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LOAN NUMBER 3789-CAM (COL)

LOAN AGREEMENT  
(Ordinary Operations [Concessional])  
(National Solar Park Project)

between

KINGDOM OF CAMBODIA

and

ASIAN DEVELOPMENT BANK

DATED 28 JUN 2019

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CAM 51182

**LOAN AGREEMENT**  
**(Ordinary Operations [Concessional])**

LOAN AGREEMENT dated 28 JUN 2019 between KINGDOM OF CAMBODIA ("Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

**WHEREAS**

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

(B) by a loan agreement of even date herewith between the Borrower and ADB ("ADB SCF Loan Agreement"), ADB has agreed to provide from the ADB Strategic Climate Fund ("ADB SCF") a loan in the amount of eleven million Dollars (\$11,000,000) ("ADB SCF Loan"), to be administered by ADB, for the purposes of the Project;

(C) by a grant agreement of even date herewith between the Borrower and ADB ("ADB SCF Grant Agreement"), ADB has agreed to provide from the ADB SCF a grant in an amount of three million Dollars (\$3,000,000) ("ADB SCF Grant"), to be administered by ADB, for the purposes of the Project;

(D) the Project will be carried out by Electricite du Cambodge ("EDC") pursuant the Project Agreement of even date herewith between the EDC, as the Project Executing Agency and ADB ("Project Agreement"), and for this purpose the Borrower will make available to EDC the proceeds of the loan provided for herein upon terms and conditions satisfactory to ADB; and

(E) ADB has agreed to make a concessional 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 EDC;

NOW THEREFORE the parties agree as follows:

**ARTICLE I**

**Loan Regulations; Definitions**

Section 1.01. All the provisions of ADB's Ordinary Operations (Concessional) 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.

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) "Associated Facility" means a solar photovoltaic power plant to be constructed within the Project site, but not included as part of the Project, and financed separately; however, whose viability and existence depend exclusively on the Project;
- (b) "Consulting Services" means consulting services as described in the Procurement Regulations and set out in the Procurement Plan, and to be financed out of the proceeds of the Loan;
- (c) "EDC" means the Electricite du Cambodge, a wholly state-owned limited liability enterprise incorporated by a Royal Decree of the Kingdom of Cambodia on 9 March 1996, including any successor thereto;
- (d) "EMP" means the environmental management plan for the Project, including any update thereto, incorporated in the 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) "Goods" means equipment and materials as set out in the Procurement Plan and to be financed out of the proceeds of the Loan, including any related Nonconsulting Services such as transportation, insurance, installation, commissioning, training, and initial maintenance;
- (g) "IEE" means the initial environmental examination for the Project, including any update thereto, prepared and submitted by the Project Executing Agency and cleared by ADB;
- (h) "Involuntary Resettlement Safeguards" means the principles and requirements set forth in Chapter V, Appendix 2, and Appendix 4 (as applicable) of the SPS;
- (i) "IPP" means an independent power producer responsible for the Private Sector Project, including the right to sell to EDC, the electrical output from and benefits associated with the Private Sector Project;
- (j) "LARF" means the land acquisition and resettlement framework for the Project, including any update thereto, prepared and submitted by the Project Executing Agency and cleared by ADB;
- (k) "LARP" means the land acquisition and resettlement plan for the Project, including any update thereto, prepared and submitted by the Project Executing Agency and cleared by ADB;
- (l) "Loan Disbursement Handbook" means ADB's Loan Disbursement Handbook (2017, as amended from time to time);
- (m) "Nonconsulting Services" means nonconsulting services described in the Procurement Regulations and set out in the Procurement Plan, and to be financed out of the proceeds of the Loan;

