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LOAN NUMBER 3385-MON

LOAN AGREEMENT  
(Ordinary Operations)

(Erdenes Mongol LLC Strengthening Institutional Framework  
and Management Capacity Project)

between

ERDENES MONGOL LLC

and

ASIAN DEVELOPMENT BANK

DATED 1 APRIL 2016

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MON 49409

**LOAN AGREEMENT**  
**(Ordinary Operations)**

LOAN AGREEMENT dated 1 April 2016 between ASIAN DEVELOPMENT BANK ("ADB") and ERDENES MONGOL LLC ("Borrower").

WHEREAS

(A) the Borrower, a company established and validly existing under the laws of Mongolia, has applied to ADB for a loan for the purpose of the Project described in Schedule 1 to this Loan Agreement;

(B) the loan is to be guaranteed by Mongolia ("Guarantor") under the terms of the Guarantee Agreement to be executed between the Guarantor and ADB; and

(C) ADB has agreed to provide a loan to the Borrower from ADB's ordinary capital resources upon terms and conditions set forth herein;

NOW THEREFORE the parties hereto agree as follows:

**ARTICLE I**

**Loan Regulations; Definitions**

Section 1.01. All the provisions of the Ordinary Operations Loan Regulations Applicable to LIBOR-Based Loans Made from ADB's Ordinary Capital Resources, dated 1 July 2001 ("Loan Regulations"), are hereby made applicable to this Loan Agreement with the same force and effect as if they were fully set forth herein, subject, however, to the following modifications:

(a) Section 3.03 is deleted and the following is substituted therefor:

**Commitment Charge; Credit.** (a) The Borrower shall pay a commitment charge on the unwithdrawn amount of the Loan at the rate and on the terms specified in the Loan Agreement.

(b) ADB shall provide to the Borrower a credit at the rate specified in the Loan Agreement, which credit shall remain fixed for the term of the Loan. ADB shall apply the credit against the interest payable by the Borrower.

(b) Section 3.06 is deleted and the following is substituted therefor:

**Rebate.** (a) Following any announcement by ADB that the Fixed Spread applicable to new Loans shall be reduced, ADB shall provide a Rebate to any Borrower with an outstanding Loan on which a higher Fixed Spread is

applicable. The amount of the Rebate shall be determined by multiplying (i) the difference between the Fixed Spread applicable to the outstanding Loan and the Fixed Spread that will be applied to new Loans (expressed as a percentage per annum), by (ii) the principal amount of the outstanding Loan on which the Borrower shall pay interest for all interest periods commencing on and after the effective date of the lower Fixed Spread that will be applied to new Loans.

(b) Following any announcement by ADB that its Funding Cost Margin calculations with respect to any Loan Currency (or Approved Currency) in any Semester resulted in ADB achieving savings, ADB shall provide a Rebate to the Borrower. The amount of the Rebate shall be determined by multiplying (i) the Funding Cost Margin (expressed as a percentage per annum) by (ii) the principal amount of the Loan on which the Borrower shall pay interest for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated. ADB shall apply the amount of the Rebate against the interest payable by the Borrower for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated.

(c) Section 3.07 is deleted and the following is substituted therefor:

**Surcharge.** (a) Following any announcement by ADB that the Fixed Spread applicable to new Loans shall be increased, any Borrower with an outstanding Loan on which a lower Fixed Spread is applicable shall pay ADB a Surcharge. The amount of the Surcharge shall be determined by multiplying (i) the difference between the Fixed Spread that will be applied to new Loans and the Fixed Spread applicable to the outstanding Loan (expressed as a percentage per annum), by (ii) the principal amount of the outstanding Loan on which the Borrower shall pay interest for all interest periods commencing on and after the effective date of the higher Fixed Spread that will be applied to new Loans.

(b) Following any announcement by ADB that its Funding Cost Margin calculations with respect to any Loan Currency (or Approved Currency) in any Semester resulted in ADB incurring additional costs, the Borrower shall pay ADB a Surcharge. The amount of the Surcharge shall be determined by multiplying (i) the Funding Cost Margin (expressed as a percentage per annum) by (ii) the principal amount of the Loan on which the Borrower shall pay interest for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated. ADB shall add the amount of the Surcharge to the interest payable by the Borrower for the Interest Period commencing immediately after

the Semester for which the Funding Cost Margin was calculated.

- (d) Section 7.07(c) is deleted.

