



ASIAN DEVELOPMENT BANK

Ordinary Operations Loan Regulations

Applicable to Regular Loans Made
from ADB's Ordinary Capital Resources

Dated 1 January 2017

ASIAN DEVELOPMENT BANK
ORDINARY OPERATIONS LOAN REGULATIONS

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ORDINARY OPERATIONS LOAN REGULATIONS

DATED 1 JANUARY 2017

ARTICLE I

Purpose; Application to Loan Agreements and Guarantee Agreements

Section 1.01. **Purpose.** The purpose of these Regulations is to set forth certain terms and conditions generally applicable to regular loans made by ADB from its ordinary capital resources.

Section 1.02. **Application of Regulations.** Any loan agreement with ADB and any guarantee agreement with ADB relating to a regular loan made by ADB from its ordinary capital resources may provide that the parties thereto accept the provisions of these Regulations. To the extent so provided in any such agreement, these Regulations shall apply and shall govern the rights and obligations of the parties thereto with the same force and effect as if they were fully set forth therein. No revocation or amendment of these Regulations shall be effective in respect of any such agreement unless the parties shall so agree in writing.

Section 1.03. **Inconsistency with Loan Agreements and Guarantee Agreements.** If any provision of a loan agreement or guarantee agreement is inconsistent with a provision of these Regulations, the provision of the loan agreement or guarantee agreement, as the case may be, shall govern.

ARTICLE II

Definitions; Interpretation

Section 2.01. **Definitions.** Except where the context otherwise requires, the following terms have the following meanings wherever used in these Regulations or in a loan agreement or guarantee agreement to which these Regulations have been made applicable:

- (a) "ADB" means Asian Development Bank;
- (b) "Approved Currency" means, in respect of a Currency Conversion, any currency approved by ADB;
- (c) "assets" includes property, revenues and claims of any kind;
- (d) "Banking Day" means, in respect of any Loan Currency other than Euro, a London Banking Day, and in respect of Euro, a Target Settlement Day;

- (e) “Borrower” means the party to the Loan Agreement to which ADB has agreed to make the Loan;
- (f) “Conversion” means any of the following modifications of the terms of all or any portion of the Loan that has been requested by the Borrower and accepted by ADB: (i) an Interest Rate Conversion; (ii) a Currency Conversion; or (iii) the establishment of an Interest Rate Cap or Interest Rate Collar on the Floating Rate; each as provided in the Loan Agreement;
- (g) “Conversion Date” means, in respect of a Conversion, the Interest Payment Date (or, in the case of a Currency Conversion of an unwithdrawn amount of the Loan, such other date as ADB shall determine) on which the Conversion enters into effect, as further specified in the Conversion Guidelines;
- (h) “Conversion Guidelines” means, in respect of a Conversion, the "Guidelines for Conversion of Loan Terms" or such other guidelines for Conversion as may be issued from time to time by ADB and in effect at the time of said Conversion;
- (i) “Conversion Period” means, in respect of a Conversion, the period from and including the Conversion Date to and including the last day of the Interest Period in which said Conversion terminates by its terms; provided, that solely for the purpose of enabling the final payment of interest and principal under a Currency Conversion to be made in the Approved Currency for said Conversion, such period shall end on the Interest Payment Date immediately following the last day of said final applicable Interest Period;
- (j) “convertible currency” means any currency so designated by ADB at any time;
- (k) “Counterparty” means a party with which ADB enters into a derivatives transaction in order to effect a Conversion;
- (l) “currency” of a country or a territory means such currency as at the time referred to is legal tender for the payment of public and private debts in that country or territory;
- (m) “Currency Conversion” means a change of the Loan Currency of all or any portion of the principal amount of the Loan, withdrawn or unwithdrawn, to an Approved Currency;
- (n) “Currency Hedge Transaction” means, in respect of a Currency Conversion, one or more currency swap transactions entered into by ADB with a Counterparty as of the Execution Date and in accordance with the Conversion Guidelines, in connection with such Currency Conversion;
- (o) “Dollar” or the sign “\$” each means the lawful currency of the United States of America;
- (p) “Effective Date” means the date on which the Loan Agreement and the Guarantee Agreement, if any, shall have come into force and effect pursuant to Section 10.03;

- (q) “Euribor” means, in respect of any Interest Period, the Euro interbank offered rate for six-month deposits in the Loan Currency, expressed as a percentage per annum, that appears on the Relevant Telerate Page as of 11:00 a.m., Brussels time, on the Reference Rate Reset Date for said Interest Period. If such rate does not appear on the Relevant Telerate Page, ADB shall request the principal office of each of four major banks selected by ADB in the relevant Financial Center for deposits in Euro to provide a quotation of the rate at which it offers six-month deposits in said Loan Currency to leading banks in the Euro interbank market at approximately 11:00 a.m. Brussels time on the Reference Rate Reset Date for said Interest Period. If at least two such quotations are provided, the rate in respect of said Interest Period shall be the arithmetic mean (as determined by ADB and rounded up, if necessary, to the nearest 1/16th of one percent) of the quotations. If less than two of the banks so selected are quoting such rates, Euribor in respect of said Interest Period shall be equal to Euribor in effect for the Interest Period immediately preceding said Interest Period;
- (r) “Euro” or the sign “€” each means the lawful currency of the member states of the European Union that adopt the single currency in accordance with the Treaty establishing the European Community, as amended by the Treaty on European Union;
- (s) “Execution Date” means, in respect of a Conversion, the date on which ADB shall have undertaken all actions necessary to effect said Conversion, as reasonably determined by ADB;
- (t) “Financial Center” means:
- (i) in respect of a currency other than Euro, the principal financial center for the relevant currency; and
 - (ii) in respect of Euro, the principal financial center of any of the member states of the European Union that adopt Euro;
- (u) “Fixed Rate” means:
- (i) upon an Interest Rate Conversion from the Floating Rate, a fixed rate of interest applicable to the amount of the Loan to which said Conversion applies, equal to either: (A) the interest rate that reflects the fixed rate of interest payable by ADB under the Interest Hedge Transaction relating to said Conversion (adjusted in accordance with the Conversion Guidelines for the difference, if any, between said Floating Rate and the variable rate of interest receivable by ADB under said Interest Hedge Transaction); or (B) if ADB so determines in accordance with the Conversion Guidelines, the Screen Rate; and
 - (ii) upon a Currency Conversion of an amount of the Loan that shall accrue interest at a fixed rate during the Conversion Period, a fixed rate of interest applicable to such amount equal to either: (A) the interest rate that reflects the fixed rate of interest payable by ADB under the Currency Hedge Transaction relating to said Currency Conversion; or (B) if ADB so

determines in accordance with the Conversion Guidelines, the interest rate component of the Screen Rate;

- (v) “Fixed Spread” means ADB’s spread (expressed as a percentage per annum) included within the Floating Rate as in effect at 12:01 a.m. Manila time on the date of the Loan Agreement and communicated to the Borrower, which spread shall remain fixed for the term of the Loan;
- (w) “Floating Rate” means a variable rate of interest applicable to the principal amount of the Loan withdrawn and outstanding equal to the sum of (i) the Reference Rate in respect of the initial Loan Currency; plus (ii) the Fixed Spread; provided that:
 - (A) upon an Interest Rate Conversion from the Fixed Rate, the variable rate of interest applicable to the amount of the Loan to which said Conversion applies shall be equal to either: (1) the sum of: (I) the Reference Rate in respect of the Loan Currency; plus (II) the spread to the Reference Rate, if any, payable by ADB under the Interest Hedge Transaction relating to said Conversion (adjusted in accordance with the Conversion Guidelines for the difference, if any, between said Fixed Rate and the fixed rate of interest receivable by ADB under said Interest Hedge Transaction); or (2) if ADB so determines in accordance with the Conversion Guidelines, the Screen Rate;
 - (B) upon a Currency Conversion to an Approved Currency of an unwithdrawn amount of the Loan, and upon withdrawal of any of such amount, the variable rate of interest applicable to such amount shall be equal to the sum of: (1) the Reference Rate in respect of said Approved Currency; plus (2) the Fixed Spread; and
 - (C) upon a Currency Conversion to an Approved Currency of a withdrawn amount of the Loan that shall accrue interest at a variable rate during the Conversion Period, the variable rate of interest applicable to such amount shall be equal to either: (1) the sum of (I) the Reference Rate in respect of said Approved Currency; plus (II) the spread to the Reference Rate , if any, payable by ADB under the Currency Hedge Transaction relating to said Currency Conversion; or (2) if ADB so determines in accordance with the Conversion Guidelines, the interest rate component of the Screen Rate;
- (x) “foreign currency” means any currency other than the currency of the member in whose territory the Project is to be carried out;
- (y) “Funding Cost Margin” means, for any Semester, the average cost margin relative to the relevant Reference Rate achieved by ADB from all borrowings that have been allocated to fund loans in a Loan Currency (or Approved Currency). The Funding Cost Margin for each Loan Currency (or Approved Currency) will be announced by ADB after the end of each Semester;