- (n) "PAM" means the project administration manual for the Project dated 4 December 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;
- (o) "PPA" means each power purchase agreement to be entered into between the Project Executing Agency and an IPP, as may be amended;
- (p) "Private Sector Project" means a project to build-own-operate an Associated Facility during the term of the PPA;
- (q) "Private Sector Project EMP" means a construction environmental management plan for a Private Sector Project, as updated;
- (r) "Private Sector Project IEE" means an initial environmental examination for a Private Sector Project, as updated;
- (s) "Procurement Plan" means the procurement plan for the Project dated 4 December 2018 and agreed between the Borrower and ADB, as updated from time to time in accordance with the Procurement Policy, the Procurement Regulations, and other arrangements agreed with ADB (which include the standard operations procedures of the Borrower (22 May 2012, as amended from time to time) ("SOP") providing procedures applicable to externally-financed projects and programs, and the procurement manual under the SOP (22 May 2012, as amended from time to time) prepared by the Borrower setting forth the procurement-related policies and procedures for externally-financed projects and programs);
- (t) "Procurement Policy" means ADB's Procurement Policy - Goods, Works, Nonconsulting and Consulting Services (2017, as amended from time to time);
- (u) "Procurement Regulations" means ADB's Procurement Regulations for ADB Borrowers – Goods, Works, Nonconsulting and Consulting Services (2017, as amended from time to time);
- (v) "Project Executing Agency" means the EDC or any successor thereto acceptable to ADB, which is responsible for the overall carrying out of the Project;
- (w) "Project facilities" means facilities to be constructed, procured, rehabilitated and/or maintained under the Project;
- (x) "Safeguard Policy Statement" or "SPS" means ADB's Safeguard Policy Statement (2009);
- (y) "Safeguards Monitoring Report" means each report prepared and submitted by the Project Executing Agency to ADB that describes

progress with implementation of and compliance with the EMP and the LARP, including any corrective and preventative actions;

- (z) "Services" means Consulting Services and Nonconsulting Services;
- (aa) "Subsidiary Loan Agreement" means the agreement or agreements entered into between the Borrower and the Project Executing Agency for the purpose of relending the proceeds of (i) this Loan as specified in Section 3.01 of this Loan Agreement and (ii) the SCF Loan as specified in Section 3.01 of the SCF Loan Agreement, as applicable; and
- (bb) "Works" means construction or civil works as set out in the Procurement Plan and to be financed out of the proceeds of the Loan, ADB SCF Loan and ADB SCF Grant, including any related Nonconsulting Services and project related services that are provided as part of a single responsibility or turnkey contract.

## ARTICLE II

### The Loan

Section 2.01. (a) ADB agrees to lend to the Borrower from ADB's ordinary capital resources an amount of seven million six hundred forty thousand Dollars (\$7,640,000).

(b) The Loan has a principal repayment period of 24 years, and a grace period as defined in subsection (c) hereinafter.

(c) The term "grace period" as used in subsection (a) 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 an interest charge at the rate of 1% per annum during the grace period, and 1.5% per annum thereafter, on the amount of the Loan withdrawn from the Loan Account and outstanding from time to time.

Section 2.03. The interest charge and any other charge on the Loan shall be payable semiannually on 15 June and 15 December in each year.

Section 2.04. The Borrower shall repay the principal amount of the Loan withdrawn from the Loan Account in accordance with the amortization schedule set forth in Schedule 2 to this Loan Agreement.

Section 2.05. The currency of repayment of the principal amount of the Loan and the currency of payment of the interest charge for the purposes of Sections 4.03(b) and 4.04 of the Loan Regulations shall be the Dollar.

### ARTICLE III

#### Use of Proceeds of the Loan

Section 3.01. (a) The Borrower shall relend the proceeds of the Loan to Project Executing Agency under a Subsidiary Loan Agreement upon terms and conditions satisfactory to ADB.

(b) The Borrower shall cause the proceeds of the Loan to be applied exclusively to the financing of expenditures on the Project in accordance with the provisions of this Loan Agreement, the ADB SCF Loan Agreement, the ADB SCF Grant 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. (a) Withdrawals from the Loan Account in respect of Goods, Works and Services shall be made only on account of expenditures relating to:

- (i) Goods which are produced in and supplied from and Works and Services which are supplied from such member countries of ADB as shall have been specified by ADB from time to time as eligible sources for procurement; and
- (ii) Goods, Works and Services which meet such other eligibility requirements as shall have been specified by ADB from time to time.

(b) For purposes of subparagraph (a)(ii), Goods, Works and Services may also be procured under the Project from non-member countries of ADB.

