
LOAN NUMBER 3422-KGZ(SF)

GRANT NUMBER 0494-KGZ(SF)

FINANCING AGREEMENT
(Special Operations)
(Toktogul Rehabilitation Phase 3 Project)

between

KYRGYZ REPUBLIC

and

ASIAN DEVELOPMENT BANK

DATED 13 December 2016

KGZ 49013

**FINANCING AGREEMENT
(Special Operations)**

FINANCING AGREEMENT dated 13 Dec 2016 between the KYRGYZ REPUBLIC ("Beneficiary") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) the Beneficiary has applied to ADB for a loan and a grant for the purposes of the Project described in Schedule 1 to this Financing Agreement;

(B) the Project will be carried out by the State Committee for Industry, Energy and Subsoil Use of the Beneficiary ("SCIESU") and the Open Joint-Stock Company Electric Power Plants ("EPP"), and for this purpose the Beneficiary will make available to SCIESU and EPP the proceeds of the loan and the grant provided for herein upon terms and conditions satisfactory to ADB;

(C) by a loan agreement to be entered into between the Beneficiary and the Eurasian Development Bank ("EDB") ("EDB Loan Agreement"), it is expected that EDB will provide a loan to the Beneficiary from its Eurasian Fund for Stabilization and Development in the amount of forty million Dollars (\$40,000,000) ("EDB Loan") for the purposes of financing part of the expenditures under the Project; and

(D) ADB has agreed to provide financing by making a loan and a grant to the Beneficiary from ADB's Special Funds resources upon the terms and conditions set forth herein and in the Project Agreement of even date herewith between ADB and EPP;

NOW THEREFORE the parties agree as follows:

ARTICLE I

Loan Regulations and Grant 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 Financing Agreement for purposes of the Loan with the same force and effect as if they were fully set forth herein, subject, however, to the following modifications:

(a) The term "Loan Agreement", wherever it appears in the Loan Regulations, shall be substituted by the term "Financing Agreement".

(b) The term "Borrower", wherever it appears in the Loan Regulations, shall be substituted by the term "Beneficiary" as defined in the opening paragraph of this Financing Agreement.

(c) Section 2.01(25) is deleted and the following is substituted therefor:

"Project Agreement" means the Project Agreement of even date herewith between ADB and EPP, as such agreement may be amended from time to time; and such term includes all agreements supplementary to the Project Agreement and all schedules to the Project Agreement.

(d) The term "Project Executing Agency" appearing in Sections 6.01(a), 8.01(d), 8.01(f), 8.01(k), 9.01(c) and 9.02(c) of the Loan Regulations shall be substituted by the term "EPP".

Section 1.02. All provisions of the Special Operations Grant Regulations of ADB, dated 7 February 2005 ("Grant Regulations") are hereby made applicable to this Financing Agreement for purposes of the Grant with the same force and effect as if they were fully set forth herein subject, however, to the following modifications:

(a) The term "Grant Agreement", wherever it appears in the Grant Regulations, shall be substituted by the term "Financing Agreement".

(b) The term "Recipient", wherever it appears in the Grant Regulations, shall be substituted by the term "Beneficiary" as defined in the opening paragraph of this Financing Agreement.

(c) Section 2.01(16) is deleted and the following is substituted therefor:

"Project Agreement" means the Project Agreement of even date herewith between ADB and EPP, as such agreement may be amended from time to time; and such term includes all agreements supplementary to the Project Agreement and all schedules to the Project Agreement.

(d) The term "Project Executing Agency" appearing in Sections 6.01(a), 8.01(c), 8.01(e), 8.01(i), 9.01(b) and 9.02(b) of the Grant Regulations shall be substituted by the term "EPP".

