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LOAN NUMBER 3542-NEP(COL)

LOAN AGREEMENT  
(Ordinary Operations [Concessional])

(Power Transmission and Distribution Efficiency Enhancement Project)

between

NEPAL

and

ASIAN DEVELOPMENT BANK

DATED 10 SEPTEMBER 2017

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NEP 50059

**LOAN AGREEMENT**  
**(Ordinary Operations [Concessional])**

LOAN AGREEMENT dated 10 September 2017 between NEPAL ("Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) the Borrower has applied to ADB for a loan for the purposes of the Project described in Schedule 1 to this Loan Agreement;

(B) the Project will be carried out by Nepal Electricity Authority ("NEA"), and for this purpose the Borrower will make available to NEA the proceeds of the loan provided for herein upon terms and conditions satisfactory to ADB; and

(C) ADB has agreed to make a concessional loan to the Borrower from ADB's ordinary capital resources upon the terms and conditions set forth herein and in the Project Agreement between ADB and NEA;

NOW THEREFORE the parties agree as follows:

**ARTICLE I**

**Loan Regulations; Definitions**

Section 1.01. All the provisions of the Ordinary Operations (Concessional) Loan Regulations of ADB, dated 1 January 2017 ("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) "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) "ETFC" means the Electricity Tariff Fixation Commission, which determines electricity tariffs in the territory of the Borrower, or any successor thereto;

- (d) "EMP" means the Environmental Management Plan for the Project, including any update thereto, incorporated in the IEE;
- (e) "Environmental Safeguards" means the principles and requirements set forth in Chapter V, Appendix 1, and Appendix 4 (as applicable) of the SPS;
- (f) "GAP" means the Gender Action Plan or the Gender Equality and Social Inclusion Plan prepared for the Project in consultation with the Borrower and approved by ADB;
- (g) "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;
- (h) "IEE" means the Initial Environmental Examination for the Project, including any update thereto, prepared and submitted by NEA and cleared by ADB;
- (i) "Involuntary Resettlement Safeguards" means the principles and requirements set forth in Chapter V, Appendix 2, and Appendix 4 (as applicable) of the SPS;
- (j) "Loan Disbursement Handbook" means ADB's Loan Disbursement Handbook (2015, as amended from time to time);
- (k) "NEA" means the Nepal Electricity Authority established pursuant to the Nepal Electricity Authority Act 1984 or any successor thereto;
- (l) "PAM" means the Project Administration Manual for the Project dated 19 May 2017 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;
- (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 19 May 2017 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;
- (o) "Project Executing Agency" means for the purposes of, and within the meaning of, the Loan Regulations, NEA, which is responsible for the carrying out of the Project, or any successor acceptable to ADB;
- (p) "RP" means the Resettlement Plan for the Project, including any update thereto, prepared and submitted by the NEA and cleared by ADB;

- (q) "Safeguards Monitoring Report" means each report prepared and submitted by the Borrower to ADB that describes progress with implementation of and compliance with the EMP and the RP, including any corrective and preventative actions;
- (r) "SPS" means ADB's Safeguard Policy Statement (2009);
- (s) "Subsidiary Loan Agreement" means the Subsidiary Loan Agreement between the Borrower and NEA referred to in Section 3.01 of this Loan Agreement; and
- (t) "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. (a) ADB agrees to lend to the Borrower from ADB's ordinary capital resources an amount in various currencies equivalent to one hundred nine million two hundred twenty-nine thousand Special Drawing Rights (SDR109,229,000).

(b) The Loan has a principal repayment period of 24 years, and a grace period as defined in subsection (c) hereinafter.

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

Section 2.02. The Borrower shall pay to ADB 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.

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 Dollar.

**ARTICLE III****Use of Proceeds of the Loan**

Section 3.01. (a) The Borrower shall relend the proceeds of the Loan to NEA under a Subsidiary Loan Agreement upon terms and conditions satisfactory to ADB.

(b) The Borrower shall cause the proceeds of the Loan to be applied exclusively to the financing of expenditures on the Project in accordance with the provisions of this Loan Agreement and the Project 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. 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 3.05. The Loan Closing Date for the purposes of Section 8.02 of the Loan Regulations shall be 30 June 2022 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 carrying out 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 and the Project 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. 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 in ADB's website.

Section 4.04. The Borrower shall take all actions which shall be necessary on its part to enable NEA 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 Borrower shall exercise its rights under the Subsidiary Loan Agreement in such a manner as to protect the interests of the Borrower and ADB and to accomplish the purposes of the Loan.