Section 3.05. The Loan Closing Date for the purposes of Section 8.02 of the Loan Regulations shall be 30 June 2022 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 the Project and operation of the Project facilities, the Borrower shall perform, or cause to be performed, all obligations set forth in Schedule 4 to this Loan Agreement, the ADB SCF Loan Agreement, the ADB SCF Grant Agreement and the Project Agreement.

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

Section 4.03. The Borrower shall take all actions which shall be necessary on its part to enable the Project Executing Agency to perform its obligations under the Project Agreement, and shall not take or permit any action which would interfere with the performance of such obligations.

Section 4.04. (a) The Borrower shall exercise its rights under the Subsidiary Loan Agreement in such a manner as to protect the interests of the Borrower and ADB and to accomplish the purposes of the Loan.

(b) No rights or obligations under the Subsidiary Loan Agreement shall be assigned, amended, 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 8.01(m) of the Loan Regulations:

- (a) the Borrower shall have failed to perform any of its obligation under the ADB SCF Loan Agreement or ADB SCF Grant Agreement;
- (c) the ADB SCF Loan shall have become liable for suspension or cancellation or shall have become repayable prior to its agreed maturity date; and
- (d) the ADB SCF Grant 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 8.07(d) of the Loan Regulations: any of the events specified in Section 5.01 of this Loan Agreement shall have occurred.

## **ARTICLE VI**

### **Effectiveness**

Section 6.01. The following are specified as additional conditions to the effectiveness of this Loan Agreement for the purposes of Section 9.01(f) of the Loan Regulations:

- (a) the ADB SCF 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 Loan Agreement) shall have been fulfilled; and
- (b) the ADB SCF 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. The following are specified as additional matters, for the purposes of Section 9.02(d) of the Loan Regulations, to be included in the opinion or opinions to be furnished to ADB:

- (a) the ADB SCF Loan Agreement has been duly authorized, and executed and delivered on behalf of the Borrower, and is legally binding upon the Borrower in accordance with its terms; and
- (b) the ADB SCF Grant Agreement has been duly authorized, executed and delivered on behalf of the Borrower, and is legally binding upon the Borrower in accordance with its terms.

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

## **ARTICLE VII**

### **Miscellaneous**

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

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



For the Borrower

Ministry of 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 Numbers:

(632) 636-2444  
(632) 636-2336.

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.


KINGDOM OF CAMBODIA

By

  
H.E. DR. AUN PORNMONIROTH  
Deputy Prime Minister  
Minister of Economy and Finance

ASIAN DEVELOPMENT BANK

By

  
GENEVIEVE MARY O'FARRELL  
Authorized Representative

## SCHEDULE 1

### Description of the Project

1. The objective of the Project is to facilitate the increase in private sector investments in solar photovoltaic (PV).
2. The Project shall comprise the following:
  - (a) Output 1: **Construction of solar park and transmission interconnection** which comprises the construction of approximately 100 megawatt (MW) capacity solar park in Kampong Chhnang Province and a transmission interconnection system to grid substation 6 (GS6) near the Phnom Penh demand center, to supply power to the national grid; and
  - (b) Output 2: **Strengthening capacity of the Project Executing Agency in solar power plant construction and operation, project design and supervision, grid integration and competitive procurement**, which comprises strengthening the Project Executing Agency's capacity to design, construct and operate solar PV plants and solar parks, procure competitively-bid independent solar PV plants, and adopt energy storage systems and other measures to integrate intermittent renewable energy into the national grid.
3. The Project is expected to be completed by 31 December 2021.

