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LOAN NUMBER 3789-CAM (COL)  
LOAN NUMBER 8357-CAM (SCF)  
GRANT NUMBER 0645-CAM (EF)

PROJECT AGREEMENT  
(National Solar Park Project)

between

ASIAN DEVELOPMENT BANK

and

ELECTRICITÉ DU CAMBODGE

DATED 28 JUNE 2019

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CAM 51182

## PROJECT AGREEMENT

PROJECT AGREEMENT dated 28 JUNE 2019 between ASIAN DEVELOPMENT BANK ("ADB") and ELECTRICITÉ DU CAMBODGE ("Project Executing Agency").

### WHEREAS

(A) by a loan agreement of even date herewith between the Kingdom of Cambodia ("Borrower") and ADB ("Ordinary Operations [Concessional] Loan Agreement"), ADB has agreed to make to the Borrower a concessional loan of seven million six hundred forty thousand Dollars (\$7,640,000) ("Ordinary Operations [Concessional] Loan") on the terms and conditions set forth in the Ordinary Operations [Concessional] Loan Agreement for the purposes of the National Solar Park Project ("Project"), described in Schedule 1 to the Ordinary Operations [Concessional] Loan Agreement;

(B) by a loan agreement of even date herewith between the Borrower and 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 Strategic Climate Fund ("SCF") a grant in an amount of three million Dollars (\$3,000,000) ("ADB SCF Grant") for the purposes of the Project;

(D) ADB has agreed to make the Ordinary Operations [Concessional] Loan, ADB SCF Loan and ADB SCF Grant only on the condition that the proceeds of the Ordinary Operations [Concessional] Loan, ADB SCF Loan and ADB SCF Grant be made available to the Project Executing Agency and that the Project Executing Agency agrees to undertake certain obligations towards ADB set forth herein; and

(E) the Project Executing Agency, in consideration of ADB entering into the Ordinary Operations [Concessional] Loan Agreement, ADB SCF Loan Agreement and ADB SCF Grant Agreement, has agreed to undertake the obligations set forth herein;

NOW THEREFORE the parties hereto agree as follows:

## ARTICLE I

### Definitions

Section 1.01. (a) Wherever used in this Project Agreement, unless the context otherwise requires, the several terms defined in Section 1.02 of the Ordinary Operations [Concessional] Loan Agreement and in the Loan Regulations (as so defined therein) have the respective meanings therein set forth.

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## ARTICLE II

### Particular Covenants

Section 2.01. (a) The Project Executing Agency shall carry out the Project with due diligence and efficiency, and in conformity with sound applicable technical, financial, business, and development practices.

(b) In the carrying out of the Project and operation of the Project facilities, the Project Executing Agency shall perform all obligations set forth in Ordinary Operations [Concessional] Loan Agreement, ADB SCF Loan Agreement and ADB SCF Grant Agreement to the extent that they are applicable to the Project Executing Agency, and all obligations set forth in the Schedule to this Project Agreement.

Section 2.02. The Project Executing Agency shall make available, promptly as needed, and on terms and conditions acceptable to ADB, the funds, facilities, services, land and other resources as required, in addition to the proceeds of the Ordinary Operations [Concessional] Loan, ADB SCF Loan and ADB SCF Grant, for the carrying out of the Project.

Section 2.03. (a) In the carrying out of the Project, the Project Executing Agency shall employ competent and qualified consultants and contractors, acceptable to ADB, to an extent and upon terms and conditions satisfactory to ADB.

(b) Except as ADB may otherwise agree, the Project Executing Agency shall procure all items of expenditures to be financed out of the proceeds of the Loan in accordance with the provisions of Schedule 4 to the Ordinary Operations [Concessional] Loan Agreement. ADB may refuse to finance a contract where any such item has not been procured under procedures substantially in accordance with those agreed between the Borrower and ADB or where the terms and conditions of the contract are not satisfactory to ADB.

Section 2.04. The Project Executing Agency shall carry out the Project in accordance with plans, design standards, specifications, work schedules and construction methods acceptable to ADB. The Project Executing Agency shall furnish, or cause to be furnished, to ADB, promptly after their preparation, such plans, design standards, specifications and work schedules, and any material modifications subsequently made therein, in such detail as ADB shall reasonably request.

Section 2.05. (a) The Project Executing Agency shall take out and maintain with responsible insurers, or make other arrangements satisfactory to ADB for, insurance against such risks and in such amounts as shall be consistent with sound practice.

(b) Without limiting the generality of the foregoing, the Project Executing Agency undertakes to insure, or cause to be insured, the Goods to be imported for the Project against hazards incident to the acquisition, transportation and delivery thereof to the place of use or installation, and for such insurance any indemnity shall be payable in a currency freely usable to replace or repair such Goods.

Section 2.06. The Project Executing Agency shall maintain, or cause to be maintained, records and accounts adequate to identify the items of expenditure financed

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out of the proceeds of the Loan, to disclose the use thereof in the Project, to record the progress of the Project (including the cost thereof) and to reflect, in accordance with consistently maintained sound accounting principles, its operations and financial condition.