Section 1.03 Wherever used in this Financing Agreement, the several terms defined in the Loan Regulations and the Grant Regulations have the respective meanings therein set forth unless modified herein or the context otherwise requires. Additional terms used in this Financing 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 or the Grant as described in paragraph 2 of Schedule 1 to this Financing Agreement;

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

(d) "EPP" means Open Joint-Stock Company Electric Power Plants established under the laws and regulations of the Beneficiary, being a power generation company with registered address at 326, Jibek Jolu Street, Bishkek 720070, Kyrgyz Republic, or any successor thereto acceptable to both the Beneficiary and ADB;

(e) "Financial Year" means the period of 12 months commencing on 1 January and ending on 31 December;

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

(g) "HPP" means hydroelectric power plant;

(h) "IEE" means the initial environmental examination prepared for the Project, including any update thereto, prepared and submitted by the Beneficiary and cleared by ADB;

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

(j) "Medium Term Tariff Plan" means the Medium Term Tariff Plan for Electricity and Thermal Energy for 2014-2017, as approved by Ordinance #660 on 20 November 2014 by the Government of the Kyrgyz Republic;

(k) "PAM" means the project administration manual for the Project dated 22 July 2016 and agreed between the Beneficiary and ADB, as updated from time to time in accordance with the respective administrative procedures of the Beneficiary and ADB;

(l) "Part" means any part of the Project as described in paragraph 2 of Schedule 1 to this Financing Agreement;

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

(n) "Procurement Plan" means the procurement plan for the Project dated 22 July 2016 and agreed between the Beneficiary and ADB, as updated from time to time in accordance with the Procurement Guidelines, Consulting Guidelines, and other arrangements agreed with ADB;

(o) "Project Executing Agency" for the purposes of, and within the meaning of, the Loan Regulations and the Grant Regulations, means EPP or any successor thereto acceptable to ADB, which is responsible for carrying out Part A of the Project, and SCIESU or any successor thereto acceptable to ADB, which is responsible for carrying out Part B of the Project;

(p) "Project facilities" means the plant, equipment, material, supplies and facilities provided or rehabilitated, or to be provided or rehabilitated, under the Project;

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

(r) "SCIESU" means the State Committee for Industry, Energy and Subsoil Use of the Beneficiary, as established pursuant to Decree No. 373 dated 4 July 2016 of the Government of the Kyrgyz Republic, and which is responsible for carrying out Part B of the Project;

(s) "SOE" means a state-owned enterprise;

(t) "SPS" means ADB's Safeguard Policy Statement (2009);

(u) "Subsidiary Financing Agreement" means a subsidiary financing agreement to be entered into between the Beneficiary and EPP pursuant to Section 3.01(a) of this Financing Agreement; and

(v) "Works" means construction or civil works to be financed out of the proceeds of the Loan or the Grant, 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 and the Grant

Section 2.01. ADB agrees to provide to the Beneficiary from ADB's Special Funds resources, on terms and conditions set forth in this Financing Agreement:

(a) a loan in various currencies equivalent to forty-three million two hundred twenty-eight thousand Special Drawing Rights (SDR43,228,000) ("Loan"); and

(b) a grant in the amount of fifty million Dollars (\$50,000,000) ("Grant").

Section 2.02. (a) The Beneficiary shall pay to ADB an interest charge at the rate of 1% per annum during the grace period, and 1.5% per annum 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 paragraph (a) of this Section means the period prior to the first Principal Payment Date in accordance with the amortization schedule set forth in Schedule 2 to this Financing Agreement.

Section 2.03. The interest charge and any other charge on the Loan shall be payable semiannually on 15 March and 15 September in each year.

Section 2.04. The Beneficiary 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 Financing 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 and the Grant

Section 3.01. (a) The Beneficiary shall make available (i) the proceeds of the Loan; and (ii) a portion of the proceeds of the Grant in the amount of forty-two million six hundred thirty thousand Dollars (\$42,630,000), by way of equity contribution (25%) and relending (75%) to EPP upon terms and conditions acceptable to ADB under the Subsidiary Financing Agreement. Except as ADB shall otherwise agree, the terms for relending a portion of the proceeds of the Loan and the Grant shall include interest at the rate of 1.5 % per annum, a repayment period of 25 years including a grace period of 7 years, and EPP bearing the foreign exchange risk. The Beneficiary shall cause EPP to apply such proceeds of the Loan and the Grant to the financing of expenditures under Part A of the Project in accordance with the provisions of this Financing Agreement and the Project Agreement.