## SCHEDULE 2

### Amortization Schedule

<u>Date Payment Due</u>	<u>Payment of Principal</u> <u>(Expressed in USD*)</u>
15 June 2027	159,167
15 December 2027	159,167
15 June 2028	159,167
15 December 2028	159,167
15 June 2029	159,167
15 December 2029	159,167
15 June 2030	159,167
15 December 2030	159,167
15 June 2031	159,167
15 December 2031	159,167
15 June 2032	159,167
15 December 2032	159,167
15 June 2033	159,167
15 December 2033	159,167
15 June 2034	159,167
15 December 2034	159,167
15 June 2035	159,167
15 December 2035	159,167
15 June 2036	159,167
15 December 2036	159,167
15 June 2037	159,167
15 December 2037	159,167
15 June 2038	159,167
15 December 2038	159,167
15 June 2039	159,167
15 December 2039	159,167
15 June 2040	159,167
15 December 2040	159,167
15 June 2041	159,167
15 December 2041	159,167
15 June 2042	159,167
15 December 2042	159,167
15 June 2043	159,167
15 December 2043	159,167
15 June 2044	159,167
15 December 2044	159,167
15 June 2045	159,167
15 December 2045	159,167
15 June 2046	159,167
15 December 2046	159,167
15 June 2047	159,167
15 December 2047	159,167
15 June 2048	159,167

Schedule 2

15 December 2048	159,167
15 June 2049	159,167
15 December 2049	159,167
15 June 2050	159,167
15 December 2050	159,151
TOTAL	7,640,000

\* The arrangements for payment are subject to the provisions of Sections 3.04 and 4.03 of the Loan Regulations.

## **SCHEDULE 3**

### **Allocation and Withdrawal of Loan Proceeds**

#### General

1. The table attached to this Schedule sets forth the Categories of 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 Charge

3. The amount allocated to Category "Interest Charges" is for financing the interest charge 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 charge.

#### 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 for Category 1 (Works (turnkey contract)) until (i) all land acquisition activities for the solar park required for the construction of the initial 60 MW capacity of solar power plant is completed, and (ii) the conditions for acquiring such land through negotiated settlement as set out in paragraph 9 of Schedule 4 to this Loan Agreement are satisfied.

TABLE

ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS			
Number	Item	Total Amount Allocated for ADB Financing USD (\$)	Percentage and Basis for Withdrawal from the Loan Account
		Category	
1	Works (turnkey contract)*	3,150,000	18.58% of total expenditure claimed**
2	Consulting Services	1,500,000	100% of total expenditure claimed**
3	Interest Charges	160,000	100% of amount due
4	Unallocated	2,830,000	
	<b>TOTAL</b>	<b>7,640,000</b>	

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

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



## SCHEDULE 4

### Execution of Project; Financial Matters

#### Implementation Arrangements

1. The Borrower 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 Borrower and ADB. In the event of any discrepancy between the PAM and this Loan Agreement, the provisions of this Loan Agreement shall prevail.
2. The Borrower shall ensure that capacity building is provided to the Project Executing Agency's staff on procurement and contract management of IPP bids.

#### Procurement

3. The Borrower and the Project Executing Agency shall ensure that:
  - (a) the procurement of Goods, Works and Services is carried out in accordance with the Procurement Policy and the Procurement Regulations;
  - (b) Goods, Works and Services shall be procured based on the detailed arrangements set forth in the Procurement Plan, including the procurement and selection methods, the type of bidding documents, and ADB's review requirements. The Borrower may modify the detailed arrangements set forth in the Procurement Plan only with prior agreement of ADB, and such modifications must be set out in the updates to the Procurement Plan; and
  - (c) (i) all Goods and Works procured and Services obtained (including 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; and (ii) all contracts for the procurement of Goods, Works and Services contain appropriate representations, warranties and, if appropriate, indemnities from the contractor, supplier, consultant or service provider with respect to the matters referred to in this subparagraph.
4. The Borrower shall not commence any Works which involves environmental impacts until:
  - (a) The appropriate authority of the Borrower has granted the final approval of the IEE; and
  - (b) the Project Executing Agency has incorporated the relevant provisions from the EMP into the Works contract.

5. The Borrower shall not commence any Works which involves involuntary resettlement impacts until the Project Executing Agency has provided compensation and other entitlements as per the updated LARP submitted by the Project Executing Agency and cleared by ADB.

#### Environment

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

#### Land Acquisition and Involuntary Resettlement

7. The Borrower, through the Project Executing Agency, shall ensure that all land and all rights-of-way required for the Project are made available to the Works contractor in accordance with the schedule agreed under the related Works contract and all land acquisition and resettlement activities are implemented in compliance with (a) all applicable laws and regulations of the Borrower relating to land acquisition and involuntary resettlement; (b) the Involuntary Resettlement Safeguards; and (c) all measures and requirements set forth in the LARP and conditions specified in Paragraph 9 below (Land Acquired through Negotiated Settlement), and any corrective or preventative actions set forth in the Safeguards Monitoring Report.

