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LOAN NUMBER 3313-MON (SF)

LOAN AGREEMENT  
(Special Operations)

(Regional Upgrades of Sanitary and Phytosanitary Measures for Trade Project)

between

MONGOLIA

and

ASIAN DEVELOPMENT BANK

DATED 8 January 2016.

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MON 46315

**LOAN AGREEMENT  
(Special Operations)**

LOAN AGREEMENT dated 8 January 2016 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; and

(B) ADB has agreed to make a loan to the Borrower from ADB's Special Funds resources upon the terms and conditions set forth herein;

NOW THEREFORE the parties agree as follows:

**ARTICLE I**

**Loan Regulations; Definitions**

Section 1.01. All provisions of the Special Operations Loan Regulations of ADB, dated 1 January 2006 ("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) "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 as described in paragraph 3 of Schedule 1 to this Loan Agreement;

(c) "Environmental Management Plan" or "EMP" means the environmental management plan for the Project, including any update thereto, incorporated in the IEE;

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

(e) "Goods" means equipment and materials to be financed out of the proceeds of the Loan, including related services such as transportation, insurance, installation, commissioning, training, and initial maintenance, but excluding Consulting Services;

(f) "Initial Environmental Examination" or "IEE" means the initial environmental examination for the Project, including any update thereto, prepared and submitted by the Borrower and cleared by ADB;

(g) "Loan Disbursement Handbook" means ADB's Loan Disbursement Handbook (2015, as amended from time to time);

(h) "PAM" means the project administration manual for the Project dated 15 September 2015 and agreed between the Borrower and ADB, as updated from time to time in accordance with the respective administrative procedures of the Borrower and ADB;

(i) "PMU" means the project management unit to be established by the Project Executing Agency to assume day-to-day management of the Project;

(j) "Procurement Guidelines" means ADB's Procurement Guidelines (2015, as amended from time to time);

(k) "Procurement Plan" means the procurement plan for the Project dated 15 September 2015 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;

(l) "Project Executing Agency" for the purposes of, and within the meaning of, the Loan Regulations, means the Borrower's Office of the Deputy Prime Minister or any successor thereto acceptable to ADB;

(m) "Project Implementing Agencies" means the Borrower's Veterinary and Animal Breeding Agency and the Borrower's General Agency for Specialized Inspection, or any successors thereto acceptable to ADB;

(n) "Safeguards Monitoring Report" means each report prepared and submitted by the Borrower to ADB that describes progress with implementation of and compliance with the EMP, including any corrective and preventative actions;

(o) "Safeguard Policy Statement" or "SPS" means ADB's Safeguard Policy Statement (2009);

(p) "Social Development Action Plan" or "SDAP" means the social development action plan for the Project set out in the PAM, and including any update thereto; and

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

## ARTICLE II

### The Loan

Section 2.01. ADB agrees to lend to the Borrower from ADB's Special Funds resources an amount in various currencies equivalent to ten million six hundred ninety-five thousand Special Drawing Rights (SDR10,695,000).

Section 2.02. (a) The Borrower shall pay to ADB an interest charge at the rate of 2% per annum during the grace period and thereafter, on the amount of the Loan withdrawn from the Loan Account and outstanding from time to time.

(b) 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 2.03. The interest charge and any other charge on the Loan shall be payable semiannually on 15 February and 15 August 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(a) and 4.04 of the Loan Regulations shall be the Dollar.

## ARTICLE III

### Use of Proceeds of the Loan

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

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

Section 3.03. Except as ADB may otherwise agree, the Borrower shall procure, or cause to be procured, the items of expenditure to be financed out of the proceeds of the Loan in accordance with the provisions of Schedule 4 to this Loan Agreement.

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

Section 3.05. Withdrawals from the Loan Account in respect of Goods, Works, and Consulting Services shall be made only on account of expenditures relating to:

- (a) Goods which are produced in and supplied from and Works and Consulting 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
- (b) Goods, Works, and Consulting Services which meet such other eligibility requirements as shall have been specified by ADB from time to time.

Section 3.06. The Loan Closing Date for the purposes of Section 8.02 of the Loan Regulations shall be 30 June 2021 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 shall perform, or cause to be performed, all obligations set forth in Schedule 5 to this Loan Agreement.

