

SC-108280-CAM

Development of Targeted Credit Guarantee Scheme for Cambodia

Final Report

Prepared for



**The Royal Government of
Cambodia: Ministry of
Economy and Finance**



Asian Development Bank



Prepared by

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Glossary of Terminology

ADB	Asian Development Bank
CRF	Cambodia Rice Federation
FID	General Department of Financial Industry, Ministry of Economy and Finance

MEF	Ministry of Economy and Finance
MOC	Ministry of Commerce
MOJ	Ministry of Justice
NAC	National Accounting Council of Cambodia
NBC	National Bank of Cambodia
PFI	Participating Financial Institutions
RDB	Rural Development Bank of Cambodia
RGC	Royal Government of Cambodia

Special Acknowledgement

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Objective and Rationale

1 Objective of Technical Assistance

1.1 *Background*

1. The Royal Government of the Cambodia (RGC) and the Ministry of Economy and Finance (MEF) are concerned for the Rice Sector, especially the rice farmers, who have suffered in recent years due to (i) adverse weather conditions, (ii) a broken value chain in the Rice Sector, and (iii) low market confidence – all leading to a collapse in rice paddy prices.
2. MEF recognizes that the Rice Sector is a significant contributor to Cambodia’s cultural identity, economic growth, social cohesion, and political stability.
3. Further, MEF understands that (i) the ability of rice farmers and millers to access loans for rice planting, cultivation, and processing would help restore the agricultural value chain and build up market confidence in the Rice Sector; and (ii) building up market confidence is key to bolstering the Rice Sector value chain.
4. Thus, the MEF decided to examine the suitability of a targeted credit guarantee scheme to increase working capital limitations of rice farmers and millers by way of a Rice Partial Credit Guarantee Facility Scheme (RPCGF).
5. In creating this new targeted RPCGF, the MEF seeks to create an accessible and robust scheme that is focused on building up and maintaining market confidence which is contrary to the 2012 RPCGF that had little to no impact because it was too technical and complex to implement.
6. The lessons learned from the previous scheme needed to be addressed and any policy and implementation changes recommended as part of the current TA.

1.2 *Technical Assistance Support from the ADB*

7. The MEF sought and was given urgent TA assistance from the ADB to develop a strategy to implement a targeted credit guarantee scheme to support the development of the Rice Sector in Cambodia. Emergency TA funding was provided by the ADB, but limited to two months in-country assistance.

8. Given its prior success working with key ministries and agencies of the Royal Government of Cambodia, *Guinness Gallagher International Pte. Ltd (Singapore)* was appointed as the TA Consultants.

2 Rationale for Credit Guarantee Scheme

9. Feedback from Rice Farmers, Agricultural Cooperatives and small rural rice millers and other Rice Sector stakeholders have consistently raised the issue of financing as a major constraint on their ability to produce consistent rice paddy. As many local stakeholders do not have working capital to purchase Cambodia's rice paddy for processing locally, a large portion of rice paddy is purchased by neighboring countries, particularly Thailand and Vietnam, and processed there for re-export.
10. The export of unprocessed rice paddy (via predominantly third party intermediaries) to near neighbors for milling:
- Represents a significant **economic loss of value-added** to the Cambodian economy;
 - Adversely **affects industries further down the value chain**, such as rice husks, rice bran and broken rice;
 - **Disadvantages related sub-sectors** such as aquaculture, animal husbandry, and livestock; and
 - Invites **price manipulation** and **market destabilization**, especially as prices may be kept artificially low, given that farmers are financially vulnerable "price takers."
11. For these and other reasons outlined in the previous report from 2012 when the last rice sector credit guarantee scheme was developed, the benefits of a targeted RPCGF remain.
12. Both the old and new RPCGF guarantees loans from commercial banks to agricultural collectives, companies and other rice paddy aggregators as a source of short-term working capital targeted to reduce the amount of rice paddy from flowing out of the country to neighboring Thailand and Vietnam, and therefore, retain more value-added for the Rice Sector in Cambodia.

13. The new targeted RPCGF must be accessible and robust, avoiding (i) complexities in administration, (ii) expensive fee structures, and (iii) unbalanced risk sharing – all the while maintaining the necessary check on the moral hazards of credit guarantees.
14. Understanding the primacy of building local market confidence, the RGC has decided to invest upwards of US\$20 million to create an accessibly robust and targeted RPCGF to build up and sustain market confidence in the Rice Sector through outreach programs, reliable market data, and publicity of the benefits of the scheme.
15. The benefits of the targeted RPCGF will include the increase in value-added to the economy, increase in economic growth, increase in employment opportunities, reduction in the incidence of poverty, stimulation of other related sub-sectors leading to economic diversification, and providing support to the development of SMEs.

2

Activity and Support

3 Activity and Support

3.1 *Work Undertaken*

16. The TA Consultants commenced activity on 7 December 2016 and provided support to the Royal Government of Cambodia, through the MEF up until 15 February 2017. The TA process was extremely intensive given the limited timeframe available.

3.1.1 Review of Previous Credit Guarantee Scheme

17. Initial reviews of all material with regards to the previous credit guarantee scheme was undertaken while a parallel process of data gathering, fact finding and meetings was initiated by the TA Consultants with key stakeholders. The documents reviewed included those attached as Appendices to this report.