8. Without limiting the application of the Involuntary Resettlement Safeguards or the LARP, the Borrower, through the Project Executing Agency, shall ensure that no physical or economic displacement takes place in connection with the Project until:

- (a) compensation and other entitlements have been provided to affected people in accordance with the LARP, as shall be confirmed in a LARP compliance report to be provided by the Project implementation consultant engaged under the Project; and
- (b) a comprehensive income and livelihood restoration program has been established in accordance with the LARP.

#### Land Acquired through Negotiated Settlement

9. The Borrower, through the Project Executing Agency, shall comply with the requirement for meaningful consultation with affected persons, mechanisms for calculating the replacement costs of land and any other assets affected, engage an independent external party to validate and document the negotiation and settlement process, and submit the third-party validation report on such negotiated land acquisition. In the event that negotiation fails and expropriation applies, the Borrower, through the Project Executing Agency, shall comply with the principles and requirements as stipulated in the LARF.

Indigenous Peoples

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

Human and Financial Resources to Implement Safeguards Requirements

11. The Borrower, through the Project Executing Agency, shall make available necessary budgetary and human resources to fully implement the EMP, LARF and the LARP.

Safeguards – Related Provisions in Bidding Documents and Works Contracts

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

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

Safeguards Monitoring and Reporting

13. The Borrower, through the Project Executing Agency, shall do the following:

- (a) submit Safeguards Monitoring Reports to ADB and disclose relevant information from such reports to affected persons 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 IEE, the EMP, LARF and the LARP, promptly inform ADB of the occurrence of such risks or impacts, 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 EMP and the LARP promptly after becoming aware of the breach.

#### Prohibited List of Investments

14. The Borrower shall 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.

#### Grievance Redress Mechanism

15. Within 30 days of Effectiveness, the Borrower, through the Project Executing Agency, shall ensure (a) efficient grievance redress mechanisms are in place and functional to assist the affected persons resolve queries and complaints, if any, in a timely manner; (b) all complaints are registered, investigated and resolved in a manner consistent with the provisions of the grievance redress mechanism detailed in the IEE/EMP, LARF and LARP; (c) the complainants or aggrieved persons are kept informed about the status of their grievances and remedies available to them; and (d) adequate staff and resources are available for supervising and monitoring the mechanism.

#### Labor Standards, Health and Safety

16. The Borrower, through the Project Executing Agency, shall ensure that the core labor standards and the Borrower's applicable laws and regulations are complied with during Project implementation. The Borrower, through the Project Executing Agency, shall include specific provisions in the bidding documents and contracts financed by ADB under the Project requiring that the contractors, among other things: (a) comply with the Borrower's applicable labor law and regulations and incorporate applicable workplace occupational safety norms; (b) do not use child labor; (c) do not discriminate workers in respect of employment and occupation; (d) do not use forced labor; (e) do not restrict the workers from developing a legally permissible means of expressing their grievances and protecting their rights regarding working conditions and terms of employment; and (f) 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.

17. The Borrower shall strictly monitor compliance with the requirements set forth in paragraph 16 above and provide ADB with regular reports.

#### Gender and Development

18. The Borrower, through the Project Executing Agency, shall ensure that the principles of gender equality aimed at increasing Project benefits and impact on women in the Project area are followed during implementation of the Project. These include (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 Support

19. The Borrower shall ensure that counterpart funds necessary for the Project is provided on a timely basis, including funds to finance taxes and duties. The Borrower shall ensure that additional counterpart funds are available to cover any funding shortfalls that may occur.

20. The Borrower shall ensure that the Project Executing Agency provides counterpart funds necessary for the Project, including funds to finance land acquisition costs.

21. In addition to the foregoing, the Borrower shall ensure that the Project Executing Agency has sufficient funds to satisfy its liabilities arising from any Goods, Works and/or Services contract.