Section 1.02. Wherever used in this Loan Agreement, the several terms defined in the Loan Regulations have the respective meanings therein set forth unless modified herein or the context otherwise requires. Additional terms used in this Loan Agreement have the following meanings:

(a) "Consulting Guidelines" means the Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers (2013, as amended from time to time);

(b) "Consulting Services" means the services to be financed out of the proceeds of the Loan to help carrying out the activities under the Project;

(c) "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;

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

(e) "PAM" means the project administration manual for the Project dated 16 February 2016 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;

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

(g) "Procurement Plan" means the procurement plan for the Project dated 16 February 2016 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;

(h) "Project Executing Agency" for the purposes of, and within the meaning of, the Loan Regulations means the Borrower or any successor thereto acceptable to ADB, which is responsible for the carrying out of the Project;

(i) "Project facilities" means facilities to be constructed, procured, rehabilitated and/or maintained under the Project; and

(j) "Safeguard Policy Statement" or "SPS" means ADB's Safeguard Policy Statement (2009).

## ARTICLE II

### The Loan

Section 2.01. (a) ADB agrees to lend to the Borrower from ADB's ordinary capital resources an amount of thirty-five million Dollars (\$35,000,000), as such amount may be converted from time to time through a Currency Conversion in accordance with the provisions of Section 2.06 of this Loan Agreement.

(b) The Loan has a principal repayment period of 12 years, and a grace period as defined in subsection (c) hereinafter.

(c) The term "grace period" as used in subsection (b) hereinabove means the period prior to the first Principal Payment Date in accordance with the amortization schedule set forth in Schedule 2 to this Loan Agreement.

Section 2.02. The Borrower shall pay to ADB interest on the principal amount of the Loan withdrawn and outstanding from time to time at a rate for each Interest Period equal to the sum of:

(a) LIBOR; and

(b) 0.60% as provided by Section 3.02 of the Loan Regulations less a credit of 0.10% as provided by Section 3.03 of the Loan Regulations.

Section 2.03. The Borrower shall pay a commitment charge of 0.15% per annum. Such charge shall accrue on the full amount of the Loan (less amounts withdrawn from time to time), commencing 60 days after the date of this Loan Agreement.

Section 2.04. Interest and other charges on the Loan shall be payable semiannually on 15 March and 15 September in each year.

Section 2.05. The Borrower shall repay the principal amount of the Loan withdrawn from the Loan Account in accordance with the provisions of Schedule 2 to this Loan Agreement.

Section 2.06. (a) The Borrower may at any time request any of the following Conversions of the terms of the Loan in order to facilitate prudent debt management:

- (i) a change of the Loan Currency of all or any portion of the principal amount of the Loan, whether withdrawn and outstanding or unwithdrawn, to an Approved Currency;
- (ii) a change of the interest rate basis applicable to all or any portion of the principal amount of the Loan withdrawn and outstanding from a Floating Rate to a Fixed Rate, or vice versa; and

- (iii) the setting of limits on the Floating Rate applicable to all or any portion of the principal amount of the Loan withdrawn and outstanding by the establishment of an Interest Rate Cap or Interest Rate Collar on said Floating Rate.

(b) Any conversion requested pursuant to subsection (a) hereinabove that is accepted by ADB shall be considered a "Conversion", as defined in Section 2.01(6) of the Loan Regulations, and shall be effected in accordance with the provisions of Article V of the Loan Regulations and the Conversion Guidelines.

### **ARTICLE III**

#### **Use of Proceeds of the Loan**

Section 3.01. 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. 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 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. The Loan Closing Date for the purposes of Section 9.02 of the Loan Regulations shall be 31 October 2019 or such other date as may from time to time be agreed between the Borrower and ADB.

### **ARTICLE IV**

#### **Particular Covenants**

Section 4.01. (a) The Borrower shall cause the Project to be carried out 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 Borrower shall perform, or cause to be performed, all obligations set forth in Schedule 5 to this Loan Agreement.

Section 4.02. The Borrower shall make available, promptly as needed the funds, facilities, services and other resources, as required, in addition to the proceeds of the Loan, for the carrying out of the Project and for the operation and maintenance of the Project facilities.

Section 4.03. (a) Whenever applicable, in the carrying out of the Project, the Borrower shall cause competent and qualified consultants and contractors, acceptable to ADB to be employed to an extent and upon terms and conditions satisfactory to the Borrower and ADB.

