

CO-FINANCING AGREEMENT ("AGREEMENT")

BETWEEN THE GOVERNMENT OF AUSTRALIA AND ASIAN DEVELOPMENT BANK

WITH RESPECT TO Kingdom of Cambodia, Greater Mekong Subregion: Rehabilitation of the Railway in Cambodia Project

DONOR REFERENCE: AusAID Agreement No. 552 60

The Government of Australia represented by Australian Agency for International Development (the "Donor") has decided to provide an untied Grant contribution (the "Grant") through Asian Development Bank ("ADB") amounting to Australian Dollar AUD24,417,140 to support Cambodia: Greater Mekong Subregion: Rehabilitation of the Railway in Cambodia Project (the "Project"). The Donor has agreed to provide the Royal Government of Cambodia (the "Government") the Grant for this purpose. The Grant will be administered by ADB and utilized solely to implement the Project in accordance with the arrangements as set out in the ADB Report and Recommendation of the President to the Board (Project No. 37269) ("the Project Document"), attached hereto as Annex A to this Agreement. In case of discrepancy between ADB's Project Documents and Grant documentation between the Donor and the Government (if any), ADB's Project Documents will prevail.

Therefore, the Donor and ADB (the "Parties") agree as follows:

Transfer and Management of Funds

1. The Donor will transfer the proceeds of the Grant to a US dollar denominated interest-bearing account ("Grant Account"), specified in this Agreement, at the exchange rate prevailing on the same day of the transfer in currencies, amounts and indicative installments as detailed in the following schedule:

Payment Milestone	Indicative Dates	Indicative Payment Amounts	Payments Condition
Tranche 1	Within two weeks from the signing of this Agreement	AUD 7,822,140 (seven million eight hundred twenty two thousand one hundred forty Australian Dollars)	Within two weeks from the signing of this Agreement
Tranche 2	Date 01 June 2011	AUD 2,755,000 (two million seven hundred fifty five thousand Australian Dollars)	Acceptance by AusAID of annual progress report and 75% acquittal of tranche 1
Tranche 3	Date 01 June 2012	AUD 2,880,000 (two million eight hundred eighty thousand Australian Dollars)	Acceptance by AusAID of annual progress report and 75% acquittal of tranche 2
Tranche 4	Date 01 September 2012	AUD 10,960,000 (ten million nine hundred sixty thousand Australian Dollars)	Acceptance by AusAID of annual progress report and 75% acquittal of tranche 3

Notwithstanding the above installment schedule, the Parties may consult each other in writing in the form of an Exchange of Letters and adjust the timing and amounts of remittances that will appropriately meet the requirements of the Project.

2. ADB will hold the Grant funds within a United States dollar interest-bearing account, the Grant Account. If other currencies are required for payment to meet any eligible expenditure, ADB may purchase the required currencies with the proceeds of the Grant Account. Any fees and charges relating to such purchase will be paid out of funds from the Grant Account.
3. The adverse impacts of potential foreign currency fluctuations during Project implementation will be addressed among the Parties with appropriate remedial measures and amendments negotiated, if necessary. Notwithstanding, there is no obligation on behalf of the Donor to contribute additional funds as a result of any foreign currency fluctuations.
4. For the purposes of this Agreement, the Grant will be held, administered and invested at the discretion of ADB. Pending disbursements, ADB may invest and reinvest the Grant and any income earned in respect of such investment and reinvestment, as well as any interest earned in respect of the Grant Account. Such income will be credited to the Grant Account and used for the purpose of the Project and/or defray the costs of administration and other expenses incurred by ADB with respect to the administration of the Grant.

Implementation and Administration

5. The Project has been implemented as from 01 March 2008 to 31 March 2013 by the Ministry of Public Works and Transport (the "Executing Agency" or "EA") and will be administered in accordance with applicable ADB policies and procedures. ADB will make every effort to ensure timely and full implementation of the Project.
6. Procurement of all goods and services financed under the Grant shall be carried out in accordance with ADB's *Procurement Guidelines* dated February 2007, as amended from time to time. The selection and engagement of consultants financed under the Grant shall be carried out in accordance with ADB's *Guidelines on the Use of Consultants* dated February 2007, as amended from time to time. With regard to the environment, Indigenous Peoples, involuntary resettlement and other social matters, ADB will follow in Project implementation its established policies and their amendments as applicable, including, but not limited to its *Safeguard Policy Statement*, 2009, as amended from time to time.
7. The Donor and ADB agree that the methods of disbursement under the Grant proceeds for the purpose of financing Project expenditures shall be in accordance with ADB's *Loan Disbursement Handbook* dated January 2007, as amended from time to time, and the detailed arrangements agreed upon between the Government and ADB and this Agreement. The Donor and ADB agree that the Donor's funds will be utilized based on pro-rata financing option, where donor's funds will be utilized on pro-rata basis for every claim as specified in the Appendix 7 of the Project Document.