Financial Matters

22. For the purpose of this Section, all financial calculations, ratios and financial covenants shall be calculated from the Project Executing Agency's audited financial statements.

(a) Except as ADB shall otherwise agree, the Borrower shall ensure that for each of its fiscal years after its fiscal year ending 31 December 2018, the Project Executing Agency meets the following requirements:

- (i) The Project Executing Agency shall generate funds from internal sources equivalent to not less than 25% of the annual average of the Project Executing Agency's capital expenditures incurred, or expected to be incurred, for that fiscal year.
- (ii) The net revenues of the Project Executing Agency shall be at least 1.3 times the debt service requirements of the Project Executing Agency.
- (iii) The Project Executing Agency's ratio of debt to equity shall not exceed 70:30.
- (iv) Total accounts receivable shall be maintained at a level that does not exceed the equivalent of 3 months' average sales revenue.
- (v) Before December 31 in each of its fiscal years, the Project Executing Agency shall, on the basis of forecasts satisfactory to ADB, review whether it would meet the requirements set forth in paragraphs a(i) to (iv) above in respect of such year and the next following fiscal year and shall furnish to ADB a copy of such review upon its completion.
- (vi) If any such review shows that the Project Executing Agency would not meet the requirements set forth in paragraphs (a)(i) to (iv) above for the Project Executing's fiscal years covered by such review, the Borrower shall promptly take all necessary measures to enable the Project Executing Agency to meet its requirements, including but not limited to, adjustments of electricity tariffs.

- (b) For the purposes of paragraph (a)(i) above:
- (i) The term "funds from internal sources" means the difference between: (A) the sum of cash flows from all sources related to operations, plus cash generated from consumer deposits and consumer advances of any kind, sale of assets, cash yield of interest on investments, and net non-operating income; and (B) the sum of all expenses related to operations, including administration, adequate maintenance and taxes and payments in lieu of taxes (excluding provision for depreciation and other non-cash operating charges), debt service requirements, all cash dividends paid and other cash distributions of surplus, increase in working capital other than cash and other cash outflows other than capital expenditures;
  - (ii) The term "net non-operating income" means the difference between: (A) revenues from all sources other than those related to operations, after making adequate provisions for uncollectible debts; and (B) expenses, including taxes and payments in lieu of taxes, incurred in the generation of revenues in (A) above.
  - (iii) The term "working capital other than cash" means the difference between current assets excluding cash and current liabilities at the end of each fiscal year.
  - (iv) The term "current assets excluding cash" means all assets other than cash which could in the ordinary course of business be converted into cash within 12 months, including accounts receivable, marketable securities, inventories and prepaid expenses properly chargeable to operating expenses within the next fiscal year.
  - (v) The term "current liabilities" means all liabilities which will become due and payable or could under circumstances then existing be called for payment within 12 months, including accounts payable, customer advances, debt service requirements, taxes and payments in lieu of taxes, and dividends.
  - (vi) The term "debt service requirements" means the aggregate amount of repayments (including sinking fund payments if any) of, and interest and other charges on, debt excluding interest charged to construction and financed from loans.
  - (vii) The term "capital expenditures" means all expenditures incurred on account of fixed assets, including interest charged to construction, related to operations.
  - (viii) The terms "operations" or "operating" refer to all operations of the Project Executing Agency.

