
LOAN NUMBER 3239-PAK(SF)

LOAN AGREEMENT
(Special Operations)

(Federally Administered Tribal Areas Water Resources Development Project)

between

ISLAMIC REPUBLIC OF PAKISTAN

and

ASIAN DEVELOPMENT BANK

DATED 17 APRIL 2015

PAK 47021

LOAN AGREEMENT
(Special Operations)

LOAN AGREEMENT dated 17 April 2015 between ISLAMIC REPUBLIC OF PAKISTAN ("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) "Agency" individually means any of the Bajaur Agency, the Mohmand Agency and the Khyber Agency; and "Agencies" collectively mean the Bajaur Agency, the Mohmand Agency and the Khyber Agency;

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

(c) "Consulting Services" means the services to be financed out of the proceeds of the Loan as described in paragraph 2(d) of Schedule 1 to this Loan Agreement;

(d) "EARF" means the environmental assessment and review framework for the Project, including any update thereto, prepared and submitted by the Borrower and cleared by ADB;

(e) "EMP" means an environmental management plan for a Subproject, including any update thereto, incorporated in the IEE;

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

(g) "FATA" means the Federally Administered Tribal Areas of the Borrower;

(h) "FATA Secretariat" means the secretariat of the Borrower responsible for local administration of FATA, including overseeing the development affairs of FATA;

(i) "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;

(j) "IEE" means an initial environmental examination for a Subproject, including any update thereto, prepared and submitted by the Borrower pursuant to the requirements set forth in the EARF and cleared by ADB;

(k) "Involuntary Resettlement Safeguards" means the principles and requirements set forth in Chapter V, Appendix 2, and Appendix 4 (as applicable) of the SPS;

(l) "LARF" means the land acquisition and resettlement framework for the Project, including any update thereto, prepared and submitted by the Borrower and cleared by ADB;

(m) "LARP" means a land acquisition and resettlement plan for a Subproject, including any update thereto, prepared and submitted by the Borrower pursuant to the requirements set forth in the LARF and cleared by ADB;

(n) "Loan Disbursement Handbook" means ADB's Loan Disbursement Handbook (2012, as amended from time to time);

(o) "PAM" means the project administration manual for the Project dated 17 November 2014 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;

(p) "PIUs" means the project implementation units for the Project to be established in each of the Agencies;

(q) "PMU" means the project management unit for the Project to be established within the Planning and Development Department of the FATA Secretariat;

(r) "Procurement Guidelines" means ADB's Procurement Guidelines (2013, as amended from time to time);

(s) "Procurement Plan" means the procurement plan for the Project dated 17 November 2014 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;

(t) "Project area" means the areas within the Bajaur Agency, the Mohmand Agency and the Khyber Agency;

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

(v) "Project Implementing Agencies" means the Directorate of Irrigation, Directorate of Agriculture, and Directorate of Forests of the FATA Secretariat;

(w) "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 and the LARP (as applicable), including any corrective and preventative actions;

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

(y) "Subproject" means a subproject under the Project that meets the subproject eligibility criteria set forth in paragraph 6 of Schedule 5 to this Loan Agreement; and

(z) "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 twenty nine million two hundred seventy four thousand Special Drawing Rights (SDR 29,274,000).

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 1 April and 1 October 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 September 2020 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 on 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. The following is specified as an additional condition to the effectiveness of this Loan Agreement for the purposes of Section 9.01(f) of the Loan Regulations: the PMU shall have been established and each of a full time (a) Project Director (PMU head), (b) Deputy Director, Engineering, (c) Deputy Director, Procurement and Contract Management, and (d) Deputy Director, Finance and Administration with qualifications, experience, expertise and terms of reference acceptable to ADB, shall have been appointed.

Section 5.02. A date 90 days after the date of this Loan Agreement is specified for the effectiveness of this Loan Agreement for the purposes of Section 9.04 of the Loan Regulations.