(b) The Beneficiary shall make available to SCIESU a portion of the Grant in the amount of seven million three hundred seventy thousand Dollars (\$7,370,000) and shall cause SCIESU to apply such proceeds to the financing of expenditures for Part B of the Project in accordance with the provisions of this Financing Agreement.

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

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

Section 3.04. The Loan Closing Date for the purposes of Section 8.02 of the Loan Regulations shall be 30 June 2023, and the Grant Closing Date for the purposes of Section 8.02 of the Grant Regulations shall be 30 June 2023 or, in each case, such other date as may from time to time be agreed between the Beneficiary and ADB.

ARTICLE IV**Particular Covenants**

Section 4.01. In the carrying out of the Project and operation of the Project facilities, the Beneficiary shall perform, or cause to be performed, all obligations set forth in Schedule 5 to this Financing Agreement and the Project Agreement.

Section 4.02. (a) The Beneficiary shall, through SCIESU (i) maintain separate accounts and records for the Project, including separate accounts and records for the Loan and Grant; (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 and Grant 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 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 14 days of the date of ADB's confirmation of their acceptability by posting them on ADB's website.

(c) The Beneficiary shall enable ADB, upon ADB's request, to discuss the financial statements for the Project and the Beneficiary'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 Beneficiary, unless the Beneficiary shall otherwise agree.

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

Section 4.04. The Beneficiary shall take all action which shall be necessary on its part to enable EPP to perform its obligations under the Project Agreement, and shall not take or permit any action which would interfere with the performance of such obligations.

Section 4.05. (a) The Beneficiary shall exercise its rights under the Subsidiary Financing Agreement in such a manner as to protect the interests of the Beneficiary and ADB and to accomplish the purposes of the Loan and the Grant.

(b) No rights or obligations under the Subsidiary Financing Agreement shall be assigned, amended, or waived without the prior concurrence of ADB.

ARTICLE V

Suspension; Acceleration of Maturity

Section 5.01. The following are specified as additional events for the suspension of the right of the Beneficiary to make withdrawals from the Loan Account for the purposes of Section 8.01(m) of the Loan Regulations and the Grant Account for the purposes of Section 8.01(k) of the Grant Regulations, respectively:

- (a) the EDB Loan shall have become liable for suspension or cancellation or shall have become repayable prior to its agreed maturity date; or
- (b) the Beneficiary or EPP shall have failed to perform any of their respective obligations under the Subsidiary Financing Agreement.

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

ARTICLE VI

Effectiveness

Section 6.01. The following is specified as an additional condition to the effectiveness of this Financing Agreement for the purposes of Section 9.01(f) of the Loan Regulations and Section 9.01(e) of the Grant Regulations, respectively: the Subsidiary Financing Agreement, in form and substance acceptable to ADB, shall have been duly executed and delivered on behalf of each of the Beneficiary and EPP and shall have become legally binding upon the parties thereto in accordance with its terms, subject only to the effectiveness of this Financing Agreement.

Section 6.02. The following is specified as an additional matter for the purposes of Section 9.02(d) of the Loan Regulations and Section 9.02(c) of the Grant Regulations, respectively, to be included in the opinion or opinions to be furnished to ADB: that the Subsidiary Financing Agreement has been duly executed and delivered on behalf of each of the Beneficiary and EPP, and is legally binding upon the parties thereto in accordance with its terms, subject only to the effectiveness of this Financing Agreement.

Section 6.03. A date 90 days after the date of this Financing Agreement is specified for the effectiveness of the Financing Agreement for the purposes of Section 9.04 of the Loan Regulations and Section 9.04 of the Grant Regulations.

ARTICLE VII

Miscellaneous

Section 7.01. The Minister of Finance of the Beneficiary is designated as representative of the Beneficiary for the purposes of Section 11.02 of the Loan Regulations and Section 11.02 of the Grant Regulations.

