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LOAN NUMBER 2880-GEO(SF)

LOAN AGREEMENT  
(Special Operations)

(Sustainable Urban Transport Investment Program – Project 2)

between

GEORGIA

and

ASIAN DEVELOPMENT BANK

DATED 24 JULY 2012

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GEO 42414

## **LOAN AGREEMENT (Special Operations)**

LOAN AGREEMENT dated 24 July 2012 between GEORGIA (“Borrower”) and ASIAN DEVELOPMENT BANK (“ADB”).

### WHEREAS

(A) by a framework financing agreement dated 21 June 2010 between the Borrower and ADB (“FFA”), ADB has agreed to provide a multitranche financing facility to the Borrower for purposes of financing projects under the Sustainable Urban Transport Investment Program (“Investment Program”);

(B) by a periodic financing request dated 16 March 2012 (“PFR”) and as amended by the Borrower through the minutes of the loan negotiations for the Project dated 23 July 2012, the Borrower has applied to ADB for: (i) a loan from ADB’s ordinary capital resources; and (ii) a loan from ADB’s Special Funds resources, for the purposes of the Project described in Schedule 1 to this Loan Agreement;

(C) by a loan agreement between the Borrower and ADB (“Ordinary Operations Loan Agreement”), ADB has agreed to make to the Borrower a loan from ADB’s ordinary capital resources in the amount of sixty-four million Dollars (\$64,000,000) for the purposes of the Project;

(D) the Project will be carried out by the Municipal Development Fund of Georgia established under Presidential Decree dated 7 June 1997 (“MDF”), and for this purpose the Borrower will make available to MDF the proceeds of the loan provided for herein upon terms and conditions satisfactory to ADB; and

(E) ADB has agreed to make a loan to the Borrower from ADB’s Special Funds resources upon the terms and conditions set forth herein and in the Project Agreement between ADB and MDF;

NOW THEREFORE the parties agree as follows:

## **ARTICLE I**

### **Loan Regulations; Definitions**

Section 1.01. All the provisions of the Special Operations Loan Regulations of ADB, dated 1 January 2006 (“Loan Regulations”), are hereby made applicable to this Loan Agreement with the same force and effect as if they were fully set forth herein, subject, however, to the following modifications:

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

“Project Agreement” means the Project Agreement between ADB and MDF.

- (b) The term “Project Executing Agency” appearing in Section 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 “MDF”.

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) “Charter” means the charter of MDF approved by Government Decree No. 118 dated 23 July 2005, as amended from time to time;

(b) “Consulting Guidelines” means the Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers (2010, as amended from time to time);

(c) “Consulting Services” means the services to be financed out of the proceeds of the Loan as described in subparagraph 3(c) of Schedule 1 to this Loan Agreement;

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

(e) “Environmental Management Plan” or “EMP” means each environmental management plan of the Project, including any update thereto, incorporated in the IEE;

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

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

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

(i) “Loan Disbursement Handbook” means ADB’s Loan Disbursement Handbook (2012, as amended from time to time);

(j) “PAM” means the project administration manual for the Project dated 23 July 2012 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;

(k) “Procurement Guidelines” means ADB’s Procurement Guidelines (2010, as amended from time to time);

(l) “Procurement Plan” means the procurement plan for the Project dated 23 July 2012 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;

(m) “Land Acquisition and Resettlement Framework” or “LARF” means the land acquisition and resettlement framework for the Investment Program, including any update thereto, agreed between the Borrower and ADB and incorporated by reference in the FFA;

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

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

(p) “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, the RP and the IPP (as applicable), including any corrective and preventative actions; and

(q) “Works” means construction or civil works to be financed out of the proceeds of the Loan, including services such as drilling or mapping, and project related services that are provided as part of a single responsibility or turnkey contract, but excluding Consulting Services.

## **ARTICLE II**

### **The Loan**

Section 2.01. ADB agrees to lend to the Borrower from ADB’s Special Funds resources an amount in various currencies equivalent to ten million six hundred thirty-nine thousand Special Drawing Rights (SDR 10,639,000).

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 January and 15 July 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. The Borrower shall make the proceeds of the Loan available to MDF upon terms and conditions satisfactory to ADB and shall cause MDF to apply such proceeds 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. 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 Works and Consulting Services shall be made only on account of expenditures relating to:

- (a) 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) Works and Consulting Services which meet such other eligibility requirements as shall have been specified by ADB from time to time.

Section 3.06. The Loan Closing Date for the purposes of Section 8.02 of the Loan Regulations shall be 31 December 2018 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 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 Works and any relevant records and documents.