3.1.2 Benchmarking against near neighbors

18. An assessment of the existing credit guarantee schemes in the ASEAN region and the targeted credit guarantee scheme in Thailand were undertaken. This included an analysis of the policy supporting the establishment of the schemes and the policy tool options chosen by the various governments.

3.1.3 Stakeholder Engagement

19. The purpose of the stakeholder engagements was two-fold:
- (i) Identify the issues with regards to the previous RPCGF and the reasons for its extremely limited uptake by stakeholders and non-existent impact on the sector; and
 - (ii) Obtain direct feedback across all stakeholders on (a) the **practical requirements**, from their view, of a successful RPCGF, (b) how a scheme could be **implemented to best effect**, (c) how a scheme could help the **restoration of the agricultural value chain** (recognizing it is only a partial solution), and most importantly (iv) how a scheme could **build up market confidence** in the Rice Sector and bolster the Rice Sector value chain.

20. The stakeholder meetings were held across the rice sector to address the issues outlined above and stakeholders engaged, included (a) the Cambodian Rice Federation, (b) individual rice millers: large millers and small millers based in the provinces, (c) individual banks with significant lending exposure to the agriculture and rice sector in particular (ANZ Royal and ACLEDA), (d) the Cambodian Microfinance Association, (e) Green Trade, (f) Rural Development Bank, (g) Ministry of Agriculture, (h) Ministry of Economy and Finance, and (i) the Supreme National Economic Council of Cambodia.
21. In many instances, stakeholders were engaged on more than one occasion as follow-up issues and questions arose.

3.1.4 Development and Design of revised Credit Guarantee Terms

22. Having (a) analyzed the work undertaken by the previous consultant in designing the implementation of the first rice credit guarantee scheme, (b) received the feedback from stakeholders, and (c) analyzed the current situation in the rice sector, the TA Consultants developed a revised term sheet with new policy changes.
23. A stakeholder workshop to introduce and discuss those changes and the revised scheme has been scheduled for 28 February 2017.

3

Findings

4 Findings

4.1 *Importance of Rice Sector*

24. Cambodia is an agrarian society; the importance of the Rice Sector is self-evident. In summary, the Rice Sector:

- Is a significant part of the Small and Medium-sized Enterprises (SME) sector;
- Is a primary contributor to Cambodia's GDP;
- Employs most people living in Cambodia;
- Is an important source of economic growth;
- Contributes greatly to Cambodia's cultural identity, social cohesion, and political stability.

4.2 *Current Challenges in Rice Sector*

25. Many challenges exist for the Cambodian Rice Sector and are not limited to access to finance issues. Cambodia follows an open market system (free market economy) and while Cambodia's two largest industries are textiles and tourism, agricultural activities remain the main source of income for many Cambodians living in rural areas (28.25% of GDP in 2015)¹. Operating an open market system in the highly competitive rice sector is challenging and requires strong policies to ensure that any value-added arising from the rice sector remains and is captured within Cambodia. The challenges to achieving this outcome are outlined below.

26. **Subsidy of rice by other countries:** Rice is a political crop in the region, and as a free market economy, Cambodia cannot compete with its regional neighbors that subsidize the production of rice.

27. **Broken Value Chain:** A myriad of gaps still exist in the "value/supply chain" to bring rice from field to market. Some of these challenges are:

¹ <http://www.tradingeconomics.com/cambodia/agriculture-value-added-percent-of-gdp-wb-data.html>

- Rice production is primarily undertaken by small scale farmers, with little to no education, no ability to dry, transport or store their rice
- As rice production is dependent on small scale farmers, resolving the first link in the value chain requires addressing challenges faced by small scale farmers:
 - **Little to no education:** little to no understanding of economy of scale and market dynamics. Low levels of trust, inability to plan and susceptible to misinformation brought on by anyone able to provide “cash in hand” undermines any system that could stabilize and bring about more predictability to the market.
 - **Cash poor:** living hand to mouth, small scale farmers do not trust anything that that is not “cash in hand,” and rely on selling their green paddy crops to “middlemen and brokers.”
 - **Forced Sellers:** very reliant on selling their green paddy rice crop for cash to buyers who can take it when it is ready – significant “price takers”.
 - **Extremely high-risk borrowers** as have (i) no collateral (apart from their land), (ii) no insurance against risk to crop e.g. adverse weather, (iii) no ability to give confidence to lenders about repayment – and as a result cannot access (a) loans, or if they can, the loans are not (b) affordable or (c) financially sustainable.
- Rice Millers range from very large to small operators:
- Large rice millers generally have no problems accessing finance and have even achieved favorable lending rates, based on cash flow, because:
 - have secured market sales for the rice that they purchase and mill;
 - have professional management and business processes, including ability to produce financial accounts and records that give the lenders comfort to lend
- Smaller rice millers, especially those in the rural provinces have more difficulty in accessing finance, even though they have collateral, because they lack

“proven” professional management and business processes, including an inability to produce financial accounts and records.

28. **Lack of reliable information:** Information gaps remain for rice farmers:

- With lack of information rumors spread and uncertainty means that rice farmers “take what they think they can get”
- Intermediaries take advantage of the lack of information, poor education, lack of trust and urgent need to realize cash.

29. **Market Confidence** is one of the most significant challenges in the rice sector and a number of policy tools and interventions may be required from the Government to restore market confidence and fix the broken value chain.