ARTICLE VI

Miscellaneous

Section 6.01. The Secretary, Economic Affairs Division, Ministry of Finance, Revenue, Economic Affairs, Statistics and Privatization 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

The Secretary
Economic Affairs Division
Ministry of Finance, Revenue, Economic Affairs, Statistics and
Privatization
Islamabad, Pakistan

Facsimile Numbers:

(9251) 920-4086
(9251) 920-2019.

For ADB

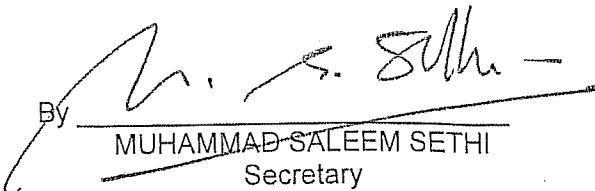
Asian Development Bank
6 ADB Avenue
Mandaluyong City
1550 Metro Manila
Philippines

Facsimile Numbers:

(632) 636-2444
(632) 636-2340.


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.

ISLAMIC REPUBLIC OF PAKISTAN

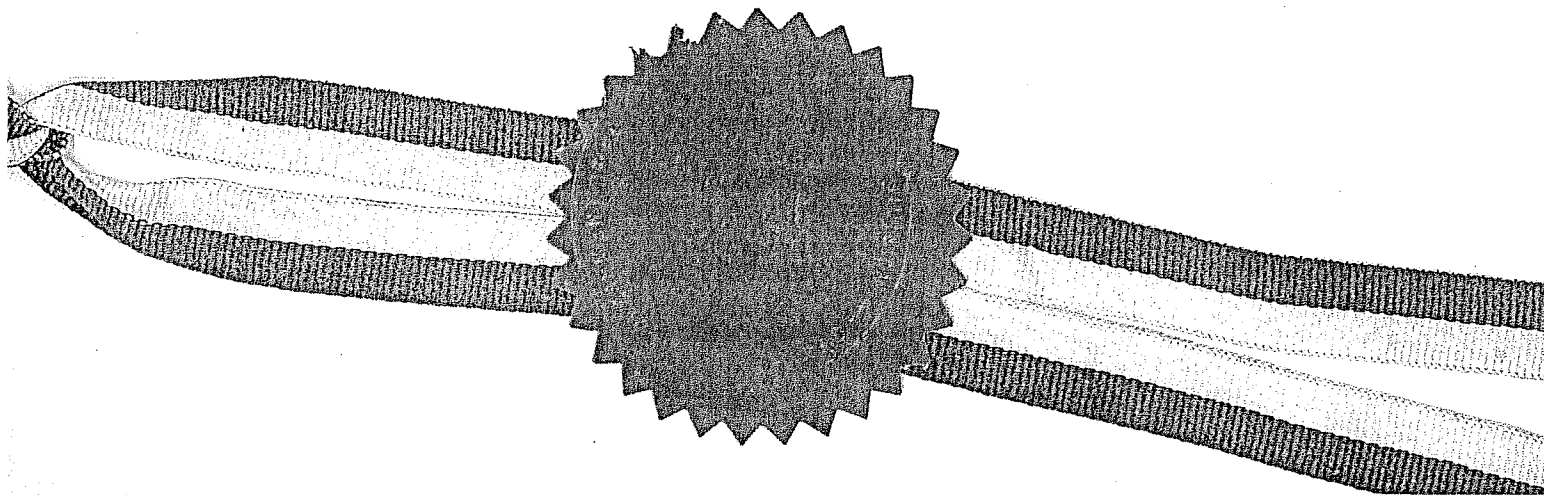
By 

MUHAMMAD SALEEM SETHI
Secretary
Economic Affairs Division

ASIAN DEVELOPMENT BANK

By 

WERNER LIEPACH
Country Director
Pakistan Resident Mission



SCHEDULE 1

Description of the Project

1. The objective of the Project is improved agricultural productivity of selected watersheds and their associated natural resource base in the Project area.
2. The Project shall comprise the following components:
 - (a) construction of approximately (i) nine small concrete gravity dams (maximum height of 15 meters each), (ii) 31 diversion weirs, and (iii) 95 kilometers of main and secondary irrigation channels, in each case in the Project area;
 - (b) (i) construction of approximately 144 kilometers of lined watercourses, terracing and land leveling on a command area of approximately 4,615 hectares, and (ii) installation of rain and stream gauges to measure water availability, in each case in the Project area;
 - (c) (i) afforestation of degraded watersheds on approximately 5,050 hectares and (ii) where appropriate, construction of check dams, in each case in the Project area; and
 - (d) provision of support for Project management and implementation including (i) project design and supervision, baseline and completion surveys, and evaluation and (ii) management and operating expenses of the PMU and PIUs.
3. The Project is expected to be completed by 31 March 2020.

SCHEDULE 2**Amortization Schedule****(Federally Administered Tribal Areas Water Resources Development Project)**

<u>Date Payment Due</u>	<u>Payment of Principal</u> (expressed in Special Drawing Rights)*
01 April 2020	731,850.00
01 October 2020	731,850.00
01 April 2021	731,850.00
01 October 2021	731,850.00
01 April 2022	731,850.00