(b) The Borrower shall cause the Project to be carried out in accordance with plans, design standards, specifications, work schedules and construction methods acceptable to the Borrower and ADB, as applicable. The Borrower 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 4.04. (a) The Borrower shall (i) maintain separate accounts and records for the Project; (ii) prepare annual financial statements for the Project in accordance with financial reporting standards acceptable to ADB; (iii) have such financial statements audited annually by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB, in accordance with auditing standards acceptable to ADB; (iv) as part of each such audit, have the auditors prepare a report, which includes the auditors' opinion(s) on the financial statements and the use of the Loan proceeds, and a management letter (which sets out the deficiencies in the internal control of the Project that were identified in the course of the audit, if any); and (v) furnish to ADB, no later than 6 months after the 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 Borrower 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 compliance with the financial covenants of the Loan Agreement; 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 Borrower shall enable ADB, upon ADB's request, to discuss the financial statements for the Project and the Borrower and its financial affairs where they relate to the Project with the auditors appointed by the Borrower pursuant to subsections (a)(iii) and (c) 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 4.05. The Borrower shall enable ADB's representatives to inspect the Project, the Goods and Works, and any relevant records and documents.

Section 4.06. (a) The Borrower 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 business.

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

(c) The Borrower shall at all times operate and maintain its plants, equipment and other property, and from time to time, promptly as needed, make all necessary repairs and renewals thereof, all in accordance with sound applicable technical, financial, business, development, operational and maintenance practices.

Section 4.07. Except as ADB may otherwise agree, the Borrower shall not sell, lease or otherwise dispose of any of its assets the disposal of which may prejudice the ability of the Borrower to perform satisfactorily any of its obligations under this Loan Agreement.

## **ARTICLE V**

### **Miscellaneous**

Section 5.01. The Chief Executive Officer of the Borrower is designated as representative of the Borrower for the purposes of Section 12.02 of the Loan Regulations.

Section 5.02. The following addresses are specified for the purposes of Section 12.01 of the Loan Regulations:

#### For the Borrower

Erdenes Mongol  
14-15<sup>th</sup> Floor, Monnis Tower  
Chinggis Avenue 15, 1<sup>st</sup> Khoroo



Sukhbaatar District, Ulaanbaatar  
Mongolia

Facsimile Number:

(976)70110725.

For ADB

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

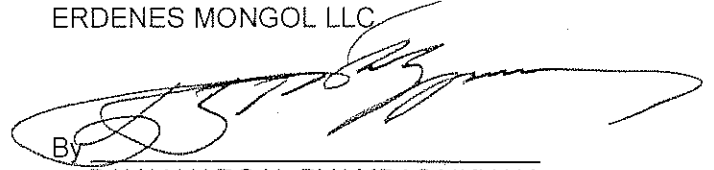
Facsimile Numbers:

(632) 636-2444

(632) 636-2407.

IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Loan Agreement to be signed in their respective names as of the day and year first above written and to be delivered at the principal office of ADB.

ERDENES MONGOL LLC

By 

BAYANJARGAL BYAMBASAIKHAN  
Chief Executive Officer

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 develop the Borrower's basic capacity for its envisaged development.

2. The Project shall comprise the following outputs.

**Output 1: Corporate strategy developed.** Conducting an analysis of the new legal and business framework to examine new business environment for the Borrower and finding its optimal strategy to operate and helping the Borrower develop a corporate roadmap to identify the mid- to long-term targets and milestones.

**Output 2: The Borrower's functional capability strengthened.**

(a) Helping establish the following management groups, and hire and retain high-level management consultants for respective groups for the transitional period:

- (i) advisory experts group;
- (ii) strategy and risk management group; and
- (iii) executive management recruitment group.

(b) Helping strengthen its following existing functions [(i)-(iii)] and establish new functions [(iv)-(vi)], and hire and retain middle-level management consultants for respective functions for the transitional period:

- (i) financial management;
- (ii) human resources management;
- (iii) public relations; and establish new functions;
- (iv) environment and social management;
- (v) supply-chain management; and
- (vi) asset and liability management.

(c) Helping develop its business processes to improve the efficiency, envisaging its business expansions, and providing capacity building.

(d) Assessing the function and status of, and strengthening its existing management information system and related information and communication technology, relating to supply-chain management, project management, and financial management.

(e) Providing capacity building for the staff of the Borrower, including (i) senior-management level, (ii) unit heads level, and (iii) working level staff, for a transitional period, with necessary training at respective reform stages.

**Output 3: The Borrower's investment capability strengthened.**

- (a) Helping the Borrower to develop capacity to diversify its assets-base to include economic infrastructure and non-mining assets with regard to the ability to identify appropriate investment opportunities and conduct due diligence.
- (b) Helping the Borrower to identify potential state-owned assets to be acquired.
- (c) Conducting an institutional and legal assessment for the Borrower to hold non-mining assets.

