



ASIAN DEVELOPMENT BANK

Special Operations Grant Regulations

Applicable to Grants Made
from ADB's Special Funds Resources

Dated 1 January 2022

ASIAN DEVELOPMENT BANK
SPECIAL OPERATIONS GRANT REGULATIONS

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SPECIAL OPERATIONS GRANT REGULATIONS

DATED 1 JANUARY 2022

ARTICLE I

Purpose; Application to Grant Agreements

Section 1.01. **Purpose.** The purpose of these Regulations is to set forth certain terms and conditions generally applicable to grants for projects and programs of high development priority made by ADB from its Special Funds resources.

Section 1.02. **Application of Regulations.** Any grant agreement with ADB relating to a grant made by ADB from its Special Funds 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 Grant Agreement.** If any provision of a grant agreement is inconsistent with a provision of these Regulations, the provision of the grant agreement 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 grant agreement to which these Regulations have been made applicable:

- (a) "ADB" means Asian Development Bank;
- (b) "assets" includes property, revenues and claims of any kind;
- (c) "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;
- (d) "Dollar" or the sign "\$" each means the lawful currency of the United States of America;

- (e) “Effective Date” means the date on which the Grant Agreement shall have come into force and effect pursuant to Section 9.03;
- (f) “foreign currency” means any currency other than the currency of the member in whose territory the Project is to be carried out;
- (g) “Grant” means the grant provided for in the Grant Agreement for projects and programs of high development priority;
- (h) “Grant Account” means the account opened or to be opened by ADB on its books in the name of the Recipient to which the amount of the Grant has been or will be credited;
- (i) “Grant Agreement” means the particular grant agreement to which these Regulations shall have been made applicable, as such agreement may be amended from time to time; and such term includes these Regulations as thus made applicable, all agreements supplementary to the Grant Agreement and all schedules to the Grant Agreement;
- (j) “Grant Closing Date” means the date specified in the Grant Agreement, after which ADB may terminate the right of the Recipient to make any withdrawals from the Grant Account, or such other date as may be agreed between ADB and the Recipient for such purpose;
- (k) “member” means a member of ADB;
- (l) “Project” means the project or program for which ADB has agreed to make the Grant, as described in the Grant Agreement and as such description may be amended from time to time by agreement between ADB and the Recipient;
- (m) “Project Agreement” means the project agreement, if any, between ADB and the Project Executing Agency, being the Project Agreement referred to in the Grant Agreement, as such agreement may be amended from time to time; and such term includes all agreements supplementary to the Project Agreement and all schedules to the Project Agreement;
- (n) “Project Executing Agency” means any entity responsible for the carrying out of the Project as specified in the Grant Agreement;
- (o) “Recipient” means the party to the Grant Agreement to which ADB has agreed to provide the Grant;
- (p) “Special Funds resources” means “Special Funds resources” of ADB as defined in Article 20 of the Articles of Agreement of ADB; and
- (q) “taxes” includes imposts, levies, fees and duties of any nature, whether in effect at the date of the Grant Agreement or thereafter imposed.

Section 2.02. **Interpretation.** Except where the context otherwise requires, (a) references in these Regulations to Articles or Sections are to Articles or Sections of these Regulations; (b) 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; (c) singular may include plural and vice versa; and (d) a reference to any gender includes any other gender.

ARTICLE III

Grant Account

Section 3.01. **Grant Account.** The amount of the Grant shall be credited to the Grant Account and may be withdrawn therefrom in accordance with the provisions of the Grant Agreement and these Regulations.

ARTICLE IV

Currency Provisions

Section 4.01. **Denomination of the Grant.** Except as ADB's Board of Directors may otherwise determine, the Grant shall be denominated in Dollar.

Section 4.02. **Currency of Withdrawal and Purchase of Currencies.** Except as ADB and the Recipient shall otherwise agree, withdrawals from the Grant Account shall be made in the currency in which the Grant is denominated. ADB shall, at the request and acting as agent of the Recipient, use such currency to purchase the currencies in which the items of expenditure to be financed out of the proceeds of the Grant has been paid or is payable.

ARTICLE V

Withdrawal of Grant Proceeds

Section 5.01. **Withdrawal from the Grant Account.** (a) Grant proceeds shall be used only for the purposes of the Project. Subject to any conditions or restrictions specified in the Grant Agreement, the Recipient shall be entitled to withdraw from the Grant 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 Grant Agreement. If at any time ADB determines that any amount of the Grant proceeds withdrawn from the Grant Account has been used by the Recipient in a manner inconsistent with the provisions of the Grant Agreement, the Recipient shall promptly refund such amount to ADB.

(b) Except as ADB and the Recipient 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 Recipient 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 Grant proceeds withdrawn from the Grant Account has been used by the Recipient to finance such contracts, the Recipient shall promptly refund such amount to ADB.

Section 5.02. **Commitment Letters by ADB.** Upon the Recipient's request, ADB may issue commitment letters to pay amounts in respect of the cost of goods and services to be financed under the Grant notwithstanding any subsequent suspension or cancellation.

Section 5.03. **Application for Withdrawal.** When the Recipient shall desire to withdraw any amount from the Grant Account or to request ADB to issue commitment letters pursuant to Section 5.02, the Recipient 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 Recipient 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 5.04. **Evidence of Authority to Sign Applications.** The Recipient 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 5.05. **Supporting Evidence.** The Recipient 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 5.06. **Sufficiency of Applications and Documents.** Each application for withdrawal and the accompanying documents and other evidence furnished in connection therewith must be sufficient in form and substance to satisfy ADB that the Recipient is entitled to withdraw from the Grant Account the amount applied for and that the amount to be withdrawn from the Grant Account is to be used only for the purposes specified in the Grant Agreement.

Section 5.07. **Payment by ADB.** Payment by ADB of amounts which the Recipient is entitled to withdraw from the Grant Account shall be made to or on the order of the Recipient.

ARTICLE VI

Particular Covenants

Section 6.01. **Cooperation and Information.** (a) ADB and the Recipient shall cooperate fully to ensure that the purposes of the Grant are accomplished. To that end, ADB and the Recipient shall:

- (i) from time to time, at the request of either one of them, exchange views with regard to any matters relating to the progress of the Project, the purposes of the Grant, the performance of their respective obligations under the Grant Agreement and 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) above. In respect of Grants to a Recipient which is not a member, the Recipient shall promptly inform ADB in advance of any proposed changes in the ownership or control of the Recipient or its assets, or any transaction or arrangement which will have or is likely to have such effect.
- (b) Where the Recipient is a member, such member shall:
- (i) afford all reasonable opportunity for ADB's representatives to visit any part of its territory for purposes related to the Grant;
 - (ii) furnish to ADB all such information as ADB shall reasonably request with respect to the financial and economic conditions in its territory, including its balance of payments and its foreign currency debt as well as that of its political subdivisions or agencies and of any entity owned or controlled by, or operating for the account or benefit of, such member or any such subdivision or agency, and of any institution performing the functions of a central bank for such member; and
 - (iii) represent, as at the date of the Grant Agreement, that no defaults exist in respect of any debt of such member except those otherwise communicated in writing by such member to ADB.

Section 6.02. **Insurance.** (a) The Recipient 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 Recipient 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 Recipient 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 Grant 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 6.03. **Records, Financial Statements and Audits.** The Recipient 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 Grant Agreement.

Section 6.04. **Reports.** (a) The Recipient shall furnish, or cause to be furnished, to ADB all such reports as ADB shall reasonably request concerning: (i) the Grant, 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 Grant; (iii) the Project and the Project Executing Agency; (iv) the administration and operations of the Recipient if not a member; and (v) any other matters relating to the purposes of the Grant.

(b) Without limiting the generality of the foregoing, the Recipient shall furnish to ADB periodic reports on the execution of the Project, the accomplishment of the targets and actions agreed between ADB and the Recipient, 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 Recipient and ADB, the Recipient 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 Recipient of its obligations under the Grant Agreement and the accomplishment of the purposes of the Grant.

Section 6.05. **Counterpart Obligations and Land Acquisition.** The Recipient 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 Grant, for the carrying out of the Project and for the operation and maintenance of any Project facilities. The Recipient 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 6.06. **Work Schedules, Plans and Design Standards.** The Recipient shall cause the Project to be carried out in accordance with plans, design standards, specifications, work schedules and construction methods acceptable to the Recipient and ADB, as applicable. When required by ADB, the Recipient 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 6.07. **General Undertakings.** (a) The Recipient shall cause the Project to be carried out with due diligence and efficiency and in conformity with sound applicable financial, business and development practices. The Recipient 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 Grant Agreement.

(b) The Recipient shall ensure that the activities of its departments and agencies with respect to the carrying out of the Project and operation of any Project facilities are conducted and coordinated in accordance with sound administrative policies and procedures.

Section 6.08. **Contractors and Consultants.** In the carrying out of the Project, the Recipient shall cause competent and qualified consultants and contractors, acceptable to the Recipient and ADB, to be employed to an extent and upon terms and conditions satisfactory to the Recipient and ADB.

Section 6.09. **Maintenance.** The Recipient shall ensure that any facilities relevant to the Project are operated, maintained and repaired in accordance with sound operational and maintenance practices. The Recipient shall promptly as needed, make or cause to be made all necessary repairs and renewals thereof.

ARTICLE VII

Exemption from Taxation

Section 7.01. **Exemption from Taxation.** (a) Where the Recipient is a member, such member shall ensure that the Grant 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 the Recipient is not a member, the Recipient 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 Grant 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 VIII

Suspension and Cancellation

Section 8.01. **Suspension by ADB.** If any of the following events shall have occurred at any time after the date of the Grant Agreement and be continuing, ADB may, by notice to the Recipient, suspend in whole or in part the right of the Recipient to make withdrawals from the Grant Account:

- (a) The Recipient shall have failed to make payment of principal, interest charge or any other charge required (i) under any loan agreement or guarantee agreement with ADB; or (ii) in consequence of any guarantee or other financial obligation of any kind extended by ADB to any third party with the agreement of the Recipient.
- (b) The Recipient shall have failed to perform any of its obligations under the Grant Agreement.
- (c) The Project Executing Agency shall have failed to perform any of its obligations under the Project Agreement.

- (d) ADB shall have suspended in whole or in part the right of the Recipient to make withdrawals under any other grant agreement or any loan agreement with ADB because of a failure by the Recipient to perform any of its obligations under such grant agreement or loan agreement or any related guarantee agreement with ADB.
- (e) 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 Recipient or the Project Executing Agency will be able to perform any of its obligations under the Grant Agreement or the Project Agreement.
- (f) 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.
- (g) A representation made by the Recipient in, or pursuant to, the Grant Agreement or any statement furnished in connection therewith and intended to be relied upon by ADB in making the Grant, shall have been incorrect in any material respect, or, where the Recipient is not a member, any material adverse change in the condition of the Recipient as so represented by the Recipient shall have occurred in the reasonable opinion of ADB.
- (h) Where the Recipient 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 Recipient, the alienation or transfer of any of its assets other than in the normal course of business, or for the suspension of its operations.
- (i) 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.
- (j) ADB shall have determined, with respect to any contract to be financed in full or in part out of the proceeds of the Grant, that corrupt, fraudulent, collusive or coercive practices, as determined by ADB, were engaged in by representatives of the Recipient or any beneficiary of the Grant during the procurement of goods and services, consultants' selection or the execution of a contract, without the Recipient 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 Grant is inconsistent with the relevant procedure set out in the Grant Agreement.
- (k) Any other event specified in the Grant Agreement for the purposes of this Section shall have occurred.

The right of the Recipient to make withdrawals from the Grant 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 Recipient that the right to make withdrawals has been restored in whole or in part, whichever is the earlier.

Section 8.02. **Cancellation by ADB.** If (a) the right of the Recipient to make withdrawals from the Grant Account shall have been suspended with respect to any amount of the Grant for a continuous period of 30 days; (b) at any time ADB determines, after consultation with the Recipient, that any amount of the Grant will not be required for the purposes of the Project; (c) by the date specified in the Grant Agreement as the Grant Closing Date, an amount of the Grant shall remain unwithdrawn from the Grant 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 Grant, that corrupt, fraudulent, collusive or coercive practices, as determined by ADB, were engaged in by representatives of the Recipient or any beneficiary of the Grant during the procurement of goods, works, services, consultants' selection or the execution of a contract, without the Recipient 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 Grant is inconsistent with the relevant procedure set out in the Grant Agreement, ADB may, by notice to the Recipient, terminate the right of the Recipient to make withdrawals with respect to such amount, contract or procurement. Upon the giving of such notice, the relevant amount of the Grant shall be cancelled.

Section 8.03. **Cancellation by the Recipient.** After consultation with ADB, the Recipient may, by notice to ADB, cancel any amount of the Grant which the Recipient shall not have withdrawn prior to the giving of such notice.

Section 8.04. **Amounts Subject to Commitment Letters.** No suspension or cancellation shall apply to amounts subject to any commitment letter issued by ADB pursuant to Section 5.02 except as expressly provided in such commitment letter.

Section 8.05. **Effectiveness of Provisions After Suspension or Cancellation.** Notwithstanding any cancellation or suspension, all the provisions of the Grant Agreement and the Project Agreement shall continue in full force and effect except as specifically provided in this Article.

ARTICLE IX

Effectiveness; Termination

Section 9.01. **Conditions Precedent to Effectiveness.** The Grant Agreement shall not become effective until evidence satisfactory to ADB shall have been furnished to ADB that:

- (a) the execution and delivery of the Grant Agreement on behalf of the Recipient have been duly authorized or ratified by all necessary corporate and governmental action;
- (b) 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;
- (c) where the Recipient is not a member, the condition of the Recipient, as represented to ADB at the date of the Grant Agreement, has undergone no material adverse change between such date and the date agreed upon between

the Recipient and ADB for the purposes of this Section, provided that ADB shall have requested such evidence;

- (d) where the Recipient is not a member, the requirements in Section 7.01(b) have been fulfilled; and
- (e) all other events specified in the Grant Agreement as additional conditions to its effectiveness have occurred.

Section 9.02. **Legal Opinions.** As part of the evidence to be furnished pursuant to Section 9.01, the Recipient 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 Recipient, that the Grant Agreement has been duly authorized or ratified by, and executed and delivered on behalf of, the Recipient and is legally binding upon the Recipient in accordance with its terms;
- (b) 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
- (c) such other matters as shall be specified in the Grant Agreement.

Section 9.03. **Effective Date.** (a) Except as ADB and the Recipient shall otherwise agree, the Grant Agreement shall come into force and effect on the date of ADB's notice to the Recipient of its acceptance of the evidence required by Section 9.01.

(b) If, before the Effective Date, any event shall have occurred which would have entitled ADB to suspend the right of the Recipient to make withdrawals from the Grant Account if the Grant 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 9.04. **Termination for Failure to Become Effective.** If the Grant Agreement shall not have come into force and effect by the date specified in the Grant Agreement for the purposes of this Section, the Grant 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 Recipient of such later date.

ARTICLE X

Enforceability; Failure to Exercise Rights; Arbitration

Section 10.01. **Enforceability.** (a) The rights and obligations of ADB and the Recipient under the Grant Agreement shall be valid and enforceable in accordance with their terms and, where the Recipient is a member, notwithstanding the law of any state or political or administrative subdivision thereof to the contrary.

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

Section 10.02. **Failure to Exercise Rights.** No delay in exercising, or omission to exercise, any right, power or remedy accruing to either party under the Grant 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 10.03. **Arbitration.** (a) Any controversy between the parties to the Grant Agreement and any claim by any such party against any other such party arising under the Grant 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 Recipient 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 Recipient; 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 Grant 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 Recipient 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 Grant 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 Grant 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 11.01. The parties to the Grant Agreement waive any and all other requirements for the service of any such notice or process.

ARTICLE XI

Miscellaneous Provisions

Section 11.01. **Notices and Requests.** Any notice or request required or permitted to be given or made under the Grant Agreement, and any other agreement between any of the parties contemplated by the Grant Agreement, shall be in writing. Except as otherwise provided in Section 9.03 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 Grant 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 11.02. **Authority to Take Action.** Any action required or permitted to be taken, and any documents required or permitted to be executed, under the Grant Agreement, on behalf of the Recipient, may be taken or executed by the representative of the Recipient designated in the Grant Agreement for the purposes of this Section or any person thereunto authorized in writing by such representative. Any modification of the provisions of the Grant Agreement may be agreed to on behalf of the Recipient, by written instrument executed on behalf of the Recipient 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 Recipient under the Grant 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 Grant Agreement effected by such instrument is reasonable in the circumstances and will not substantially increase the obligations of the Recipient thereunder.

Section 11.03. **Evidence of Authority.** The Recipient shall furnish to ADB sufficient evidence of the authority of the person or persons who will, on behalf of the Recipient, take any action or execute any documents required or permitted to be taken or executed by the Recipient under the Grant Agreement and the authenticated specimen signature of each such person.

Section 11.04. **Execution in Counterparts.** The Grant Agreement may be executed in several counterparts, each of which shall be an original.