Section 4.02. (a) The Borrower shall (i) maintain separate accounts and records for the Project; (ii) prepare annual financial statements for the Project in accordance with accounting principles acceptable to ADB; (iii) have such financial statements audited annually by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB, in accordance with international standards for auditing or the national equivalent acceptable to ADB; (iv) as part of each such audit, have the auditors prepare a report (which includes the auditors' opinion on the financial statements, use of the Loan proceeds and compliance with the financial covenants of this Loan Agreement as well as on the use of the procedures for imprest fund(s) and statement of expenditures) and a management letter (which sets out the deficiencies in the internal control of the Project that were identified in the course of the audit, if any); and (v) furnish to ADB, no later than 6 months after the end of each related fiscal year, copies of such audited financial statements, audit report and management letter, all in the English language, and such other information concerning these documents and the audit thereof as ADB shall from time to time reasonably request.

(b) ADB shall disclose the annual audited financial statements for the Project and the opinion of the auditors on the financial statements within 30 days of the date of their receipt by posting them on ADB's website.

(c) The Borrower shall enable ADB, upon ADB's request, to discuss the financial statements for the Project and the Borrower's financial affairs where they relate to the Project with the auditors appointed pursuant to subsection (a)(iii) hereinabove, and shall

authorize and require any representative of such auditors to participate in any such discussions requested by ADB. This is provided that such discussions shall be conducted only in the presence of an authorized officer of the Borrower, unless the Borrower shall otherwise agree.

Section 4.03. The Borrower shall enable ADB's representatives to inspect the Project, the Goods and Works, and any relevant records and documents.

## ARTICLE V

### Effectiveness

Section 5.01. 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 9.04 of the Loan Regulations.

## ARTICLE VI

### Miscellaneous

Section 6.01. The Minister of Finance of the Borrower is designated as representative of the Borrower for the purposes of Section 11.02 of the Loan Regulations.

Section 6.02. The following addresses are specified for the purposes of Section 11.01 of the Loan Regulations:

#### For the Borrower

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

Facsimile Number:

+(976) 51-267468

#### For ADB

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

Facsimile Numbers:

(632) 636-2444

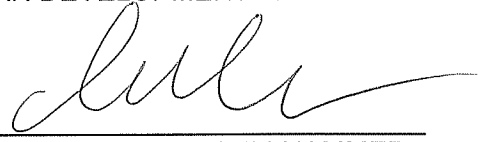
(632) 636-2384.

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  \_\_\_\_\_  
B. BOYOR  
Minister  
Ministry of Finance

ASIAN DEVELOPMENT BANK

By  \_\_\_\_\_  
ROBERT SCHOELLHAMMER  
Country Director  
Mongolia Resident Mission



**SCHEDULE 1****Description of the Project**

1. The objective of the Project is to improve the Borrower's sanitary and phytosanitary control, testing, and inspection systems.

2. The Project shall comprise:

**Output 1. Upgrading Laboratories and Inspection and Quarantine Facilities**

Upgrading laboratories in three aimags (Dornogovi, Selenge, and Darkhan-Uul) and the central reference laboratory in Ulaanbaatar, and upgrading inspection, disinfection and quarantine facilities in two major border crossing points (Zamyn-Uud and Altanbulag), including infrastructure, equipment, quality management, training and accreditation.

**Output 2. Inspection Management System**

Establishing a sanitary and phytosanitary inspection management system providing the ability to avoid duplication of documents involved in the application for and approval of permissions to import and export agri-food products, with an integrated risk-based inspection system and an automated information management system.

**Output 3. Control and Inspection Procedures**

Aligning sanitary and phytosanitary control and inspections procedures with international standards.

**Output 4. Capacity Development**

Developing the capacity of the Project Executing Agency and Project Implementing Agencies for project implementation, monitoring and evaluation.

3. The Project will finance Consulting Services for preparation of design, technical specifications and bid documents and for project management services.

4. The Project is expected to be completed by 31 December 2020.

**SCHEDULE 2**

**Amortization Schedule**

**(Regional Upgrades of Sanitary and Phytosanitary Measures for Trade Project)**

<b>Date Payment Due</b>	<b>Payment of Principal (expressed in Special Drawing Rights)*</b>
15 February 2021	267,400
15 August 2021	267,400
15 February 2022	267,400
15 August 2022	267,400
15 February 2023	267,400
15 August 2023	267,400
15 February 2024	267,400
15 August 2024	267,400
15 February 2025	267,400
15 August 2025	267,400
15 February 2026	267,400
15 August 2026	267,400
15 February 2027	267,400
15 August 2027	267,400
15 February 2028	267,400
15 August 2028	267,400
15 February 2029	267,400
15 August 2029	267,400
15 February 2030	267,400
15 August 2030	267,400
15 February 2031	267,400
15 August 2031	267,400
15 February 2032	267,400
15 August 2032	267,400
15 February 2033	267,400
15 August 2033	267,400
15 February 2034	267,400
15 August 2034	267,400
15 February 2035	267,400
15 August 2035	267,400
15 February 2036	267,400
15 August 2036	267,400
15 February 2037	267,400
15 August 2037	267,400
15 February 2038	267,400
15 August 2038	267,400