8. ADB will administer and account for the Grant in accordance with its financial regulations, other applicable rules, procedures and practices, and keep separate records and accounts for the Project.
9. ADB will be entitled to withdraw from the Grant Account an amount equivalent to five (5) percent of the disbursed Grant up to US\$5 million, or two (2) per cent of the disbursed grant amount for individual investment operation above US\$5 million with a minimum of US\$250,000, whichever is greater, in order to cover the costs incurred by ADB in the administration of the Grant.
10. Within (6) six months after financial closure of the Project, except as may be otherwise agreed by the Donor and ADB, any balance amount from the Grant Account shall be returned to the Donor together with any investment/reinvestment income and interest income earned on the deposit from the Grant Account, and any gains from foreign transactions, net of all fees and charges and losses. Where several cofinanciers are involved, funds are returned on a pro rata basis consistent with contribution as specified in Annex A, or as separately agreed with each donor.

Reviews, Reporting and Audits

11. Each Party shall inform the other Party of any review missions related to the Grant undertaken by it, and provide to the other Party a report setting out the main findings or results of such mission. ADB will invite the Donor to join project review missions, including supervision missions and the mid-term review during the implementation of the Project and upon its completion. The Donor will be responsible for its own costs with respect to any participation in project review missions.
12. ADB will, in accordance with its usual procedures:

Progress Reports:

- (i) provide the Donor with annual progress reports in relation to the Project, as prepared by ADB and/or the Executing Agency, and provide the Donor with such reports and information as the Donor may reasonably request concerning the progress of the Project. Within six (6) months from completion of the Project, ADB shall provide the Donor with a final report.

Financial Reports:

- (ii) provide the Donor with unaudited six (6) monthly statements of expenditure stated in US dollars. In addition, ADB shall provide the Donor within six (6) months from financial closure of the Project, with a terminal financial report showing the receipts, income and expenditures under the Grant Account and the remaining balance, if any.

Audit Reports:

- (iii) provide the Donor free of charge, with externally audited annual financial statements, as submitted to the ADB by the Executing Agency, in relation to the Project.

- (iv) Should the Donor require an external audit of the terminal financial report specifically in relation to the Grant, and in addition to the audited annual financial statements submitted by the Executing Agency, the Donor should upon completion of the Project request ADB for such external audit in writing. The cost of this audit shall be charged against the Grant Account provided funds are available after settlement of all expenditures. Alternately, upon agreement by the Donor and ADB the cost of this audit shall be paid separately by the Donor.
13. ADB shall inform the Donor promptly of any condition which significantly interferes, or threatens to interfere, with the performance by ADB or any Executing Agency of its commitments under this Agreement.

Special Provisions

14. This Grant will be subject to ADB's *Anticorruption Policy* dated July 1998 and *Integrity Principles and Guidelines* dated November 2006 as amended from time to time. ADB's *Anticorruption Policy* requires staff, consultants, Grant recipients, beneficiaries and contractors executing the Grant to observe the highest standards of ethics and personal integrity. Any party found in breach of ADB's *Anticorruption Policy* may be subject to disciplinary measures and/or sanctions in accordance with ADB's *Integrity Principles and Guidelines*.
15. Recognizing the obligations of ADB member countries under various United Nations Security Council Resolutions to take measures to prevent the financing of terrorists, ADB undertakes to use reasonable efforts, consistent with ADB's Articles of Agreement and policies, including those pertaining to combating the financing for terrorists, to ensure that funds provided under any Agreement are used for their intended purposes and are not diverted to terrorist or their agents. ADB must inform the Donor in a timely manner if, during the course of this Agreement ADB becomes aware that funds provided under this Agreement are being used for the purpose of any payment to persons or entities, or for the import of goods, if such payment or import is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations.
16. ADB will ensure that under projects funded by this Agreement that the participating ADB developing member countries (DMCs):
- (i) will not use the proceeds of the Grant for the purpose of any payment to persons or entities, or for the import of goods, if such payment or import, to the DMCs knowledge or belief, is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, and, if applicable; and
 - (ii) will take necessary measures to ensure that entities to which such DMCs make the Grant funding available will not use the funds for the purpose of any payment to persons or entities, or for the import of goods, if such payment or import, to the DMCs knowledge or belief, is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations.