- (z) “guarantee” includes, as the case requires, any counter-guarantee, indemnity or any other arrangement which has the effect of a guarantee, counter-guarantee or indemnity, given by a member in favor, or for the benefit of ADB;
- (aa) “Guarantee Agreement” means the particular guarantee agreement, if any, which provides for the guarantee of the Loan and to which these Regulations shall have been made applicable, as such agreement may be amended from time to time; and such guarantee agreement includes these Regulations as thus made applicable and all schedules to the Guarantee Agreement;
- (bb) “Guarantor” means a party to the Guarantee Agreement, if any, which guarantees to ADB the repayment of the Loan and payment of all outstanding amounts under the Loan Agreement;
- (cc) “Interest Hedge Transaction” means, in respect of an Interest Rate Conversion, one or more interest rate swap transactions entered into by ADB with a Counterparty as of the Execution Date and in accordance with the Conversion Guidelines, in connection with said Interest Rate Conversion;
- (dd) “Interest Payment Date” means each date specified in the Loan Agreement occurring on or after the date of the Loan Agreement on which interest is payable. Interest Payment Dates shall be on the first or fifteenth of any month, and six months thereafter;
- (ee) “Interest Period” means the initial period from and including the date of the Loan Agreement to but excluding the first Interest Payment Date occurring thereafter, and after such initial period, each period from and including an Interest Payment Date to but excluding the next following Interest Payment Date;
- (ff) “Interest Rate Cap” means, in respect of the Floating Rate, a ceiling that sets an upper limit for said Floating Rate;
- (gg) “Interest Rate Collar” means in respect of the Floating Rate, a combination of a ceiling and a floor that sets an upper and a lower limit for said Floating Rate;
- (hh) “Interest Rate Conversion” means a change of the interest rate basis applicable to all or any portion of the principal amount of the Loan, from the Floating Rate to the Fixed Rate or vice versa;
- (ii) “LIBOR” means, in respect of any Interest Period, the London interbank offered rate for six-month deposits in the Loan Currency, expressed as a percentage per annum, that appears on the Relevant Telerate Page as of 11:00 a.m., London time, on the Reference Rate Reset Date for said Interest Period. If such rate does not appear on the Relevant Telerate Page, ADB shall request the principal London office of each of four major banks to provide a quotation of the rate at which it offers six-month deposits in said Loan Currency to leading banks in the London interbank market at approximately 11:00 a.m., London time, on the Reference Rate Reset Date for said Interest Period. If at least two such quotations are provided, the rate in respect of said Interest Period shall be the arithmetic mean (as determined by ADB and rounded up, if necessary, to the nearest 1/16th of one percent) of the quotations. If less than two quotations are

provided as requested, the rate in respect of said Interest Period shall be the arithmetic mean (as determined by ADB and rounded up, if necessary, to the nearest 1/16th of one percent) of the rates quoted by four major banks selected by ADB in the relevant Financial Center, at approximately 11:00 a.m. in said Financial Center, on the Reference Rate Reset Date for said Interest Period for loans in said Loan Currency to leading banks for a period of six months. If less than two of the banks so selected are quoting such rates, LIBOR in respect of said Interest Period shall be equal to LIBOR in effect for the Interest Period immediately preceding said Interest Period;

- (jj) "lien" includes mortgages, pledges, charges, privileges and priorities of any kind;
- (kk) "Loan" means the loan provided for in the Loan Agreement;
- (ll) "Loan Account" means the account opened or to be opened by ADB on its books in the name of the Borrower to which the amount of the Loan has been or will be credited;
- (mm) "Loan Agreement" means the particular loan agreement to which these Regulations shall have been made applicable, as such agreement may be amended from time to time; and such loan agreement includes these Regulations as thus made applicable and all schedules to the Loan Agreement;
- (nn) "Loan Closing Date" means the date specified by ADB that is not later than the first Principal Payment Date shown in the amortization schedule to the Loan Agreement, or such other date as may be agreed between ADB and the Borrower for such purpose;
- (oo) "Loan Currency" means the currency in which all or any portion of the principal amount of the Loan is denominated from time to time, which term shall, in the case of a Loan denominated in more than one currency, apply separately to each of such currencies;
- (pp) "London Banking Day" means any day on which commercial banks are open for general business (including dealings in foreign exchange and foreign currency deposits) in London;
- (qq) "member" means a member of ADB;
- (rr) "ordinary capital resources" has the same meaning as the expression "ordinary capital resources" of ADB as defined in Article 7 of the Agreement Establishing the Asian Development Bank;
- (ss) "Principal Payment Date" means each date specified in the Loan Agreement on which all or any portion of the principal amount of the Loan is payable;
- (tt) "Project" means the project or program for which ADB has agreed to make the Loan, as described in the Loan Agreement and as such description may be amended from time to time by agreement between ADB and the Borrower;

- (uu) “Project Agreement” means the project agreement, if any, between ADB and the Project Executing Agency, being the Project Agreement referred to in the Loan Agreement, as such agreement may be amended from time to time; and such project agreement includes all schedules to the Project Agreement;
- (vv) “Project Executing Agency” means any entity responsible for the carrying out of the Project as specified in the Loan Agreement;
- (ww) “Rebate” means, for any Loan Currency (or Approved Currency), the amount payable by ADB to the Borrower calculated in accordance with Section 3.06;
- (xx) “Reference Rate” means, in respect of any Loan Currency other than Euro, LIBOR, and in respect of Euro, Euribor;
- (yy) “Reference Rate Reset Date” means:
 - (i) in respect of any Loan Currency other than Euro, the day two London Banking Days prior to the first day of the relevant Interest Period, or: (A) in the case of the initial Interest Period, the day two London Banking Days prior to the first or fifteenth day of the month in which the Loan Agreement is signed, whichever day immediately precedes the date of the Loan Agreement; provided, that if the date of the Loan Agreement falls on the first or fifteenth day of such month, the Reference Rate Reset Date shall be the day two London Banking Days prior to the date of the Loan Agreement; and (B) if the Conversion Date of a Currency Conversion of an unwithdrawn amount of the Loan to any Approved Currency other than Euro falls on a day other than an Interest Payment Date, the initial Reference Rate Reset Date in respect of said Approved Currency shall be the date two London Banking Days prior to the first or fifteenth day of the month in which said Conversion Date falls, whichever day immediately precedes said Conversion Date; provided, that if said Conversion Date falls on the first or fifteenth day of such month, the Reference Rate Reset Date in respect of said Approved Currency shall be the day two London Banking Days prior to said Conversion Date;
 - (ii) in respect of Euro, the day two Target Settlement Days prior to the first day of the relevant Interest Period, or: (A) in the case of the initial Interest Period, the day two Target Settlement Days prior to the first or fifteenth day of the month in which the Loan Agreement is signed, whichever day immediately precedes the date of the Loan Agreement; provided, that if the date of the Loan Agreement falls on the first or fifteenth day of such month, the Reference Rate Reset Date shall be the day two Target Settlement Days prior to the date of the Loan Agreement; and (B) if the Conversion Date of a Currency Conversion of an unwithdrawn amount of the Loan to Euro falls on a day other than an Interest Payment Date, the initial Reference Rate Reset Date in respect of said Approved Currency shall be the day two Target Settlement Days prior to the first or fifteenth day of the month in which said Conversion Date falls, whichever day immediately precedes said Conversion Date; provided, that if said Conversion Date falls on the first or fifteenth day of such month, the Reference Rate Reset Date in respect of said Approved Currency shall

be the day two Target Settlement Days prior to said Conversion Date); and

- (iii) notwithstanding the foregoing sub-paragraphs (i) and (ii), if in respect of a Currency Conversion to an Approved Currency ADB shall determine that market practice for the determination of the Reference Rate Reset Date shall be on a date other than as set forth in said sub-paragraphs, the Reference Rate Reset Date shall be such other date, as further specified in the Conversion Guidelines;