01 October 2022	731,850.00
01 April 2023	731,850.00
01 October 2023	731,850.00
01 April 2024	731,850.00
01 October 2024	731,850.00
01 April 2025	731,850.00
01 October 2025	731,850.00
01 April 2026	731,850.00
01 October 2026	731,850.00
01 April 2027	731,850.00
01 October 2027	731,850.00
01 April 2028	731,850.00
01 October 2028	731,850.00
01 April 2029	731,850.00
01 October 2029	731,850.00
01 April 2030	731,850.00
01 October 2030	731,850.00
01 April 2031	731,850.00
01 October 2031	731,850.00
01 April 2032	731,850.00
01 October 2032	731,850.00
01 April 2033	731,850.00
01 October 2033	731,850.00
01 April 2034	731,850.00
01 October 2034	731,850.00
01 April 2035	731,850.00
01 October 2035	731,850.00
01 April 2036	731,850.00
01 October 2036	731,850.00
01 April 2037	731,850.00

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

<u>Date Payment Due</u>	<u>Payment of Principal</u> (expressed in Special Drawing Rights) *
01 October 2037	731,850.00
01 April 2038	731,850.00
01 October 2038	731,850.00
01 April 2039	731,850.00
01 October 2039	731,850.00
TOTAL	29,274,000.00

* 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 7 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.

TABLE

ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (Federally Administered Tribal Areas Water Resources Development Project)				
Number	Item	Total Amount Allocated for ADB Financing (SDR)		Basis for Withdrawal from the Loan Account
		Category	Subcategory	
1	Works	18,066,000		
1A	Khyber Agency		7,365,000	90% of total expenditure claimed
1B	Mohmand Agency		5,486,000	90% of total expenditure claimed
1C	Bajaur Agency		5,215,000	90% of total expenditure claimed
2	Mechanical and Equipment	368,000		100% of total expenditure claimed*
3	Environmental and Social Mitigation	243,000		100% of total expenditure claimed*
4	Project Management	82,000		100% of total expenditure claimed*
5	Design and Development	2,718,000		100% of total expenditure claimed*
6	Recurrent Costs	1,908,000		
6A	Project Management Costs		1,192,000	100% of total expenditure claimed*
6B	Recurrent Costs (Vehicles, Equipment, Supplies)		716,000	90% of total expenditure claimed
7	Interest Charge	878,000		100% of amounts due
8	Unallocated	5,011,000		
	Total	29,274,000		

* Exclusive of taxes and duties imposed within the territory of 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) 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.

