
LOAN NUMBER 3268-SRI (SF)

LOAN AGREEMENT
(Special Operations)

(Mahaweli Water Security Investment Program – Tranche 1)

between

DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

and

ASIAN DEVELOPMENT BANK

DATED 17 SEPTEMBER 2015

SRI 47381

**LOAN AGREEMENT
(Special Operations)**

LOAN AGREEMENT dated 17 September 2015 between DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA (“Borrower”) and ASIAN DEVELOPMENT BANK (“ADB”).

WHEREAS

(A) by a framework financing agreement dated 23 April 2015 between the Borrower and ADB, ADB has agreed to provide a multitranche financing facility to the Borrower for purposes of financing projects under the Mahaweli Water Security Investment Program;

(B) by a periodic financing request dated 23 April 2015, the Borrower has applied for a loan from ADB’s Special Funds resources and a loan from ADB’s ordinary capital resources, for the purposes of the Project described in Schedule 1 to this Loan Agreement (“Project”);

(C) by a loan agreement of even date herewith (“Ordinary Operations Loan Agreement”), ADB has agreed to make a loan (“Ordinary Operations Loan”) to the Borrower from ADB’s ordinary capital resources in an amount of seventy six million Dollars (\$76,000,000) for the purposes of the Project; and

(D) 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 the 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) “Alternative Wetting and Drying” is a water-saving process that farmers can apply to reduce their irrigation water use in rice fields without any yield penalty;

(b) “CEA” means the Central Environmental Authority of the Borrower or any successor thereto;

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

(d) “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;

(e) “DOI” means the Department of Irrigation under the Ministry of Irrigation, or any successor thereto;

(f) “EA” or “Project Executing Agency” for the purposes of, and within the meaning of, the Loan Regulations means MMDE or any successor thereto acceptable to ADB, which is responsible for the carrying out of the Project;

(g) “EARF” or “Environmental Assessment and Review Framework” means the environmental assessment and review framework for the Investment Program, including any update thereto, agreed between the Borrower and ADB and incorporated by reference in the FFA;

(h) “EIA” or “Environmental Impact Assessment” means the environmental impact assessment for each of Part A and Part B of the Project, as per EARF, including any update thereto, prepared and submitted by the Borrower pursuant to the requirements set forth in the EARF, and cleared by ADB;

(i) “EMP” or “Environmental Management Plan” or means each and any environmental management plan for the Project, including any update thereto, incorporated in the EIAs or the IEE, as appropriate;

(j) “Environmental Monitoring Report” means each report prepared and submitted by the Borrower to ADB, that describes progress with implementation of, and compliance with, the EMPs, including any corrective and preventative actions;

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

(l) “Facility” means the multitranche financing facility provided by ADB to the Borrower for purposes of financing projects under the Investment Program;

(m) “FAM” means the Facility administration manual dated April 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;

(n) “FFA” means the framework financing agreement dated 23 April 2015 between ADB and the Borrower with respect to the Facility;

(o) “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;

(p) “IEE” or “Initial Environmental Examination” means the initial environmental examination for Part C of the Project, including any update thereto, prepared and submitted by the Borrower pursuant to the requirements set forth in the EARF and cleared by ADB;

(q) “Investment Program” means the Mahaweli Water Security Investment Program;

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

(s) “km” means kilometer;

(t) “Loan Disbursement Handbook” means ADB’s Loan Disbursement Handbook (2012, as amended from time to time);

(u) “MASL” means the Mahaweli Authority of Sri Lanka, established and operating under the Mahaweli Authority Law of Sri Lanka 1979 (as amended) of the Borrower, or any successor thereto;

(v) “MMDE” means the Ministry of Mahaweli Development and Environment of the Borrower, or any successor thereto acceptable to ADB;

(w) “MOF” means the Ministry of Finance of the Borrower;

(x) “North Central Province Canal Program” means a high priority development program of the Borrower to augment water in the North Central, Central, North Western and Eastern Provinces;

(y) “O&M” means operation and maintenance;