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

For the Beneficiary

58, Erkindik Boulevard
Bishkek, 720040
Kyrgyz Republic

Facsimile Number:

(996) 312 661645

For ADB

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

Facsimile Numbers:

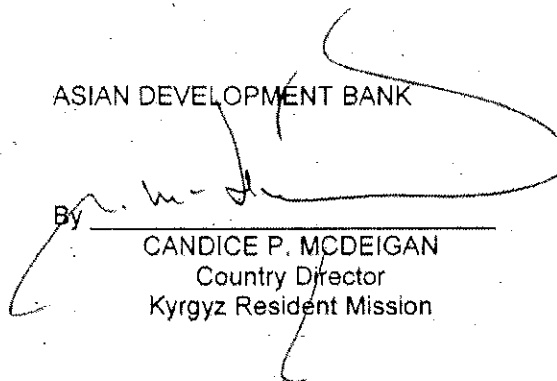
(632) 636-2444
(632) 636-2428.

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

KYRGYZ REPUBLIC

By 
ADYLBĚK A. KASYMALIEV
Minister
Ministry of Finance

ASIAN DEVELOPMENT BANK

By 
CANDICE P. MCDEIGAN
Country Director
Kyrgyz Resident Mission

SCHEDULE 1

Description of the Project

1. The objective of the Project is improved operational performance of the power sector of the Beneficiary.

2. The Project shall comprise:

Part A:

- (a) rehabilitating Units 1 and 3 of the Toktogul HPP, including associated auxiliary equipment, and refurbishing Toktogul dam civil structures;
- (b) refurbishing the dam monitoring systems in Toktogul, Kurpsai, Tashkumyr, Shamaldy-Sai, and Uch Kurgan dams; and
- (c) providing support for project management, including procurement and external audit of the project financial statements;

Part B:

- (a) carrying out public information program to improve public knowledge about power sector reforms and benefits;
- (b) enhancing governance and management procedure of power sector (including business operation assessment, management modernization and corporate financial statements audit of eight selected power and heat companies); and
- (c) providing support for project management support and external audit of the project and corporate financial statements.

3. The Project is expected to be completed by 31 December 2022.

SCHEDULE 2

Amortization Schedule

(Toktogul Rehabilitation Phase 3 Project)

<u>Payment Due Date</u>	<u>Payment of Principal</u> (expressed in Special Drawing Rights)*
15 September 2024	900,583
15 March 2025	900,583
15 September 2025	900,583
15 March 2026	900,583
15 September 2026	900,583
15 March 2027	900,583
15 September 2027	900,583
15 March 2028	900,583
15 September 2028	900,583
15 March 2029	900,583
15 September 2029	900,583
15 March 2030	900,583
15 September 2030	900,583
15 March 2031	900,583
15 September 2031	900,583
15 March 2032	900,583
15 September 2032	900,583
15 March 2033	900,583
15 September 2033	900,583
15 March 2034	900,583
15 September 2034	900,583
15 March 2035	900,583
15 September 2035	900,583
15 March 2036	900,583
15 September 2036	900,583
15 March 2037	900,583
15 September 2037	900,583
15 March 2038	900,583
15 September 2038	900,583
15 March 2039	900,583
15 September 2039	900,583
15 March 2040	900,583
15 September 2040	900,583
15 March 2041	900,583
15 September 2041	900,583
15 March 2042	900,583
15 September 2042	900,583
15 March 2043	900,583
15 September 2043	900,583

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

<u>Payment Due Date</u>	<u>Payment of Principal</u> (expressed in Special Drawing Rights)*
15 March 2044	900,583
15 September 2044	900,583
15 March 2045	900,583
15 September 2045	900,583
15 March 2046	900,583
15 September 2046	900,583
15 March 2047	900,583
15 September 2047	900,583
15 March 2048	<u>900,599</u>
Total	43,228,000

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

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

1. The tables attached to this Schedule set forth the Categories of items of expenditure to be financed out of the proceeds of the Loan and the Grant. Table 1 sets forth the allocation of the Loan proceeds to each such Category. Table 2 sets out the allocation of the Grant proceeds to each such Category. (Reference to "Category" in this Schedule is to a Category or Subcategory of Table 1 and Table 2, respectively.)

Basis for Withdrawal from the Loan Account and the Grant Account

2. Except as ADB may otherwise agree, the proceeds of the Loan and the Grant shall be disbursed on the basis of the withdrawal percentage for each item of expenditure set forth in Table 1 and Table 2, respectively.

Interest Charge

3. The amount allocated to Category 3 of Table 1 is for financing the interest charge on the Loan during the implementation period of the Project.

Reallocation

4. Notwithstanding the allocation of the Loan proceeds and the Grant proceeds and the withdrawal percentages set forth in Table 1 and Table 2, respectively,

- (a) if the amount of the Loan or the Grant allocated to any Category appears to be insufficient to finance all agreed expenditures in that Category, ADB may, by notice to the Beneficiary, (i) reallocate to such Category, to the extent required to meet the estimated shortfall, amounts of the Loan or the Grant 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 or the Grant then allocated to any Category appears to exceed all agreed expenditures in that Category, ADB may, by notice to the Beneficiary, reallocate such excess amount to any other Category.

Disbursement Procedure

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

Condition for Withdrawals from the Loan Account and the Grant Account

6. Notwithstanding any other provision of this Financing Agreement and except as ADB may otherwise agree, no withdrawals shall be made from the Loan Account and the Grant Account for Category 1 for turnkey contract until the EDB Loan Agreement shall have become effective in accordance with its terms and the entire proceeds of the EDB Loan have been made available to the EPP.

Retroactive Financing

7. Withdrawals from the Loan Account and the Grant Account may be made to finance eligible expenditures incurred under the Project before the Effective Date, but not earlier than 12 months before the date of this Financing Agreement in connection with procurement of Goods, Works and Consulting Services, subject to a maximum amount equivalent to 20% of the aggregate amount of the Loan and the Grant.

TABLE 1

ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (Toktogul Rehabilitation Phase 3 Project)			
Number	Item	Total Amount Allocated for ADB Financing (SDR) Category	Basis for Withdrawal from the Loan Account
1	Turnkey contracts for Toktogul HPP rehabilitation*	28,012,000	40% of total expenditure claimed**
2	Works for civil structure refurbishment	3,241,000	60% of total expenditure claimed**
3	Interest charge	973,000	100% of amounts due
4	Unallocated	11,002,000	
	Total	43,228,000	

*Subject to the condition for withdrawal described in paragraph 6 of Schedule 3.

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

TABLE 2

ALLOCATION AND WITHDRAWAL OF GRANT PROCEEDS (Toktogul Rehabilitation Phase 3 Project)				
Number	Item	Total Amount Allocated for ADB Financing (\$)		Basis for Withdrawal from the Grant Account
		Category	Subcategory	
1	Turnkey contracts for Toktogul HPP rehabilitation*	25,660,000		26% of total expenditure claimed**
2	Works for civil structure refurbishment	3,000,000		40% of total expenditure claimed**
3	Turnkey contract for dam monitoring system	1,700,000		100% of total expenditure claimed**
4	Consulting Services	10,730,000		
4a	EPP		3,360,000	100% of total expenditure claimed**
4b	SCIESU		7,370,000	100% of total expenditure claimed**
5	Unallocated (for Categories 1, 2, 3 and 4a)	8,910,000		
	Total	50,000,000		

*Subject to the condition for withdrawal described in paragraph 6 of Schedule 3.

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

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. Except as ADB may otherwise agree, Goods and Works shall be procured and Consulting Services shall be selected and engaged only on the basis of the procurement methods and the selection methods set forth below. These methods are subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. The Beneficiary may only modify the procurement methods and the selection methods or threshold values with the prior agreement of ADB, and modifications must be set out in updates to the Procurement Plan.
3. All terms used in this Schedule and not otherwise defined in this Financing Agreement have the meanings provided in the Procurement Guidelines and/or the Consulting Guidelines, as applicable.

Eligible Source of Procurement of Goods, Works and Consulting Services

4. Goods, Works and Consulting Services may also be procured under the Project from non-member countries of ADB.

Goods and Works

5. Except as ADB may otherwise agree, Goods and Works shall only be procured on the basis of International Competitive Bidding.

Conditions for Award of Contract

6. The Beneficiary shall ensure, and cause EPP to ensure, that no Works contract will be awarded until:
 - (a) the State Agency of Environmental Protection and Forestry has granted the final approval of the IEE; and
 - (b) EPP has incorporated the relevant provisions from the EMP into the Works contract.

Consulting Services

7. Except as set forth in the paragraph below, the Beneficiary, through SCIESU, shall, and cause EPP to, apply Quality- and Cost-Based selection for selecting and engaging Consulting Services.

8. The Beneficiary, through SCIESU, shall, and cause EPP 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: Consultants' Qualifications Selection for (a) public information program, (b) the corporate and project financial statements audit, and (c) project management.

9. The Beneficiary, through SCIESU, shall, and cause EPP to, recruit the individual consultants to assist in project implementation in accordance with procedures acceptable to ADB for recruiting individual consultants.

Industrial or Intellectual Property Rights

10. (a) The Beneficiary, through SCIESU, shall, and cause EPP 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 Beneficiary, through SCIESU, shall, and cause EPP 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.

11. The Beneficiary, through SCIESU, shall, and cause EPP 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

12. 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 Beneficiary and ADB and set forth in the Procurement Plan.

13. In the case of a contract for Goods or Works, which is subject to ADB's prior review, the Beneficiary shall 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/Grant 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).

14. 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 Beneficiary as soon as practicable, but not later than 1 month after the receipt of the required document.

15. The Beneficiary, through SCIESU, shall, and cause EPP 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 and Operation of
Project Facilities; Financial Matters**Implementation Arrangements

1. The Beneficiary shall, through SCIESU and EPP as the Project Executing Agency for the relevant Part of the Project, 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 Beneficiary and ADB. In the event of any discrepancy between the PAM and this Financing Agreement, the provisions of this Financing Agreement shall prevail.
2. The Beneficiary shall cause:
 - (a) EPP to adequately staff and equip the Project implementation unit for Part A of the Project and to ensure that the Project implementation unit will function until such components are completed; and
 - (b) SCIESU to ensure that a qualified and experienced staff designated as the focal point for implementing Part B of the Project and to notify ADB promptly upon any replacement of such focal point until such Project components are completed.

Counterpart Funding

3. The Beneficiary shall:
 - (a) provide counterpart funding for purposes of timely and successful Project implementation in the form of exemption from taxes, duties and other mandatory payments on Project expenditures within its territory; or
 - (b) ensure that EPP has other financing resources sufficient to cover the cost of such taxes, duties or other mandatory payments.
4. The Beneficiary shall ensure that the Project is included in the state budget as necessary to ensure timely disbursement of Project expenditures.
5. The Beneficiary shall also ensure that EPP has sufficient funds to satisfy its liabilities arising from any Works and Goods contract.

Financial Covenants

6. The Beneficiary shall cause EPP to review the reports produced by EPP's internal audit unit by its board of directors and promptly address recommendations made in such internal audit reports.

7. Except as ADB may otherwise agree, the Beneficiary shall cause EPP to ensure that from the Financial Year ending on 31 December 2019 and for each Financial Year thereafter, the free cash flows of EPP for the current Financial Year shall be at least 1.3 times the debt service requirements for the same period on all debt based on EPP's entity financial statements. For purposes of this paragraph:

- (a) the term "debt" means any indebtedness of EPP maturing by its term more than 1 year from the date on which it was originally incurred;
- (b) the term "debt service requirements" means the aggregate amount of all repayments (including sinking fund payments and lease payments under finance leases), whether or not actually paid, and interest and other charges on debt, provided that interest and other charges on debt that are incurred in financing capital expenditure that will be capitalized are excluded; and
- (c) the term "free cash flows" means the difference between (i) the sum of cash flows from all sources related to operations, sale of assets, miscellaneous income, decrease in working capital other than cash; and (ii) the sum of all expenses related to operations, including administration, adequate maintenance, taxes and payments in lieu of taxes (excluding the provision for depreciation, other non-operating charges, and taxes), all cash dividends paid, increase in working capital other than cash, other than capital expenditures.

8. Except as ADB may otherwise agree, the Beneficiary shall cause EPP to ensure that from the Financial Year ending on 31 December 2019 and for each Financial Year thereafter, the free cash flows of EPP from operations after debt service is at least 20% of the average capital expenditure for the previous Financial Year, current Financial Year and (based on projections) the following Financial Year based on EPP's entity financial statements. For purposes of this paragraph:

- (a) the term "free cash flows" means the difference between (i) the sum of cash flows from all sources related to operations, sale of assets, miscellaneous income, decrease in working capital other than cash and cash equivalents; and (ii) the sum of all expenses related to operations, including administration, adequate maintenance, taxes and payments in lieu of taxes (excluding the provision for depreciation, other non-operating charges, and taxes), all cash dividends paid, increase in working capital other than cash and cash equivalents, other than capital expenditures;
- (b) the term "working capital other than cash and cash equivalents" means the difference between current assets excluding cash and cash equivalents, and current liabilities, at the end of each Financial Year;

- (c) the term "current assets excluding cash and cash equivalents" means all those assets other than cash and cash equivalents, that would be converted to cash in the ordinary course of business within 12 months, and includes accounts receivable, inventory, marketable securities held for sale, prepaid expenses properly chargeable to operating expenses within the next Financial Year; and
- (d) the term "capital expenditures" means all expenses incurred on fixed assets, including interest charged to construction, related to operations;

9. Except as ADB may otherwise agree, the Beneficiary shall cause EPP to ensure that from the Financial Year ending on 31 December 2019 and for each Financial Year thereafter, its debt does not exceed 70% of debt and equity based on EPP's entity financial statements. For purposes of this paragraph:

- (a) the term "debt" means any indebtedness of EPP maturing by its term more than 1 year from the date on which it was originally incurred; and
- (b) the term "equity" means equity and reserves, net of any accumulated losses of EPP.

10. Except as ADB may otherwise agree, the Beneficiary shall cause EPP to ensure that from the Financial Year ending on 31 December 2019 and for each Financial Year thereafter, its current ratio (being the ratio of current assets to current liabilities) is maintained at no less than one based on EPP's entity financial statements. For purposes of this paragraph:

- (a) the term "current assets" means cash and all those assets other than cash, that would be converted to cash in the ordinary course of business within 12 months, and includes accounts receivable, inventory, marketable securities held for sale, prepaid expenses properly chargeable to operating expenses within the next Financial Year; and
- (b) the term "current liabilities" means all liabilities that will become due and payable, or could under circumstances existing be called for payment within 12 months, including accounts payable, consumers advances, the current portion of long-term debt, taxes and payments in lieu of taxes and dividends.

Operational/Sector Performance Covenants

11. The Beneficiary shall ensure, or shall cause EPP to ensure, that qualified and experienced staff are made available for the effective operation and maintenance of the Project facilities.

12. The Beneficiary shall cause EPP to install, equip, operate, maintain and manage the Project facilities in compliance with applicable standards and best international practices.

13. The Beneficiary shall ensure, or shall cause EPP to ensure, that ADB's consent is obtained at least 6 months prior to the implementation of any of the following: (a) any change in ownership of any asset, facility or structure financed under the Project; (b) any sale, transfer, or assignment of interest or control in any asset, facility or structure financed under the Project; or (c) any lease or other contract or modification of the functions and authority of EPP over operation and maintenance of any such asset, facility or structure financed under the Project.

14. The Beneficiary shall ensure, or shall cause EPP to ensure, that, following ADB's approval, any such changes will be carried out in a legal and transparent manner.

15. The Beneficiary shall ensure that:

- (a) tariffs in the electricity and heating sector are revised in accordance with the Medium Term Tariff Plan; and
- (b) at least 60% of the aggregate incremental tariff that accrues to the electricity and heat sectors due to implementation of the Medium Term Tariff Plan are transferred to EPP until such time that EPP is in a position to meet the covenants set out in paragraph [7] above.

16. The Beneficiary shall take necessary actions so that, by December 2019, the independent settlement center responsible for monitoring energy flows and ensuring appropriate accounting and payment becomes fully operational.

17. The Beneficiary shall, through SCIESU and the regulator established for the energy sector, ensure that ADB is informed of key power sector policy and restructuring reforms including any reforms pertaining to the tariff policy.

Environment

18. The Beneficiary shall ensure, or cause EPP 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 Beneficiary relating to environment, health and safety; (b) the environmental safeguards requirement as set out in the SPS; and (c) all measures and requirements set forth in the IEE, the EMP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

19. The Beneficiary shall ensure, and cause EPP to ensure, that (a) released oils and scrap metal will be safely kept at the onsite storage area; and (b) recycling and disposing of oils and scrap metals will be performed by companies licensed to perform such activities.

20. The Beneficiary shall make available, or shall cause EPP to make available, necessary budgetary and human resources to fully implement the EMP.

21. The Beneficiary shall, through EPP, ensure that all bidding documents and contracts for Works contain provisions that require contractors to:

- (a) comply with the measures relevant to the contractor set forth in the IEE and the EMP and any corrective or preventative actions set forth in a Safeguards Monitoring Report;
- (b) make available a budget for all such environmental and social measures; and
- (c) provide the Beneficiary 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 IEE and the EMP.

22. The Beneficiary shall cause EPP to do the following:

- (a) submit semiannual 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 the Project that were not considered in the IEE, 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 promptly after becoming aware of the breach.

Resettlement

23. The Beneficiary shall cause EPP to ensure that Project implementation will not involve any land acquisition and/or resettlement impacts within the meaning of the SPS. In the event that any land acquisition and/or resettlement impacts are identified during Project implementation, the Beneficiary shall cause EPP to ensure that such impacts are addressed in accordance with SPS, including the preparation of a land acquisition and resettlement plan in consultation with the affected people in accordance with the SPS.

Prohibited List of Investments

24. The Beneficiary shall ensure that no proceeds of the Loan or the Grant are used to finance any activity included in the list of prohibited investment activities provided in Appendix 5 of the SPS.

Gender and Development

25. The Beneficiary shall ensure that the principles of gender equity aimed at increasing Project benefits and impacts on women in the Project area consistent with ADB's

Policy on Gender and Development (1998) are followed during implementation of the Project, including (a) equal pay to men and women for work of equal value; (b) enabling working conditions for women workers; and (c) taking necessary actions to encourage women living in the Project area to participate in the design and implementation of Project activities.

Labor Standards, Health and Safety

26. The Beneficiary shall ensure that the core labor standards and the Beneficiary's applicable laws and regulations are complied with during Project implementation. The Beneficiary shall include specific provisions in the bidding documents and contracts financed by ADB under the Project requiring that the contractors, among other things: (a) comply with the Beneficiary's applicable labor law and regulations and incorporate applicable workplace occupational safety norms; (b) do not use child labor; (c) do not discriminate workers in respect of employment and occupation; (d) do not use forced labor; (e) allow freedom of association and effectively recognize the right to collective bargaining; and (f) disseminate, or engage appropriate service providers to disseminate, information on the risks of sexually transmitted diseases, including HIV/AIDS, to the employees of contractors engaged under the Project and to members of the local communities surrounding the Project area, particularly women.

Governance and Anticorruption

27. The Beneficiary shall cause SCIESU and EPP to ensure that updated information on the Project, reflecting the performance of the Project, business opportunities, bidding process and guidelines, outcome of biddings and summary progress reports of the Project, will be disclosed on the websites of SCIESU and EPP, respectively, in a timely manner.

28. The Beneficiary shall, and shall ensure that SCIESU and EPP will, comply with ADB's Anticorruption Policy (1998, as amended to date). The Beneficiary acknowledges, and shall ensure that SCIESU and EPP shall acknowledge, that ADB reserves the right to investigate, directly or through its agents, any alleged corrupt, fraudulent, collusive or coercive practices relating to the Project. The Beneficiary agrees, and shall ensure that EPP shall agree, to cooperate fully with any such investigation and to extend all necessary assistance for satisfactory completion of such investigation.

29. The Beneficiary shall cause SCIESU and EPP to ensure that the anticorruption provisions acceptable to ADB are included in all bidding documents and contracts financed by ADB under the Project, including provisions specifying the right of ADB to audit and examine the records and accounts of SCIESU and EPP and all contractors, suppliers, consultants and other service providers as they relate to the Project.

EDB Financing

30. The Beneficiary shall ensure that, in the event the EDB financing does not materialize, the necessary financing is provided either from its own resources or from other external sources for successful implementation of the Project. Alternatively, the Beneficiary and ADB consider reducing the scope of the Project.