
LOAN NUMBER 3429-CAM(SF)

LOAN AGREEMENT
(Special Operations)

(Strengthening Public Financial Management Project)

between

KINGDOM OF CAMBODIA

and

ASIAN DEVELOPMENT BANK

DATED 06 OCT 2016

CAM 49041

**LOAN AGREEMENT
(Special Operations)**

LOAN AGREEMENT dated 06 OCT 2016 between KINGDOM OF CAMBODIA ("Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) by a loan agreement of even date herewith between the Borrower and ADB ("PBL Agreement"), ADB has agreed to make a policy-based loan to the Borrower from ADB's Special Funds resources in the amount of SDR18,939,000 for the purposes of the first subprogram ("Program") under a programmatic approach described in paragraph 1 of Schedule 1 to the Program Loan Agreement;

(B) in support of the Program, the Borrower has applied to ADB for a loan for the purposes of the technical assistance project described in Schedule 1 to this Loan Agreement ("Project"); and

(C) 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 and Section 1.02 of the Program Loan Agreement have the respective meanings therein set forth unless modified herein or the context otherwise requires. Additional terms used in this Loan Agreement have the following meanings:

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

(b) "Consulting Services" means the services to be financed out of the proceeds of the Loan as described in paragraph 3 of Schedule 1 to this Loan Agreement;

(c) "Goods" means equipment and materials to be financed out of the proceeds of the Loan, including related services such as transportation, insurance,

installation, commissioning, training, and initial maintenance, but excluding Consulting Services;

(d) "PAM" means the project administration manual for the Project dated 5 August 2016 and agreed between the Borrower and ADB, as updated from time to time in accordance with the respective administrative procedures of the Borrower and ADB;

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

(f) "Procurement Manual" means the Procurement Manual under the Standard Operating Procedures prepared by the Borrower and endorsed by ADB, which sets forth procurement-related policies and procedures for externally-financed projects and programs;

(g) "Procurement Plan" means the procurement plan for the Project dated 5 August 2016 and agreed between the Borrower and ADB, as updated from time to time in accordance with the Procurement Guidelines, the Consulting Guidelines, and other arrangements agreed with ADB (which include the Standard Operating Procedures and Procurement Manual as updated from time to time);

(h) "Project Executing Agency" for the purposes of, and within the meaning of, the Loan Regulations means the Borrower's Ministry of Economy and Finance or any successor thereto acceptable to ADB; and

(i) "Standard Operating Procedures" means the standard operating procedures of the Borrower dated 22 May 2012 (as amended from time to time) providing procedures applicable to all externally-financed projects and programs.

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 two million five hundred and one thousand Special Drawing Rights (SDR2,501,000).

Section 2.02. (a) The Borrower 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 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 April and 15 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 and Consulting Services shall be made only on account of expenditures relating to:

- (a) Goods which are produced in and supplied from 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 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 31 March 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 financial reporting standards acceptable to ADB; (iii) have such financial statements audited annually by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB, in accordance with auditing standards acceptable to ADB; (iv) as part of each such audit, have the auditors prepare a report, which includes the auditors' opinion(s) on the financial statements and the use of the Loan proceeds, and a management letter (which sets out the deficiencies in the internal control of the Project that were identified in the course of the audit, if any); and (v) furnish to ADB, no later than 6 months after the 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 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 any relevant records and documents.

ARTICLE V

Suspension; Acceleration of Maturity

Section 5.01. The following are specified as additional events 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:

(a) the Borrower shall have failed to perform any of its key obligations under the Program Loan Agreement; and

(b) the Borrower's Public Financial Management Reform Program or any provision thereof shall have been repealed, suspended or amended in any manner which in the reasonable opinion of ADB will or may adversely affect the carrying out of the Project.

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 Program Loan Agreement, in form and substance satisfactory to ADB, shall have been duly executed and delivered on behalf of the Borrower and shall have become legally binding upon the Borrower in accordance with its terms.

Section 6.02. 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 VII

Miscellaneous

Section 7.01. The Minister of Economy and Finance 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

Ministry of Economy and Finance
St. 92 Sangkat Wat Phnom
Khan Daun Penh
Phnom Penh, Cambodia

Facsimile Numbers:

+855 23 427 798

+855 23 428 424.

For ADB

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

Facsimile Numbers:


(632) 636-2444
(632) 636-2331.

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.

KINGDOM OF CAMBODIA

By 
H.E. DR. AUN PORNMONIROTH
Senior Minister
Minister, Ministry of Economy and
Finance

ASIAN DEVELOPMENT BANK

By 
NORIKO OGAWA
Deputy Director General
Southeast Asia Department

SCHEDULE 1**Description of the Project**

1. The objective of the Project is to enhance the efficiency, effectiveness and accountability of the Borrower's public expenditures and revenue management.
2. The Project shall comprise the following main components:
 - (i) Component 1: strengthening the program management and coordination capacity of MEF and the Steering Committee including through support for improved program financial management, completion of an internal audit manual and preparation of Guidelines on Contingent Liabilities including Government Guarantees.
 - (ii) Component 2: strengthening budgeting, accounting, financial management and internal audit capacity of MEF, MAFF, MLVT, MPWT, MOEYS, MRD and MOWRAM.
 - (iii) Component 3: strengthening the external audit capacity of NAA through improved audit oversight of line ministries and the districts.
3. The Project includes provision of Consulting Services for implementation of the components described in paragraph 2 above.
4. The Project is expected to be completed by 30 September 2019.

