;
- (l) "Output" means the output of the Project, more fully described in Schedule 1 to this Loan Agreement;
- (m) "PAM" means the project administration manual for the Project dated 20 July 2018 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;
- (n) "PMU" means a Project management unit to be established within the Borrower's Ministry of Energy;
- (o) "Procurement Guidelines" means ADB's Procurement Guidelines (2015, as amended from time to time);
- (p) "Procurement Plan" means the procurement plan for the Project dated 20 July 2018 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;
- (q) "Project Executing Agency" for the purposes of, and within the meaning of, the Loan Regulations means the Borrower's Ministry of Energy or any successor thereto acceptable to ADB, which is responsible for the carrying out of the Project;
- (r) "Project facilities" means facilities developed, constructed, updated and/or maintained under the Project;
- (s) "Safeguard Policy Statement" or "SPS" means ADB's Safeguard Policy Statement (2009);
- (t) "Safeguards Monitoring Report" means each report prepared and submitted by the Borrower to ADB that describes progress with implementation of, and compliance with, the EMPs, including any corrective and preventative actions;
- (u) "Subgrant Agreement" means the agreement entered into between the Borrower and each of the Project Implementing Agencies for the purposes of making a portion of the proceeds of the Grants available to the Project Implementing Agencies, as specified in Section 3.01 of the respective Grant Agreements;
- (v) "Subproject" means a subproject to be selected in accordance with paragraph 19 of Schedule 5 to this Loan Agreement and carried out in

accordance with the relevant provisions of this Loan Agreement and the PAM;

- (w) "Subsidiary Loan Agreement" means the agreement entered into between the Borrower and each of WRES and AUES for the purposes of making a portion of the proceeds of this Loan available to them, as specified in Section 3.01 of this Loan Agreement; and
- (x) "Works" means construction or civil works to be financed out of the proceeds of the Loan, including provision of equipment on the construction area and 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 forty million Dollars (\$40,000,000), 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 20 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 0.10% 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 March and 15 September 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 each of the Project Implementing Agencies under the respective Subsidiary Loan Agreement upon terms and conditions satisfactory to ADB. Except as ADB may otherwise agree, the terms for the relending shall include (i) commitment charge and interest at the rates identical to those applied to the Loan; (ii) a repayment period, including a grace period identical to those applied to the Loan; and (iii) the Project Implementing Agencies bearing the foreign exchange and interest rate risks of the proceeds of the Loan made available thereto.

(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 29 February 2024 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, through the Project Executing Agency, 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 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 Implementing Agencies to perform their obligations under the Project Agreement, and shall not take or permit any action which would interfere with the performance of such obligations.

Section 4.05. (a) The Borrower shall exercise its rights under the Subsidiary Loan Agreements and Subgrant Agreements 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 and Subgrant Agreements shall be assigned, amended, abrogated or waived without the prior concurrence of ADB.

## ARTICLE V

### Suspension; Acceleration of Maturity

Section 5.01. The following are specified as additional events for suspension of the right of the Borrower to make withdrawals from the Loan Account for the purposes of Section 9.01(m) of the Loan Regulations: any of the SCF Grant Agreement and JFJCM Grant Agreement shall have become liable for suspension or cancellation.

Section 5.02. The following is specified as an additional event for acceleration of maturity for the purposes of Section 9.07(a)(iv) of the Loan Regulations: an event specified in Section 5.01 of this Loan Agreement shall have occurred.

## ARTICLE VI

### Effectiveness

Section 6.01. The following is specified as an additional condition to the effectiveness of this Loan Agreement for the purposes of Section 10.01(f) of the Loan Regulations: both SCF Grant Agreement and JFJCM Grant Agreement shall have been duly executed and delivered, and all conditions precedent to its effectiveness (other than a condition requiring the effectiveness of this Loan Agreement) shall have been fulfilled.

Section 6.02. 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 VII**

**Miscellaneous**

Section 7.01. The Minister of MOF is designated as representative of the Borrower for the purposes of Section 12.02 of the Loan Regulations.