(zz) “Relevant Telerate Page” means:

- (i) with respect to LIBOR, the display page designated on the Thomson Reuters Telerate Service as the page for the purpose of displaying LIBOR for deposits in the Loan Currency (or such other page as may replace such page on such service, or such other service as may be selected by ADB as the information vendor, for the purpose of displaying rates or prices comparable to LIBOR); and
- (ii) with respect to Euribor, the display page designated on the Thomson Reuters Telerate Service as the page for the purpose of displaying Euribor for deposits in the Loan Currency (or such other page as may replace such page on such service, or such other service as may be selected by ADB as the information vendor, for the purpose of displaying rates or prices comparable to Euribor);

(aaa) “Screen Rate” means:

- (i) in respect of an Interest Rate Conversion from the Floating Rate to the Fixed Rate, the fixed rate of interest determined by ADB on the Execution Date on the basis of said Floating Rate and market rates displayed by established information vendors reflecting the Conversion Period, the currency amount and the repayment provisions of the amount of the Loan to which said Conversion applies;
- (ii) in respect of an Interest Rate Conversion from the Fixed Rate to the Floating Rate, the variable rate of interest determined by ADB on the Execution Date on the basis of said Fixed Rate and market rates displayed by established information vendors reflecting the Conversion Period, the currency amount and the repayment provisions of the amount of the Loan to which said Conversion applies;
- (iii) in respect of a Currency Conversion of an unwithdrawn amount of the Loan, the exchange rate between the Loan Currency immediately prior to said Conversion and the Approved Currency, determined by ADB on the Execution Date on the basis of market exchange rates displayed by established information vendors;
- (iv) in respect of a Currency Conversion of a withdrawn amount of the Loan, each of: (A) the exchange rate between the Loan Currency immediately prior to said Conversion and the Approved Currency, determined by ADB on the Execution Date on the basis of market exchange rates displayed

by established information vendors; and (B) the fixed rate of interest or the variable rate of interest (whichever applies to said Conversion), determined by ADB on the Execution Date in accordance with the Conversion Guidelines on the basis of the interest rate applicable to such amount immediately prior to said Conversion and market rates displayed by established information vendors reflecting the Conversion Period, the currency amount and the repayment provisions of the amount of the Loan to which said Conversion applies; and

- (v) in respect of the early termination of a Conversion, each of the rates applied by ADB for the purpose of calculating the Unwinding Amount as of the date of such early termination in accordance with the Conversion Guidelines on the basis of market rates displayed by established information vendors reflecting the remaining Conversion Period, currency amount and repayment provisions of the amount of the Loan to which said Conversion and such early termination apply;
- (bbb) “Semester” means each six-month period ending on 30 June and 31 December of each calendar year;
- (ccc) “Substitute Loan Currency” means the substitute loan currency specified in Section 4.04;
- (ddd) “Surcharge” means, for any Loan Currency (or Approved Currency), the amount payable by the Borrower to ADB calculated in accordance with Section 3.07;
- (eee) “Target Settlement Day” means any day on which the Trans European Automated Real-Time Gross Settlement Express Transfer system is open for the settlement of Euro;
- (fff) “taxes” includes imposts, levies, fees and duties of any nature, whether in effect at the date of the Loan Agreement or Guarantee Agreement, if any, or thereafter imposed;
- (ggg) “Unwinding Amount” means, in respect of the early termination of a Conversion:
 - (i) an amount payable by the Borrower to ADB equal to the net aggregate amount payable by ADB under transactions undertaken by ADB to terminate said Conversion, or if no such transactions are undertaken, an amount determined by ADB on the basis of the Screen Rate, to represent the equivalent of such net aggregate amount; or
 - (ii) an amount payable by ADB to the Borrower equal to the net aggregate amount receivable by ADB under transactions undertaken by ADB to terminate said Conversion, or if no such transactions are undertaken, an amount determined by ADB on the basis of the Screen Rate, to represent the equivalent of such net aggregate amount; and
- (hhh) “Yen” or “JPY” each means the lawful currency of Japan.

Section 2.02. **Interpretation.** Except where the context otherwise requires, (a) a reference to the incurring of debt includes the assumption and guarantee of debt; (b) references in these Regulations to Articles or Sections are to Articles or Sections of these Regulations; (c) the headings of the Articles and Sections and the Table of Contents are inserted for

convenience of reference only and are not a part of these Regulations; (d) singular may include plural and vice versa; and (e) a reference to any gender includes any other gender.

ARTICLE III

Loan Account; Interest and Other Charges; Repayment; Place of Payment; Sale of Loan

Section 3.01. **Loan Account.** The principal amount of the Loan shall be credited to the Loan Account in the Loan Currency and may be withdrawn therefrom in accordance with the provisions of the Loan Agreement and these Regulations. If at any time the Loan is denominated in more than one currency, the Loan Account shall be divided into multiple sub-accounts, one for each Loan Currency.

Section 3.02. **Interest.** (a) Interest shall be payable on the principal amount of the Loan withdrawn from the Loan Account and outstanding from time to time. For each Interest Period, interest shall be calculated at the Floating Rate, as such rate may be modified from time to time in accordance with the provisions of Article V. Interest shall accrue from the respective dates on which amounts shall be withdrawn from the Loan Account.

(b) Whenever, in light of changes in market practice affecting the determination of the Floating Rate applicable to all or any portion of the principal amount of the Loan, ADB determines that it is in the interest of its borrowers as a whole and of ADB to apply a basis for determining the Floating Rate other than as provided in the Loan Agreement and these Regulations, ADB may modify the basis for determining such Floating Rate upon not less than three-months' notice to the Borrower and the Guarantor of such new basis. The new basis shall become effective upon the expiry of the notice period unless the Borrower or the Guarantor notifies ADB during such period of its objection thereto, in which case such modification shall not apply to the Loan.

Section 3.03. **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 it against the interest payable by the Borrower.

(c) If applicable, 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.

Section 3.04. **Computation of Interest and Other Charges.** Interest and other charges shall be computed on the basis of a 360-day year of twelve 30-day months.

Section 3.05. **Repayment and Prepayment.** (a) The Borrower shall repay the principal amount of the Loan withdrawn from the Loan Account in accordance with the provisions of the Loan Agreement.

(b) After giving not less than 45 days' written notice to ADB, the Borrower shall have the right to repay in advance of maturity, as of a date acceptable to ADB (provided, that the Borrower shall have paid all amounts due under the Loan Agreement as of such date, including any prepayment premium calculated in accordance with paragraph (c) of this Section): (i) all of the principal amount of the Loan then outstanding; or (ii) all of the principal amount of any one or more maturities of the Loan. Any partial prepayment shall be applied in the following manner: (A) if the Loan Agreement provides for the separate amortization of specified disbursed amounts of the principal of the Loan, such prepayment shall be applied in the inverse order of said disbursed amounts, with the disbursed amount which shall have been withdrawn last being repaid first and with the latest maturity of said disbursed amount being repaid first; and (B) in all other cases, such prepayment shall be applied in the inverse order of maturity of the Loan, with the latest maturity being repaid first.

(c) The prepayment premium payable under paragraph (b) of this Section on prepayment of any amount of the Loan shall be an amount reasonably determined by ADB to represent any cost to ADB of redeploying the amount to be prepaid from the date of prepayment to the maturity date of such amount.

(d) If, in respect of any amount of the Loan to be prepaid, a Conversion has been effected and the Conversion Period for said Conversion has not terminated at the time of prepayment: (i) the Borrower shall pay a transaction fee in respect of the early termination of said Conversion, in such amount or at such rate as announced by ADB from time to time and in effect at the time of receipt by ADB of the Borrower's notice of prepayment; and (ii) the Borrower or ADB, as the case may be, shall pay an Unwinding Amount, if any, in respect of the early termination of said Conversion, in accordance with the Conversion Guidelines. Transaction fees provided for under this paragraph and any Unwinding Amount payable by the Borrower pursuant to this paragraph shall be paid not later than 60 days after the date of prepayment.

Section 3.06. **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 or 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 Fund Cost Margin was calculated.

Section 3.07. **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 3.08. **Place of Payment.** The principal (including premium) of, and interest and other charges on, the Loan shall be paid at such places as ADB shall reasonably request.