Section 2.07. (a) ADB and the Project Executing Agency shall cooperate fully to ensure that the purposes of the Ordinary Operations [Concessional] Loan, ADB SCF Loan and ADB SCF Grant will be accomplished.

(b) The Project Executing Agency shall promptly inform ADB of any condition which interferes with, or threatens to interfere with, the progress of the Project, the performance of its obligations under this Project Agreement or the Subsidiary Loan Agreement, or the accomplishment of the purposes of the Ordinary Operations [Concessional] Loan, ADB SCF Loan and ADB SCF Grant.

(c) ADB and the Project Executing Agency shall from time to time, at the request of either party, exchange views through their representatives with regard to any matters relating to the Project, the Project Executing Agency and the Ordinary Operations [Concessional] Loan, SCF Loan and SCF Grant.

Section 2.08. (a) The Project Executing Agency shall furnish to ADB all such reports and information as ADB shall reasonably request concerning (i) the Ordinary Operations [Concessional] Loan, ADB SCF Loan and ADB SCF Grant and the expenditure of the proceeds thereof; (ii) the items of expenditure financed out of such proceeds; (iii) the Project; (iv) the administration, operations and financial condition of Project Executing Agency; and (v) any other matters relating to the purposes of the Ordinary Operations [Concessional] Loan, ADB SCF Loan and ADB SCF Grant.

(b) Without limiting the generality of the foregoing, the Project Executing Agency shall furnish to ADB periodic reports on the execution of the Project and on the operation and management of the Project facilities. Such reports shall be submitted in such form and in such detail and within such a period as ADB shall reasonably request, and shall indicate, among other things, progress made and problems encountered during the period under review, steps taken or proposed to be taken to remedy these problems, and proposed program of activities and expected progress during the following period.

(c) Promptly after physical completion of the Project, but in any event not later than 3 months thereafter or such later date as ADB may agree for this purpose, the Project Executing Agency shall prepare and furnish to ADB a report, in such form and in such detail as ADB shall reasonably request, on the execution and initial operation of the Project, including its cost, the performance by the Project Executing Agency of its obligations under this Project Agreement and the accomplishment of the purposes of the Ordinary Operations [Concessional] Loan, ADB SCF Loan and ADB SCF Grant.

Section 2.09. (a) The Project Executing Agency 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, use of the proceeds of the Ordinary Operations [Concessional] Loan, ADB SCF Loan and ADB SCF Grant and

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compliance with the financial covenants of the Ordinary Operations [Concessional] Loan Agreement and this Project Agreement, and a management letter (which sets out the deficiencies in the internal control of the Project that were identified in the course of the audit, if any); and (v) furnish to ADB, no later than 6 months after the close of the fiscal year to which they relate, 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) In addition to annual audited financial statements referred to in subsection (a) hereinabove, the Project Executing Agency shall (i) provide its annual financial statements prepared in accordance with financing reporting standards acceptable to ADB; (ii) have its 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; (iii) as part of each such audit, have the auditors prepare the auditors' opinion(s) on the financial statements; and (iv) furnish to ADB, no later than 1 month after approval by the relevant authority, copies of such audited financial statements and auditors' opinion(s), 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.

(d) The Project Executing Agency shall enable ADB, upon ADB's request, to discuss the financial statements for the Project and the Project Executing Agency and its financial affairs where they relate to the Project with the auditors appointed by the Project Executing Agency pursuant to subsections (a)(iii) and (c)(ii) 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 Project Executing Agency, unless the Project Executing Agency shall otherwise agree.

Section 2.10. The Project Executing Agency shall enable ADB's representatives to inspect the Project, the Goods and Works and any relevant records and documents.

Section 2.11. (a) The Project Executing Agency shall, promptly as required, take all action within its powers to maintain its corporate existence, to carry on its operations, and to acquire, maintain and renew all rights, properties, powers, privileges and franchises which are necessary in the carrying out of the Project or in the conduct of its operations.

(b) The Project Executing Agency shall at all times conduct its operations in accordance with sound applicable technical, financial, business, development and operational practices, and under the supervision of competent and experienced management and personnel.

(c) The Project Executing Agency shall at all times operate and maintain its plants, equipment and other property, and from time to time, promptly as needed, make all

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necessary repairs and renewals thereof, all in accordance with sound applicable technical, financial, business, development, operational and maintenance practices.

Section 2.12. Except as ADB may otherwise agree, the Project Executing Agency shall not sell, lease or otherwise dispose of any of its assets which shall be required for the efficient carrying on of its operations or the disposal of which may prejudice its ability to perform satisfactorily any of its obligations under this Project Agreement.

Section 2.13. Except as ADB may otherwise agree, the Project Executing Agency shall apply the proceeds of the Loan to the financing of expenditures on the Project in accordance with the provisions of the Loan Agreement and this Project Agreement, and shall ensure that all items of expenditures financed out of such proceeds are used exclusively in the carrying out of the Project.

