
LOAN NUMBER 3181-TIM
(Additional Financing to Loan 2857 and Loan 2858[SF])

LOAN AGREEMENT
(Ordinary Operations)

(Road Network Upgrading Project – Additional Financing)

between

DEMOCRATIC REPUBLIC OF TIMOR-LESTE

and

ASIAN DEVELOPMENT BANK

DATED 24 JUNE 2015

TIM 45094

**LOAN AGREEMENT
(Ordinary Operations)**

LOAN AGREEMENT dated 24 June 2015 between DEMOCRATIC REPUBLIC OF TIMOR-LESTE ("Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) by a loan agreement dated 2 May 2012 between the Borrower and ADB ("Initial Special Operations Loan Agreement"), ADB provided the Borrower a loan from ADB's Special Funds resources in an amount equivalent to five million nine hundred five thousand Special Drawing Rights (SDR 5,905,000) for the purposes of the Project described in Schedule 1 to the Initial Special Operations Loan Agreement ("Initial Project");

(B) by a loan agreement dated 2 May 2012 between the Borrower and ADB ("Initial Ordinary Operations Loan Agreement"), ADB provided the Borrower a loan from ADB's ordinary capital resources in an amount of thirty million eight hundred fifty thousand Dollars (\$30,850,000) for the purposes of the Initial Project;

(C) the Borrower has applied for an additional loan from ADB's ordinary capital resources for the purposes of covering cost overrun and changed scope of output 1 to the Initial Project, and the modified description of the Project is attached hereto as Schedule 1 to this Loan Agreement; 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 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.

(b) 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.

(c) 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) "CAFI" means the Borrower's Conselho de Administracao do Fundo Infraestrutura as defined in, and with the functions and powers given to it under, the Borrower's national legislation;

(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 paragraph 3 of Schedule 1 to this Loan Agreement;

(d) "DMF" means design and monitoring framework;

(e) "Environmental Assessment and Review Framework" or "EARF" means the environmental assessment and review framework for the Project, including any update thereto, prepared and submitted by the Borrower and cleared by ADB;

(f) "Environmental Management Plan" or "EMP" means each environmental management plan for the Project, including any updates thereto, incorporated in the relevant IEE;

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

(h) "Gender Action Plan" or "GAP" means a gender action plan prepared for the Project, including any update thereto, and agreed between the Borrower and ADB;

(i) “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;

(j) “Indigenous Peoples Safeguards” means the principles and requirements set forth in Chapter V, Appendix 3, and Appendix 4 (as applicable) of the SPS;

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

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

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

(n) “MoF” means the Borrower’s Ministry of Finance;

(o) “MPW” means the Borrower’s Ministry of Public Works, or any successor thereto;

(p) “PAM” means the project administration manual for the Project dated 10 September 2014 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;

(q) “PMU” means the project management unit under the MPW;

(r) “Procurement Guidelines” means ADB’s Procurement Guidelines (2013, as amended from time to time);

(s) “Procurement Plan” means the procurement plan for the Project dated 10 September 2014 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;

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

(u) “Project facilities” means roads and other infrastructures to be constructed under the Project as described as outputs on Schedule 1 to this Loan Agreement;

(v) “Resettlement Framework” or “RF” means the resettlement framework for the Project, including any update thereto, prepared and submitted by the Borrower and cleared by ADB;

(w) “Resettlement Plan” or “RP” means any resettlement plan for the Project, including any updates thereto, prepared and submitted by the Borrower pursuant to the requirements set forth in the RF and cleared by ADB;

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

(y) “Safeguards Monitoring Report” means each report prepared and submitted by the Borrower to ADB that describes progress with implementation of and compliance with the EMP and the RP (as applicable), including any corrective and preventative actions; and

(z) “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 eleven million seven hundred and eighty thousand Dollars (\$11,780,000), 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 20 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 0.10% 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 cause the proceeds of the Loan to be applied to the financing of expenditures on the Project in accordance with the provisions of this Loan Agreement.

Section 3.02. The proceeds of the Loan shall be allocated and withdrawn in accordance with the provisions of Schedule 3 to this Loan Agreement, as such Schedule may be amended from time to time by agreement between the Borrower and ADB.

Section 3.03. Except as ADB may otherwise agree, the Borrower shall procure, or cause to be procured, the items of expenditure to be financed out of the

proceeds of the Loan in accordance with the provisions of Schedule 4 to this Loan Agreement. 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 2018 or such other date as may from time to time be agreed between the Borrower and ADB.