4.3 Current Responses to Challenges in the Rice Sector

30. The Royal Government of Cambodia and its myriad of government ministries and agencies, with support from international development partners, are seeking to improve the rice sector. Challenges faced by the Rice Sector are neither unique nor isolated, and permeate across the whole sector. These challenges are sector-wide and difficult if not impossible to fix with stop-gap measures. In addition, these challenges, if they are to be overcome, require a long-term commitment to change and a coordinated effort across the many agencies on these initiatives for change.

31. Although only a partial solution, this targeted RPCGF for the rice sector addresses some of the primary issues that cuts across the sector (i) low market confidence, (ii) financially vulnerable farmers, and (iii) limited access to capital of many stakeholders.

32. This has been recognized by the MEF who are presently negotiating with the Chinese Government to build significant and sizeable storage and drying facilities across Cambodia. The details of the negotiations have not been provided to the TA Consultants.

4.4 *Benchmarking against near neighbors and previous Cambodian credit guarantee scheme*

4.4.1 Previous Credit Guarantee Scheme

33. A Credit Guarantee Scheme was developed for the rice sector some years ago, but was not picked up by borrowers or lenders. There has been a number of reasons provided for the previous failure in uptake, including:

- **Scheme Design:** The design of the scheme *according to lenders* made it difficult for the lenders in terms of (i) cost: the cost of the RPCGF was considered high, (ii) security coverage: initial % of default had to be covered by lenders, (iii) payout for default: lenders claimed delay in payout.
- **Collateral and Business Accounting and Process Issues:** many borrowers, especially rice farmers, were still not able to meet minimal lending requirements for the reasons outlined above (education, skills, low economies of scale etc.), even with the RPCGF scheme on offer.

4.4.2 Near neighbor schemes

34. The elements in the schemes run by the near neighbors tended to reflect wider government policy objectives and strategies, especially the “political” nature of the rice sector given its importance to the rural sectors where poverty alleviation was a main priority. Further, those with successful schemes were at a higher level of economic growth and were able to commit significant budget to their schemes both in terms of the guarantee fund size and the government operational support provided to the schemes.

35. However, the key components that were relevant as part of the review in Cambodia and which were incorporated into the proposed model were:

- **Flexibility:** The need for greater flexibility was apparent, with the ability of the government to target the scheme at differing borrowers, at differing periods of times, with flexibility as to when the scheme was offered, to who it was offered and differing offer rates.

- **Simplicity:** Many of the schemes were simple and easy to understand, with clear guidelines for eligibility and responsibilities (borrowers), responsibilities (lenders and scheme guarantor) and a simple process of claim upon default.

4.5 Possible Effectiveness of a New Scheme

36. The TA Consultants have, after consulting with the key stakeholders, developed a revised partial credit guarantee scheme targeting the rice sector (RPCGF) that addresses many of the previous Scheme Design shortcomings outlined above.
37. The new RPCG's effectiveness will depend on its ability to:
 - (i) Target its focus and narrowly tailor its offering to millers seeking to export to China under the proposed joint venture between the RGC and PDRC for drying, warehousing and export of Cambodian rice to China.
 - (ii) Improve accessibility of its loan facility to promote reliable information on price and build up local market confidence.
 - (iii) Outreach programs and other publicity of the benefits of the new targeted RPCGF.

4

Recommendations

38. Based on the TA Consultants' findings, some recommendations around the effective implementation of a targeted RPCGF are made below.

4.6 Design of Revised Credit Guarantee Facility

4.6.1 Objective of revised scheme

39. A revised targeted CGS should be accessible, robust and inviting to borrowers and other stakeholders to build up and sustain **market confidence**.
40. The challenges in the design of the scheme remain unchanged from those considered in 2012, namely:
- Limited amount of guarantee funds (\$20 million) and the need to preserve them;
 - Avoiding a relaxed lending attitude among Participating Financial Institutions (PFI) and indefinite dependence on government intervention for lending;
 - Avoiding complex structures that require a high level of human and financial resources;
 - Making the guarantee instrument marketable and credible.

4.6.2 Proposed policy changes to scheme

41. Accepting the key objective of the revised scheme is to both (a) build market confidence, and (b) provide access to finance to targeted purchasers of rice paddy (small millers, agricultural cooperatives etc.) who are seeking to undertake the value-add component within Cambodia the proposed main policy changes from the previous credit guarantee scheme include:
- Greater risk sharing between the scheme and lenders (up to 50%), while ensuring that the lenders maintain normal commercial review of any loans;
 - Simpler rules around "loan default", including when a loan is considered to be in default and a claim able to be made against the scheme;
 - Lower fee rates for utilization of the scheme.

42. These elements will need to be continuously monitored to ensure that moral hazard issues are minimized.
43. Attached as **Appendix A** is a draft Term Sheet for the proposed targeted Credit Guarantee Scheme, which incorporates these policy recommendations to improve accessibility and thereby contribute towards building up and maintaining market confidence.

4.7 Other Recommendations Concerning the Wider Rice Market

44. While not directly related to the targeted rice credit guarantee, it is apparent from the review undertaken by the TA Consultants that a revised credit guarantee scheme does not address many other difficulties in the value chain and the Royal Government of Cambodia may consider other policy and operational responses to improve the rice sector.