Conditions for Award of Contract

6. The Borrower shall ensure that the FATA Secretariat does not award any Works contract for a Subproject which involves environmental impacts until the FATA Secretariat has:
 - (a) obtained the final approval of the IEE from the relevant environment authority of the Borrower; and
 - (b) incorporated the relevant provisions from the EMP into the Works contract.
7. The Borrower shall ensure that the FATA Secretariat does not award any Works contract involving involuntary resettlement impacts for a Subproject until the Borrower, through the FATA Secretariat, has prepared and submitted to ADB the final LARP for such Subproject based on the Subproject's detailed design, and obtained ADB's clearance of such LARP.

Consulting Services

8. Except as ADB may otherwise agree, and except as set forth in the paragraph below, the Borrower shall cause the FATA Secretariat to apply quality- and cost-based selection for selecting and engaging Consulting Services.

9. The Borrower shall cause the FATA Secretariat to apply the following method for selecting and engaging the specified Consulting Services, in accordance with, among other things, the procedures set forth in the Procurement Plan: Least-Cost Selection for baseline and completion surveys, and project evaluation.

10. The Borrower shall cause the FATA Secretariat to recruit the individual consultant for accounting software and training in accordance with procedures acceptable to ADB for recruiting individual consultants.

Industrial or Intellectual Property Rights

11. (a) The Borrower shall cause the FATA Secretariat to 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 cause the FATA Secretariat to 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.

12. The Borrower shall cause the FATA Secretariat to 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

13. Contracts procured under national competitive bidding procedures using single stage, two envelope 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.

14. In the case of a contract of Goods or Works, which is subject to ADB's prior review, the Borrower shall cause the FATA Secretariat to seek ADB's prior approval of any modification or waiver of the terms and conditions of the contract, including:

- (a) granting an extension of the stipulated time for completion of a contract for a period of 1 month or more, or which is likely to require an extension of the Loan Closing Date; and

- (b) increases in aggregate of the original price by more than 5% (for the avoidance of doubt, such increase shall take into account any previous change under such contract).

15. In the case of a contract for Goods or Works, which is subject to ADB's post review, ADB shall review the required contract modification or waiver and respond to the Borrower, through the FATA Secretariat, as soon as practicable, but not later than 1 month after the receipt of the required document.

16. The Borrower shall cause the FATA Secretariat to provide to ADB copies of all time extensions, modifications or waivers to the contracts (including change orders) within 1 month following amendment of the contract.

SCHEDULE 5

Execution of Project; Financial Matters

Implementation Arrangements

1. The Borrower and the FATA Secretariat 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. Without limiting the generality of the provisions of paragraph 1 above, the Borrower shall cause the FATA Secretariat to ensure the following:
 - (a) ADB is consulted on all significant matters relating to management and implementation of the Project, including selection, appointment, or change of the Project director, to ensure continuity, transparency and efficiency of management;
 - (b) appointment of the Project director shall not be terminated or term of such appointment altered in any material way until the third anniversary of such appointment unless a determination of serious misconduct is made through due process or ADB otherwise agrees; and
 - (c) the remaining PMU and PIU staff (in addition to those identified in Section 5.01 of this Loan Agreement) as set out in the PAM are appointed within 60 days of the effectiveness of this Loan Agreement.

Counterpart Funding

3. The Borrower shall ensure that necessary counterpart funds are available and released on a timely basis for implementation of the Project. The Borrower, through the FATA Secretariat, shall annually update its regional development program to incorporate revised estimates and funding requirements for the Project.

Policy Dialogue

4. The Borrower shall and shall cause the FATA Secretariat to ensure that: (a) ADB is kept informed of the policies and programs of the Borrower for the irrigation sector (particularly as they relate to the FATA), including those under discussion with other multilateral and bilateral agencies and those that may materially affect the economic viability of the Project or any Subproject; and (b) ADB is given an opportunity to comment on any proposed new irrigation sector policies or programs.

Security

5. The Borrower shall cause the FATA Secretariat to ensure, through the political administration of each Agency, that adequate security is provided for the smooth and uninterrupted implementation of the Project.