Section 2.14. Except as ADB may otherwise agree, the Project Executing Agency shall duly perform all its obligations under the Subsidiary Loan Agreement, and shall not take, or concur in, any action which would have the effect of assigning, amending, abrogating or waiving any rights or obligations of the parties under the Subsidiary Loan Agreement.

Section 2.15. The Project Executing Agency shall promptly notify ADB of any proposal to amend, suspend or repeal any provision of its constitutional documents, which, if implemented, could adversely affect the carrying out of the Project or the operation of the Project facilities. The Project Executing Agency shall afford ADB an adequate opportunity to comment on such proposal prior to taking any affirmative action thereon.

Section 2.16. 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, for each of its fiscal years after its fiscal year ending 31 December 2018, the Project Executing Agency shall meet 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.

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- (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

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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

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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.

### **ARTICLE III**

#### **Effective Date; Termination**

Section 3.01. This Project Agreement shall come into force and effect on the date on which the Ordinary Operations [Concessional] Loan Agreement comes into force and effect. ADB shall promptly notify Project Executing Agency of such date.

Section 3.02. This Project Agreement and all obligations of the parties hereunder shall terminate on the date on which the Ordinary Operations [Concessional] Loan Agreement shall terminate in accordance with its terms.

Section 3.03. All the provisions of this Project Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the Ordinary Operations [Concessional] Loan Agreement.

### **ARTICLE IV**

#### **Miscellaneous**

Section 4.01. Any notice or request required or permitted to be given or made under this Project Agreement and any agreement between the parties contemplated by this Project Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand, mail or facsimile to the party to

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which it is required or permitted to be given or made at its address hereinafter specified, or at such other address as such party shall have designated by notice to the party giving such notice or making such request. The addresses so specified are:

Section 4.02. (a) Any action required or permitted to be taken, and any documents required or permitted to be executed, under this Project Agreement by or on behalf of the Project Executing Agency may be taken or executed by its [Managing Director] or by such other person or persons as he or she shall so designate in writing notified to ADB.

(b) The Project Executing Agency shall furnish to ADB sufficient evidence of the authority of each person who will act under subsection (a) hereinabove, together with the authenticated specimen signature of each such person.

Section 4.03. No delay in exercising, or omission to exercise, any right, power or remedy accruing to either party under this Project Agreement upon any default shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence in such default; nor shall the action of such party in respect of any default, or any acquiescence in any default, affect or impair any right, power or remedy of such party in respect of any other or subsequent default.

For ADB

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

Facsimile Numbers:

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

For Project Executing Agency

ELECTRICITÉ DU CAMBODGE  
No. 2, Street Preah Yukunthor  
Khan Daun Penh  
Phnom Penh, Cambodia


Facsimile Number:

(855) 23 426 018.

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

ASIAN DEVELOPMENT BANK

By   
GENEVIEVE MARY O'FARRELL  
Authorized Representative

ELECTRICITÉ DU CAMBODGE

By   
H.E. KEO ROTTANAK  
Minister Attached to the Prime Minister  
Managing Director 

## SCHEDULE 1

### Execution of Project; Financial Matters

#### Implementation Arrangements

1. 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 Project Agreement, the provisions of this Project Agreement shall prevail.

#### Counterpart Funds

2. The Project Executing Agency shall provide counterpart funds necessary for the Project in a timely manner, including any additional counterpart funds required for any shortfall of funds or cost overruns during Project implementation. Additionally, the Project Executing Agency shall provide funds and resources necessary for the operation and maintenance of the Project facilities after completion of the Project.

3. In addition to the foregoing, the Project Executing Agency shall ensure sufficient funds to satisfy its liabilities for any Goods, Works and/or Services contract.

#### Covenant on Change of Circumstances/Ownership

4. The Project Executing Agency shall ensure that no material organization changes (either financial, operational or structural) to it relevant to the Project shall be approved or implemented without approval of ADB. Material organizational change means an organization change in EDC or a merger, amalgamation, acquisition, winding-up or dissolution of EDC which could hinder or prevent it from performing its obligations under the Project.

#### Associated Facility and IPP Covenants

5. 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

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and comply with the terms of the Private Sector Project EMP throughout the term of each PPA.

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 5 (a) and (b) above.

6. 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 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 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 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.

7. 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.

#### Governance and Anticorruption

8. 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.

9. 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 all bidding documents and contracts, including provisions specifying the right of ADB to audit and examine the records and accounts of the executing and implementing agencies and all contractors, suppliers, consultants, and other service providers as they relate to the Project.

#### Prohibited List of Investments

10. The Project Executing Agency shall ensure that no proceeds of the Ordinary Operations [Concessional] Loan, ADB SCF Loan and ADB SCF Grant are used to finance any activity included in the list of prohibited investment activities provided in Appendix 5 of the SPS.