<b>Date Payment Due</b>	<b>Payment of Principal (expressed in Special Drawing Rights)*</b>
15 February 2039	267,400
15 August 2039	267,400
15 February 2040	267,400
15 August 2040	266,400
<b>TOTAL</b>	<b>10,695,000</b>

\* 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 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 6 is for financing the interest charge on the Loan during the implementation period of the Project.

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 and detailed arrangements agreed upon between the Borrower and ADB.

TABLE

Allocation and Withdrawal of Loan Proceeds (Regional Upgrades of Sanitary and Phytosanitary Measures for Trade Project)			
CATEGORY			ADB FINANCING BASIS
Number	Item	Total Amount Allocated for ADB Financing	Percentage of ADB Financing from the Loan Account
		(SDRs)	
1	Civil Works	4,455,000	100% of total expenditure claimed <sup>a</sup>
2	Goods	3,504,000	100% of total expenditure claimed <sup>a</sup>
3	Consulting Services	809,000	100% of total expenditure claimed <sup>a</sup>
4	Project Management	583,000	100% of total expenditure claimed <sup>a</sup>
5	Training	216,000	100% of total expenditure claimed
6	Interest Charges	343,000	100% of total amount due
7	Unallocated	785,000	
	<b>Total</b>	<b>10,695,000</b>	

<sup>a</sup> Exclusive of taxes and duties imposed within the territory of the Borrower. All taxes and duties are financed in form of tax exemption by the Borrower.

**SCHEDULE 4****Procurement of Goods, Works and Consulting Services**General

1. The procurement of Goods, Works and Consulting Services shall be subject to and governed by the Procurement Guidelines, and the Consulting Guidelines, respectively.

2. All terms used in this Schedule and not otherwise defined in this Loan Agreement have the meanings provided in the Procurement Guidelines and/or the Consulting Guidelines, as applicable.

Goods and Works

3. Except as ADB may otherwise agree, Goods and Works shall only be procured on the basis of the methods of procurement set forth below:

- (a) International Competitive Bidding;
- (b) National Competitive Bidding; and
- (c) Shopping.

4. The methods of procurement are subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. The Borrower may only modify the methods of procurement or threshold values with the prior agreement of ADB, and modifications must be set out in updates to the Procurement Plan.

National Competitive Bidding

5. 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

6. The Borrower shall not award any Works contract which involves environmental impacts until:

- (a) the Borrower's Ministry of Environment, Green Development and Tourism has granted the final approval of the IEE;
- (b) the Borrower has updated the EMP to reflect the final IEE and obtained ADB's approval; and
- (c) the Borrower has incorporated the relevant provisions from the EMP into the Works contract.

Consulting Services

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

8. The Borrower shall recruit individual consultants in accordance with procedures acceptable to ADB for recruiting individual consultants.

Industrial or Intellectual Property Rights

9. (a) The Borrower shall ensure that all Goods and Works procured (including without limitation all computer hardware, software and systems, whether separately procured or incorporated within other goods and services procured) do not violate or infringe any industrial property or intellectual property right or claim of any third party.

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

10. 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

11. 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; Financial Matters

#### Implementation Arrangements

1. The Borrower, the Project Executing Agency and the Project Implementing Agencies 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 the PMU (a) conducts full information technology back-ups of its accounting software program and financial data on a weekly basis and (b) engages a full-time finance specialist.

#### Environment

3. The Borrower shall ensure that the preparation, design, construction, implementation, operation and decommissioning of the Project and all Project facilities comply with (a) all applicable laws and regulations of the Borrower relating to environment, health, and safety; (b) the Environmental Safeguards; and (c) all measures and requirements set forth in each IEE and EMP, and any corrective or preventative actions (i) set forth in a Safeguards Monitoring Report, or (ii) which are subsequently agreed between ADB and the Borrower.
4. The Borrower shall ensure that all Project facilities are connected to water supply, sewerage systems and heating systems prior to operation of the facilities.
5. The Borrower shall develop a standard protocol and design for the onsite laboratory waste storage systems prior to starting construction.
6. The Borrower shall ensure that the design for the Project facilities is based on, among other things, detailed soils and foundations assessments, including evaluating permafrost conditions, and that the engineering design for the Project facilities includes climate-proofing and permafrost-proofing.

#### Human and Financial Resources to Implement Safeguards Requirements

7. The Borrower shall make available all necessary budgetary and human resources to fully implement each EMP and the SDAP.

#### Safeguards – Related Provisions in Bidding Documents and Works Contracts

8. The Borrower 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 each IEE and EMP (to the extent they concern impacts on the respective



- affected people under the Environmental Safeguards during construction), and any corrective or preventative actions set out in (i) a Safeguards Monitoring Report, or (ii) subsequently agreed between ADB and the Borrower;
- (b) make available a budget for all such environmental and social measures;
  - (c) provide the Borrower with a written notice of any unanticipated environmental, resettlement or indigenous peoples risks or impacts that arise during construction, implementation or operation of the Project that were not considered in the relevant IEE or EMP; and
  - (d) reinstate pathways, other local infrastructure, and agricultural land to at least their pre-project condition upon the completion of construction.

#### Indigenous Peoples and Involuntary Resettlement

9. The Borrower shall ensure that the Project does not have any indigenous peoples or involuntary resettlement impacts within the meaning of ADB's Safeguards Policy Statement. In the event that the Project 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 Mongolia and with ADB's Safeguards Policy Statement.

#### Safeguards Monitoring and Reporting

10. The Borrower shall do the following:
- (a) submit Safeguards Monitoring Reports to ADB in respect of implementation of and compliance with Environmental Safeguards and the EMP, semi-annually during construction and the implementation of the Project and the EMP, until the issuance of ADB's Project completion report unless a longer period is agreed in the EMP, and disclose relevant information from such reports to affected persons under the 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 relevant IEE or EMP, promptly inform ADB of the occurrence of such risks or impacts, with detailed description of the event and proposed corrective actions; and
  - (c) report any actual or potential breach of compliance with the measures and requirements set forth in an EMP promptly after becoming aware of the breach.

Prohibited List of Investments

11. 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.

Labor Standards, Health and Safety

12. The Borrower shall ensure and include a specific provision in the bidding documents to ensure that contractors engaged under the Project (a) comply with core labor standards, applicable laws and regulations of the Borrower and incorporate applicable workplace occupational safety norms; (b) do not differentiate payment between men and women for work of equal value; (c) do not employ child labor; (d) eliminate forced or compulsory labor; (e) eliminate employment discrimination; (f) to the extent possible, maximize employment of local poor and disadvantaged persons for project construction purposes, provided that the requirements for job and efficiency are adequately met; and (g) disseminate information on the risks of sexually transmitted diseases, including human immunodeficiency virus/acquired immunodeficiency syndrome, to the employees of the contractors under the Project and to members of the local communities near the Project.

Gender and Development

13. The Borrower 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.

14. The Borrower shall and shall cause the Project Implementing Agencies to (a) implement the SDAP, (b) monitor the Project's performance under the SDAP; (c) ensure, that all bidding documents and contracts for Works contain provisions that require contractors to comply with the measures relevant to the contractor set forth in the SDAP; and (d) report on the Project's progress in achieving the SDAP targets in the Project's quarterly progress reports and annual reports.

Counterpart Support; O&M

15. The Borrower shall ensure that any counterpart funding required, in addition to the proceeds of the Loan, for successful project implementation, including for shortfalls and cost overruns is timely allocated and provided. The Borrower shall ensure that the PMU is adequately staffed and equipped in a manner acceptable to ADB.

16. The Borrower shall ensure that the Project Implementing Agencies develop operations and maintenance plans to provide for ongoing operation and maintenance of the Project facilities during the term of the loan and thereafter, and the Borrower shall provide sufficient funds to the Project Implementing Agencies to implement the operations and maintenance plans.

Governance and Anticorruption

17. The Borrower, the Project Executing Agency and the Project Implementing Agencies 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.

18. The Borrower, the Project Executing Agency and the Project Implementing Agencies shall ensure that anticorruption provisions acceptable to ADB are included in all bidding documents and contracts, including provisions specifying the right of ADB to audit and examine the records and accounts of the Project Executing Agency, the Project Implementing Agencies, the PMU and all contractors, suppliers, consultants, and other service providers as they relate to the Project.

Grievance Redress Mechanism

19. The Borrower shall ensure that a joint safeguards grievance redress mechanism acceptable to ADB is established in accordance with the provisions of the EMP at the PMU, within the timeframes specified in the relevant EMP, to consider safeguards complaints.