Subproject Selection Criteria

6. The Borrower shall cause the FATA Secretariat to ensure that all Subprojects that are selected are in accordance with the following selection criteria:

- (a) each Subproject meets the Subproject selection criteria as set out in Annex 1 of the PAM;
- (b) each Subproject falls within the activities described in paragraph 2 of Schedule 1 to this Loan Agreement;
- (c) each Subproject is located within the Project area;
- (d) each Subproject complies with ADB safeguard policies and has (i) no significant adverse environmental impacts (in other words, would not be classified as a category A Subproject for environment in accordance with the SPS) and (ii) no social impacts (in other words, would not be classified as either a category A or B Subproject for involuntary resettlement or indigenous peoples in accordance with the SPS); and
- (e) each Subproject can be completed by the Project completion date as specified in paragraph 3 of Schedule 1 to this Loan Agreement.

Terms of Partnerships; Operation and Maintenance

7. In addition, to the selection criteria discussed in paragraph 6 above, prior to the commencement of each proposed Subproject, the FATA Secretariat and the relevant community organization shall have entered into a Terms of Partnership ("TOP") setting forth, among other relevant terms, the details of the preparation and implementation of such Subproject (including information on any land to be voluntarily contributed by the community for such Subproject) and subsequent operation and maintenance of the facilities financed under such Subproject, which such TOP will have been approved by the Political Administration.

8. Without limiting the generality of paragraph 7 above, (a) each TOP for a Subproject involving construction of a dam shall stipulate that the FATA Secretariat, through its Directorate of Irrigation, will carry out at least four annual inspections of such dam and its appurtenant structures. Repairs to dams and appurtenant structures, if required, shall be carried out by the FATA Secretariat, through its Directorate of Irrigation, using its own maintenance and rehabilitation funds; and (b) each TOP for a Subproject involving the construction of a weir or irrigation channel shall stipulate that the relevant community organization shall be responsible for operation and maintenance of such weir or irrigation channel from such community organization's own funds, provided, that, any major repairs to such facilities shall be carried out by, and at the expense of, the FATA Secretariat, through its Directorate of Irrigation.

9. The Borrower shall cause the FATA Secretariat to ensure that each completed Subproject facility is operated and maintained in accordance with the TOP for such Subproject and otherwise in accordance with sound administrative policies and procedures and as otherwise set forth in the applicable TOP for such Subproject. The Borrower, through the FATA Secretariat, shall ensure adequate funds are allocated in its annual budgets and made available during the period of Project implementation and each fiscal year thereafter to enable the FATA Secretariat, through its Directorate of Irrigation, to comply with its operation and maintenance obligations under each TOP entered into in respect of a Subproject.

Environment

10. The Borrower shall cause the FATA Secretariat to ensure that the preparation, design, construction, implementation, operation and decommissioning of each Subproject and all Subproject facilities comply with (a) all applicable laws and regulations of the Borrower relating to environment, health, and safety; (b) the Environmental Safeguards; (c) the EARF; and (d) all measures and requirements set forth in the IEE and the EMP for such Subproject, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

Land Acquisition and Involuntary Resettlement

11. The Borrower shall cause the FATA Secretariat to ensure that each Subproject does not have any involuntary resettlement impacts within the meaning of the SPS. In the event that any Subproject does have any such impact, the Borrower shall cause the FATA Secretariat to take all steps required to ensure that the such Subproject complies with (a) all applicable laws and regulations of the Borrower relating to land acquisition and involuntary resettlement; (b) the principles and requirements set forth in the Involuntary Resettlement Safeguards; (c) the LARF; and (d) all measures set forth in the LARP for such Subproject, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

Indigenous Peoples

12. The Borrower shall cause the FATA Secretariat to ensure that each Subproject does not have any indigenous peoples impacts within the meaning of the SPS. In the event that any Subproject does have any such impact, the Borrower shall cause the FATA Secretariat to take all steps required to ensure that such Subproject complies with the applicable laws and regulations of the Borrower and with the SPS.

Human and Financial Resources to Implement Safeguards Requirements

13. The Borrower shall make available and cause the FATA Secretariat to make available necessary budgetary and human resources to fully implement the EMP and, if applicable, the LARP for each Subproject.