Section 3.09. **Sale of Loan.** ADB may sell to a third party any portions of the Loan on such terms and conditions as ADB shall consider appropriate without, however, creating any contractual relationship between the Borrower and the purchasing party and without affecting the contractual relationship between ADB and the Borrower.

ARTICLE IV

Currency Provisions

Section 4.01. **Currency of Withdrawal.** Each withdrawal of an amount of the Loan from the Loan Account shall be made in the Loan Currency.

Section 4.02. **Currency of Payment.** All amounts payable by the Borrower under the Loan Agreement shall be paid in the Loan Currency, as further specified in the Conversion Guidelines.

Section 4.03. **Purchase of Currencies.** ADB shall, at the request of the Borrower and on such terms and conditions as ADB shall determine, use its best efforts to purchase any currency needed by the Borrower for payment of items of expenditure to be financed from the Loan, repayment of principal, and payment of premiums, interest and other charges required under the Loan Agreement upon payment by the Borrower of sufficient funds therefor in a currency or currencies to be specified by ADB from time to time. In purchasing the currencies required, ADB shall be acting as agent of the Borrower and the Borrower shall be deemed to have made any payment required under the Loan Agreement only when and to the extent that ADB has received such payment in the currency or currencies required.

Section 4.04. **Temporary Currency Substitution.** (a) If ADB shall have reasonably determined that an extraordinary situation shall have arisen under which ADB shall be unable to provide the Loan Currency at any time for purposes of funding the Loan, ADB may

provide such substitute currency or currencies for said Loan Currency (the Substitute Loan Currency) as ADB shall select. During the period of such extraordinary situation, the repayment of principal and payment of interest and other charges required under the Loan Agreement shall be made in the Substitute Loan Currency, and other related financial terms shall be applied, in accordance with principles reasonably determined by ADB. ADB shall promptly notify the Borrower and the Guarantor of the occurrence of such extraordinary situation, the Substitute Loan Currency and the financial terms of the Loan related thereto.

(b) Upon notification by ADB under paragraph (a) of this Section, the Borrower may within 30 days thereafter notify ADB of its selection of another currency acceptable to ADB as the Substitute Loan Currency. In such case, ADB shall notify the Borrower of the financial terms of the Loan applicable to said Substitute Loan Currency, which shall be determined in accordance with principles reasonably established by ADB.

(c) During the period of the extraordinary situation referred to in paragraph (a) of this Section, notwithstanding the provisions of Section 3.05(c), no prepayment premium shall be payable on prepayment of the Loan.

(d) Once ADB shall again become able to provide the Loan Currency, ADB shall, at the Borrower's request, change the Substitute Loan Currency to the Loan Currency in accordance with principles reasonably established by ADB.

Section 4.05. Valuation of Currencies. Whenever it shall be necessary for the purposes of the Loan Agreement or the Guarantee Agreement to determine the value of one currency in terms of another, such value shall be as reasonably determined by ADB.

Section 4.06. Manner of Payment. (a) Any payment required under the Loan Agreement or the Guarantee Agreement to be made to ADB in the currency of any country shall be made in such manner, and in currency acquired in such manner, as shall be permitted under the laws of such country for the purpose of making such payment and effecting the deposit of such currency to the account of ADB with a depository of ADB in such country.

(b) Where either the Borrower or the Guarantor is a member, such member shall ensure that the principal (including premium) of, and interest and other charges on, the Loan are paid without restrictions of any kind imposed by, or in the territory of, such member. When neither the Borrower nor the Guarantor is a member, the Borrower shall obtain from the member in whose territory the Project is to be carried out and furnish to ADB, prior to the Effective Date, evidence, satisfactory to ADB, that the principal (including premium, if any) of, and interest and other charges on, the Loan will be paid without restrictions of any kind imposed by, or in the territory of, such member.

ARTICLE V

Conversion of Loan Terms

Section 5.01. General Provisions. (a) If so provided in the Loan Agreement, the Borrower may, at any time, request an Interest Rate Conversion or a Currency Conversion as provided in the Loan Agreement in order to facilitate prudent debt management. Each

request shall be furnished by the Borrower to ADB in accordance with the Conversion Guidelines and, upon acceptance by ADB, the conversion so requested shall be considered a Conversion for the purposes of these Regulations.

(b) Upon acceptance by ADB of a request for a Conversion, ADB shall take all actions necessary to effect said Conversion in accordance with the Conversion Guidelines; provided that the maturity of the Interest Rate Conversion may be limited by ADB's ability to execute an interest rate hedge transaction in the market as provided in the Conversion Guidelines. To the extent any modification of the provisions of the Loan Agreement providing for withdrawal of the proceeds of the Loan is required to give effect to said Conversion, such provisions shall be deemed to have been modified as of the Conversion Date. Promptly after the Execution Date for each Conversion, ADB shall notify the Borrower and the Guarantor of the financial terms of the Loan, including any revised amortization provisions and modified provisions providing for withdrawal of the proceeds of the Loan.

(c) Except as otherwise provided in the Conversion Guidelines, the Borrower shall pay a transaction fee in respect of each Conversion, in such amount or at such rate as determined by ADB from time to time and in effect on the Execution Date. Transaction fees provided for under this paragraph shall be payable not later than 60 days after the Execution Date.

Section 5.02. Interest Payable Following Interest Rate Conversion or Currency Conversion.

(a) **Interest Rate Conversion.** Upon an Interest Rate Conversion applicable to all or any portion of the principal amount of the Loan, the Borrower shall, in respect of each Interest Period during the Conversion Period, pay interest on such principal amount withdrawn and outstanding from time to time at the Floating Rate or the Fixed Rate, whichever applies to said Conversion.

(b) **Currency Conversion of Unwithdrawn Amounts.** Upon a Currency Conversion of all or any portion of the unwithdrawn principal amount of the Loan to an Approved Currency, the Borrower shall, in respect of each Interest Period during the Conversion Period, pay interest in said Approved Currency on such principal amount as subsequently withdrawn and outstanding from time to time at the Floating Rate.

(c) **Currency Conversion of Withdrawn Amounts.** Upon a Currency Conversion of all or any portion of the withdrawn principal amount of the Loan to an Approved Currency, the Borrower shall, in respect of each Interest Period during the Conversion Period, pay interest in said Approved Currency on such principal amount outstanding from time to time at the Floating Rate or the Fixed Rate, whichever applies to said Conversion.

Section 5.03. Principal Payable Following Currency Conversion.

(a) **Currency Conversion of Unwithdrawn Amounts.** In the event of a Currency Conversion of an unwithdrawn amount of the Loan to an Approved Currency, the principal amount of the Loan so converted shall be determined by ADB by multiplying the amount to be so converted in its currency of denomination immediately prior to said Conversion by the Screen Rate. The Borrower shall repay such principal amount as subsequently withdrawn in said Approved Currency in accordance with the provisions of the Loan Agreement.

(b) **Currency Conversion of Withdrawn Amounts.** In the event of a Currency Conversion of a withdrawn amount of the Loan to an Approved Currency, the principal amount of the Loan so converted shall be determined by ADB by multiplying the amount to be so converted in its currency of denomination immediately prior to said Conversion by either: (i) the exchange rate that reflects the amounts of principal in the 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. The Borrower shall repay such principal amount in such Approved Currency in accordance with the provisions of the Loan Agreement.

Section 5.04. **Termination of Conversion Period Prior to Final Loan Maturity.** If the Conversion Period of a Currency Conversion applicable to a portion of the Loan terminates prior to the final maturity thereof, the principal amount of such portion of the Loan remaining outstanding in the Loan Currency to which such amount shall revert upon such termination shall be determined by ADB either: (i) by multiplying said amount in the Approved Currency of such Conversion by the spot or forward exchange rate prevailing between such Approved Currency and Loan Currency for settlement on the last day of such Conversion Period; or (ii) in such other manner as specified in the Conversion Guidelines. The Borrower shall repay such principal amount in such Loan Currency in accordance with the provisions of the Loan Agreement. Following termination of a Currency Conversion in accordance with this Section, the Borrower shall pay interest in respect of each Interest period in the Loan Currency in accordance with the provisions of the Loan Agreement.