ARTICLE IV

Particular Covenants

Section 4.01. (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.

Section 4.02. The Borrower shall make available, promptly as needed and on terms and conditions acceptable to ADB, 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 and for the operation and maintenance of the Project facilities.

Section 4.03. (a) Whenever applicable, 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 4.04. 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 4.05. (a) The Borrower shall (i) maintain separate accounts and records for the Project; (ii) prepare annual financial statements for the Project in accordance with accounting principles acceptable to ADB; (iii) have such financial statements audited annually by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB, in accordance with international standards for auditing or the national equivalent acceptable to ADB; (iv) as part of each such audit, have the auditors prepare a report (which includes the auditors' opinion on the financial statements, use of the Loan proceeds and compliance with the financial covenants of this Loan Agreement as well as on the use of the imprest fund procedure and a management letter (which sets out the deficiencies in the internal control of the Project that were identified in the course of the audit, if any); and (v) furnish to ADB, no later than 6 months after the end of each related fiscal year, copies of such audited financial statements, audit report and management letter, all in the English language, and such other information concerning these documents and the audit thereof as ADB shall from time to time reasonably request.

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

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

Section 4.06. 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.

ARTICLE V

Effectiveness

Section 5.01. A date 90 days after the date of this Loan Agreement is specified for the effectiveness of this Loan Agreement for the purposes of Section 10.04 of the Loan Regulations.

ARTICLE VI

Miscellaneous

Section 6.01. 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 6.02. The following addresses are specified for the purposes of Section 12.01 of the Loan Regulations:

For the Borrower

Palacio do Governo
Ministry of Finance
Edificio 5, 1 Andar
Dili, Timor-Leste

Facsimile Number:

(670) 332-1339.

For ADB

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

Facsimile Numbers:

(632) 636-2444
(632) 636-2446.

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.

DEMOCRATIC REPUBLIC OF TIMOR-LESTE

By 

SANTINA JRF VIEGAS CARDOSO
Minister
Ministry of Finance

ASIAN DEVELOPMENT BANK

By 

SHANE J. ROSENTHAL
Country Director
Timor-Leste Resident Mission

SCHEDULE 1

Description of the Project

1. The objective of the Project is the provision of a more reliable and safer road network.
2. The Project shall consist of:

Output 1. National roads will be upgraded and climate proofed. Upgrading of the roads from Dili to Liquica (28.6 km) and Tibar to Gleno (31.0 km) are original components of Output 1. The Dili to Liquica components will be changed from upgrading of the road from Dili airport road junction to Liquica to upgrading of the road from Tacitolu to Liquica. The changed component will therefore comprise: (i) realignment and upgrading to four lanes from Tacitolu to the junction with the Tibar to Gleno road including construction of roundabout at this junction (3.2 km), (ii) upgrading to four lanes from the roundabout to Tibar Port entrance (2 km) including provision for port access and (iii) widening to 6 meters and strengthening of the road from Tibar Port entrance to Liquica (19.1 km). The Tibar to Gleno component which commences at the junction with the above component will be unchanged from its present strengthening and widening existing sealed pavements from a width of generally less than 4.5 meters to 6 meters with asphalt surfacing. Vulnerability to damage from severe rainfall, sea level rise, and other potential effects of climate change for all roads will be reduced through engineering counter-measures, including ensuring suitably-sized drainage structures, raising of road levels that are flood-prone, and bio-engineering to promote slope stability.

Output 2. A feasibility study and detailed design will be prepared. A feasibility study and detailed design suitable for ADB financing will be prepared for the road from Manatuto to Natarbora (81.0 km). The additional loan will help finance the detailed design of the road from Comoro roundabout to Tibar Port entrance.

Output 3. Performance-based road maintenance will be introduced. The civil works contractors will be responsible for maintenance of the upgraded road sections for two years after physical completion. Local contractors will be trained in performance maintenance and period performance-based contracts will be used for future maintenance.

Output 4. Awareness of road safety and transport-related social issues will be raised. The awareness of road safety will be increased by implementing a community-based road safety awareness program, including an education program for schools, drivers, road users and the community, and implementing an HIV/AIDS prevention program.

Output 5. Efficient project management will be provided. The Project includes project management support for the implementing agency through strengthening of its Project Management Unit (PMU).

3. Consulting services shall be provided to support the above activities.
4. The Project is expected to be completed by 31 December 2017.