4.7.1 Rice Storage and Drying

45. Given the RGC has determined that it will investigate the establishment of rice storage and drying facilities to encourage rice sector growth and stability, in conjunction with the People's Democratic Republic of China (PDRC), the TA Consultants suggest that other issues should be considered as part of the development and implementation process for these facilities as follows:
- **Need for partial guaranteed sale:** Securing access to the sizeable and lucrative Chinese market is important and such access should not only include access but a **guaranteed sale** of a minimum quantity of rice.
 - Addressing the challenges of Purchase and Storage.
46. The need for partial guaranteed sale, which involves a minimum purchase price being agreed and set and not simply a quota allowance is that a minimum guaranteed sale would: (i) Give additional comfort to lenders to fund Rice Millers (or others) to *purchase and store* rice from farmers, especially as the Rice Millers would be purchasing a crop for which they have no sale – a large risk, and (ii) give comfort to

Rice Millers (or others) to *purchase and store* rice from farmers. [also see issues on collateral below].

47. The other challenges in encouraging millers and other stakeholders to purchase and store rice are:

- **Storage and Drying Price Set:** The price for the storage and drying by the Government-owned Storage and Drying facilities needs to be appropriately set – otherwise such facilities will not be used.
- **Collateral:** The main collateral able to be offered would be against the rice being stored. Two issues arise around collateral:
 - Conflict of Law: There is a conflict of law between the Civil Code, which provides lenders must have a court order to seize goods on default, and the Secured Transaction Law, which provides a party can initiate self-help measures to seize goods on default. The ability of lenders to seize goods on default is an important factor for minimizing risk and making the targeted RPCGF more inviting to lenders, and therefore, clarity on whether the secured transaction law applies must be made clear.
 - Commingling of Assets: the rice milled, stored and used as collateral must always be kept separate to avoid commingling.

4.7.2 Coordinated Rice Marketing and Sale

48. The RGC could consider *temporarily* mandating the establishment of a government sanctioned legal entity to control the purchase and sale of rice in Cambodia.² As noted in the footnote below, this comes with a number of risks as it goes against the concept

² Marketing boards (state-controlled or state-sanctioned entities legally granted control over the purchase or sale of agricultural commodities) flourished in the 20th century in both developed and developing economies. Since the mid-1980s they have declined in number under pressure from domestic liberalization and from international trade rules that increasingly cover agriculture. Where reforms have been widespread and successful, marketing boards have vanished or retreated to providing public goods, such as strategic grain reserves or insurance against extraordinary price fluctuations. Where reforms have been less successful, the weaknesses of private agricultural marketing channels have been revealed by the rollback of marketing boards, often leading to calls for reinstatement of powerful marketing boards.

of a free market economy which drives efficiency etc., but could be in place fully or partially while improvements are made to the underlying rice value chain.

4.7.3 Crop Insurance

49. Investigate ability to provide affordable Crop insurance to farmers. Other countries have provided crop insurance certificates in rice sold to farmers, which encourages farmers to purchase quality rice. Crop Insurance would require the use of the offer of free satellite imagery that the TA Consultant is aware of.

5

Appendices

Kingdom of Cambodia
Nation – Religion – King

Dated this _____ Day of _____

RICE PARTIAL CREDIT GUARANTEE FACILITY AGREEMENT

BETWEEN

MINISTRY OF ECONOMY AND FINANCE
(As Guarantor)

AND

[-] BANK
(As Participating Financial Institution (PFI))

Rice Partial Credit Guarantee Facility Agreement

THIS AGREEMENT ENTERED ON [] 2017 AND EXECUTED

BY AND BETWEEN:

The **MINISTRY OF ECONOMY AND FINANCE** of the Royal Government of Cambodia (MEF), having its registered address at Street 92, Sangkat Wat Phnom, Khan Daun Penh, Phnom Penh, represented by the **Financial Industry Department** of the Ministry of Economy and Finance (referred to as the “**FID**”);

AND

[] **BANK**, a banking institution established under the law of Cambodia having its registered address at [], Phnom Penh, Cambodia and represented by [] (referred to as the “**Participating Financial Institution (PFI)**”).

Each of the parties to this Agreement may be individually referred to as a “Party” or collectively referred to as the “Parties” herein.

Now Therefore, for and in consideration of the mutual promises and benefits herein contained, both parties agree to the terms and be subject to the conditions set forth herein.

RECITALS

- A. Whereas the Ministry of Economy and Finance of the Royal Government of Cambodia (“MEF”) recognizes that the RGC has put in place the national Policy on The Promotion of Paddy Production and Rice Export (“Rice Policy”) that aims to improve both output levels and value retained in rice production in the country and further recognizes that the Rice Sector is a significant contributor to Cambodia’s economic growth, social cohesion, and political stability;
- B. Whereas the MEF is concerned for rice farmers and millers who have suffered in recent years due to adverse weather conditions, broken value chain, and low market confidence;
- C. Whereas MEF understands that the ability of rice farmers and millers to access loans for rice planting, cultivation, and processing would help restore the agricultural value chain and build up market confidence in the Rice Sector;
- D. Whereas building up market confidence is key to bolstering the Rice Sector value chain, the MEF has decided to ease working capital limitations of rice farmers, agricultural cooperatives, and rice paddy collectors and rice millers by way of a Partial Rice Credit Guarantee Facility (RPCG) scheme;
- E. Whereas as part of the Rice Policy, the RGC has decided to ease working capital limitations of rice millers and processors by way of the RPCGF;

- F. Whereas the Royal Government of Cambodia (RGC) has decided to set up a [\$20] million guarantee fund to facilitate commercial banks' lending to the Rice Sector, and has placed said fund in a rice guarantee account at the Rural Development Bank of Cambodia (RDB);
- G. Whereas the MEF has designated the FID to manage the RPCGF scheme as mandated by Sub-decree number [], dated [] month [];
- H. Whereas [] BANK is keen to participate in the RPCGF Scheme and securing a partial credit guarantee facility for its loan portfolio in the Rice Sector;
- I. Whereas both the MEF and the [] BANK desire to implement the RPCGF Scheme.