Section 5.05. **Interest Rate Cap, Interest Rate Collar.**

(a) **Interest Rate Cap.** Upon the establishment of an Interest Rate Cap on the Floating Rate, the Borrower shall, for each Interest Period during the Conversion Period, pay interest on the principal amount of the Loan withdrawn and outstanding from time to time to which said Conversion applies at said Floating Rate, unless on any Reference Rate Reset Date during said Conversion Period such Floating Rate exceeds such Interest Rate Cap, in which case, for the Interest Period to which said Reference Rate Reset Date relates, the Borrower shall pay interest on such principal amount at a rate equal to such Interest Rate Cap.

(b) **Interest Rate Collar.** Upon the establishment of an Interest Rate Collar on the Floating Rate, the Borrower shall, for each Interest Period during the Conversion Period, pay interest on the principal amount of the Loan withdrawn and outstanding from time to time to which said Conversion applies at said Floating Rate, unless on any Reference Rate Reset Date during said Conversion Period such Floating Rate: (i) exceeds the upper limit of such Interest Rate Collar, in which case, for the Interest Period to which such Reference Rate Reset Date relates, the Borrower shall pay interest on such principal amount at a rate equal to such upper limit; or (ii) falls below the lower limit of said Interest Rate Collar, in which case, for the Interest Period to which such Reference Rate Reset Date relates, the Borrower shall pay interest on such principal amount at a rate equal to such lower limit.

(c) **Interest Rate Cap or Collar Premium.** Upon the establishment of an Interest Rate Cap or an Interest Rate Collar, the Borrower shall pay to ADB a premium on the principal amount of the Loan withdrawn and outstanding from time to time to which said Conversion applies, calculated: (i) on the basis of the premium, if any, payable by ADB in respect of an interest rate cap or collar purchased by ADB from a Counterparty for the purpose of establishing said Interest Rate Cap or Interest Rate Collar, or (ii) otherwise as specified in the Conversion

Guidelines. Such premium shall be payable by the Borrower not later than 60 days after the Execution Date.

(d) **Early Termination.** Except as otherwise provided in the Conversion Guidelines, upon the early termination of any Interest Rate Cap or Interest Rate Collar by the Borrower: (i) the Borrower shall pay a transaction fee in respect of such early termination, in such amount or at such rate as determined by ADB from time to time and in effect at the time of receipt by ADB of the Borrower's notice of early termination; and (ii) the Borrower or ADB, as the case may be, shall pay an Unwinding Amount, if any, in respect of such early termination, in accordance with the Conversion Guidelines. Transaction fees provided for under this paragraph and any Unwinding Amount payable by the Borrower pursuant to this paragraph shall be paid not later than 60 days after the effective date of such early termination.

ARTICLE VI

Withdrawal of Loan Proceeds

Section 6.01. **Withdrawal from the Loan Account.** (a) Loan proceeds shall be used only for the purposes of the Project. Subject to any conditions or restrictions specified in the Loan Agreement, the Borrower shall be entitled to withdraw from the Loan Account such amounts as shall have been paid or, if ADB shall so agree, such amounts as shall be required to meet payments to be made, for the reasonable cost of goods, services and any other expenditures required for the Project and to be financed under the Loan Agreement. If at any time ADB determines that any amount of the Loan proceeds withdrawn from the Loan Account has been used by the Borrower in a manner inconsistent with the provisions of the Loan Agreement, the Borrower shall promptly refund such amount to ADB.

(b) Except as ADB and the Borrower shall otherwise agree, no withdrawals shall be made on account of (i) expenditures incurred prior to the Effective Date; and (ii) expenditures in the territory of any country which is not a member or for goods produced in, or services supplied from, such territory. ADB may refuse to finance a contract where goods and services have not been procured in accordance with 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. If at any time ADB determines that any amount of the Loan proceeds withdrawn from the Loan Account has been used by the Borrower to finance such contracts, the Borrower shall promptly refund such amount to ADB.

Section 6.02. **Commitment Letters by ADB.** Upon the Borrower's request, ADB may issue commitment letters to pay amounts in respect of the cost of goods and services to be financed under the Loan, notwithstanding any subsequent suspension or cancellation.

Section 6.03. **Application for Withdrawal.** When the Borrower shall desire to withdraw any amount from the Loan Account or to request ADB to issue commitment letters pursuant to Section 6.02, the Borrower shall promptly deliver to ADB an application in such form and containing such statements, representations, warranties and agreements as ADB shall reasonably request. Except as ADB and the Borrower shall otherwise agree, applications for withdrawal, with the necessary documentation as hereinafter in this Article provided, shall be made promptly in relation to expenditures for the Project.

Section 6.04. **Evidence of Authority to Sign Applications.** The Borrower shall furnish to ADB sufficient evidence of the authority of the person or persons authorized to sign applications for withdrawal and the authenticated specimen signature of each such person.

Section 6.05. **Supporting Evidence.** The Borrower shall furnish to ADB such documents and other evidence in support of the application for withdrawal as ADB shall reasonably request, whether before or after ADB shall have permitted any withdrawal requested in the application.

Section 6.06. **Sufficiency of Applications and Documents.** Each application for withdrawal and the accompanying documents and all other evidence must be sufficient in form and substance to satisfy ADB that the Borrower is entitled to withdraw from the Loan Account the amount applied for and that the amount to be withdrawn from the Loan Account is to be used only for the purposes specified in the Loan Agreement.

Section 6.07. **Payment by ADB.** Payment by ADB of amounts which the Borrower is entitled to withdraw from the Loan Account shall be made to or on the order of the Borrower.

ARTICLE VII

Particular Covenants

Section 7.01. **Cooperation and Information.** (a) ADB, the Borrower and the Guarantor shall cooperate fully to ensure that the purposes of the Loan will be accomplished. To that end, ADB, the Borrower and the Guarantor shall:

- (i) from time to time, at the request of any one of them, exchange views with regard to any matters relating to the progress of the Project, the purposes of the Loan or the maintenance of the service thereof, the performance of their respective obligations under the Loan Agreement and the Guarantee Agreement, the performance by the Project Executing Agency of its obligations under the Project Agreement, and furnish to the other party all such related information as it shall reasonably request; and
- (ii) promptly inform each other of any condition which interferes with, or threatens to interfere with, the matters referred to in paragraph (a)(i) of this Section. In respect of a Loan to a Borrower which is not a member, the Borrower shall promptly inform ADB in advance of any proposed changes in the ownership or control of the Borrower or its assets, or any transaction or arrangement which will have or is likely to have such effect.

(b) Where either the Borrower or the Guarantor is a member, such member shall afford all reasonable opportunity for ADB's representatives to visit any part of its territory for purposes related to the Loan.

Section 7.02. **Insurance.** (a) The Borrower shall take out and maintain with responsible insurers, or make other arrangements satisfactory to ADB for, insurance against

such risks and in such amounts as shall be consistent with sound practice. The Borrower shall be deemed to have opted for self-insurance in the absence of any specific insurance for the Project.

(b) Without limiting the generality of the foregoing, the Borrower undertakes to insure, or cause to be insured, the goods to be imported for the Project and to be financed out of the proceeds of the Loan against hazards incident to the acquisition, transportation and delivery thereof to the place of use or installation, and for such insurance any indemnity shall be payable in a currency freely usable to replace or repair such goods.

Section 7.03. **Records, Financial Statements and Audits.** The Borrower shall maintain, or cause to be maintained, records and financial statements adequate to identify the goods, services and other items of expenditure financed under the Project; to record the progress of the Project (including the cost thereof); to reflect, in accordance with consistently maintained sound financial reporting principles, the operations and financial condition of the Project; and to have the financial statements audited. Related requirements shall be specified in the Loan Agreement.

Section 7.04. **Reports.** (a) The Borrower and the Guarantor shall furnish, or cause to be furnished, to ADB all such reports as ADB shall reasonably request concerning: (i) the Loan, and the expenditure of the proceeds and maintenance of the service thereof; (ii) the goods, services and other items of expenditure financed out of the proceeds of the Loan; (iii) the Project and the Project Executing Agency; (iv) the administration, operations and financial condition of the Borrower; and (v) any other matters relating to the purposes of the Loan.

(b) Without limiting the generality of the foregoing, the Borrower shall furnish to ADB periodic reports on the execution of the Project, the accomplishment of the targets and actions agreed between ADB and the Borrower, and the operation and management of the Project facilities, if any. Such reports shall be submitted in such form and in such detail and within such a period as ADB shall reasonably request, and shall indicate, among other things, progress made and problems encountered during the period under review, steps taken or proposed to be taken to remedy these problems, and proposed program of activities and expected progress during the following period.

