
LOAN NUMBER 3273-GEO

LOAN AGREEMENT
(Ordinary Operations)

(Sustainable Urban Transport Investment Program – Project 4)

between

GEORGIA

and

ASIAN DEVELOPMENT BANK

DATED 26 OCTOBER 2015

GEO 42414

**LOAN AGREEMENT
(Ordinary Operations)**

LOAN AGREEMENT dated 26 October 2015 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 15 April 2015, the Borrower has applied to ADB for a loan for the purposes of the Project described in Schedule 1 to this Loan Agreement;

(C) 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

(D) ADB has agreed to make a loan to the Borrower from ADB's ordinary capital resources upon the terms and conditions set forth herein;

NOW THEREFORE the parties hereto agree as follows:

ARTICLE I

Loan Regulations; Definitions

Section 1.01. All the provisions of the Ordinary Operations Loan Regulations Applicable to LIBOR-Based Loans Made from ADB's Ordinary Capital Resources, dated 1 July 2001 (“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(50) 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 Sections 7.04(b), 9.01(d), 9.01(f), 9.01(k), 10.01(c) and 10.02(c) of the Loan Regulations shall be substituted by the term “MDF”.

(c) Section 3.03 is deleted and the following is substituted therefor:

Commitment Charge; Credit; Maturity Premium.

- (a) The Borrower shall pay a commitment charge on the unwithdrawn amount of the Loan at the rate and on the terms specified in the Loan Agreement.
- (b) ADB shall provide to the Borrower a credit at the rate specified in the Loan Agreement, which credit shall remain fixed for the term of the Loan. ADB shall apply the credit against the interest payable by the Borrower.
- (c) The Borrower shall pay a maturity premium at the rate specified in the Loan Agreement, which maturity premium shall remain fixed for the term of the Loan. ADB shall add the maturity premium to the interest payable by the Borrower.
- (d) Section 3.06 is deleted and the following is substituted therefor:

Rebate. (a) Following any announcement by ADB that the Fixed Spread applicable to new Loans shall be reduced, ADB shall provide a Rebate to any Borrower with an outstanding Loan on which a higher Fixed Spread is applicable. The amount of the Rebate shall be determined by multiplying (i) the difference between the Fixed Spread applicable to the outstanding Loan and the Fixed Spread that will be applied to new Loans (expressed as a percentage per annum), by (ii) the principal amount of the outstanding Loan on which the Borrower shall pay interest for all interest periods commencing on and after the effective date of the lower Fixed Spread that will be applied to new Loans.

(b) Following any announcement by ADB that its Funding Cost Margin calculations with respect to any Loan Currency (or Approved Currency) in any Semester resulted in ADB achieving savings, ADB shall provide a Rebate to the Borrower. The amount of the Rebate shall be determined by multiplying (i) the Funding Cost Margin (expressed as a percentage per annum) by (ii) the principal amount of the Loan on which the Borrower shall pay interest for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated. ADB shall apply the amount of the Rebate against the interest payable by the Borrower for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated.

- (e) Section 3.07 is deleted and the following is substituted therefor:

Surcharge. (a) Following any announcement by ADB that the Fixed Spread applicable to new Loans shall be increased, any Borrower with an outstanding Loan on which a

lower Fixed Spread is applicable shall pay ADB a Surcharge. The amount of the Surcharge shall be determined by multiplying (i) the difference between the Fixed Spread that will be applied to new Loans and the Fixed Spread applicable to the outstanding Loan (expressed as a percentage per annum), by (ii) the principal amount of the outstanding Loan on which the Borrower shall pay interest for all interest periods commencing on and after the effective date of the higher Fixed Spread that will be applied to new Loans.

(b) Following any announcement by ADB that its Funding Cost Margin calculations with respect to any Loan Currency (or Approved Currency) in any Semester resulted in ADB incurring additional costs, the Borrower shall pay ADB a Surcharge. The amount of the Surcharge shall be determined by multiplying (i) the Funding Cost Margin (expressed as a percentage per annum) by (ii) the principal amount of the Loan on which the Borrower shall pay interest for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated. ADB shall add the amount of the Surcharge to the interest payable by the Borrower for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated.