THE PARTIES, INTENDING TO BE LEGALLY BOUND, HEREBY AGREE AS FOLLOWS:

SECTION 1: DEFINITIONS & INTERPRETATION

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, unless the context otherwise requires, the following words and expressions shall have the following meanings respectively:

"Advance Payment Request"	means the advance payment request in the form of Annex 1;
"Agreement"	means this Rice Partial Credit Guarantee Facility Agreement and all schedules, exhibits and attachments attached hereto, as the same may from time to time be amended, modified, novated, restated, replaced or supplemented;
"Bank or PFI"	means a bank duly registered under the Banking and Financial Law of Cambodia, having granted the Loan, and having the benefit of the Sub-Participation;
"Borrower"	means a Borrower of the Loan Facilities of the PFI;
"Business Day"	means a day (other than a Saturday, Sunday, and other Gazetted Public Holiday).
"Event or Events of Default"	mean any, each or all (as the context may require) of the "Events of Default" in this Agreement.
"Force Majeure"	has the meaning set out in Section [8] of this Agreement;
"Grant Letter"	means the letter by which the FID grants the Sub-Participation to the PFI;

“Law”	means the Constitution of Cambodia and any laws, rules, regulations, directives, guidelines, judgments, awards, decrees or other binding actions or requirements of any government, any department agency of the government, any regulatory authority, any court or arbitral tribunal, or any securities exchange, which is applicable to the specified person or its business or assets, or to which the specified person or its business or assets is subject;
“Loan”	means the loan granted by the PFI to the Borrower, the purpose of which is financing the Borrower;
“Default”	A default is defined as Sub-Standard in line with NBC’s Loan Classification Regulation;
“Parties”	means, collectively, the FID and the PFI and the expression “Party” means any of them as the context dictates;
“Proceeding”	means legal action, proceeding, arbitration, litigation, prosecution, investigation, mediation or other form of dispute resolution process, whether civil, criminal, administrative or otherwise;
“RPCGF scheme”	means the Rice Partial Credit Guarantee Facility scheme;
“Sub-Participation”	means the risk sub-participation granted by the FID to the PFI in relation to the Loan, in accordance with the terms and conditions set out below. The maximum amount of the risk sub-participation is 50% of the Loan;
“US\$” or “USD”	means the lawful currency of the United States of America. Whenever required by Cambodian Law, numbers stated herein as US\$ shall be restated in Cambodian Riel at the official National Bank of Cambodia exchange rate as of the date of the Share Closing, or such other exchange rate as may be agreed by the Parties from time to time.

1.2. Interpretation

The following rules of construction or interpretation apply, unless the context clearly requires otherwise:

- a) Words importing the singular number include the plural number, and vice versa;
- b) Words importing the masculine gender include the feminine gender;
- c) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- d) a reference to “writing” includes an email transmission and any means of reproducing words in a tangible and permanently visible form;
- e) mentioning anything after “include”, “includes” or “including” does not limit what else might be included;
- f) The words “hereof”, “herein”, “hereon” and “hereunder” and words of similar import, when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement;
- g) A reference to a Party to this Agreement or another agreement or document includes the Party’s successors in title, permitted substitutes and assigns (and, where applicable, the Party’s legal personal representative).
- h) A reference to an agreement or document or writing (however labelled or described) includes any amended, modified, novated, restated, replaced or supplemented of the same;
- i) References to laws include re-enactments and amendments thereof and include any subordinate legislation made under any such law;
- j) The headings to the Clauses hereof shall not be deemed to be a part thereof or be taken in consideration in the interpretation or construction thereof or of this Agreement;
- k) References to Recitals, Clauses, Schedules and Appendices shall be taken, read and construed as essential parts of this Agreement, unless otherwise stipulated (as applicable);
- l) A reference to a person includes a corporation, trust, partnership, joint venture, association, unincorporated body or other entity, whether or not it comprises a separate legal entity;
- m) The “assets” of any person shall be constructed as a reference to the whole or any part of its business, undertaking, property, assets and revenue (including any rights to receive revenues);

- n) A “consent” also includes an approval, authorization, exemption, filing, license, order, permission, recording or registration (and references to obtaining consents shall be construed accordingly); and
- o) A “law” includes common or customary law and any constitution, decree, judgment, legislation, order, ordinance, regulation, statute, treaty or other legislative measure (and “lawful” and “unlawful” shall be construed accordingly).

SECTION 2: RICE PARTIAL CREDIT GUARANTEE FACILITY

1. ESTABLISHMENT OF THE RICE PARTIAL CREDIT GUARANTEE FACILITY

1.1. Guarantee Fund Facilities

The Rice Partial Credit Guarantee Facility (RPCGF) shall be for the amount of [Twenty] Million United States Dollars (US\$ [20] million). Such funds were earmarked as part of the 2011 national budget and have been transferred into a “**Rice Guarantee Fund Account**” established at the National Bank of Cambodia (NBC).