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

## ARTICLE V

### Effectiveness

Section 5.01. 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 VI

### Miscellaneous

Section 6.01. The Secretary of the Ministry of Finance of the Borrower is designated as representative of the Borrower for the purposes of Section 11.02 of the Loan Regulations.

Section 6.02. The following addresses are specified for the purposes of Section 11.01 of the Loan Regulations:

#### For the Borrower

Ministry of Finance  
Singh Durbar  
Kathmandu, Nepal

Facsimile Number:

(977 1) 421-1164

For ADB


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

Facsimile Numbers:


(632) 636-2444  
(632) 636-2338.

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.

NEPAL

By   
\_\_\_\_\_  
SHANTA RAJ SUBEDI  
Secretary  
Ministry of Finance

ASIAN DEVELOPMENT BANK

By   
\_\_\_\_\_  
SHARAD BHANDARI  
Officer-in-Charge  
Nepal Resident Mission



**SCHEDULE 1****Description of the Project**

1. The objective of the Project is to achieve improved access to efficient, adequate and high quality power supply in Kathmandu Valley.
2. The Project shall comprise:
  - (a) strengthening transmission grid capacity for the primary distribution networks for Kathmandu Valley;
  - (b) rehabilitation of, and capacity increase for, the Kathmandu Valley distribution network;
  - (c) enhancing operational and financial performance of NEA distribution centers; and
  - (d) development of capacity building of NEA staff to operate and manage advanced distribution system, intelligent energy network (smart grid) technology and gender equality and social inclusion aspects in electricity access and end-user awareness.
3. Consulting Services will be provided to support the above-stated activities.
4. The Project is expected to be completed by 31 December 2021.

**SCHEDULE 2**

**Amortization Schedule**

<u>Payment Due</u>	<u>Payment of Principal</u> (expressed in Special Drawing Rights)*
15 December 2025	2,275,604
15 June 2026	2,275,604
15 December 2026	2,275,604
15 June 2027	2,275,604
15 December 2027	2,275,604
15 June 2028	2,275,604
15 December 2028	2,275,604
15 June 2029	2,275,604
15 December 2029	2,275,604
15 June 2030	2,275,604
15 December 2030	2,275,604
15 June 2031	2,275,604
15 December 2031	2,275,604
15 June 2032	2,275,604
15 December 2032	2,275,604
15 June 2033	2,275,604
15 December 2033	2,275,604
15 June 2034	2,275,604
15 December 2034	2,275,604
15 June 2035	2,275,604
15 December 2035	2,275,604
15 June 2036	2,275,604
15 December 2036	2,275,604
15 June 2037	2,275,604
15 December 2037	2,275,604
15 June 2038	2,275,604
15 December 2038	2,275,604
15 June 2039	2,275,604
15 December 2039	2,275,604
15 June 2040	2,275,604
15 December 2040	2,275,604
15 June 2041	2,275,604
15 December 2041	2,275,604
15 June 2042	2,275,604
15 December 2042	2,275,604
15 June 2043	2,275,604
15 December 2043	2,275,604
15 June 2044	2,275,604
15 December 2044	2,275,604
15 June 2045	2,275,604
15 December 2045	2,275,604
15 June 2046	2,275,604
15 December 2046	2,275,604

<u>Payment Due</u>	<u>Payment of Principal</u> (expressed in Special Drawing Rights)*
15 June 2047	2,275,604
15 December 2047	2,275,604
15 June 2048	2,275,604
15 December 2048	2,275,604
15 June 2049	<u>2,275,612</u>
<b>TOTAL</b>	<b>109,229,000</b>

\* 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 during Construction

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

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, 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

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

Retroactive Financing

6. Withdrawals from the Loan 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 Loan Agreement in connection with Works, subject to a maximum amount equivalent to 20% of the Loan amount.

TABLE

ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS				
Number	Item	Total Amount Allocated for ADB Financing (SDR)		Basis for Withdrawal from the Loan Account
		Category	Subcategory	
1	Works	97,942,000		
1A	Turnkey Contracts (Substations)		45,366,000	100% of total expenditure claimed*
1B	Turnkey Contracts (Distribution)		52,576,000	100% of total expenditure claimed*
2	Goods (Equipment)	5,097,000		100% of total expenditure claimed*
3	Consulting Services (Project Management and Capacity Development)	4,588,000		100% of total expenditure claimed*
4	Interest during Construction	1,602,000		Total amount due
	<b>TOTAL</b>	<b>109,229,000</b>		

\* 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. 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 method and the selection method 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 method and the selection method or threshold values with the prior consent 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 and Works

4. Goods and Works shall be procured on the basis of international competitive bidding.

Domestic Preference

5. NEA may grant a margin of preference in the evaluation of bids under international competitive bidding in accordance with paragraphs 2.55(a) and 2.56 of the Procurement Guidelines for domestically manufactured Goods and paragraphs 2.55(b) and 2.56 of the Procurement Guidelines for domestic Works.

Conditions for Award of Contract

6. The Borrower shall ensure that NEA does not award any Works contract which involves environmental impacts until the Borrower's Department of Environment has granted the final approval of the IEE.

7. The Borrower shall ensure that NEA does not award any Works contract which involves involuntary resettlement impacts, until NEA has prepared and submitted to ADB the final RP based on the project's detailed design, and obtained ADB's clearance of such RP.

Consulting Services

8. The Borrower shall ensure that NEA applies Quality- and Cost-Based Selection for Consulting Services.

Industrial or Intellectual Property Rights

9. (a) The Borrower shall ensure that NEA ensures 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 NEA ensures 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 NEA ensures 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 NEA 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 the Loan Agreement and Project Agreement, the provisions of the Loan Agreement and Project Agreement shall prevail.

#### Counterpart Support

2. (a) The Borrower shall cause NEA to allocate adequate counterpart financing and staffing for the Project. This includes the Borrower providing budgetary allocations on an annual basis or more regularly if needed for counterpart financing. In addition to the foregoing, the Borrower shall ensure that NEA has sufficient funds to satisfy its liabilities arising from any Works, Goods and/or Consulting Services contract.

(b) The Borrower shall exempt NEA from all taxes and duties on the Works and Goods contracts except for the 1% customs levy on imported equipment and the prevailing "value-added" tax on construction.

#### Operational Covenants

3. The Borrower shall ensure that by 15 December 2017, NEA prepares and submits to the Borrower a plan for further financial restructuring, including (a) conversion of the Borrower's loans to NEA into equity; (b) conversion to equity of interest accrued and due on the Borrower's loans to NEA; (c) set-off of accumulated losses from paid-up capital and reserves; and (d) full payment or provisioning of municipal street light arrears.

4. The Borrower and NEA shall ensure that the financial management action plan, which sets forth specific actions and timelines and is summarized in Table 11 of the PAM, as agreed between the Borrower, NEA and ADB, is implemented in accordance with its terms in close coordination with ADB. As part of this action plan, the Borrower shall ensure that NEA can manage its exposure to foreign exchange risk (by way of currency forward or swap contracts or any other means deemed appropriate by NEA).

5. The Borrower shall ensure that NEA adheres to the reporting requirements below:

- (a) provides to ADB summaries and related information for petitions made to the ETFC in relation to electricity tariff issues;
- (b) provides ADB with an annual report detailing electricity losses on the integrated Nepal power system, including measures taken by NEA to control and reduce commercial losses;

- (c) provides ADB with an annual report detailing NEA's revenue collection performance, including details of significant debtors and recovery measures taken; and
- (d) regularly publishes on its website the System Average Interruption Frequency Index, and initiates the development of the system of the System Average Interruption Duration Index and the Consumer Average Interruption Duration Index and provides regular updates to ADB (as each is defined in Standard 1366-2012, as may be updated from time to time, of the Institute of Electrical and Electronics Engineers).

#### Financial Covenants

6. The Borrower shall ensure that NEA maintains: (a) by 15 July 2018, a debt service coverage ratio of at least 1.2 (with debt service being computed following generally accepted accounting principles); and (b) by 15 July 2019, a debt-to-equity ratio of no more than 75:25 and a current ratio of at least 1. For the purpose of this paragraph, (a) the term "equity" means the sum of the total unimpaired paid-up capital, retained earnings and reserves of NEA not allocated to cover specific liabilities; (b) the term "debt" means any outstanding indebtedness of NEA, but excluding any amount due for payment within one year of that date at which this ratio is computed; and (c) the term "current ratio" means the ratio of NEA's current assets to its current liabilities as of its balance sheet date.

7. Commencing from the financial year starting 16 July 2017, the Borrower shall ensure that NEA: (a) prepares its projected financial performance based on the prevailing electricity tariff; (b) estimates the additional resources required for it to have a debt service coverage ratio of 1.2; and (c) submits a request to the Borrower for a revenue subsidy (as required). The Borrower shall support NEA (such as through subsidy in each year's annual budget or other means) to fully comply with the debt service coverage ratio.

#### Tariffs

8. The Borrower shall ensure that, if necessary to cover annual cost increases, NEA submits regular petitions for increases in electricity tariffs to the ETFC.

#### Environment

9. (a) The Borrower shall ensure, and cause NEA to ensure, that the preparation, design, construction, implementation, operation and decommissioning of the Project comply with: (i) all applicable laws and regulations of the Borrower relating to environment, health, and safety; (ii) the Environmental Safeguards; and (iii) all measures and requirements set forth in the respective IEE and EMP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

(b) The Borrower shall ensure, and cause NEA to ensure, that (i) no proceeds of the Loan are used for Works located within the core and buffer zones of the Kathmandu Valley World Heritage Sites with potential adverse impact; and (ii) the Department of Archeology of the Borrower participates in the supervision of Works to ensure no adverse impact to the protected heritage sites.

Land Acquisition and Involuntary Resettlement

10. The Borrower shall ensure, and cause NEA to ensure, that all land and all rights-of-way required for the Project 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; and (c) all measures and requirements set forth in the respective RP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

11. Without limiting the application of the Involuntary Resettlement Safeguards or the RP, the Borrower shall ensure, and cause NEA to ensure, that no physical or economic displacement takes place in connection with the Project until:

- (a) compensation and other entitlements have been provided to affected people in accordance with the RP; and
- (b) a comprehensive income and livelihood restoration program has been established in accordance with the RP.

Indigenous Peoples

12. The Borrower shall ensure, and cause NEA to ensure, that the Project does not impact indigenous peoples within the meaning of the SPS. If due to unforeseen circumstances, the Project impacts indigenous peoples, the Borrower shall take all steps necessary or desirable to ensure that the Project complies with all applicable laws and regulations of the Borrower relating to indigenous peoples and with the SPS.

Human and Financial Resources to Implement Safeguards Requirements

13. The Borrower shall make available, and NEA to make available, necessary budgetary and human resources to fully implement the EMP and the RP.

Safeguards – Related Provisions in Bidding Documents and Works Contracts

14. The Borrower shall ensure, and cause NEA 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 IEE, the EMP and the RP (to the extent they concern impacts on affected people during construction), and any corrective or preventative actions set out in a Safeguards Monitoring Report;
- (b) make available a budget for all such environmental and social measures;
- (c) provide the Borrower with a written notice of any unanticipated environmental, resettlement or indigenous peoples risks or impacts that arise during construction, implementation or operation of the Project that were not considered in the IEE, the EMP or the RP;

- (d) adequately record the condition of roads, agricultural land and other infrastructure prior to starting to transport materials and construction; and
- (e) fully reinstate pathways, other local infrastructure, and agricultural land to at least their pre-project condition upon the completion of construction.

#### Safeguards Monitoring and Reporting

15. The Borrower shall cause NEA to do the following:
- (a) submit semi-annual Safeguards Monitoring Reports to ADB and disclose relevant information from such reports to affected persons promptly upon submission;
  - (b) if any unanticipated environmental and/or social risks and impacts arise during construction, implementation or operation of the Project that were not considered in the IEE, the EMP or the RP, promptly inform ADB of the occurrence of such risks or impacts, with detailed description of the event and proposed corrective action plan; and
  - (c) report any actual or potential breach of compliance with the measures and requirements set forth in the EMP or the RP promptly after becoming aware of the breach.

#### Prohibited List of Investments

16. The Borrower shall ensure, and cause NEA 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, Health and Safety

17. The Borrower shall ensure, and cause NEA to ensure, that the core labor standards and the Borrower's applicable laws and regulations are complied with during Project implementation. The Borrower 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 Borrower'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; and
  - (e) 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.
- The Borrower shall strictly monitor compliance with the requirements set forth above and provide ADB with regular reports.

Gender and Development

18. The Borrower shall ensure that (a) the GAP is implemented in accordance with its terms; (b) the bidding documents and contracts include relevant provisions for contractors to comply with the measures set forth in the GAP; (c) adequate resources are allocated for implementation of the GAP; and (d) progress on implementation of the GAP, including progress toward achieving key gender outcome and output targets, are regularly monitored and reported to ADB.

Governance and Anticorruption

19. The Borrower and NEA 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.

20. The Borrower and NEA shall ensure that the anticorruption provisions acceptable to ADB are included in all bidding documents and contracts, including provisions specifying the right of ADB to audit and examine the records and accounts of the executing and implementing agencies and all contractors, suppliers, consultants, and other service providers as they relate to the Project.

Change in Ownership

21. In the event that the Borrower or NEA plans to: (a) make any change in the ownership of the Project facilities or NEA; (b) sell, transfer or assign NEA's direct or indirect interest in the Project; or (c) lease or contract out, or otherwise modify NEA's responsibilities for construction, operation and maintenance of the Project, the Borrower shall at least 6 months prior to implementation of such transaction, consult with ADB and obtain ADB's consent.