Section 7.02. The following addresses are specified for the purposes of Section 12.01 of the Loan Regulations:

For the Borrower

Ministry of Finance  
Government Building 2  
S.Danzan Street 5/1  
Ulaanbaatar-15160  
Mongolia

Facsimile Number:

(976-11) 320247

For ADB

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

Facsimile Numbers:


(632) 636-2444  
(632) 636-2407.

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.

MONGOLIA

By   
KHURELBAATAR GHIMED  
Minister  
Ministry of Finance

ASIAN DEVELOPMENT BANK

By   
YOLANDA FERNANDEZ LOMMEN  
Country Director  
Mongolia Resident Mission

## SCHEDULE 1

### Description of the Project

1. The objective of the Project is to increase renewable energy supply in the territory of the Borrower, and strengthen and enhance the Borrower's institutional and organizational capacity.
2. The Project shall comprise the following outputs.
  - Output 1: Distributed renewable energy system development.** Carrying out Subprojects comprising an estimated total of 40.5 megawatt of solar photovoltaic and wind power in the Western and Altai-Uliastai regions, and any other Subprojects selected in accordance with this Loan Agreement and the PAM;
  - Output 2: Shallow ground heat pump demonstration.** Carrying out a Subproject comprising installation of 500 kilowatt thermal of shallow ground heat pump capacity in public buildings in five townships of the targeted region; and
  - Output 3: Institutional strengthening and capacity enhancement.** Carrying out a Subproject (a) enhancing technical capacity of local utilities and the national dispatching center in renewable energy investment planning, renewable electricity dispatch, and grid control and protection; (b) supporting preparation of renewable energy investment plan 2023-2030 in targeted regions; and (c) supporting PMU for subproject implementation.
3. The Project is expected to be completed by 31 August 2023.

**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>Date Payment Due</u>	<u>Installment Share</u> (Expressed as a %)
15 March 2024	2.500000
15 September 2024	2.500000
15 March 2025	2.500000
15 September 2025	2.500000
15 March 2026	2.500000
15 September 2026	2.500000
15 March 2027	2.500000
15 September 2027	2.500000
15 March 2028	2.500000
15 September 2028	2.500000
15 March 2029	2.500000
15 September 2029	2.500000
15 March 2030	2.500000
15 September 2030	2.500000
15 March 2031	2.500000
15 September 2031	2.500000
15 March 2032	2.500000
15 September 2032	2.500000
15 March 2033	2.500000
15 September 2033	2.500000
15 March 2034	2.500000
15 September 2034	2.500000
15 March 2035	2.500000
15 September 2035	2.500000
15 March 2036	2.500000
15 September 2036	2.500000
15 March 2037	2.500000
15 September 2037	2.500000
15 March 2038	2.500000
15 September 2038	2.500000
15 March 2039	2.500000

15 September 2039	2.500000
15 March 2040	2.500000
15 September 2040	2.500000
15 March 2041	2.500000
15 September 2041	2.500000
15 March 2042	2.500000
15 September 2042	2.500000
15 March 2043	2.500000
15 September 2043	2.500000
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; 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 2 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, by notice to the Borrower, (i) reallocate to such Category, to the extent required to meet the estimated shortfall, amounts of the Loan which have been allocated to another Category but, in the opinion of ADB, are not needed to meet other expenditures, and (ii) if such reallocation cannot fully meet the estimated shortfall, reduce the withdrawal percentage applicable to such expenditures in order that further withdrawals under such Category may continue until all expenditures thereunder shall have been made; and
- (b) if the amount of the Loan allocated to any Category appears to exceed all agreed expenditures in that Category, ADB may, by notice to the Borrower, reallocate such excess amount to any other Category.

Disbursement Procedures

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

Condition for Withdrawals from Loan Account

6. Notwithstanding any other provision of this Loan Agreement, no withdrawals shall be made from the Loan Account until all Subsidiary Loan Agreements and Subgrant Agreements shall have been duly executed and delivered on behalf of the Borrower and the respective Project Implementing Agencies, and shall have become fully effective and binding upon their parties in accordance with their terms, subject only to the effectiveness of this Loan Agreement.



TABLE

ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS				
Number		Total Amount Allocated for ADB Financing US\$		Basis for Withdrawal from the Loan Account
		Category	Subcategory	
1	Works	28,680,000		
1A	Works-Umunogovi Wind** ***		5,940,000	100 % of total expenditure claimed*
1B	Works-Altai Solar PV** ****		3,880,000	100 % of total expenditure claimed*
1C	Works-Uliastai Solar PV** ****		2,950,000	100 % of total expenditure claimed*
1D	Works-others**		15,910,000	100 % of total expenditure claimed*
2	Consulting Service** ****	550,000		100 % of total expenditure claimed
3	Project Administration**	1,280,000		100 % of total expenditure claimed
4	Interest and Commitment Charges	5,120,000		100% of amounts due
5	Unallocated	4,370,000		
	<b>TOTAL</b>	<b>40,000,000</b>		

\* Exclusive tax and duties imposed within the territory of Borrower.

\*\* Subject to the condition for withdrawal described in paragraph 6 of Schedule 3 in the Loan Agreement.

\*\*\* Before starting withdrawal from these Categories, the amount under the corresponding Categories under SCF Grant Agreement shall be fully utilized, unless the remaining amount under such Category is insufficient to pay a claim under a particular withdrawal application.

\*\*\*\* Before starting withdrawal from this Category, the amount under the corresponding Categories under JFJCM Grant Agreement shall be fully utilized, unless the remaining amount under such Category is insufficient to pay a claim under a particular withdrawal application.

**SCHEDULE 4****Procurement of 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. Except as ADB may otherwise agree, 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.

Eligible Source of Procurement of Works and Consulting Services

4. Works and Consulting Services may also be procured under the Project from non-member countries of ADB, except for any contract packages jointly financed with JFJCM Grant, for which Works and Consulting Services may be procured from member countries of ADB.

Works

5. 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.

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 Works contracts until:

- (a) the Borrower's Ministry of Energy has granted the final approval of the respective IEE; and
- (b) the Borrower has caused the relevant provisions to be incorporated from the respective EMP into such Works contract.

#### Consulting Services

8. Except as set forth in the paragraph below, the Borrower shall apply Quality- and Cost-Based Selection for Consulting Services.

9. The Borrower shall recruit the individual consultants for PMU office support in accordance with procedures acceptable to ADB for recruiting individual consultants.

#### Industrial or Intellectual Property Rights

10. (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.

11. 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

12. 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; Environmental, Social, Financial and Other Matters**Implementation Arrangement

1. The Borrower 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 the Loan Agreement, the provisions of this Loan Agreement shall prevail.

Environmental

2. The Borrower, through the Project Executing Agency, shall ensure, and cause the Project Implementing Agencies to ensure, that the preparation, design, construction, implementation, operation and decommissioning of each Subproject, and that 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 ESARF; and (d) all measures and requirements set forth in the IEE, the EMP, and any corrective or preventative actions (i) set forth in a Safeguards Monitoring Report, or (ii) as subsequently agreed between ADB and the Borrower.

Land Acquisition and Indigenous Peoples

3. The Borrower, through the Project Executing Agency, shall ensure that the Project or any Subproject thereto does not have any involuntary resettlement or indigenous peoples impacts, within the meaning of the Safeguard Policy Statement. In the event that the Project or any Subproject does have any such impact, the Borrower shall take all steps required to ensure that the Project complies with the applicable laws and regulations of the Borrower and with the Safeguard Policy Statement.

Human and Financial Resources to Implement Safeguards Requirements

4. The Borrower, through the Project Executing Agency, shall make available, and cause the Project Implementing Agencies to make available, necessary budgetary and human resources to fully implement the EMPs.

Safeguards-Related Provisions in Bidding Documents and Works Contracts

5. The Borrower, through the Project Executing Agency, shall ensure, and cause the Project Implementing Agencies to ensure, that all bidding documents and Works contracts contain provisions that require contractors to:

- (a) comply with the measures relevant to the contractor set forth in the IEEs and the EMPs, and any corrective or preventative actions (i) set forth in a Safeguards Monitoring Report, or (ii) as subsequently agreed between ADB and the Borrower;
- (b) make available a budget for all such environmental and social measures; and

- (c) provide the Borrower or the Project Implementing Agencies, as the case may be, with a written notice of any unanticipated environmental risk or impact that arise during construction, implementation or operation of the Project that were not considered in the IEEs and the EMPs.

#### Safeguards Monitoring and Reporting

6. The Borrower, through the Project Executing Agency, shall do, or cause the Project Implementing Agencies to do, the following:

- (a) submit Safeguards Monitoring Reports to ADB semi-annually during construction and the implementation of the Project and the EMPs, and thereafter annually during operation, until the issuance of ADB's Project completion report unless a longer period is agreed in the EMPs, and disclose relevant information from such reports to respective affected people under Environmental Safeguards 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 IEEs and the EMPs, promptly inform ADB of the occurrence of such risk or impact, with detailed description of the event and proposed corrective action plan; and
- (c) report any actual or potential breach of compliance with the measures and requirements set forth in the EMPs promptly after becoming aware of the breach.

#### Safeguards - Prohibited List of Investments

7. The Borrower, through the Project Executing Agency, shall ensure, and cause the Project Implementing Agencies 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 Safeguards Policy Statement.

#### Labor Standards, Health and Safety

8. The Borrower, through the Project Executing Agency, shall ensure that the core labor standards and the applicable laws and regulations of the Borrower are complied with during Project implementation. The Borrower, through the Project Executing Agency, shall cause the Project Implementing Agencies to 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 applicable labor law and regulations of the Borrower 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; (e) allow freedom of association and effectively recognize the right to collective bargaining; and (f) 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.

9. The Borrower, through the Project Executing Agency, shall strictly monitor compliance with the requirements set forth in paragraph 8 above and provide ADB with regular reports in accordance with the PAM.

#### Gender

10. The Borrower, through the Project Executing Agency, shall ensure that the principles of gender equity aimed at increasing Project benefits and impacts on women in the Project area consistent with ADB's Policy on Gender and Development (1998) are followed during implementation of the Project, including (a) equal pay to men and women for work of equal value; (b) enabling working conditions for women workers; and (c) taking necessary actions to encourage women living in the Project area to participate in the design and implementation of Project activities.

#### Counterpart Funding

11. The Borrower, through the Project Executing Agency, shall provide, and cause the Project Implementing Agencies to provide, counterpart funding in a timely manner, including any additional counterpart funding required for any shortfall of funds or cost overruns. The Borrower, through the Project Executing Agency, shall ensure, and cause the Project Implementing Agencies to ensure, that O&M of all Project facilities is fully funded without any delay.

12. In addition to the foregoing, the Borrower, through the Project Executing Agency, shall ensure that the Project Implementing Agencies have sufficient funds to satisfy its liabilities arising from any Works and/or Consulting Services contract.

#### Use of Project Administration Costs

13. The Borrower, through the Project Executing Agency, shall ensure that staff/consultants using the Project administration costs shall be engaged in accordance with the Borrower's relevant regulations and the Consulting Guidelines, including, but not limited to, prior review of ADB.

#### Financial Management and Tariffs

14. The Borrower, through the Project Executing Agency, shall cause the Project Implementing Agencies to carry out the following measures to maintain sound financial management: (a) the establishment of separate Project accounts, (b) the maintenance of minimum balances to ensure smooth cash flow, and (c) the timely settlement of Project construction liabilities and future debt servicing. In particular, the Borrower shall cause the Project Implementing Agencies to achieve and maintain the financial indicators set forth in the Schedule to the Project Agreement.

15. The Borrower, through the Project Executing Agency, shall regularly review the financial position of the Project Implementing Agencies to ensure overall financial health. The Borrower, through the Project Executing Agency, shall cause the Project Implementing Agencies to: (a) annually prepare their projected financial performance based on the prevailing electricity tariff; (b) estimate the additional resources required for them to fully achieve the financial indicators set forth in the Project Agreement; (c) submit tariff adjustment

proposal to the Energy Regulatory Commission for approval; and (d) submit a request to the Borrower for subsidy in case the approved tariff adjustment should prove to be insufficient to achieve and maintain the financial indicators set forth in the Project Agreement.