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 (2013, 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(b) of Schedule 1 to this Loan Agreement;

(d) "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) "EMP" means each environmental management plan for 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) “Facility” means the multitranche financing facility provided by ADB to the Borrower for purposes of financing projects under the Investment Program;

(h) “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;

(i) “IEE” means each initial environmental examination for the Project, including any update thereto, prepared and submitted by the Borrower pursuant to the requirements set forth in the EARF and cleared by ADB;

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

(k) “LARF” means the land acquisition and resettlement framework for the Investment Program, including any update thereto, prepared and submitted by the Borrower and cleared by ADB/Investment Program, including any update thereto, agreed between the Borrower and ADB and incorporated by reference in the FFA;

(l) “LARP” means each resettlement plan for the Project (if any), including any update thereto, prepared and submitted by the Borrower pursuant to the requirements set forth in the LARF and cleared by ADB;

(m) “Loan Disbursement Handbook” means ADB’s Loan Disbursement Handbook (2015, as amended from time to time);

(n) “PAM” means the project administration manual for the Project dated 9 June 2015 and agreed between the Borrower and ADB, as updated from time to time in accordance with the respective administrative procedures of the Borrower and ADB;

(o) “Procurement Guidelines” means ADB’s Procurement Guidelines (2015, as amended from time to time);

(p) “Procurement Plan” means the procurement plan for the Project dated 9 June 2015 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;

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

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

(s) “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 LARP, including any corrective and preventative actions; 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 of twenty million Dollars (\$20,000,000), as such amount may be converted from time to time through a Currency Conversion in accordance with the provisions of Section 2.06 of this Loan Agreement.

(b) The Loan has a principal repayment period of 11 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 interest on the principal amount of the Loan withdrawn and outstanding from time to time at a rate for each Interest Period equal to the sum of:

- (a) LIBOR;
- (b) 0.60% as provided by Section 3.02 of the Loan Regulations less a credit of 0.10% as provided by Section 3.03 of the Loan Regulations; and
- (c) a maturity premium of 0.20% as provided by Section 3.03 of the Loan Regulations.

Section 2.03. The Borrower shall pay a commitment charge of 0.15% per annum. Such charge shall accrue on the full amount of the Loan (less amounts withdrawn from time to time), commencing 60 days after the date of this Loan Agreement.

Section 2.04. Interest and other charges on the Loan shall be payable semiannually on 15 March and 15 September in each year.

Section 2.05. The Borrower shall repay the principal amount of the Loan withdrawn from the Loan Account in accordance with the provisions of Schedule 2 to this Loan Agreement.

Section 2.06. (a) The Borrower may at any time request any of the following Conversions of the terms of the Loan in order to facilitate prudent debt management:

- (i) a change of the Loan Currency of all or any portion of the principal amount of the Loan, whether withdrawn and outstanding or unwithdrawn, to an Approved Currency;
- (ii) a change of the interest rate basis applicable to all or any portion of the principal amount of the Loan withdrawn and outstanding from a Floating Rate to a Fixed Rate, or vice versa; and
- (iii) the setting of limits on the Floating Rate applicable to all or any portion of the principal amount of the Loan withdrawn and outstanding by the establishment of an Interest Rate Cap or Interest Rate Collar on said Floating Rate.

(b) Any conversion requested pursuant to subsection (a) hereinabove that is accepted by ADB shall be considered a "Conversion", as defined in Section 2.01(6) of the Loan Regulations, and shall be effected in accordance with the provisions of Article V of the Loan Regulations and the Conversion Guidelines.

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 through MDF shall procure 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. ADB may refuse to finance a contract where any such item has not been procured under procedures substantially in accordance with those agreed between the Borrower and ADB or where the terms and conditions of the contract are not satisfactory to ADB.

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. The Loan Closing Date for the purposes of Section 9.02 of the Loan Regulations shall be 30 June 2020 or such other date as may from time to time be agreed between the Borrower and ADB.

ARTICLE IV

Particular Covenants

Section 4.01. (a) The Borrower shall cause the Project to be carried out with due diligence and efficiency and in conformity with sound applicable technical, financial, business, and development practices.

(b) 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 and the Project Agreement.

Section 4.02. The Borrower shall make available, or cause to be made available, promptly as needed, the funds, facilities, services, land and other resources, as required, in addition to the proceeds of the Loan, for the carrying out of the Project.

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 30 days of the date of their receipt by posting them on ADB's website.

Section 4.04. (a) In the carrying out of the Project, the Borrower shall cause competent and qualified consultants and contractors, acceptable to ADB, to be employed to an extent and upon terms and conditions satisfactory to the Borrower and ADB.

(b) The Borrower shall cause the Project to be carried out in accordance with plans, design standards, specifications, work schedules and construction methods acceptable to the Borrower and ADB, as applicable. The Borrower shall furnish, or cause to be furnished, to ADB, promptly after their preparation, such plans, design standards, specifications and work schedules, and any material modifications subsequently made therein, in such detail as ADB shall reasonably request.

Section 4.05. The Borrower shall ensure that the activities of its departments and agencies with respect to the carrying out of the Project and operation of the Project facilities are conducted and coordinated in accordance with sound administrative policies and procedures.

Section 4.06. The Borrower shall enable ADB's representatives to inspect the Project, the Goods and Works, and any relevant records and documents.

Section 4.07. The Borrower shall ensure that any facilities relevant to the Project are operated, maintained and repaired in accordance with sound applicable technical, financial, business, development, operational and maintenance practices.

Section 4.08. The Borrower shall take all actions which shall be necessary on its part to enable 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. A date 60 days after the date of this Loan Agreement is specified for the effectiveness of this Loan Agreement for the purposes of Section 10.04 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 Section 3.02 of this Loan Agreement and under Sections 6.01, 6.02, 6.03 and 6.04 of the Loan Regulations.

Section 6.02. Any action taken or any agreement entered into by MDF pursuant to the authority conferred under Section 6.01 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 MDF under Section 6.01 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 12.02 of the Loan Regulations.

Section 7.02. The following addresses are specified for the purposes of Section 12.01 of the Loan Regulations:

For the Borrower

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

Facsimile Number:

(99532) 2262 423.

For ADB

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

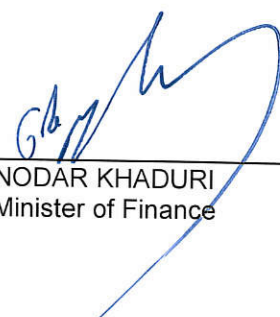
Facsimile Numbers:

(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



NODAR KHADURI
Minister of Finance

ASIAN DEVELOPMENT BANK

By



YESIM ELHAN-KAYALAR
Country Director
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 a part of the Investment Program, the Project aims to improve efficiency, reliability and affordability of urban transport infrastructure and services in the city of Batumi.
3. The Project shall consist of:
 - (a) construction of a coastal protection structure, designed according to international best practices, which will provide sustainable shoreline protection for the city of Batumi; and
 - (b) strengthening the institutional and monitoring management capacity of MDF through a management information system for MDF, project preparatory activities, detailed engineering design and bidding documents for the Kobuleti coastal protection project and related recreational area and bicycle lanes, project preparatory activities, detailed engineering design, and bidding documents for other projects under the Investment Program, and implementation support through financial audit and independent safeguards monitoring.
4. The Project is expected to be completed by 31 December 2019.

SCHEDULE 2**Amortization Schedule****(Sustainable Urban Transport Investment Program – Project 4)**

1. The following table sets forth the Principal Payment Dates of the Loan and the percentage of the total principal amount of the Loan payable on each Principal Payment Date (Installment Share). If the proceeds of the Loan shall have been fully withdrawn as of the first Principal Payment Date, the principal amount of the Loan repayable by the Borrower on each Principal Payment Date shall be determined by ADB by multiplying: (a) the total principal amount of the Loan withdrawn and outstanding as of the first Principal Payment Date; by (b) the Installment Share for each Principal Payment Date, such repayment amount to be adjusted, as necessary, to deduct any amounts referred to in paragraph 4 of this Schedule, to which a Currency Conversion applies.

<u>Payment Due</u>	<u>Installment Share</u> (Expressed as a %)
15 March 2029	4.545455
15 September 2029	4.545455
15 March 2030	4.545455
15 September 2030	4.545455
15 March 2031	4.545455
15 September 2031	4.545455
15 March 2032	4.545455
15 September 2032	4.545455
15 March 2033	4.545455
15 September 2033	4.545455
15 March 2034	4.545455
15 September 2034	4.545455
15 March 2035	4.545455
15 September 2035	4.545455
15 March 2036	4.545455
15 September 2036	4.545455
15 March 2037	4.545455
15 September 2037	4.545455
15 March 2038	4.545455
15 September 2038	4.545455
15 March 2039	4.545455
15 September 2039	4.545445
TOTAL	100.000000

2. If the proceeds of the Loan shall not have been fully withdrawn as of the first Principal Payment Date, the principal amount of the Loan repayable by the Borrower on each Principal Payment Date shall be determined as follows:

(a) To the extent that any proceeds of the Loan shall have been withdrawn as of the first Principal Payment Date, the Borrower shall repay the amount withdrawn and outstanding as of such date in accordance with paragraph 1 of this Schedule.

(b) Any withdrawal made after the first Principal Payment Date shall be repaid on each Principal Payment Date falling after the date of such withdrawal in amounts determined by ADB by multiplying the amount of each such withdrawal by a fraction, the numerator of which shall be the original Installment Share specified in the table in paragraph 1 of this Schedule for said Principal Payment Date (the Original Installment Share) and the denominator of which shall be the sum of all remaining Original Installment Shares for Principal Payment Dates falling on or after such date, such repayment amounts to be adjusted, as necessary, to deduct any amounts referred to in paragraph 4 of this Schedule, to which a Currency Conversion applies.

3. Withdrawals made within two calendar months prior to any Principal Payment Date shall, for the purposes solely of calculating the principal amounts payable on any Principal Payment Date, be treated as withdrawn and outstanding on the second Principal Payment Date following the date of withdrawal and shall be repayable on each Principal Payment Date commencing with the second Principal Payment Date following the date of withdrawal.

4. Notwithstanding the provisions of paragraphs 1 and 2 of this Schedule, upon a Currency Conversion of all or any portion of the withdrawn principal amount of the Loan to an Approved Currency, the amount so converted in said Approved Currency that shall be repayable on any Principal Payment Date occurring during the Conversion Period, shall be determined by ADB by multiplying such amount in its currency of denomination immediately prior to said Conversion by either: (i) the exchange rate that reflects the amounts of principal in said Approved Currency payable by ADB under the Currency Hedge Transaction relating to said Conversion; or (ii) if ADB so determines in accordance with the Conversion Guidelines, the exchange rate component of the Screen Rate.

5. If the principal amount of the Loan withdrawn and outstanding from time to time shall be denominated in more than one Loan Currency, the provisions of this Schedule shall apply separately to the amount denominated in each Loan Currency, so as to produce a separate amortization schedule for each such amount.

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 and Commitment Charges

3. The amount allocated to Category 3 is for financing interest and commitment charges on the Loan during the implementation 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 and commitment charges.

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 Goods and Works, subject to a maximum amount equivalent to 20% of the Loan Amount.

TABLE

ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (Sustainable Urban Transport Investment Program – Project 4)			
Number	Item	Total Amount Allocated for ADB Financing (\$) Category	Basis for Withdrawal from the Loan Account
1	Works and Goods	12,007,000	100% of total expenditure claimed*
2	Consulting Services and Incremental Administration	5,190,000	100% of total expenditure claimed*
3	Interest and Commitment Charges	464,000	100% of amounts due
4	Unallocated	2,339,000	
	Total	20,000,000	

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

SCHEDULE 4

Procurement of Goods, Works and Consulting Services

General

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

Goods and Works

3. Except as ADB may otherwise agree, Goods and Works shall only be procured on the basis of 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 final approval of the IEE from the appropriate approving 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 the Borrower 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 apply quality- and cost-based selection or consultants' qualifications 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 Goods and Works procured (including without limitation all computer hardware, software and systems, whether

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

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

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

ADB's Review of Procurement Decisions

11. Contracts procured under international competitive bidding procedures and contracts for Consulting Services shall be subject to prior review by ADB, unless otherwise agreed between the Borrower and ADB and set forth in the Procurement Plan.

12. In the case of a contract for Works, which is subject to ADB's prior review, the Borrower 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 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).

13. In the case of a contract for Works, which is subject to ADB's post review, ADB shall review the required contract modification or waiver and respond to the Borrower as soon as practicable, but not later than 1 month after the receipt of the required document.

14. The Borrower shall 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; 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 the Project Agreement, the provisions of this Loan Agreement and the Project Agreement shall prevail.

Environment

2. The Borrower through MDF shall 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 through MDF shall 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 through MDF shall 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 through MDF shall 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 through MDF shall 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 through MDF shall 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 through MDF shall 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, 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; and
- (c) 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 through MDF 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 the SPS.

Health and Labor Standards

10. The Borrower through MDF shall ensure that the core labor standards and the Borrower's applicable laws and regulations, including workplace occupational safety norms, are complied with during Project implementation. MDF 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 norms; (b) do not use child labor, within the meaning provided in Appendix 5 of the SPS; (c) to not discriminate workers in respect of employment and occupation; (d) do not use forced labor, within the meaning provided in Appendix 5 of the SPS; (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.

11. The Borrower through MDF shall strictly monitor compliance with the requirements set forth in paragraph 10 above and provide ADB with regular reports.

Gender and Development

12. The Borrower through MDF shall 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 Anticorruption

13. 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.

14. The Borrower through MDF 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.

Operational Covenants

15. The Borrower through MDF shall 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.

16. 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.

17. 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.