3. The Project is expected to be completed by 30 April 2019.

## SCHEDULE 2

### Amortization Schedule

#### (Strengthening Institutional Framework and Management Capacity of Erdenes Mongol Project)

1. The following table sets forth the Principal Payment Dates of the Loan and the percentage of the total principal amount of the Loan payable on each Principal Payment Date (Installment Share). If the proceeds of the Loan shall have been fully withdrawn as of the first Principal Payment Date, the principal amount of the Loan repayable by the Borrower on each Principal Payment Date shall be determined by ADB by multiplying: (a) the total principal amount of the Loan withdrawn and outstanding as of the first Principal Payment Date; by (b) the Installment Share for each Principal Payment Date, such repayment amount to be adjusted, as necessary, to deduct any amounts referred to in paragraph 4 of this Schedule, to which a Currency Conversion applies.

<u>Date Payment Due</u>	<u>Installment Share</u> (Expressed as a % based on 30% annuity)
15 September 2019	0.542983
15 March 2020	0.624431
15 September 2020	0.718095
15 March 2021	0.825809
15 September 2021	0.949681
15 March 2022	1.092133
15 September 2022	1.255953
15 March 2023	1.444346
15 September 2023	1.660997
15 March 2024	1.910147
15 September 2024	2.196669
15 March 2025	2.526169
15 September 2025	2.905095
15 March 2026	3.340859
15 September 2026	3.841988
15 March 2027	4.418286
15 September 2027	5.081029
15 March 2028	5.843183
15 September 2028	6.719661
15 March 2029	7.727610
15 September 2029	8.886752
15 March 2030	10.219764
15 September 2030	11.752729
15 March 2031	13.515631
Total	100.000000

2. If the proceeds of the Loan shall not have been fully withdrawn as of the first Principal Payment Date, the principal amount of the Loan repayable by the Borrower on each Principal Payment Date shall be determined as follows:

(a) To the extent that any proceeds of the Loan shall have been withdrawn as of the first Principal Payment Date, the Borrower shall repay the amount withdrawn and outstanding as of such date in accordance with paragraph 1 of this Schedule.

(b) Any withdrawal made after the first Principal Payment Date shall be repaid on each Principal Payment Date falling after the date of such withdrawal in amounts determined by ADB by multiplying the amount of each such withdrawal by a fraction, the numerator of which shall be the original Installment Share specified in the table in paragraph 1 of this Schedule for said Principal Payment Date (the Original Installment Share) and the denominator of which shall be the sum of all remaining Original Installment Shares for Principal Payment Dates falling on or after such date, such repayment amounts to be adjusted, as necessary, to deduct any amounts referred to in paragraph 4 of this Schedule, to which a Currency Conversion applies.

3. Withdrawals made within two calendar months prior to any Principal Payment Date shall, for the purposes solely of calculating the principal amounts payable on any Principal Payment Date, be treated as withdrawn and outstanding on the second Principal Payment Date following the date of withdrawal and shall be repayable on each Principal Payment Date commencing with the second Principal Payment Date following the date of withdrawal.

4. Notwithstanding the provisions of paragraphs 1 and 2 of this Schedule, upon a Currency Conversion of all or any portion of the withdrawn principal amount of the Loan to an Approved Currency, the amount so converted in said Approved Currency that shall be repayable on any Principal Payment Date occurring during the Conversion Period, shall be determined by ADB by multiplying such amount in its currency of denomination immediately prior to said Conversion by either: (a) the exchange rate that reflects the amounts of principal in said Approved Currency payable by ADB under the Currency Hedge Transaction relating to said Conversion; or (b) if ADB so determines in accordance with the Conversion Guidelines, the exchange rate component of the Screen Rate.

5. If the principal amount of the Loan withdrawn and outstanding from time to time shall be denominated in more than one Loan Currency, the provisions of this Schedule shall apply separately to the amount denominated in each Loan Currency, so as to produce a separate amortization schedule for each such amount.

**SCHEDULE 3****Allocation and Withdrawal of Loan Proceeds**General

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

Basis for Withdrawal from the Loan Account

2. Except as ADB may otherwise agree, the proceeds of the Loan shall be disbursed on the basis of the withdrawal percentage for each item of expenditure set forth in the Table.

Interest and Commitment Charges

3. The amount allocated to Category 3 is for financing interest and commitment charges on the Loan during the implementation period of the Project. ADB shall be entitled to withdraw from the Loan Account and pay to itself, on behalf of the Borrower, the amounts required to meet payments, when due, of such interest and commitment charges.