(c) Promptly after physical completion of the Project, but in any event not later than three months thereafter or such later date as may be agreed for this purpose between the Borrower and ADB, the Borrower shall prepare and furnish to ADB a report, in such form and in such detail as ADB shall reasonably request, on the execution and initial operation of the Project, including its cost, the performance by the Borrower of its obligations under the Loan Agreement and the accomplishment of the purposes of the Loan.

Section 7.05 **Counterpart Obligations and Land Acquisition.** The Borrower shall make available, promptly as and when needed, the funds, facilities, services, land, and other resources as shall be necessary or required, in addition to the proceeds of the Loan, for the carrying out of the Project and for the operation and maintenance of the Project facilities. The Borrower shall furnish to ADB, promptly at its request, evidence satisfactory to ADB that such funds, facilities, services, land, and other resources are available for purposes related to the Project.

Section 7.06. **Work Schedules, Plans and Design Standards.** 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. When required by ADB, 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 7.07. **General Undertakings.** (a) The Borrower shall cause the Project to be carried out with due diligence and efficiency and in conformity with sound financial, business and development practices. The Borrower shall in collaboration with ADB ensure that the Project adheres to ADB policies on anticorruption, core labor standards, environmental and social safeguards, gender, procurement and consulting services, disbursement and such other policy specified in the Loan Agreement.

(b) 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 7.08. **Contractors and Consultants.** In the carrying out of the Project, the Borrower shall cause competent and qualified consultants and contractors, acceptable to the Borrower and ADB, to be employed to an extent and upon terms and conditions satisfactory to the Borrower and ADB.

Section 7.09. **Maintenance.** The Borrower shall ensure that any facilities relevant to the Project are operated, maintained and repaired in accordance with sound operational and maintenance practices. The Borrower shall, promptly as needed, make or cause to be made all necessary repairs and renewals thereof.

Section 7.10. **Negative Pledge.** (a) If the Borrower shall create or permit the creation of any lien on any of its assets as security for any foreign currency debt, the Borrower undertakes to expressly provide that such lien will ipso facto equally and ratably secure the payment of the principal of, and interest and other charges on, the Loan. If any statutory lien shall be created on any assets of the Borrower (as hereinafter defined), as security for any foreign currency debt, the Borrower shall grant to ADB an equivalent lien satisfactory to ADB.

(b) The provisions of paragraph (a) of this Section shall not apply to (i) any lien created on property, at the time of purchase thereof, solely as security for payment of the purchase price of such property; or (ii) any lien arising in the ordinary course of banking transactions and securing a debt maturing not more than one year after its date.

(c) The term "assets of the Borrower" as used in paragraph (a) of this Section includes assets of any political subdivision or any agency of the Borrower and assets of any agency of such political subdivision, and assets of any entity owned or controlled by, or operating for the account or benefit of, the Borrower or any such political subdivision or agency, including any other institution performing the functions of a central bank for the Borrower.

ARTICLE VIII

Exemption from Taxation

Section 8.01. **Exemption from Taxation.** (a) Where either the Borrower or the Guarantor is a member, such member shall ensure that:

- (i) the principal (including premium) of, and interest and other charges on, the Loan are exempt from, and are paid without deduction for, any taxes levied by, or in the territory of, such member; and
- (ii) the Loan Agreement, the Guarantee Agreement, and the Project Agreement, are exempt from any taxes levied by, or in the territory of, such member on or in connection with the execution, delivery or registration thereof.

(b) Where neither the Borrower nor the Guarantor is a member, the Borrower shall obtain from the member in whose territory the Project is to be carried out and furnish to ADB, prior to the Effective Date, evidence satisfactory to ADB that:

- (i) the principal (including premium) of, and interest and other charges on, the Loan will be exempt from, and be paid without deduction for, any taxes levied by, or in the territory of, such member; and
- (ii) the Loan Agreement, the Guarantee Agreement, and the Project Agreement will be exempt from any taxes levied by, or in the territory of, such member on or in connection with the execution, delivery or registration thereof.

ARTICLE IX

Suspension; Cancellation; Acceleration of Maturity

Section 9.01. **Suspension by ADB.** If any of the following events shall have occurred at any time after the date of the Loan Agreement and be continuing, ADB may, by notice to the Borrower and the Guarantor, suspend in whole or in part the right of the Borrower to make withdrawals from the Loan Account:

- (a) The Borrower shall have failed to make payment (notwithstanding the fact that such payment may have been made by the Guarantor or a third party) of principal (including premium), interest or any other charge required (i) under the Loan Agreement; (ii) under any other loan agreement or guarantee agreement with ADB; or (iii) in consequence of any guarantee or other financial obligation of any kind extended by ADB to any third party with the agreement of the Borrower.
- (b) The Guarantor shall have failed to make payment of principal (including premium), interest or any other charges required (i) under the Guarantee

Agreement; (ii) under any other loan agreement or guarantee agreement with ADB; or (iii) in consequence of any guarantee or other financial obligation of any kind extended by ADB to any third party with the agreement of the Guarantor.

- (c) The Borrower or the Guarantor shall have failed to perform any other of its obligations under the Loan Agreement or the Guarantee Agreement.
- (d) The Project Executing Agency shall have failed to perform any of its obligations under the Project Agreement.
- (e) ADB shall have suspended in whole or in part the right of the Borrower or the Guarantor to make withdrawals under any other loan agreement with ADB because of a failure by the Borrower or the Guarantor to perform any of its obligations under such loan agreement or any related guarantee agreement with ADB.
- (f) A situation shall have arisen or developed which in the reasonable opinion of ADB will or may make it improbable that (i) the Project can be successfully carried out or (ii) the Borrower, the Guarantor or the Project Executing Agency will be able to perform any of its obligations under the Loan Agreement, the Guarantee Agreement or the Project Agreement.
- (g) The member in whose territory the Project is to be carried out shall have been suspended from membership in, or ceased to be a member of, ADB, or shall have delivered a notice to withdraw from ADB.
- (h) A representation made by the Borrower or the Guarantor in or pursuant to the Loan Agreement or the Guarantee Agreement, or any statement furnished in connection therewith and intended to be relied upon by ADB in making the Loan, shall have been incorrect in any material respect, or, where the Borrower is not a member, any material adverse change in the condition of the Borrower as so represented by the Borrower shall have occurred in the reasonable opinion of ADB.
- (i) Where the Borrower is not a member, the Borrower shall have been unable to pay its debts as they mature or any action or proceeding shall have been taken by the Borrower or by others whereby any of the assets of the Borrower shall or may be distributed among its creditors.
- (j) Where the Borrower is not a member, the member in whose territory the Project is to be carried out or any other authority having jurisdiction shall have taken any action for the dissolution or disestablishment of the Borrower, the alienation or transfer of any of its assets other than in the normal course of business, or for the suspension of its operations.
- (k) Any authority having jurisdiction shall have taken any action for the dissolution or disestablishment of the Project Executing Agency, the alienation or transfer of any of its assets other than in the normal course of business, or for the suspension of its operations.

- (l) ADB shall have determined, with respect to any contract to be financed in full or in part out of the proceeds of the Loan, that corrupt, fraudulent, coercive or collusive practices, as determined by ADB, were engaged in by representatives of the Borrower, the Guarantor, or any beneficiary of the Loan during the procurement of goods and services, consultants' selection or the execution of a contract, without the Borrower or Guarantor having taken timely and appropriate action satisfactory to ADB to remedy the situation; or ADB shall have determined that the procurement of any goods or services to be financed out of the proceeds of the Loan is inconsistent with the relevant procedure set out in the Loan Agreement.
- (m) Any other event specified in the Loan Agreement for the purposes of this Section shall have occurred.

The right of the Borrower to make withdrawals from the Loan Account shall continue to be suspended in whole or in part, as the case may be, until the event which gave rise to such suspension shall have, in the reasonable opinion of ADB, ceased to exist or until ADB shall have notified the Borrower that the right to make withdrawals has been restored in whole or in part, whichever is the earlier.