SCHEDULE 2

Amortization Schedule

(Strengthening Public Financial Management Project)

Date Payment Due	Payment of Principal (expressed in Special Drawing Rights)*
15 October 2024	52,104
15 April 2025	52,104
15 October 2025	52,104
15 April 2026	52,104
15 October 2026	52,104
15 April 2027	52,104
15 October 2027	52,104
15 April 2028	52,104
15 October 2028	52,104
15 April 2029	52,104
15 October 2029	52,104
15 April 2030	52,104
15 October 2030	52,104
15 April 2031	52,104
15 October 2031	52,104
15 April 2032	52,104
15 October 2032	52,104
15 April 2033	52,104
15 October 2033	52,104
15 April 2034	52,104
15 October 2034	52,104
15 April 2035	52,104
15 October 2035	52,104
15 April 2036	52,104
15 October 2036	52,104
15 April 2037	52,104
15 October 2037	52,104
15 April 2038	52,104
15 October 2038	52,104
15 April 2039	52,104
15 October 2039	52,104
15 April 2040	52,104
15 October 2040	52,104
15 April 2041	52,104
15 October 2041	52,104
15 April 2042	52,104
15 October 2042	52,104
15 April 2043	52,104
15 October 2043	52,104
15 April 2044	52,104
15 October 2044	52,104

Date Payment Due	Payment of Principal (expressed in Special Drawing Rights)*
15 April 2045	52,104
15 October 2045	52,104
15 April 2046	52,104
15 October 2046	52,104
15 April 2047	52,104
15 October 2047	52,104
15 April 2048	52,112
TOTAL	2,501,000

*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.

Interest Charge

3. The amount allocated to Category 4 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 (Strengthening Public Financial Management Project)			
Number	Item	Total Amount Allocated for ADB Financing (SDR) Category	Basis for Withdrawal from the Loan Account
1	Consulting Services	1,529,000	100% of total expenditure claimed
2	Training, Workshops, Study Tours and Seminars	637,000	100% of total expenditure claimed
3	TA Management	38,000	100% of total expenditure claimed
4	Interest During Implementation	111,000	100% of amounts due
5	Unallocated	186,000	
	Total	2,501,000	

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

1. The procurement of Goods and Consulting Services shall be subject to and governed by the Procurement Guidelines, and the Consulting Guidelines, respectively.
2. Except as ADB may otherwise agree, Goods 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 Borrower 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 Loan Agreement have the meanings provided in the Procurement Guidelines and/or the Consulting Guidelines, as applicable.

Goods

4. Goods shall be procured on the basis of the procurement methods set forth below:
 - (a) National Competitive Bidding; and
 - (b) Shopping.

National Competitive Bidding

5. The Borrower and ADB shall ensure that, prior to the commencement of any procurement activity under national competitive bidding, the Borrower's national competitive bidding procedures are consistent with the Procurement Guidelines. Any modifications or clarifications to such procedures agreed between the Borrower and ADB shall be set out in the Procurement Plan. Any subsequent change to the agreed modifications and clarifications shall become effective only after approval of such change by the Borrower and ADB.

Consulting Services

6. Except as set forth in the paragraph below, the Borrower shall apply Quality- and Cost-Based Selection for Consulting Services.
7. The Borrower shall recruit the individual consultants for the following positions in accordance with procedures acceptable to ADB for recruiting individual consultants: budgeting experts, financial management experts, internal audit experts and financial management information systems experts, an external audit expert, project coordinator, debt management expert, assistant accountant, information communication technology expert, assistant procurement officer.

Industrial or Intellectual Property Rights

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

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

9. The Borrower shall ensure that all ADB-financed contracts with consultants contain appropriate representations, warranties and, if appropriate, indemnities from the consultants to ensure that the Consulting Services provided do not violate or infringe any industrial property or intellectual property right or claim of any third party.

ADB's Review of Procurement Decisions

10. Contracts procured under national 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

Implementation Arrangements

1. The Borrower and the Project Executing Agency 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.

Counterpart Support

2. The Borrower shall ensure, and cause the Project Executing Agency and Implementing Agencies to ensure, that office equipment, counterpart personnel and office space are made available, promptly as and when needed, for the carrying out of the Project.

Safeguards

3. The Borrower shall cause the Project Executing Agency to ensure that no Project activities have any environmental, resettlement or indigenous peoples' impacts as described in ADB's Safeguard Policy Statement (2009).

Prohibited List of Investments

4. The Borrower shall ensure that no proceeds of the Loan are used to finance any activity included in the list of prohibited investment activities provided in Appendix 5 of ADB's Safeguard Policy Statement (2009).

Gender

5. The Borrower shall ensure that the principles of gender equity aimed at increasing Project benefits and impacts on women 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; and (b) ensuring that the Project activities including the communication plan and the mitigation framework for labor-related issues are gender sensitive.

Governance and Anticorruption

6. The Borrower, the Project Executing Agency, and the 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.

7. The Borrower, the Project Executing Agency and the 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 Project Executing Agency and Implementing Agencies and all contractors, suppliers, consultants, and other service providers as they relate to the Project. Individuals/entities on ADB's anticorruption debarment lists are ineligible to participate in ADB-financed activity and may not be awarded any contracts under the Project. If the Borrower, the Project Executing Agency or any of the Implementing Agencies is or becomes aware or has a reasonable suspicion that any member of the Borrower, Project Executing Agency or Implementing Agency has engaged in corrupt or fraudulent practices (as defined in ADB's Anticorruption Policy) under or in connection with the Project, the Borrower, Project Executing Agency and Implementing Agencies shall take such timely and appropriate action satisfactory to ADB to investigate and/or remedy the situation.