Section 4.03. (a) The Borrower shall cause MDF to (i) maintain separate accounts and records for the Project; (ii) prepare annual financial statements for the Project in accordance with accounting principles acceptable to ADB; (iii) have such financial statements audited annually by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB, in accordance with international standards for auditing or the national equivalent acceptable to ADB; (iv) as part of each such audit, have the auditors prepare a report (which includes the auditors' opinion on the use of the Loan proceeds and compliance with the financial covenants of this Loan Agreement as well as on the use of the procedures for the imprest account(s) and statement of expenditures) and a management letter (which sets out the deficiencies in the internal control of the Project that were identified in the course of the audit, if any); and (v) furnish to ADB, no later than 6 months after the end of each related fiscal year, copies of such audited financial statements, audit report and management letter, all in the English language, and such other information concerning these documents and the audit thereof as ADB shall from time to time reasonably request.

(b) ADB shall disclose the annual audited financial statements for the Project and the opinion of the auditors on the financial statements within 30 days of the date of their receipt by posting them on ADB's website.

(c) The Borrower shall enable ADB, upon ADB's request, to discuss the financial statements for the Project and the Borrower's financial affairs where they relate to the Project with the auditors appointed pursuant to subsection (a)(iii) hereinabove, and shall authorize and require any representative of such auditors to participate in any such discussions requested by ADB. This is provided that such discussions shall be conducted only in the presence of an authorized officer of the Borrower, unless the Borrower shall otherwise agree.

Section 4.04. The Borrower shall take all actions which shall be necessary on its part to enable the MDF 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.

## **ARTICLE V**

### **Effectiveness**

Section 5.01. The following is specified as an additional condition to the effectiveness of this Loan Agreement for the purposes of Section 9.01(f) of the Loan Regulations: the Ordinary Operations Loan Agreement shall have been duly executed and delivered on behalf of the Borrower and all conditions precedent to its effectiveness (other than a condition requiring the effectiveness of this Loan Agreement) shall have been fulfilled.

Section 5.02. The following is specified as an additional matter, for the purposes of Section 9.02(d) of the Loan Regulations, to be included in the opinion or opinions to be furnished to ADB: that the Ordinary Operations Loan Agreement has been duly authorized by or ratified by, and executed and delivered on behalf of, the Borrower, and is legally binding upon the Borrower in accordance with its terms.

Section 5.03. A date 60 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**

### **Delegation of Authority**

Section 6.01. The Borrower hereby designates MDF as its agent for the purposes of taking any action or entering into any agreement required or permitted under Sections 3.02, 3.03 and 3.05 of this Loan Agreement and under Sections 5.01, 5.02, 5.03 and 5.04 of the Loan Regulations.

Section 6.02. Any action taken or any agreement entered into by the Project Executing Agency pursuant to the authority conferred under Section 7.01 of this Loan Agreement shall be fully binding on the Borrower and shall have the same force and effect as if taken by the Borrower.

Section 6.03. The authority conferred on the Project Executing Agency under Section 7.01 of this Loan Agreement may be revoked or modified by agreement between the Borrower and ADB.

## **ARTICLE VII**

### **Miscellaneous**

Section 7.01. The Minister of 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

Public Debt and External Finance Department  
Ministry of Finance  
16 Gorgasali Street, 0114  
Tbilisi, Georgia

Facsimile Number:

(99532) 2261 461.

For ADB

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

Facsimile Numbers:

(632) 636-2444

(632) 636-2301.

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.

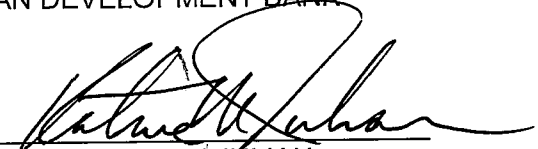
GEORGIA

By

  
DIMITRI GVINDADZE  
Minister of Finance

ASIAN DEVELOPMENT BANK

By

  
KATHIE JULIAN  
Resident Representative  
Georgia Resident Mission



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

1. The objective of the Investment Program is to improve efficiency, reliability and affordability of urban transport infrastructure and services.
2. As part of the Investment Program, the Project aims to improve urban transport infrastructure and services in selected municipalities.
3. The Project shall consist of:
  - (a) construction of two sections of a four-lane road (of an approximate aggregate length of 10.6 kilometers) between the city of Tbilisi and the city of Rustavi;
  - (b) construction of a 151 meters two-lane bridge over the Aragvi River between the city of Mtskheta and the national east-west highway; and
  - (c) provision of project implementation support (this includes assistance in construction supervision, procurement, financial management and environmental and social safeguards, and provision of financial audits) and capacity development on bridge construction and maintenance.
4. The Project is expected to be completed by 31 July 2018.

**SCHEDULE 2****Amortization Schedule****(Sustainable Urban Transport Investment Program – Project 2)**

<u>Date Payment Due</u>	<u>Payment of Principal</u> (expressed in Special Drawing Rights)*
15 January 2021	221,646
15 July 2021	221,646
15 January 2022	221,646
15 July 2022	221,646
15 January 2023	221,646
15 July 2023	221,646
15 January 2024	221,646
15 July 2024	221,646
15 January 2025	221,646
15 July 2025	221,646
15 January 2026	221,646
15 July 2026	221,646
15 January 2027	221,646
15 July 2027	221,646
15 January 2028	221,646
15 July 2028	221,646
15 January 2029	221,646
15 July 2029	221,646
15 January 2030	221,646
15 July 2030	221,646
15 January 2031	221,646
15 July 2031	221,646
15 January 2032	221,646
15 July 2032	221,646
15 January 2033	221,646
15 July 2033	221,646
15 January 2034	221,646
15 July 2034	221,646
15 January 2035	221,646
15 July 2035	221,646
15 January 2036	221,646
15 July 2036	221,646
15 January 2037	221,646
15 July 2037	221,646
15 January 2038	221,646
15 July 2038	221,646
15 January 2039	221,646
15 July 2039	221,646
15 January 2040	221,646
15 July 2040	221,646

<u>Date Payment Due</u>	<u>Payment of Principal</u> (expressed in Special Drawing Rights)*
15 January 2041	221,646
15 July 2041	221,646
15 January 2042	221,646
15 July 2042	221,646
15 January 2043	221,646
15 July 2043	221,646
15 January 2044	221,646
15 July 2044	221,638
Total	10,639,000

\* 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 3 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.

##### Retroactive Financing

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

TABLE

<b>ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (Sustainable Urban Transport Investment Program – Project 2)</b>			
<b>Number</b>	<b>Item</b>	<b>Total Amount Allocated for ADB Financing (SDR) Category</b>	<b>Basis for Withdrawal from the Loan Account</b>
1	Works	8,312,000	20% of total expenditure claimed*
2	Consulting Services	758,000	20% of total expenditure claimed*
3	Interest Charge	223,000	100% of amounts due
4	Unallocated	1,346,000	
	Total	10,639,000	

\* Exclusive of taxes and duties imposed within the territory of the Borrower.

## SCHEDULE 4

### Procurement of Works and Consulting Services

#### General

1. The procurement of Works and Consulting Services shall be subject to and governed by the Procurement Guidelines, and the Consulting Guidelines, respectively.
2. All terms used in this Schedule and not otherwise defined in this Loan Agreement have the meanings provided in the Procurement Guidelines and/or the Consulting Guidelines, as applicable.

#### Works

3. Except as ADB may otherwise agree, Works shall only be procured on the basis of International Competitive Bidding.
4. The method of procurement is subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. The Borrower may only modify the method of procurement or threshold values with the prior agreement of ADB, and modifications must be set out in updates to the Procurement Plan.

#### Conditions for Award of Contract

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

#### Consulting Services

7. Except as ADB may otherwise agree, the Borrower shall ensure that MDF apply quality- and cost-based selection for selecting and engaging Consulting Services.
8. The Borrower shall ensure that MDF recruit the individual consultants in accordance with procedures acceptable to ADB for recruiting individual consultants.

#### Industrial or Intellectual Property Rights

9. (a) The Borrower shall ensure that all Works procured (including without limitation all computer hardware, software and systems, whether separately procured or

incorporated within other goods and services procured) do not violate or infringe any industrial property or intellectual property right or claim of any third party.

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

10. The Borrower shall ensure that all ADB-financed contracts with consultants contain appropriate representations, warranties and, if appropriate, indemnities from the consultants to ensure that 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.

12. The Borrower shall seek ADB's approval before it:

- (a) grants any extension of the stipulated time for completion of a contract for Works; or
- (b) agrees to any modification or waiver of the conditions of a contract for Works, including any change order that falls under (c) or (d) below; or
- (c) issues any change order under a contract for Works that will in aggregate increase the original contract price (for the avoidance of doubt, such aggregate shall take into account any previous or simultaneous change order or orders under such contract); or
- (d) issues any change order under a contract for Works that will affect more than 15% of the original contract price (either through increases or decreases), even if the net effect of such change order will not in aggregate increase the original contract price. For the avoidance of doubt, such aggregate shall take into account any previous or simultaneous change order or orders under such contract.

13. ADB shall respond to each request for approval under paragraph 12 above within 10 business days (in Manila) of ADB's receipt of such request. Such response will indicate that the request is (a) approved, (b) declined, (c) pending receipt of additional information or documentation, or (d) pending consideration by ADB's Procurement Committee, in each case as determined by ADB. If ADB fails to respond within 10 business days (in Manila) of ADB's receipt of such request, the request (except if it relates to consideration by the Procurement Committee) shall be deemed to have been approved by ADB. In the case of (c), the Borrower shall promptly provide the requested information or documentation to ADB and ADB shall respond to the relevant request within 10 business days (in Manila) upon receipt of such requested information or documentation satisfactory to ADB. In the case of (d), ADB shall notify the Borrower of the decision by the Procurement

Committee within 10 business days (in Manila) of such decision by the Procurement Committee.

14. The Borrower shall, or shall ensure that MDF will:
- (a) provide to ADB within 10 days a copy of all time extensions, modifications or waivers to the contracts (including change orders) following ADB's approval in accordance with paragraph 12 above and amendment of the contracts; and
  - (b) maintain a record of all change orders under all contracts for Works which do not require ADB's prior approval under paragraph 12 above and submit such record for ADB's review every 6 months.



## SCHEDULE 5

### Execution of Project; Financial Matters

#### Implementation Arrangements

1. The Borrower and MDF 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 and/or the Project Agreement, the provisions of this Loan Agreement and/or the Project Agreement shall prevail.

#### Environment

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

#### Land Acquisition and Involuntary Resettlement

3. The Borrower shall cause the MDF 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; (c) the LARF; and (d) all measures and requirements set forth in the respective LARP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

4. Without limiting the application of the Involuntary Resettlement Safeguards, the LARF or the LARP, the Borrower shall cause MDF 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 LARP; and
- (b) a comprehensive income and livelihood restoration program has been established in accordance with the LARP.

#### Indigenous Peoples

5. No impact on indigenous people under the SPS is expected for the Project. In the event that there is any such impact, the Borrower shall cause MDF to ensure that it adheres to applicable laws and regulations of the Borrower and the SPS. If there is any discrepancy between the SPS and the Borrower's laws and regulations, the SPS shall prevail.

Human and Financial Resources to Implement Safeguards Requirements

6. The Borrower shall cause MDF to make available necessary budgetary and human resources to fully implement the EMP and the LARP.

Safeguards – Related Provisions in Bidding Documents and Works Contracts

7. The Borrower shall cause MDF 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 LARP (to the extent they concern impacts on affected people during construction), and any corrective or preventative actions set out in a Safeguards Monitoring Report;
- (b) make available a budget for all such environmental and 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 LARP;
- (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

8. The Borrower shall cause MDF 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 LARP, promptly inform ADB of the occurrence of such risks or impacts, with detailed description of the event and proposed corrective action plan;
- (c) no later than 3 months after the Effective Date, engage qualified and experienced external experts or a qualified NGO under a selection process and terms of reference acceptable to ADB, to verify information produced through the Project monitoring process, and

facilitate the carrying out of any verification activities by such external experts; and

- (d) report any actual or potential breach of compliance with the measures and requirements set forth in the EMP or the LARP promptly after becoming aware of the breach.

#### Prohibited List of Investments

9. The Borrower shall cause MDF 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.

#### Health and Labor Standards

10. The Borrower shall cause MDF to ensure that contractors engaged under the Project: (a) comply with all applicable labor laws and regulations of the Borrower; (b) use their best efforts to employ women and local people, including disadvantaged people, living in the vicinity of the Project; (c) provide equal pay to men and women for work of equal type; (d) provide and adequately equip first-aid, health and sanitation, and personal hygiene facilities for male and female workers at the Project site; (e) conduct an information and education campaign on sexually transmitted diseases and HIV/AIDS for construction workers as part of the health and safety program at campsites and adjacent communities during Project implementation; and (f) abstain from child labor. Contracts financed under the Project shall include specific provisions on these requirements.

#### Gender and Development

11. The Borrower shall cause MDF to ensure that: (a) the gender action plan is implemented in accordance with its terms; (b) the bidding documents include relevant provisions for contractors to comply with the measures set forth in the gender action plan; (c) adequate resources are allocated for the implementation of the gender action plan; and (d) key gender outcome and output targets are monitored regularly and achieved.

#### Governance and Corruption

12. The Borrower and MDF 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.

13. The Borrower shall cause MDF to 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.

Operational Covenants

14. The Borrower shall cause MDF to ensure that: (a) the Project is implemented in accordance with design specifications and construction norms; and (b) construction supervision, quality control and contract management are performed in accordance with international standards.

15. The Borrower shall ensure that the relevant municipalities or authorities install appropriate safety signs and facilities during implementation and ensure monitoring of the accident rate and traffic volume.

16. The Borrower and MDF shall 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; (c) revision, amendment or restatement of MDF's Charter that may affect implementation or management of the Project; or (d) any lease or other contract or modification of the functions and authority of MDF over operation and maintenance of any such asset, facility or structure financed under the Project. The Borrower shall ensure that any such changes will be carried out in a legal and transparent manner.