Section 9.02. Cancellation by ADB. If (a) the right of the Borrower to make withdrawals from the Loan Account shall have been suspended with respect to any amount of the Loan for a continuous period of 30 days; (b) at any time ADB determines, after consultation with the Borrower, that any amount of the Loan will not be required for the purposes of the Project; (c) by the date specified in the Loan Agreement as the Loan Closing Date, an amount of the Loan shall remain unwithdrawn from the Loan Account; (d) at any time ADB determines, with respect to any contract to be financed in full or in part out of the proceeds of the Loan, that corrupt, fraudulent, coercive or collusive practices, as determined by ADB, were engaged in by representatives of the Borrower, the Guarantor or any beneficiary of the Loan during the procurement of goods, works, services, consultants' selection or the execution of a contract, without the Borrower or Guarantor having taken timely and appropriate action satisfactory to ADB to remedy the situation; or (e) at any time ADB determines that the procurement of any goods or services to be financed out of the proceeds of the Loan is inconsistent with the relevant procedure set out in the Loan Agreement, ADB may, by notice to the Borrower and the Guarantor, terminate the right of the Borrower to make withdrawals with respect to such amount, contract or procurement. Upon the giving of such notice, the relevant amount of the Loan shall be cancelled.

Section 9.03. Cancellation by the Borrower. After consultation with ADB and with the concurrence of the Guarantor, the Borrower may, by notice to ADB, cancel any amount of the Loan which the Borrower shall not have withdrawn prior to the giving of such notice.

Section 9.04. Amounts Subject to Commitment Letters. No suspension or cancellation shall apply to amounts subject to any commitment letter issued by ADB pursuant to Section 6.02, except as expressly provided in such commitment letter.

Section 9.05. Application of Cancellation. Except as ADB and the Borrower shall otherwise agree, any cancellation shall be applied pro rata to the remaining maturities of the principal amount of the Loan which shall mature after the date of such cancellation and which shall not have been sold or agreed to be sold by ADB.

Section 9.06. **Effectiveness of Provisions After Suspension or Cancellation.** Notwithstanding any cancellation or suspension, all the provisions of the Loan Agreement, the Guarantee Agreement and the Project Agreement shall continue in full force and effect except as specifically provided in this Article.

Section 9.07. **Acceleration of Maturity.** (a) If any of the following events shall have occurred and continued for the period, if any, specified below, then at any subsequent time during the continuance thereof, ADB may, by notice to the Borrower and the Guarantor, declare the principal of the Loan then outstanding, together with all accrued interest and other charges thereon, to be due and payable immediately, and upon any such declaration such principal, interest and other charges shall become due and payable immediately:

- (i) Any event specified in Section 9.01(a) and Section 9.01(b) shall have occurred and continued for a period of 30 days.
- (ii) Any event specified in Section 9.01(c) and Section 9.01(d) shall have occurred and continued for a period of 60 days after notice thereof shall have been given by ADB to the Borrower and the Guarantor.
- (iii) Any event specified in Section 9.01(h), Section 9.01(i), Section 9.01(j) and Section 9.01(k) shall have occurred.
- (iv) Any other event specified in the Loan Agreement for the purposes of this Section shall have occurred and continued for the period, if any, specified in the Loan Agreement.

(b) If any notice of acceleration is given pursuant to paragraph (a) of this Section during the Conversion Period for any Conversion: (i) the Borrower shall pay a transaction fee in respect of the early termination of said Conversion, in such amount or at such rate as announced by ADB from time to time and in effect on the date of such notice; and (ii) the Borrower or ADB, as the case may be, shall pay any Unwinding Amount owed by it in respect of the early termination of said Conversion.

ARTICLE X

Effectiveness; Termination

Section 10.01. **Conditions Precedent to Effectiveness.** The Loan Agreement and the Guarantee Agreement shall not become effective until evidence satisfactory to ADB shall have been furnished to ADB that:

- (a) the execution and delivery of the Loan Agreement on behalf of the Borrower have been duly authorized or ratified by all necessary corporate and governmental action;
- (b) where there is a Guarantee Agreement, the execution and delivery of the Guarantee Agreement on behalf of the Guarantor have been duly authorized or ratified by all necessary corporate and governmental action;

- (c) where there is a Project Agreement, the execution and delivery of the Project Agreement on behalf of the Project Executing Agency shall have been duly authorized or ratified by all necessary corporate and governmental action;
- (d) where the Borrower is not a member, the condition of the Borrower, as represented to ADB at the date of the Loan Agreement, has undergone no material adverse change between such date and the date agreed upon between the Borrower and ADB for the purposes of this Section, provided that ADB shall have requested such evidence;
- (e) where neither the Borrower nor the Guarantor is a member, the requirements of Section 4.06(b) and Section 8.01(b) have been fulfilled; and
- (f) all other events specified in the Loan Agreement as additional conditions to its effectiveness have occurred.

Section 10.02. **Legal Opinions.** As part of the evidence to be furnished pursuant to Section 10.01, the Borrower shall furnish, or cause to be furnished, to ADB an opinion or opinions satisfactory to ADB of counsel acceptable to ADB showing:

- (a) on behalf of the Borrower, that the Loan Agreement has been duly authorized or ratified by, and executed and delivered on behalf of, the Borrower and is legally binding upon the Borrower in accordance with its terms;
- (b) on behalf of the Guarantor where there is a Guarantee Agreement, that the Guarantee Agreement has been duly authorized or ratified by, and executed and delivered on behalf of, the Guarantor and is legally binding upon the Guarantor in accordance with its terms;
- (c) on behalf of the Project Executing Agency where there is a Project Agreement, that the Project Agreement has been duly authorized or ratified by, and executed and delivered on behalf of, the Project Executing Agency and is legally binding upon the Project Executing Agency in accordance with its terms; and
- (d) such other matters as shall be specified in the Loan Agreement.

Section 10.03. **Effective Date.** (a) Except as ADB and the Borrower shall otherwise agree, the Loan Agreement and the Guarantee Agreement shall come into force and effect on the date of ADB's notice to the Borrower and the Guarantor of its acceptance of the evidence required by Section 10.01.

(b) If, before the Effective Date, any event shall have occurred which would have entitled ADB to suspend the right of the Borrower to make withdrawals from the Loan Account if the Loan Agreement had been effective, ADB may postpone the dispatch of the notice referred to in paragraph (a) of this Section until such event shall have ceased to exist.

Section 10.04. **Termination for Failure to Become Effective.** If the Loan Agreement shall not have come into force and effect by the date specified in the Loan Agreement for the purposes of this Section, the Loan Agreement and the Guarantee Agreement, and all obligations of the parties thereunder shall terminate, unless ADB, after

consideration of the reasons for the delay, shall establish a later date for the purposes of this Section. ADB shall promptly notify the Borrower and the Guarantor of such later date.

Section 10.05. **Termination on Full Payment.** If and when the entire principal amount of the Loan withdrawn from the Loan Account, the premium on the prepayment of the Loan and all interest and other charges which shall have accrued on the Loan shall have been paid, the Loan Agreement and the Guarantee Agreement and all obligations of the parties thereunder shall forthwith terminate.

ARTICLE XI

Enforceability; Failure to Exercise Rights; Arbitration

Section 11.01. **Enforceability.** (a) The rights and obligations of ADB and the Borrower under the Loan Agreement, and of ADB and the Guarantor under the Guarantee Agreement, shall be valid and enforceable in accordance with their terms and, where either the Borrower or the Guarantor is a member, notwithstanding the law of any state or political or administrative subdivision thereof to the contrary.

(b) Neither ADB nor the Borrower nor the Guarantor shall be entitled in any proceeding under this Article to assert any claim that any provision of the Loan Agreement or the Guarantee Agreement is invalid or unenforceable because of any provision of the Agreement Establishing the Asian Development Bank or for any other reason.

Section 11.02. **Obligations of the Guarantor.** The obligations of the Guarantor under the Guarantee Agreement shall not be discharged except by performance and then only to the extent of such performance. Such obligations shall not be subject to any prior notice to or demand upon or action against the Borrower or to any prior notice to or demand upon the Guarantor with regard to any default by the Borrower, and shall not be impaired by any of the following: any extension of time, forbearance or concession given to the Borrower; any assertion of, or failure to assert, or delay in asserting, any right, power or remedy against the Borrower or in respect of any security for the Loan; any modification of the provisions of the Loan Agreement contemplated by the terms thereof; or any failure of the Borrower to comply with any requirement of any law, regulation or order of the member in whose territory the Project is to be carried out or of any political or administrative subdivision or agency of such member.