SCHEDULE 2**Amortization Schedule****(Road Network Upgrading Project – Additional Financing)**

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 September 2019	2.5
15 March 2020	2.5
15 September 2020	2.5
15 March 2021	2.5
15 September 2021	2.5
15 March 2022	2.5
15 September 2022	2.5
15 March 2023	2.5
15 September 2023	2.5
15 March 2024	2.5
15 September 2024	2.5
15 March 2025	2.5
15 September 2025	2.5
15 March 2026	2.5
15 September 2026	2.5
15 March 2027	2.5
15 September 2027	2.5
15 March 2028	2.5
15 September 2028	2.5
15 March 2029	2.5
15 September 2029	2.5
15 March 2030	2.5
15 September 2030	2.5
15 March 2031	2.5
15 September 2031	2.5

<u>Payment Due</u>	<u>Installment Share</u> (Expressed as a %)
15 March 2032	2.5
15 September 2032	2.5
15 March 2033	2.5
15 September 2033	2.5
15 March 2034	2.5
15 September 2034	2.5
15 March 2035	2.5
15 September 2035	2.5
15 March 2036	2.5
15 September 2036	2.5
15 March 2037	2.5
15 September 2037	2.5
15 March 2038	2.5
15 September 2038	2.5
15 March 2039	2.5
Total	100

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, in agreement with the Borrower, (i) reallocate to such Category, to the extent required to meet the estimated shortfall, amounts of the Loan which have been allocated to another Category but, in the opinion of ADB, are not needed to meet other expenditures, and (ii) if such reallocation cannot fully meet the estimated shortfall, reduce the withdrawal percentage applicable to such expenditures in order that further withdrawals under such Category may continue until all expenditures thereunder shall have been made; and

(b) if the amount of the Loan allocated to any Category appears to exceed all agreed expenditures in that Category, ADB may, in agreement with the Borrower, reallocate such excess amount to any other Category.

Disbursement Procedures

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

Retroactive Financing

6. Withdrawals from the Loan Account may be made 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 items to be retroactively financed, subject to a maximum amount equivalent to 20% of the Loan amount.

Condition for Withdrawals from Loan Account

7. Notwithstanding any other provision of this Loan Agreement, no withdrawals shall be made from the Loan Account Category 1a, in respect of any Works from Tibar roundabout to Liquica, and from Tibar to Gleno components until all of the allocated funds for the Works and Unallocated categories of Loans 2857 and 2858 have been fully disbursed.

TABLE

ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (Road Network Upgrading Project – Additional Financing)				
Number	Item	Total Amount Allocated for ADB Financing (\$)		Basis for Withdrawal from the Loan Account
		Category	Subcategory	
1	Works	6,810,000		
1A	Tibar roundabout to Liquica, and Tibar to Gleno components**		600,000	40% of total expenditure claimed*
1B	Others		6,210,000	40% of total expenditure claimed*
2	Consulting Services	2,200,000		
2A	Consulting Services-planning support		400,000	100% of total expenditure claimed*
2B	Design and Supervision		1,800,000	100% of total expenditure claimed*
3	Interest and Commitment Charges	420,000		100% of amounts due
4	Unallocated	2,350,000		
	Total	11,780,000		

* Inclusive of local taxes and duties imposed within the territory of the Borrower.

** Subject to the condition for withdrawal described in paragraph 7 of Schedule 3.

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 the methods of procurement set forth below:
 - (a) International Competitive Bidding; and
 - (b) Shopping.
4. The methods of procurement are subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. The Borrower may only modify the methods 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 contracts until:
 - (a) the National Directorate of Environment has granted the final approval of the relevant IEE; and
 - (b) the Borrower has incorporated the relevant provisions from the EMP into the Works contract.
6. The Borrower shall not award any Works contract which involves involuntary resettlement impacts, until the Borrower has prepared and submitted to ADB the final RP based on the Project's detailed design, and obtained ADB's clearance of such RP.
7. The Borrower shall ensure that no Works shall commence until:
 - (a) the contractor has received induction training on environmental management delivered by the PMU or supervision consultant and submitted the relevant EMP for review and clearance;
 - (b) the relevant EMP has been reviewed and cleared by the PMU and supervision consultant; and

- (c) an environment license has been obtained from the National Directorate of Environment.

Consulting Services

8. Except as ADB may otherwise agree, and except as set forth in the paragraph below, the Borrower shall apply quality- and cost-based selection for selecting and engaging Consulting Services.

9. The Borrower shall apply the following methods for selecting and engaging the specified Consulting Services, in accordance with, among other things, the procedures set forth in the Procurement Plan: Least-Cost Selection and/or Consultants' Qualification Selection for small assignments including road safety program, social surveys, HIV/AIDS awareness, and annual audit.

10. The Borrower shall recruit the individual consultants in accordance with procedures acceptable to ADB for recruiting individual consultants.

Industrial or Intellectual Property Rights

11. (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.

12. 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

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

SCHEDULE 5

Execution of Project; Financial Matters

Implementation Arrangements

1. The Borrower and the Project Executing Agency shall ensure that the Project is implemented in accordance with the detailed arrangements set forth in the PAM. Any subsequent change to the PAM shall become effective only after approval of such change by the Borrower and ADB. In the event of any discrepancy between the PAM and this Loan Agreement, the provisions of this Loan Agreement shall prevail.

Environment

2. The Borrower 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 the Safeguards Monitoring Report.

Land Acquisition and Involuntary Resettlement

3. The Borrower 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 RF; and (d) all measures and requirements set forth in the RP, and any corrective or preventative actions set forth in the Safeguards Monitoring Report.

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

Indigenous Peoples

5. The Borrower shall ensure that the Project does not have any indigenous peoples impacts within the meaning of Safeguard Policy Statement. In the event that the Project does have any such impact, the Borrower shall take all steps required to ensure that the Project complies with the applicable laws and regulations of the Borrower, the Safeguard Policy Statement and any corrective or preventative actions set forth in the Safeguards Monitoring Report.

Human and Financial Resources to Implement Safeguards Requirements

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

Safeguards-Related Provisions in Bidding Documents and Works Contracts

7. The Borrower shall ensure that all bidding documents and contracts for Works contain provisions that require contractors to:

- (a) comply with the measures relevant to the contractor set forth in the IEE, the EMP, and the RP (to the extent they concern impacts on affected people during construction), and any corrective or preventative actions set forth in the 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 and the RP;
- (d) adequately record the condition of roads, agricultural land and other infrastructure prior to starting to transport materials and construction; and
- (e) reinstate pathways, other local infrastructure, and agricultural land to at least their pre-project condition upon the completion of construction.

Safeguards Monitoring and Reporting

8. The Borrower shall do the following:

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

Prohibited List of Investments

9. The Borrower shall ensure that no proceeds of the Loan are used to finance any activity included in the list of prohibited investment activities provided in Appendix 5 of the SPS.

Labor Standards

10. The Borrower shall ensure that Works contracts and bidding documents under the Project include specific provisions requiring contractors to comply with all (a) applicable labor laws and core labor standards on (i) prohibition of child labor as defined in national legislation for construction and maintenance activities; (ii) equal pay for equal work of equal value regardless of gender, ethnicity or caste; and (iii) elimination of forced labor; and (b) the requirement to disseminate information on sexually transmitted diseases including HIV/AIDS to employees and local communities.

Gender and Development

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

Counterpart Support

12. The Borrower shall make available adequate budgetary allocations of the required counterpart funds in respect of the Project on a timely and regular basis.

Project Website

13. Within 12 months after the Effective Date, the Borrower shall create a Project website to disclose information about various matters on the Project, including procurement. With regard to procurement, the website shall include information on the list of participating bidders, name of the winning bidder, basic details on bidding procedures adopted, amount of contract awarded, and the list of goods/services procured.

Governance and Anticorruption

14. The Borrower, the Project Executing Agency, and the implementing agency 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.

15. The Borrower, the Project Executing Agency and the implementing agency 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.

16. The Project Executing Agency shall prepare and implement a robust code of conduct, acceptable to ADB, for its staff and for the staff of the implementing agency involved in the Project, ensuring, among others, that the staff members working with the Project do not have any conflict of interest with any activities under the Project. The Borrower shall take necessary steps to further ensure that all applicable anticorruption laws of the Borrower which apply to public officers are vigorously enforced.

Operation and Maintenance

17. The Borrower shall ensure that sufficient fund shall be earmarked in the operation and maintenance budget, allocated and released on timely basis, for the maintenance and rehabilitation of the Project facilities. The Borrower shall ensure that the Project facilities are properly maintained and that proper technical supervision and adequate routine funds shall be provided.

Project Performance and Monitoring System

18. Within 9 months after Effective Date, Borrower shall establish a project performance monitoring system in line with the targets, indicators set in the DMF. Within 12 months of Effective Date, the baseline data corresponding to indicators and targets set out in the Project status report shall be updated during the detailed design stage, disaggregated by income levels and sex as required. After the initial baseline survey, the PMU with support of the consultants shall conduct annual survey and quarterly monitoring of indicators and submit quarterly report to ADB throughout project implementation.