Reallocation

4. Notwithstanding the allocation of Loan proceeds and the withdrawal percentages set forth in the Table,

(a) if the amount of the Loan allocated to any Category appears to be insufficient to finance all agreed expenditures in that Category, ADB may, by notice to the Borrower, (i) reallocate to such Category, to the extent required to meet the estimated shortfall, amounts of the Loan which have been allocated to another Category but, in the opinion of ADB, are not needed to meet other expenditures, and (ii) if such reallocation cannot fully meet the estimated shortfall, reduce the withdrawal percentage applicable to such expenditures in order that further withdrawals under such Category may continue until all expenditures thereunder shall have been made; and

(b) if the amount of the Loan allocated to any Category appears to exceed all agreed expenditures in that Category, ADB may, by notice to the Borrower, reallocate such excess amount to any other Category.

Disbursement Procedures

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

TABLE

<b>ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS</b> <b>(Strengthening Institutional Framework and Management Capacity of Erdenes Mongol Project)</b>			
<b>Number</b>	<b>Item</b>	<b>Total Amount Allocated for ADB Financing (\$) Category</b>	<b>Basis for Withdrawal from the Loan Account</b>
1	Equipment	1,676,536	100% of total expenditure claimed
2	Consulting Services	31,019,600	100% of total expenditure claimed
3	Interest and Commitment Charges	1,714,442	100% of amounts due
4	Unallocated	589,422	
	Total	35,000,000	



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

1. The procurement of Goods 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

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) National Competitive Bidding; and
- (b) 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.

Consulting Services

6. Except as ADB may otherwise agree, and except as set forth in the paragraph below, the Borrower shall apply quality- and cost-based selection for selecting and engaging Consulting Services.
7. The Borrower shall recruit the individual consultants for areas as specified in the Procurement Plan in accordance with procedures acceptable to ADB for recruiting individual consultants.

Industrial or Intellectual Property Rights

8. (a) The Borrower shall ensure that all Goods 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 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.

9. 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

10. Contracts procured under the 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 and Other Matters

#### Implementation Arrangements

1. The Borrower shall ensure that the Project is implemented in accordance with the detailed arrangements set forth in the PAM. Any subsequent change to the PAM shall become effective only after approval of such change by the Borrower and ADB. In the event of any discrepancy between the PAM and this Loan Agreement, the provisions of this Loan Agreement shall prevail.

#### Safeguards

2. The Borrower shall ensure that the Project does not have any environmental, involuntary resettlement or indigenous peoples impacts, within the meaning of the Safeguard 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 the Borrower and with the Safeguard Policy Statement.

#### Counterpart Funding

3. The Borrower shall ensure that the counterpart funding required for successful Project implementation is timely allocated and provided.

#### Financial Matters

4. The Borrower shall, at all times, maintain the following financial ratio levels, assessing these as early as possible, and no later than 2 months from the start of the fiscal year, in the following year budgeting or projections of its financial statements, and shall furnish such projected financial ratio calculations for the year to ADB, no later than 2 months from the start of the respective fiscal year.

(a) Debt service coverage ratio shall be at least 1.10, which is calculated by Earnings before Debt Interest, Taxation, Depreciation & Amortization divided by Debt obligations due within the year (including interest and principal repayments, lease payments);

(b) Debt to equity ratio shall be at least at the level of 65 to 35, which is calculated by dividing its total outstanding debt by total shareholders equity; and

(c) Operating ratio shall not exceed a level of 0.4, which is calculated by its total operating expenses divided by net revenues.

5. The Borrower shall explore new or enlarged revenue sources from the investee companies, whose equity it holds. Such new or enlarged sources shall include, among others, (a) a portion of dividends; and (b) management fees. The Borrower shall maintain detailed records of them, in English, and furnish to ADB along with audited Project financial statements.

6. The Borrower shall cause its investee companies to (a) provide their annual financial statements prepared in accordance with financing reporting standards acceptable to ADB; (b) have their 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. The Borrower shall furnish to ADB, no later than 1 month after approval by the relevant authority, copies of such audited financial statements, all in the English language.

7. The Borrower shall undertake periodic credit rating exercises on itself with the assistance of independent external agencies, and shall furnish the results of these to ADB, no later than 1 month after the Borrower's internal approvals.

#### Change In Ownership

8. In the event that any sale, transfer or assignment of shares or interest which may materially affect the Borrower's control, is anticipated, the Borrower shall consult with ADB at least 6 months prior to the implementation of such change. The Borrower shall ensure that such change be carried out in a lawful and transparent manner. The Borrower shall further ensure that the new controlling management of the Borrower complies with (a) all Project related agreements executed between ADB and the Borrower, or the Guarantor; and (b) the policies of ADB relevant to the Project.

#### Governance and Anticorruption

9. The Borrower 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.

10. The Borrower shall ensure that the 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 executing and implementing agencies and all contractors, suppliers, consultants, and other service providers as they relate to the Project.