Section 11.03. **Failure to Exercise Rights.** No delay in exercising, or omission to exercise, any right, power or remedy accruing to either party under the Loan Agreement or the Guarantee Agreement upon any default shall impair any such right, power or remedy, or be construed to be a waiver thereof or an acquiescence in any such default; nor shall the action of such party in respect of any default, or any acquiescence in any default, affect or impair any right, power or remedy of such party in respect of any other or subsequent default.

Section 11.04. **Arbitration.** (a) Any controversy between the parties to the Loan Agreement, or the parties to the Guarantee Agreement, and any claim by any such party against any other such party arising under the Loan Agreement or the Guarantee Agreement which shall not be settled by agreement of the parties shall be submitted to arbitration by an Arbitral Tribunal as hereinafter provided.

(b) The parties to such arbitration shall be ADB, on the one side, and the Borrower and the Guarantor, on the other side.

(c) The Arbitral Tribunal shall consist of three arbitrators appointed as follows: one arbitrator shall be appointed by ADB; a second arbitrator shall be appointed by the Borrower and the Guarantor or, if they shall not agree, by the Guarantor; and the third arbitrator (hereinafter sometimes called the Umpire) shall be appointed by agreement of the parties or, if they shall not agree, by the President of the International Court of Justice or, failing appointment by him, by the Secretary-General of the United Nations. If either side shall fail to appoint an arbitrator, the Umpire shall appoint such arbitrator. In case any arbitrator appointed in accordance with this Section shall resign, die or become unable to act, a successor arbitrator shall be appointed in the same manner as herein prescribed for the appointment of the original arbitrator and such successor shall have all the powers and duties of such original arbitrator.

(d) An arbitration proceeding may be instituted under this Section upon notice by the party instituting such proceeding to the other party or parties. Such notice shall contain a statement setting forth the nature of the controversy or claim to be submitted to arbitration, the nature of the relief sought and the name of the arbitrator appointed by the party instituting such proceeding. Within 30 days after the giving of such notice, the other party or parties shall notify the party instituting the proceeding of the name of the arbitrator appointed by such other party or parties.

(e) If within 60 days after the giving of the notice instituting the arbitration proceeding the parties shall not have agreed upon an Umpire, any party may request the appointment of an Umpire as provided in paragraph (c) of this Section.

(f) The Arbitral Tribunal shall convene at such time and place as shall be fixed by the Umpire. Thereafter, the Arbitral Tribunal shall determine where and when it shall sit.

(g) The law to be applied by the Arbitral Tribunal shall be public international law, the sources of which shall be taken for these purposes to include:

- (i) any relevant treaty obligations that are binding reciprocally on the parties;
- (ii) the provisions of any international conventions and treaties (whether or not binding directly as such on the parties) generally recognized as having codified or ripened into binding rules of customary law applicable to states and international institutions, as appropriate;
- (iii) other forms of international custom, including the practice of states and international institutions of such generality, consistency and duration as to create legal obligations; and
- (iv) applicable general principles of law.

(h) Subject to the provisions of this Section and except as the parties shall otherwise agree, the Arbitral Tribunal shall decide all questions relating to its competence and shall determine its procedure. All decisions of the Arbitral Tribunal shall be by majority vote.

(i) The Arbitral Tribunal shall afford to all parties a fair hearing and shall render its award in writing. Such award may be rendered by default. An award signed by a majority of the

Arbitral Tribunal shall constitute the award of such Arbitral Tribunal. A signed counterpart of the award shall be transmitted to each party. Any such award rendered in accordance with the provisions of this Section shall be final and binding upon the parties to the Loan Agreement and the Guarantee Agreement. Each party shall abide by and comply with any such award rendered by the Arbitral Tribunal in accordance with the provisions of this Section.

(j) The parties shall fix the amount of the remuneration of the arbitrators and such other persons as shall be required for the conduct of the arbitration proceedings. If the parties shall not agree on such amount before the Arbitral Tribunal shall convene, the Arbitral Tribunal shall fix such amount as shall be reasonable under the circumstances. Each party shall defray its own expenses in the arbitration proceedings. The costs of the Arbitral Tribunal shall be divided between and borne equally by ADB on the one side, and the Borrower and the Guarantor on the other side. The Arbitral Tribunal shall determine any question concerning the division of the costs of the Arbitral Tribunal or the procedure for payment of such costs.

(k) The provisions for arbitration set forth in this Section shall be in lieu of any other procedure for the settlement of controversies between the parties to the Loan Agreement and the Guarantee Agreement, and any claim by either party against the other such party arising thereunder.

(l) If within 30 days after the counterparts of the award have been delivered to the parties the award shall not be complied with, any party may enter judgment upon, or institute a proceeding to enforce, the award in any court of competent jurisdiction against any other party, and may enforce such judgment by execution or may pursue any other appropriate remedy against such other party for the enforcement of the award and the provisions of the Loan Agreement or the Guarantee Agreement. Notwithstanding the foregoing, this Section shall not authorize any entry of judgment or enforcement of the award against any party that is a member except as such procedure may be available otherwise than by reason of the provisions of this Section.

(m) Service of any notice or process in connection with any proceeding under this Section or (to the extent that such remedy shall be available) in connection with any proceeding to enforce any award rendered pursuant to this Section may be made in the manner provided in Section 12.01. The parties to the Loan Agreement and the Guarantee Agreement waive any and all other requirements for the service of any such notice or process.

ARTICLE XII

Miscellaneous Provisions

Section 12.01. **Notices and Requests.** Any notice or request required or permitted to be given or made under the Loan Agreement or the Guarantee Agreement, and any other agreement between any of the parties contemplated by the Loan Agreement or the Guarantee Agreement, shall be in writing. Except as otherwise provided in Section 10.03, such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand or by mail, facsimile or electronic mail to the party to which it is required or permitted to be given or made at such party's address specified in the Loan Agreement or the Guarantee Agreement or at such other address as such party shall have designated by notice to the party giving such notice or making such request.

Section 12.02. **Authority to Take Action.** Any action required or permitted to be taken, and any documents required or permitted to be executed, under the Loan Agreement or the Guarantee Agreement on behalf of the Borrower or the Guarantor may be taken or executed by the representative of the Borrower or the Guarantor designated in the Loan Agreement or the Guarantee Agreement for the purposes of this Section or any person thereunto authorized in writing by such representative. Any modification of the provisions of the Loan Agreement or the Guarantee Agreement may be agreed to on behalf of the Borrower or the Guarantor by written instrument executed on behalf of the Borrower or the Guarantor by the representative so designated or any person authorized in writing by such representative; provided that, in the opinion of such representative or other person, such modification is reasonable in the circumstances and will not substantially increase the obligations of the Borrower under the Loan Agreement or of the Guarantor under the Guarantee Agreement. ADB may accept the execution by such representative or other person of any such instrument as conclusive evidence that in the opinion of such representative or other person any modification of the provisions of the Loan Agreement or the Guarantee Agreement effected by such instrument is reasonable in the circumstances and will not substantially increase the obligations of the Borrower or of the Guarantor thereunder.

Section 12.03. **Evidence of Authority.** The Borrower and the Guarantor shall furnish to ADB sufficient evidence of the authority of the person or persons who will, on behalf of the Borrower or the Guarantor, take any action or execute any documents required or permitted to be taken or executed by the Borrower under the Loan Agreement or by the Guarantor under the Guarantee Agreement, and the authenticated specimen signature of each such person.

Section 12.04. **Withholding of Payments to Members on Shares.** (a) If the member in whose territory the Project is to be carried out ceases to be a member of ADB, any amount due to the member for its shares repurchased by ADB shall be withheld so long as the member, its central bank or any of its agencies, or political or administrative subdivisions remain liable to ADB under the Loan Agreement or the Guarantee Agreement, or under any other loan agreement or guarantee agreement with ADB, and such amount may, at the option of ADB, be applied on any such liability as it matures.

(b) In the event of a distribution of the assets of ADB, the member in whose territory the Project is to be carried out shall not be entitled to receive its share in such distribution until it has settled all of its obligations to ADB including its obligations under the Loan Agreement or

the Guarantee Agreement, or under any other loan agreement or guarantee agreement with ADB.

Section 12.05. **Execution in Counterparts.** The Loan Agreement and the Guarantee Agreement may be executed in several counterparts, each of which shall be an original.