(z) “Part” means a component of the Project, as described in paragraph 2 of Schedule 1 to this Loan Agreement;

(aa) “PMDSC” means the program management, design and supervision consultants;

(bb) “PFR” means the periodic financing request submitted or to be submitted by the Borrower, for the purposes of each loan under the Facility, and for the purpose of this Loan Agreement means the periodic financing request dated 23 April 2015;

(cc) “PIU” means the project implementation units established by MMDE for the purposes of the Investment Program, that will serve as the project implementation units for the Project;

(dd) “PMU” means the program management unit established by MMDE for the purposes of the Investment Program, that will serve as the project management unit for the Project;

(ee) “Procurement Guidelines” means ADB’s Procurement Guidelines (2013, as amended from time to time);

(ff) “Procurement Plan” means the procurement plan for the Project dated April 2015, forming part of the FAM 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;

(gg) “Project facilities” means the facilities to be improved, rehabilitated, modernized, constructed, operated and/or maintained, and the equipment to be installed and maintained under the Project;

(hh) “RF” or “Resettlement Framework” means the resettlement framework for the Investment Program, including any update thereto, agreed between the Borrower and ADB and incorporated by reference in the FFA;

(ii) “RP” or “Resettlement Plan” means each and any resettlement plan for the Project, including any update thereto, prepared and submitted by the Borrower pursuant to the requirements set forth in the RF and cleared by ADB;

(jj) “Yala season” is from May to September of each year;

(kk) “Social Monitoring Report” means each report prepared and submitted by the Borrower to ADB, that describes progress with implementation of, and compliance with, the RPs, including any corrective and preventative actions;

(ll) “SPS” or “Safeguard Policy Statement” means ADB’s Safeguard Policy Statement (2009);

(mm) “Safeguards Monitoring Report” means each report prepared and submitted by the Borrower to ADB, that describes progress with implementation of, and compliance with, the EMPs and RPs, including any corrective and preventative actions;

(nn) “Strategic Communication Plan” means the communication plan prepared for the Investment Program by the Borrower and approved by ADB;

(oo) “System for Rice Intensification” is an agro-ecological methodology for increasing the productivity of irrigated rice by changing the management of plants, soil, water and nutrients; and

(pp) “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 fifty three million five hundred eighty eight thousand Special Drawing Rights (SDR53,588,000).

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 June and 15 December in each year.

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

Section 2.05. The currency of repayment of the principal amount of the Loan and the currency of payment of the interest charge for the purposes of Sections 4.03(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 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. The Borrower shall enable ADB's representatives to inspect the Project, the Goods and Works, and any relevant records and documents.

Section 4.03. (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, compliance with the financial covenants 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 close 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.

ARTICLE V

Suspension; Acceleration of Maturity

Section 5.01. The following is specified as an additional event for suspension of the right of the Borrower to make withdrawals from the Loan Account for the purposes of Section 8.01(m) of the Loan Regulations: the Borrower shall have failed to perform any of its obligations under the Ordinary Operations Loan Agreement.

Section 5.02. The following is specified as an additional event for acceleration of maturity for the purposes of Section 8.07(d) of the Loan Regulations: the event specified in Section 5.01 of this Loan Agreement shall have occurred.

ARTICLE VI

Effectiveness

Section 6.01. 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 Ordinary Operations Loan Agreement shall have been duly authorized or ratified by, and executed and delivered on behalf of, the Borrower, and all conditions precedent to its effectiveness, other than a condition requiring the effectiveness of this Loan Agreement, shall have been fulfilled.

Section 6.02. A date 90 days after the date of this Loan Agreement is specified for the effectiveness of the Loan Agreement for the purposes of Section 9.04 of the Loan Regulations.

ARTICLE VII

Miscellaneous

Section 7.01. Each of the Secretary of MOF, the Deputy Secretary to the Treasury and the Director General of the Department of External Resources of the Borrower, is designated as representative of the Borrower for the purposes of Section 11.02 of the Loan Regulations.

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

For the Borrower

Secretary
Ministry of Finance
Colombo 1
Sri Lanka

cc.: Deputy Secretary to the Treasury
Director General, Department of External Resources

Facsimile Number:

+94 11 248-4563.

For ADB

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

Facsimile Numbers:

+63 2 636-2444
+63 2 636-2391.

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.

DEMOCRATIC SOCIALIST REPUBLIC OF
SRI LANKA

By 

R H S SAMARATHUNGA
Secretary
Ministry of Finance

ASIAN DEVELOPMENT BANK

By 

SRI WIDOWATI
Country Director
Sri Lanka Resident Mission

SCHEDULE 1

Description of the Project

1. The objective of the Investment Program and the Project is to secure access to water resources for agricultural and drinking purposes in project areas.
2. The Project shall comprise the following components as described in greater detail in the PFR:

Part A. Upper Elahera Canal Construction

- (i) construction of the first approximately 6 km of the Upper Elahera Canal's open canals and associated structures.

Part B. North Western Province Canal Construction

- (i) construction of two new 25 meter tall earth gravity dams, impounding the planned Mahakithula and Mahakirula reservoirs; and
- (ii) construction of approximately 27 km of open canals between the existing Wemedilla reservoir and the new Mahakithula and Mahakirula reservoirs, including a new 940 meter tunnel.

Part C. Minipe Left Bank Canal Rehabilitation

- (i) heightening the headwork's weir by approximately 3.5 meters to regulate generation inflows;
- (ii) construction of new automatic downstream-controlled intake gates to the left bank canal;
- (iii) construction of new emergency spill weirs to both the left and right bank canals; and
- (iv) rehabilitation of the 74 km Minipe Left Bank Canal, including the regulator and spill structures.

Part D. Capacity development, including

provision of the "improving system efficiencies and water productivity" consulting package to investigate inefficiencies within the existing conveyance and irrigation systems, and constraints to improving water productivity, and to recommend on-farm and system-wide improvements.

Part E. Project management and implementation support, including

provision of PMDSC support to (i) manage and implement the Project and the Investment Program, including surveys, feasibility study, and engineering design for projects to be financed in the subsequent tranches, and (ii) conduct due diligence and feasibility studies for Phase 2 of the North Central Province Canal Program.

3. Consulting Services will be provided to support the above stated activities.
4. The Project is expected to be completed by 31 December 2019.

SCHEDULE 2**Amortization Schedule****(Mahaweli Water Security Investment Program – Tranche 1)**

<u>Date Payment Due</u>	<u>Payment of Principal</u> (expressed in Special Drawing Rights)*
15 December 2020	1,339,700
15 June 2021	1,339,700
15 December 2021	1,339,700
15 June 2022	1,339,700
15 December 2022	1,339,700
15 June 2023	1,339,700
15 December 2023	1,339,700
15 June 2024	1,339,700
15 December 2024	1,339,700
15 June 2025	1,339,700
15 December 2025	1,339,700
15 June 2026	1,339,700
15 December 2026	1,339,700
15 June 2027	1,339,700
15 December 2027	1,339,700
15 June 2028	1,339,700
15 December 2028	1,339,700
15 June 2029	1,339,700
15 December 2029	1,339,700
15 June 2030	1,339,700
15 December 2030	1,339,700
15 June 2031	1,339,700
15 December 2031	1,339,700
15 June 2032	1,339,700
15 December 2032	1,339,700
15 June 2033	1,339,700
15 December 2033	1,339,700
15 June 2034	1,339,700
15 December 2034	1,339,700
15 June 2035	1,339,700
15 December 2035	1,339,700
15 June 2036	1,339,700
15 December 2036	1,339,700
15 June 2037	1,339,700
15 December 2037	1,339,700
15 June 2038	1,339,700
15 December 2038	1,339,700
15 June 2039	1,339,700

<u>Date Payment Due</u>	<u>Payment of Principal</u> (expressed in Special Drawing Rights)*
15 December 2039	1,339,700
15 June 2040	<u>1,339,700</u>
TOTAL	53,588,000

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

SCHEDULE 3

Allocation and Withdrawal of Loan Proceeds

General

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

Basis for Withdrawal from the Loan Account

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

Reallocation

3. 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, in consultation with 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, in consultation with the Borrower, reallocate such excess amount to any other Category.

Disbursement Procedures

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

Retroactive Financing

5. Withdrawals from the Loan Account may be made for reimbursement of eligible expenditures incurred under the Project before the Effective Date, but not earlier than 12 months before the date of this Loan Agreement, in connection with consulting services and procurement of goods, services and civil works, project management, and project administration, subject to a maximum amount equivalent to 20% of the Loan amount.

TABLE

ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (Mahaweli Water Security Investment Program – Tranche 1)			
Number	Item	Total Amount Allocated for ADB Financing (SDR) Category	Basis for Withdrawal from the Loan Account
1	Civil Works	27,373,000	35% of total expenditure claimed
2	Mechanical and Electrical Equipment	1,050,000	37% of total expenditure claimed
3	Consulting Services	15,446,000	86% of total expenditure claimed
4	Incremental PMU and PIU Salaries	225,000	6% of total expenditure claimed
5	Strategic Communication Plan	253,000	41% of total expenditure claimed*
6	Training	225,000	37% of total expenditure claimed
7	Unallocated	9,016,000	
	Total	53,588,000	

* 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) International Competitive Bidding;
 - (b) National Competitive Bidding;
 - (c) Shopping; and
 - (d) Forced account.
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.

Conditions for Award of Contract

5. The Borrower shall not award any Works contract which involves environmental impacts until MMDE has:
 - (a) obtained the final approval of the EIA from the CEA;
 - (b) updated the EMP based on the detailed design; and
 - (c) incorporated the relevant provisions from the corresponding EMP into the Work contract.

National Competitive Bidding

6. 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

7. 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.

8. The Borrower shall recruit the individual consultants for activities outlined in the Procurement Plan 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 and MMDE shall ensure that the Project is implemented in accordance with the detailed arrangements set forth in the FAM. Any subsequent change to the FAM shall become effective only after approval of such change by the Borrower and ADB. In the event of any discrepancy between the FAM and this Loan Agreement, the provisions of this Loan Agreement shall prevail.

Counterpart Support

2. The Borrower and MMDE shall ensure that the PMU and the PIUs employ sufficient staff for the duration of the Project with adequate and relevant expertise in the field of project management, financial management, engineering, procurement, contract management, construction management, communications, and environmental and social safeguards assessments, monitoring and implementation. The Borrower and MMDE shall keep the PMU and the PIUs equipped with the necessary office space, facilities, equipment, support staff and management information systems for the duration of the Project.

3. The Borrower and MMDE shall (a) ensure that all counterpart staff assigned to the PMU and PIU offices are assigned to the Project on a full-time basis, and (b) undertake best efforts to ensure that they remain in their positions for a reasonable period of time, and that staff replacements do not unduly disrupt implementation of the Project. The Borrower and MMDE shall provide ADB reasonable opportunity to comment on any proposed appointment of persons to key positions in the PMU and PIUs, including the Program Director and each Project Director.

4. The Program Director shall be either a Special Grade Engineer or Senior Engineer of Class 1 from MMDE, and the Project Directors shall be officers of Class 2, or higher, from DOI and MASL.

5. The Borrower shall make available to MMDE, and MMDE shall provide, all counterpart funds required for timely and effective implementation of the Project, including, without limitation, any funds required to keep the PMU and PIUs fully equipped and fully staffed in accordance with the requirements set out in the FAM, to mitigate foreseen and unforeseen environmental and social impacts, and to meet additional costs arising from design changes, price escalation in construction costs and/or unforeseen circumstances. The Borrower shall make the resources thus required available to MMDE on a quarterly basis for each fiscal year, or more frequently as required.

6. The Borrower shall reimburse MMDE for any taxes and duties imposed in the territory of the Borrower for Goods, Works and Consulting Services used in the carrying out the Project, no later than in the fiscal year after the year in which the taxes and duties were incurred.

Management, Operation and Maintenance of Project Facilities

7. The Borrower shall ensure (a) that MMDE operates and maintains all Project facilities in accordance with the operation and maintenance plans to be developed under the Investment Program; and (b) through MMDE, that each of MASL and DOI submits annually to MMDE and the Ministry of Irrigation, respectively, budget requests with a separate line item to cover the cost of maintenance and repair of the Project facilities in accordance with such operation and maintenance plans; and (c) that MMDE allocates in its annual budget adequate resources for DOI and MASL to carry out the operation, maintenance and repair works.

Grievance Redress Mechanism

8. Within 12 months after the Effective Date, the Borrower shall ensure that MMDE prepares a grievance redress mechanism, acceptable to ADB, and establish a special committee to receive and resolve complaints/grievances or act upon reports from stakeholders on misuse of funds and other irregularities, including grievances due to resettlement, and to address environmental and other social issues in relation to the Project. The special committee shall (a) make the public aware of the existence of this grievance redress mechanism; (b) receive, review and address complaints/grievances of stakeholders of the Project, in relation to the Project, any of the service providers, or any person responsible for carrying out any aspect of the Project; and (c) proactively and constructively respond to them.

Environment

9. The Borrower shall cause MMDE to 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; (c) the EARF; and (d) all measures and requirements set forth in the respective EIAs, IEE and EMPs, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

Land Acquisition and Involuntary Resettlement

10. The Borrower and MMDE shall ensure that all land and all rights-of-way required for all Project facilities are made available to the Works contractor in accordance with the schedule agreed under the related Works contract and all land acquisition and resettlement activities are implemented in compliance with (a) all applicable laws and regulations of the Borrower relating to land acquisition and involuntary resettlement; (b) the Involuntary Resettlement Safeguards; (c) the RF; and (d) all measures and requirements set forth in the respective RPs, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

11. Without limiting the application of the Involuntary Resettlement Safeguards, the RF or the RPs, the Borrower through MMDE shall ensure that no physical or economic displacement takes place in a project area until:

- (a) compensation and other entitlements have been provided to affected people in accordance with the relevant RP; and

- (b) a comprehensive income and livelihood restoration program has been established in accordance with the relevant RP.

Indigenous Peoples

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

Human and Financial Resources to Implement Safeguards Requirements

13. The Borrower shall cause MMDE to make available necessary budgetary and human resources to fully implement the EMPs and RPs.

Safeguards – Related Provisions in Bidding Documents and Works Contracts

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

- (a) comply with the measures and requirements relevant to the contractor set forth in the EIAs, IEE, EARF and the EMP, and any corrective or preventative actions set out in a Safeguards Monitoring Report;
- (b) make available a budget for all such environmental and social measures;
- (c) provide MMDE with a written notice of any unanticipated environmental or resettlement risks or impacts that arise during construction, implementation or operation of the Project that were not considered in the EIAs, IEE, EMP, RPs or the RF;
- (d) adequately record and inventory 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 unless alternative mitigation is provided as included in the design of the project.

Safeguards Monitoring and Reporting

15. The Borrower shall cause MMDE to do the following:

- (a) submit semi-annual Environmental Monitoring Reports to ADB for the Upper Elahera Canal and North Western Province Canal projects and annual Environmental Monitoring Reports for the Minipe Left Bank

Canal project, and disclose relevant information from such reports to affected persons promptly upon submission;

- (b) submit semi-annual Resettlement Monitoring Reports for each of the Upper Elahera Canal project, North Western Province Canal project and Minipe Left Bank Canal project;
- (c) 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 EIAs, IEE, EMP, EARF, RPs or the RF, promptly inform ADB of the occurrence of such risks or impacts, with detailed description of the event and proposed corrective action plan; and
- (d) report any actual or potential breach of compliance with the measures and requirements set forth in the EMP promptly after becoming aware of the breach.

Prohibited List of Investments

16. The Borrower shall cause MMDE 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 Standards

17. The Borrower shall cause MMDE to ensure that all bidding documents and contracts for construction or civil works under the Project contain provisions that require contractors:

- (a) to comply with applicable core labor standards, labor laws and incorporate applicable workplace occupational and health and safety principles;
- (b) to eliminate discrimination in respect of employment and to not differentiate payment between men and women for work of equal value;
- (c) not to employ child labor; to eliminate forced or compulsory labor; to allow for freedom of association;
- (d) to maximize employment of local poor and disadvantaged persons for construction purposes to the extent possible, provided that the requirements for efficiency are adequately met; and
- (e) to disseminate, or engage appropriate service providers to disseminate, information on the risks of sexually transmittable infections, including HIV/AIDS, to their employees and to members of the local communities surrounding the Project facilities, particularly to females.

Panel of Experts

18. MMDE will recruit and engage a panel of individual experts with qualifications, experience and terms of reference acceptable to ADB, to review, analyze and advise on the detailed engineering designs, contract documents, and implementation of the dam and tunnel components of the Project.

Public Awareness and Communication

19. The Borrower through MMDE shall comply with and implement the Strategic Communication Plan developed for the Investment Program and allocate adequate resources for such implementation.

Inter-agency Coordination

20. The Borrower shall ensure that MMDE notifies in a timely manner the Department of Wildlife Conservation, Forestry Department, Department of Agrarian Services, provincial governments, and other relevant agencies of any areas where infrastructure under the Project will be constructed. MMDE shall take necessary measures in consultation with such agencies to ensure that they are aware of the construction and then operation of the project facilities.

Policy Dialogue and Coordination with Development Partners

21. The Borrower and MMDE shall keep ADB informed of discussions (a) among government and quasi-government bodies with responsibility for irrigation and water resources sector development; and (b) with the World Bank, Japan International Cooperation Agency, China Development Bank, International Fund for Agricultural Development, and other multilateral and bilateral agencies, that may have implications for the implementation of the Investment Program, and shall provide ADB with an opportunity to comment on any proposed interventions in the water sector resulting from such discussions. The Borrower and MMDE shall take ADB's views into consideration before finalizing and implementing any such proposals.

Improved Water Management and Farmer Extension Services

22. The Borrower and MMDE shall, in the course of implementation of the Project, be committed to undertaking the following study and implementing the actions thereunder, which seeks to improve water management: Improving System Efficiencies and Water Productivity.

23. The Borrower, MMDE, and other relevant government agencies, shall provide sufficient extension services to farmers located within the Project's beneficiary areas to educate and encourage them to (a) improve their application of irrigation water to crops and reduce water consumption; (b) apply water saving practices such as Alternate Wetting and Drying, and System for Rice Intensification; (c) improve crop yields; (d) grow higher valued crops during the Yala season; and (e) reduce application of fertilizers and pesticides.

Governance and Corruption

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

25. The Borrower and MMDE 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 MMDE and all contractors, suppliers, consultants, and other service providers as they relate to the Project.

26. The Borrower and MMDE shall ensure that detailed information on project implementation is made readily available to the public through the MMDE website. This shall include all relevant information and documents relating to procurement, including the list of participating bidders, name of the winning bidder, basic details on the bidding process adopted, amount of contract awarded and the list of goods and services procured.

27. The Borrower shall, through independent auditors acceptable to ADB and the Borrower's Anticorruption Commission, conduct periodic inspections and random spot checks of civil servants' and contractors' activities related to the procurement of Goods, Works and Consulting Services and to fund withdrawals and settlements under the Project.

Financial Management

28. The Borrower shall ensure that MMDE prepares and annually updates a five-year corporate plan.

Performance Monitoring

29. The Borrower shall cause, within 3 months of the execution of the FFA, MMDE to develop a systematic project performance monitoring system acceptable to ADB, for the term of the Investment Program.

30. The Borrower shall cause, within 3 months of effectiveness of the Loan, MMDE to establish a baseline for key performance indicators, including for disbursement, contract award and civil works progress, to be used for monitoring implementation of each project under the Investment Program.