1.2. Purpose and conditions of the Sub-Participation

- 1.2.1. The FID has agreed, in accordance with the terms and subject to the characteristics and conditions set out in the general conditions below to take risk Sub-Participation in the Loan up to the sub-participation rate set out below, within the threshold provided in Clause 1.2.3 below.
- 1.2.3. The portfolio limit that will be subject to the Partial Credit Guarantee Facility (RPCGF)’s loss coverage shall be United States Dollars Fifty Million (USD 50 million).

1.3. Type and Purpose of Guarantee Facility

Unless the FID and the PFI mutually agree otherwise, both Parties hereby covenants that the RPCGF shall be utilized for the following purposes:

- 1.3.1. RPCGF’s coverage shall be extended to domestic rice millers and processors;
- 1.3.2. RPCGF’s coverage shall be extended to a portfolio of new term and/or working capital loans.

1.4. Guarantee Fee

- 1.4.1. Both Parties hereby agree that the guarantee fee shall be half percent (0.5%) per annum calculated on the outstanding portfolio balance and shall be paid up front. The fee per day shall be computed at 1/360th of this amount. The Guarantee Fee will be calculated by multiplying number of days in the term of loan by the daily fee rate.

1.5 Effective date and duration of the Sub-Participation

- 1.5.1. The Sub-Participation takes effect on the date of signing of the Grant Letter by the FID (the “Effective Date”).
- 1.5.2. The Sub-Participation shall remain in full force and effect during the period mentioned in the Grant Letter, and in the event of a Sub-Participation call, for as long as any amount remains outstanding under the Loan and/or the Sub-Participation agreement.

2. RIGHTS AND OBLIGATIONS

2.1. Rights and Obligations of the FID

The FID shall be responsible for maintaining the guarantee fund account at NBC for the purpose of implementing the RPCGF scheme. Payment of default shall be promptly made from this account into PFI’s account once acceptable losses are approved.

- 2.1.1. The FID shall be responsible for undertaking the certification of the PFI as mentioned in Clause 2.2.1 below;
- 2.1.2. The FID shall be responsible for monitoring the performance of the PFI’s portfolio;
- 2.1.3. The FID will reserve the right to examine books of a PFI in conjunction with Advance Payment Request;
- 2.1.4. The FID shall set up a secure IT platform whereby access to this platform shall be made only by designated people by both sides.

2.2. Rights and Obligations of PFI

- 2.2.1. For the purpose of applying for certification from the FID, the PFI shall be responsible for the following:
 - a. To submit its financial statements in the same format as to NBC. All the figures must be taken from the PFI’s externally audited statements. Such externally audited figures should be consistent with those which are also approved by the NBC's regulatory process; and
 - b. To submit Sub-Standard Loans up as they are calculated for regulatory purposes.
- 2.2.2. The PFI shall be entirely responsible for making the decision regarding lending and pricing of their loan portfolio.
- 2.2.3. The PFI shall be responsible for informing the FID when a specific loan has been

reclassified substandard. The deadline for reporting of loan classification actions shall be 2 weeks of the end of the month. The PFI shall also send a copy to NBC's supervision department.

- 2.2.4. The PFI shall send loans under the RPCGF covered portfolio through a secure electronic channel as described in Clause 2.1.4.

3. EVENTS OF DEFAULT OF THE BORROWER

- 3.1. The PFI may call the Sub-Participation, if one of the following events has occurred:
- a. the Borrower is insolvent or insolvency proceedings have been started against it, and in particular if (i) a corporate action is taken to declare that the Borrower is in a state of business discontinuation, is unable to pay its debts as they fall due, suspends making payments on any of its debts or begins negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness, (ii) legal proceedings or other procedures or steps are taken against the Borrower in relation to the suspension of its payments or the appointment of a liquidator, receiver, administrator, administrative receiver or ad hoc judicial administration or recognition of the Borrower; or
 - b. payment of the Loan by the Borrower remains outstanding three (3) months after its due date.

4. REMEDIES BY PFI UPON DEFAULT OF BORROWER

In case an Event of Default shall have occurred, the PFI shall be entitled to exercise all of the rights, powers and remedies (whether vested in it by the Loan Agreement, this RPCGF Agreement or by law) for the protection and enforcement of its rights in respect of the Collateral, and the PFI shall have the right to file the Court to issue a judgment in order to sell all or any part of the Property to settle the liabilities, interest, fines and other expenses.

5. APPLICATION OF PROCEEDS

All monies received (and after deduction of all incurred costs including operational costs born to PFI in relation to the Loan) from the sale of any assets of the defaulted Borrower shall, subject to the claims of all secured or unsecured creditors (if any) ranking in priority to the PFI's Security Documents, be deducted from the base of the Sub-Participation or reimbursed to the FID in proportion to the FID's share of risk under the Sub-Participation.

6. PROCEDURES AND CONDITIONS FOR CALL ON THE SUB-PARTICIPATION

- 6.1. In the case of occurrence of an Event of Default, the PFI shall notify the FID of the occurrence of such Event of Default after two (2) weeks of the end of a quarter.