- (c) For purposes of paragraph (a)(ii) and (iii) above:
- (i) The term "debt" means any indebtedness of the Project Executing Agency maturing by its terms more than one year after the date on which it is originally incurred.
  - (ii) Debt shall be deemed to be incurred: (A) under a loan contract or agreement, or other instrument providing for such debt or for the modification of its terms of payment on the date of such contract, agreement or instrument; and (B) under a guarantee agreement, on the date the agreement providing for such guarantee has been entered into. Financial liabilities incurred by the borrower who is a lessee under finance leasing agreements may also be included as debt.
  - (iii) The term "net revenues" means the difference between: (A) the sum of revenues from all sources related to operations, after making adequate provisions for uncollectible debts, adjusted to take account of the Project Executing Agency's rates in effect at the time of the incurrence of debt even though they were not in effect during the twelve-month period to which such revenues related and net non-operating income; and (B) the sum of all expenses related to operations including administration, adequate maintenance, taxes and payments in lieu of taxes, but excluding provision for depreciation, other non-cash operating charges and interest and other charges on debt.
  - (iv) The term "net non-operating income" means the difference between: (A) revenues from all sources other than those related to operations; and (B) expenses including taxes and payments in lieu of taxes, incurred in the generation of revenues in (A) above.
  - (v) The term "debt service requirements" means the aggregate amount of repayments (including sinking fund payments, if any) of, and interest and other charges on debt. Interest charges which are incurred in financing capital expenditures during development should be excluded, if such charges are capitalized. However, if the Project Executing Agency's policy is to meet the cost from operating income, such interest charges should be included in "debt service requirements." Lease payments under finance leases should also be included.
  - (vi) The term "equity" means the sum of the total unimpaired paid-up capital, retained earnings and reserves of the Project Executing Agency not allocated to cover specific liabilities.
  - (vii) Whenever for purposes of this paragraph it shall be necessary to value, debt payable in other currency, such valuation shall be made on the basis of the prevailing lawful rate of exchange at which such currency is, at the time of valuation, obtainable for the purposes of servicing such debt, or, in the absence of such rate, on the basis of a rate of exchange acceptable to ADB.

- (viii) The terms "operations" or "operating" refer to all operations of the Project Executing Agency.

#### Operations and Maintenance of Project Facilities

23. The Borrower, through the Project Executing Agency, shall ensure that the operation and maintenance of the Project facilities in sound and functional order after completion of the Project and provide additional counterpart funds to cover any shortfalls.

#### Governance and Corruption

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

25. The Borrower and the Project Executing Agency shall ensure that the anticorruption provisions acceptable to ADB are included in all contracts financed and co-financed by ADB and 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.

#### Associated Facility and IPP Covenants

26. The Borrower, through the Project Executing Agency, shall ensure that each IPP and its engineer, procurement and construction contractors and operation and maintenance contractor (collectively, "Major Subcontractors") and any of their subcontractors shall design, finance, construct, operate and maintain the relevant Associated Facility in accordance with the following requirements:

- (a) each IPP shall develop and implement a Private Sector Project IEE and a Private Sector Project EMP and all applicable environment, health and safety laws and regulations of the Borrower in a manner consistent with the IEE and EMP and cause its Major Subcontractors to implement and comply with such plans; and
- (b) each IPP shall develop the Private Sector Project EMP as required by and in compliance with applicable law of the Borrower and consistent with the requirements of the EMP but only with respect to those portions of the EMP relating specifically to the Private Sector Project. Each IPP shall, and shall cause each of its Major Subcontractors, to implement and comply with the terms of the Private Sector Project EMP throughout the term of each PPA.

The Borrower, through the Project Executing Agency, shall ensure that the above requirements are included in each PPA and Major Subcontractors comply with the requirements provided in paragraph 26 (a) and (b) above.



27. If the Project Executing Agency believes that changes to a Private Sector Project IEE or the Private Sector Project EMP are required to ensure that such Project Sector Project IEE or Private Sector Project EMP is consistent with and complies with the IEE and EMP and all applicable environment, health and safety laws and regulations of the Borrower, as applicable, the Borrower, through the Project Executing Agency, shall provide written notice to each IPP of such changes to the relevant Private Sector Project IEE or Private Sector Project EMP, as applicable, and the Borrower, through the Project Executing Agency, shall ensure that each IPP shall incorporate the Project Executing Agency's requested changes and modifications into the relevant Private Sector Project IEE or Private Sector Project EMP, as applicable. Any dispute over whether a change to the relevant Private Sector Project IEE or Private Sector Project EMP, as applicable, is required to comply with the IEE or EMP, as applicable, that cannot be resolved pursuant to each PPA shall be referred to an independent expert for resolution provided in each PPA.

28. The Borrower, through the Project Executing Agency, shall ensure that each IPP shall not modify either the Private Sector Project IEE or the Private Sector Project EMP without the prior approval of the Project Executing Agency, which approval shall not be unreasonably withheld or delayed.