17. ADB, in consultation with the Donor, may disclose this Agreement and information with respect to it in accordance with ADB's *Public Communication Policy*.
18. The Donor, in consultation with ADB, may disclose this agreement and information with respect to it in accordance with the Donor's policy and legislative obligations.
19. ADB will endeavor to maximize opportunities to highlight the identity of the Donor's contribution to the Project (e.g. through related signage, documentation and public information about the Project, including the use of the Donor's logo). ADB will invite Donor representatives to participate in key events related to the Project. The Donor will be responsible for its own costs with respects to any participation in such events.
20. ADB will ensure that the participating DMCs shall apply an appropriate international labour standard including prohibiting child labor in accordance with applicable international laws and/or conventions.

Consultations, Amendments, Termination and Dispute Settlement

21. The parties may consult with each other on any matter of common interest arising out of this Agreement.
22. Any amendments and/or modifications to this Agreement will be made by mutual consent and in writing in the form of an Exchange of Letters between the Parties.
23. The Donor and ADB shall consult each other, in particular whenever either participant proposes to:
 - (i) modify the Agreement; or
 - (ii) suspend or terminate, in whole or in part, disbursement under this Agreement.
24. ADB will notify and consent with the Donor whenever ADB identifies a major change of scope in relation to any Project financed under the Grant. If any such changes occur which in the opinion of the Donor impairs significantly the developmental value of the Project, the Donor and ADB will consult on measures to resolve the problem and possible courses of action. In the event of such changes, the Donor, however, may decide to modify and/or terminate its financial contribution to the Project.
25. This agreement does not have the status of a treaty and any dispute between ADB and the Donor over its interpretation or application (or both) shall be resolved amicably between the Parties.
26. If at any time either Party determines that the purposes of the Agreement can no longer be effectively or appropriately carried out either party may give notice of termination of this Agreement. Such termination will enter into effect three (3) months after notice has been received, subject to the settlement of any outstanding obligations made prior to the notice being received. In the event of termination by either Party, both Parties will cooperate to ensure that all arrangements made hereunder are settled in a fair and orderly manner.

Contacts

27. Correspondence relating to the implementation of this Agreement will be addressed to the following:

- (a) For The Donor:
Australian Agency for International Development (AusAID)
 Attn. Counsellor, Development Cooperation
 Address info Australian Embassy, No.16B, National Assembly Street, Phnom Penh, Cambodia

Fax No: +855 23 213 466.

Tel. No: +855 23 213 470

- (b) For ADB:
 Asian Development Bank
 P.O.Box 789
 1099 Manila
 Philippines

- (i) General communication and financial matters:

Facsimile Number: (632)636-2456 (Direct)
 (632)636-2444 (Central)

Attention: Head, Office of Co-financing Operations

- (ii) Implementation and technical matters:

Facsimile Number: (632)636-2015 (Direct)

Attention: Director, Transport and Urban Development Division,
 Southeast Asia Regional Department

Grant Account (US\$)

Name of the Bank:	Deutsche Bank Trust Co. Americas
Bank Address:	60 Wall Street New York City, NY 10005 USA
Account name:	ADB Special Account N1
Account Number:	04430016
Type/Currency	USD
SWIFT/BIC:	BKTRUS33
Fedwire No.:	0210-0103-3

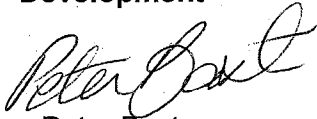
Effectiveness

28. The Agreement shall take effect upon its signature by both Parties, and shall remain in full force and effect until the date on which the Grant shall have been fully disbursed or all projects financed under the Grant shall have been completed to the satisfaction of ADB and the Donor, whichever is the later, or any other date as may be agreed between the Parties.

29. The Parties, acting through their duly authorized representative have signed this Agreement in duplicate as follows:

Signed:


**FOR Australian Agency for International
Development**



Name: Peter Baxter
Title: Director General

Date: 25-5-10

FOR ASIAN DEVELOPMENT BANK:



for
Name: Tadashi Kondo
Title: Head, Office of Cofinancing
Operations

Date: 11 May 2012

ATTACHMENT

Annex A: Report and Recommendation of the President to the Board of Directors.