- 6.2. To call on the Sub-Participation, the PFI shall send to the FID an Advance Payment Request together with the following documents:
- a. the Loan agreement;
 - b. any documentary evidence and details of the Event of Default and the date of occurrence; and
 - c. any documentary evidence as to the opening of insolvency proceedings against the Borrower (and the claims filing relating to it or any equivalent document) or as to the insolvency of the Borrower.
- 6.3. Within thirty (30) days of the receipt of the Advance Payment Request, the FID shall pay into PFI's account, by way of an advance payment, fifty percent (50%) of the amount of Sub-Participation determined in accordance with the provision of Clause 1.

7. REPRESENTATIONS AND WARRANTIES OF FID

In consideration of the PFI having agreed to take part in the RPCGF Scheme, the FID hereby represents and warrants to the PFI as follows:

- 7.1. It has the authority to enter into this RPCGF Agreement and to disburse to PFI the amount of loss from the guarantee fund account established at the NBC;
- 7.2. Subject to the subrogation rights to pursue the defaulting borrower on its own, it will promptly pay acceptable losses without requiring the PFI to exhaust the legal debt collection proceedings in the court;
- 7.3. The FID shall not in any way be involved in any of the PFI's loan decision making;
- 7.4. The FID waives any customary fees associated with PCG schemes such as fees for due diligence, facility fees, commitment fees, and management fees; and
- 7.5. It will set up an IT platform to communicate with the PFI electronically and in a secure manner all portfolio data, loan classification actions as well as all other confidential information and it will designate its staff that has authority to access the system and obtain necessary access credentials as well as providing similar access to PFI.

8. REPRESENTATIONS AND WARRANTIES OF PFI

In consideration of the FID having agreed to grant the RPCGF to the PFI, the PFI hereby represents and warrants to the FID as follows:

- a. It is a Commercial Bank registered and licensed in Cambodia and currently in full compliance with Cambodia's laws and regulations for banks and financial institutions;
- b. It has three previous years of audit statements done in accordance with relevant auditing and accounting standards by reputable external auditors;
- c. It has country-wide presence and branch network in major paddy cultivating areas;
- d. It has experience in lending to the rice sector (advantageous).
- e. It is in good standing and has full legal right, authority and power under the Laws of Cambodia to enter into and to bind itself by this RPCGF Agreement and to exercise its rights and perform its obligations hereunder;
- f. It will carry on its business with due diligence and efficiency and in accordance with sound financial and business standards and practices and will furnish to the FID all information which the FID may reasonably request in connection with the RPCGF;

9. TERMINATION

9.1. The grounds for termination shall occur when the following events occur:

- a. If the PFI breaches any of its warranties or any other provisions of this Agreement or if it shall be found that any of the warranties given by it was, when given, or will be, or would be, untrue, inaccurate or misleading or are otherwise not complied with, the FID shall have the right to rescind this Agreement without liability on its part.;
- b. One month after the PFI gave the notice to the FID with the acknowledgement of receipt of the termination of the Sub-Participation agreement.

10. FORCE MAJEURE

- 10.1. Where any force majeure event prevents, renders impossible or hinders or delays the performance of any obligation or the exercise of any right under this Agreement by a Party, then the failure or omission of that Party to perform such obligation shall not be treated as failure or omission to comply with this Agreement. The obligations of each Party shall be suspended during the force majeure period.
- 10.2. Upon the occurrence of any force majeure event, the Party so affected in the discharge of its obligations under this Agreement, shall promptly give written notice of such event to the other party. The affected Party shall use its best efforts to

remedy the situation and the Parties shall meet and consult each other with respect to the appropriate measures to be taken.

10.3. The events falling within the definition of the term “force majeure” are:

- a) war, national emergency, hostilities (whether war is declared or not), invasion, act of foreign enemies, rebellion, revolution, insurrection, military or usurped power, civil war, embargo or acts of terrorism;
- b) fire, natural catastrophe, including but not limited to earthquakes, floods, subsidence, lightning or exceptionally bad weather conditions;
- c) plague or other epidemics;
- d) riot and disorder, strike, lockout, labor unrest or other industrial disturbances;

which can cause or can reasonably be expected to cause a Party to fail to perform its obligations under this Agreement.

10.4. If despite the exercise by a Party of best efforts, the substantial fulfillment by that Party of any of its obligations under this Agreement is prevented, delayed or interfered by the event of force majeure for a period of more than 30 days, then all Parties shall discuss the situation in good faith and decide what counter measure should be taken.

11. CONFIDENTIALITY:

11.1. Each Party agrees:

- a. to keep and cause its directors, employees and representatives to keep strictly secret and confidential and not to use for its own benefit or disclose to any third party, any confidential information acquired from any other Party, save to the extent expressly permitted hereunder; and that notwithstanding anything to the contrary, the covenants and obligations of this Clause shall survive the termination of this Agreement.
- b. Any information described above shall not be deemed confidential if such information is within the public domain or is or becomes publicly known through no wrongful act or default by a Party.

11.2. Nothing herein shall prevent any Party from disclosing any such confidential information:

- a) to its officers, employees, agents, advisers or consultants for purposes of discharging their duties and responsibilities owed to it, provided that it shall

procure that such officers, employees, agents, advisers or consultants will not make any further disclosure;

- b) to the extent required in connection with any legal proceedings amongst one or more of the Parties in relation to this Agreement;
- c) to the extent required in discharging its obligations under this Agreement;
- d) as required pursuant to law or an order of court, or the requirements of any stock exchange, or as otherwise permitted in this Agreement; or
- e) the disclosure of which is agreed to by the Party to whom such confidential information belongs or originate from.