16. If, in the opinion of ADB, it appears that any of the Project Implementing Agencies cannot meet the requirements as set forth in the Project Agreement or cannot meet any debt service obligations, the Borrower, through the Project Executing Agency, shall take appropriate measures for such Project Implementing Agencies to strengthen their financial management systems, including provision of necessary financing to the concerned Project Implementing Agencies, equity injections, subsidy and tariff increases. Notwithstanding the foregoing, the Borrower, through the Project Executing Agency, shall regularly review electricity tariff adjustment to achieve full cost recovery in accordance with the first stage target under the Borrower's State Policy on Energy 2015-2023.

#### Governance and Anticorruption

17. The Borrower (a) acknowledges ADB's right to investigate, directly or through its agents, any alleged corrupt, fraudulent, collusive or coercive practices relating to the Project; and (b) agrees to cooperate, and shall cause the Project Implementing Agencies and all other Borrower offices, organizations and entities involving in implementing the Project to cooperate, fully with any such investigation and to extend all necessary assistance, including providing access to all relevant books and records, as may be necessary for the satisfactory completion of any such investigation. In particular, the Borrower, through the Project Executing Agency, shall ensure, or cause to be ensured, that (a) periodic inspections of the Project contractors' activities related to fund withdrawals and settlements are carried out; (b) relevant provisions of ADB's Anticorruption Policy (1998, as amended to date) are included in all bidding documents for the Project; and (c) contracts, financed under the Project, include provisions specifying the right of ADB to audit and examine the records and accounts of the Borrower, the Project Implementing Agencies, contractors, suppliers, consultants, and other service providers as they relate to the Project.

#### Change in Ownership

18. In the event of (a) any change in ownership of the Project facilities, or (b) any sale, transfer or assignment of shares or interest or other change of control in any of the Project Implementing Agencies is anticipated, the Borrower, through the Project Executing Agency, shall consult, and cause such Project Implementing Agencies to consult, with ADB at least 6 months prior to the implementation of such change. The Borrower, through the Project Executing Agency, shall ensure, and cause the concerned Project Implementing Agencies to ensure, that such change be carried out in a lawful and transparent matter. The Borrower shall further cause such Project Implementing Agencies to ensure that their new controlling management complies with (a) all Project related agreements executed between ADB and the Borrower, or the Project Implementing Agencies; and (b) the policies of ADB relevant to the Project.

#### Subproject Selection Criteria and Procedures

19. The Borrower, through the Project Executing Agency, shall ensure that a Subproject meets the following criteria and is selected in accordance with the detailed arrangements set forth in the PAM;

- (a) the Subproject demonstrates technical viability with resource assessment, electricity yield forecasting, electricity load demand forecasting, geological and topological assessment, capital and operation and maintenance costs estimates, layout design, and grid integration simulation. For shallow ground heat pump subprojects, technical viability is demonstrated with the geo-technical surveys. In addition, the installation shall be made in the well-insulated public buildings in accordance with the applicable building code under the Borrower's Ministry of Construction and Urban Development;
- (b) the Subproject must be economically viable and shall have demonstrated an economic internal rate of return (EIRR) equal to or greater than 9%, or with EIRR of not less than 6% for subprojects with significant unquantifiable benefits. An economic analysis is conducted in accordance with ADB's Guidelines for the Economic Analysis of Projects (2017, as amended from time to time). Each subproject shall be assessed for its contribution to: (i) savings in electricity imports, (ii) savings in transmission losses, and (iii) savings in reduced carbon dioxide emissions;
- (c) the Subproject has the financial rate of return which is greater than weighted average cost of capital and must be robust under various adverse conditions, and the Subproject investment cost, operation and maintenance cost, and cash inflows are clearly presented and reasonable. The electricity tariff to be applied shall be set at the latest end-users' tariff; and
- (d) the Subproject is categorized B or C for environment impact under Environmental Safeguards and C for both involuntary resettlement and indigenous peoples impacts under the Safeguard Policy Statement.