Safeguards – Related Provisions in Bidding Documents and Works Contracts

14. The Borrower shall cause the FATA Secretariat to ensure that all bidding documents and contracts for Works contain provisions that require contractors to:

Schedule 5

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

Safeguards Monitoring and Reporting

15. The Borrower shall cause the FATA Secretariat to do the following:

- (a) submit semi-annual safeguards monitoring reports to ADB and disclose relevant information from such reports to affected persons promptly upon submission;
- (b) if any unanticipated environmental and/or social risks and impacts arise during construction, implementation or operation of any Sub-project that were not considered in the IEE, the EMP or, if applicable, the LARP for such Sub-project, promptly inform ADB of the occurrence of such risks or impacts, with detailed description of the event and proposed corrective action plan; and
- (c) report any actual or potential breach of compliance with the measures and requirements set forth in the EMP or, if applicable, the LARP for any Sub-project promptly after becoming aware of the breach.

Prohibited List of Investments

16. The Borrower shall cause the FATA Secretariat to ensure that no proceeds of the Loan are used to finance any activity included in the list of prohibited investment activities provided in Appendix 5 of the SPS.

Labor and Health Standards

17. The Borrower shall cause the FATA Secretariat to ensure that the Works contract for each Subproject incorporates provisions to the effect that the contractor will: (a) comply with applicable core labor standards and labor laws, and incorporate applicable workforce occupational safety norms; (b) comply with the applicable provisions of the GAP (as defined in paragraph 19 below) for such Subproject, including equal pay to men and women for the same type of work and enabling working conditions for female workers; (c) not employ child labor; (d) abstain from compulsory labor; (e) abstain from employment discrimination; (f) allow for freedom of association; (g) to the extent possible, maximize employment of local poor and disadvantaged persons for project construction purposes, provided that the requirement for job and efficiency are adequately met; and (h) provide safe working conditions.

18. The Borrower shall cause the FATA Secretariat to ensure that the Works contractor for each Subproject disseminates information (in local languages) on the risks of sexually-transmitted diseases, including HIV/AIDs, in health and safety program for all construction works at campsites. The Borrower shall cause the FATA Secretariat to ensure that specific provisions to this effect will be included in the bidding documents and the Works contract for each Subproject, and the Borrower shall ensure that compliance will be strictly monitored by the FATA Secretariat.

Gender and Development

19. The Borrower shall cause the FATA Secretariat to ensure that: (a) the gender action plan ("GAP") prepared for each Subproject (each of which shall be prepared in accordance with the terms of the Gender Action Framework prepared for the Project) is fully implemented and monitored in a timely manner in accordance with its terms, related regulations of the Borrower, and ADB's Policy on Gender Development (1998) and adequate resources are allocated for this purpose; (b) bidding documents for each Subproject include provisions as specified in the GAP for such Subproject, including equal pay to men and women for same type of work and enabling working conditions for female workers; (c) progress in achieving the GAP targets are reflected in the Project progress reports and Project completion report; and (d) targets under each GAP are achieved.

Governance and Anticorruption

20. The Borrower, the FATA Secretariat, 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.

21. The Borrower, the FATA Secretariat and the Project Implementing Agencies 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.

22. All procurement activities shall be subject to an independent performance audit by an independent auditor selected by the FATA Secretariat and acceptable to ADB. The performance audit shall be performed at least twice during implementation of the Project. The auditor shall also perform random spot checks for contract implementation activities under the Works contract for each Subproject. All external costs related to such investigations shall be included as part of the costs of the applicable Subproject. The Borrower shall cause the Planning and Development Department of the FATA Secretariat to include updated information on the Project on the web. Such information shall include, among other things, (i) the Project financial statements; (ii) summary progress reports for the Project; and (iii) procurement-related information, including lists of participating bidders, names of winning bidders, basic details on bidding procedures adopted and applicable guidelines, amount of contract awards, the list of goods and/or services purchased and their intended and actual utilization.