11.3. The restriction does not apply to the disclosure of any such information which is required to be disclosed by law, by a rule of a listing authority or stock exchange to which any party is subject or submits or by a governmental authority or other authority with relevant powers to which any party is subject or submits, whether or not the requirement has the force of law provided that the disclosure shall, so far as is practicable, be made after consultation with the other party and after taking into account the other party's reasonable requirements as to its timing, content and manner of making or dispatch.

12. GENERALITIES

12.1. Governing Law

This Agreement shall be governed by and construed in accordance with the law of the Kingdom of Cambodia.

12.2. Arbitration

12.2.1. In the event of a dispute, controversy, or difference occurring between the Parties hereto relating to the interpretation or implementation of any of the provisions of this Agreement, the Parties shall attempt in good faith to resolve all disputes, controversies, or differences through mutual agreement in accordance with general business customs and practice.

12.2.2. If any dispute, controversy, or difference that may arise between the Parties out of, in relation to, or in connection with this Agreement cannot be resolved by the Parties, then all disputes, controversies, or differences between the Parties shall be resolved at an arbitration institution in Phnom Penh in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce. Awards rendered by such arbitration institution shall be final and binding upon all Parties concerned, and such decision shall be enforceable in any court having jurisdiction. Provided, however, that if an arbitration center has not been created in Cambodia as

of the time when that dispute in connection with this Agreement arises, the relevant court in Cambodia shall have jurisdiction.

12.2.3. All costs and expenses incurred in the arbitration process shall be borne by either Parties or both in such proportion as may be determined in the arbitral award.

12.2.4. The language of the Arbitration shall be English and the place of Arbitration shall be Phnom Penh, Cambodia.

12.3. Notifications

All notices to be made in writing under this Agreement shall be given in the English language by telefax, confirmed by express courier service or e-mail, to the following addresses or such other addresses as the parties may have designated to each other by notice in accordance with this clause:

If to the : **FID/Ministry of Economy and Finance**
Address: Street 92, Sangkat Wat Phnom, Khan Daun Penh, Phnom Penh, Cambodia
Telephone: (855) 023 991 050, (855) 015 536 844
Fax: (855) 023 991 060
Email: FID@mef.gov.kh
Attn: H.E. NGUON Sokha

If to the: **BANK/PFI**
Address:
Phnom Penh, Cambodia
Telephone: (855)
Fax: (855)
Email:
Attn:

12.4. Further Assurances

Each of the parties agrees to perform (or procure the performance of) all such acts and things and/or to execute and deliver (or procure the execution and delivery of) all such documents, as may be required by law or as may be necessary or reasonably requested by another party for giving full effect to this Agreement. Unless otherwise agreed, each party shall be responsible for its own costs and expenses incurred in connection with the provisions of this clause.

12.5. Assignment

Neither this Agreement nor any of the rights or obligations hereunder may be assigned by a party without the prior consent of the other Parties.

12.6. Severability

Any term, condition, stipulation, provision, covenant or undertaking in this instrument which is illegal, void, prohibited or unenforceable shall be ineffective to the extent of such illegality, voidness, prohibition or unenforceability without invalidating the remaining provisions hereof, and any such illegality, voidness, prohibition or unenforceability shall not invalidate or render illegal, void or unenforceable any other term, condition, stipulation, provision, covenant or undertaking herein contained.

12.7. Amendment and Variation

This agreement is irrevocable and no variation of this Agreement shall be effective unless made in writing and signed by both Parties.

12.8. Waiver and Indulgence

12.8.1. No delay or omission by a Party in the exercise of any right, power or remedy provided by law or under this Agreement shall impair such right, power or remedy or operate as a waiver thereof or of any other right, power or remedy.

12.8.2. The single or partial exercise by a Party of any right, power or remedy provided by law or under this Agreement shall not preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

12.9. Entire Agreement

12.9.1. This Agreement constitutes the entire agreement relating to the subject matter of this Agreement and supersedes any previous written or oral agreement between the parties relating to the subject matter of this Agreement. Any prior agreements, oral or written, in conflict with this Agreement shall be null and void.

12.9.2. Nothing in this clause shall have the effect of limiting or restricting any liability arising as a result of any fraud, wilful misconduct or wilful concealment.

12.10. Binding effect

This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective administrators, successors and permitted assigns, as the case may be.

12.11. Copies

This Agreement is prepared in Two (2) copies in English and comes into effect from the date of signing.

12.12. Execution and Counterparts:

This Agreement may be entered into in any number of counterparts, all of which taken together shall constitute one and the same instrument.

Upon all Parties execution of this document, the Agreement will become effective and have as its effective date the date and year first above written.

12.12. Indemnification of Staff:

No suit or other legal proceedings shall lie against any staff member, officer or employee of the FID or MEF or any other person acting under the direction of the FID or MEF for anything which has been done in good faith or intended to be done in the execution or purported execution of this Agreement.

IN WITNESS WHEREOF, the Parties have read and understood the meaning of this Agreement on the date first written above.

*For and on behalf of
The FID/Ministry of Economy and
Finance*

*For and on behalf of
PFI*

Authorized Signature

Authorized Signature

Witness: