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LOAN NUMBER 3397-BAN

LOAN AGREEMENT  
(Ordinary Operations)

(Dhaka Water Supply Network Improvement Project)

between

PEOPLE'S REPUBLIC OF BANGLADESH

and

ASIAN DEVELOPMENT BANK

DATED 17 JULY 2016

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BAN 47254

**LOAN AGREEMENT  
(Ordinary Operations)**

LOAN AGREEMENT dated 17 July 2016 between the PEOPLE'S REPUBLIC OF BANGLADESH ("Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) the Borrower has applied to ADB for a loan for the purposes of the Project described in Schedule 1 to this Loan Agreement;

(B) the Project will be carried out by the Dhaka Water Supply and Sewerage Authority ("DWASA"), and for this purpose the Borrower will make available to DWASA the proceeds of the loan provided for herein upon terms and conditions satisfactory to ADB; and

(C) ADB has agreed to make a loan to the Borrower from ADB's ordinary capital resources upon the terms and conditions set forth herein and in the Project Agreement of even date herewith between ADB and DWASA;

NOW THEREFORE the parties hereto agree as follows:

**ARTICLE I**

**Loan Regulations; Definitions**

Section 1.01. All the provisions of the Ordinary Operations Loan Regulations Applicable to LIBOR-Based Loans Made from ADB's Ordinary Capital Resources, dated 1 July 2001 ("Loan Regulations"), are hereby made applicable to this Loan Agreement with the same force and effect as if they were fully set forth herein, subject, however, to the following modifications:

(a) Section 3.03 is deleted and the following is substituted therefor:

**Commitment Charge; Credit; Maturity Premium.**

(a) The Borrower shall pay a commitment charge on the unwithdrawn amount of the Loan at the rate and on the terms specified in the Loan Agreement.

(b) ADB shall provide to the Borrower a credit at the rate specified in the Loan Agreement, which credit shall remain fixed for the term of the Loan. ADB shall apply the credit against the interest payable by the Borrower.

(c) The Borrower shall pay a maturity premium at the rate specified in the Loan Agreement, which maturity premium shall remain fixed for the term of the Loan. ADB

shall add the maturity premium to the interest payable by the Borrower.

- (b) Section 3.06 is deleted and the following is substituted therefor:

**Rebate.** (a) Following any announcement by ADB that the Fixed Spread applicable to new Loans shall be reduced, ADB shall provide a Rebate to any Borrower with an outstanding Loan on which a higher Fixed Spread is applicable. The amount of the Rebate shall be determined by multiplying (i) the difference between the Fixed Spread applicable to the outstanding Loan and the Fixed Spread that will be applied to new Loans (expressed as a percentage per annum), by (ii) the principal amount of the outstanding Loan on which the Borrower shall pay interest for all interest periods commencing on and after the effective date of the lower Fixed Spread that will be applied to new Loans.

(b) Following any announcement by ADB that its Funding Cost Margin calculations with respect to any Loan Currency (or Approved Currency) in any Semester resulted in ADB achieving savings, ADB shall provide a Rebate to the Borrower. The amount of the Rebate shall be determined by multiplying (i) the Funding Cost Margin (expressed as a percentage per annum) by (ii) the principal amount of the Loan on which the Borrower shall pay interest for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated. ADB shall apply the amount of the Rebate against the interest payable by the Borrower for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated.

- (c) Section 3.07 is deleted and the following is substituted therefor:

**Surcharge.** (a) Following any announcement by ADB that the Fixed Spread applicable to new Loans shall be increased, any Borrower with an outstanding Loan on which a lower Fixed Spread is applicable shall pay ADB a Surcharge. The amount of the Surcharge shall be determined by multiplying (i) the difference between the Fixed Spread that will be applied to new Loans and the Fixed Spread applicable to the outstanding Loan (expressed as a percentage per annum), by (ii) the principal amount of the outstanding Loan on which the Borrower shall pay interest for all interest periods commencing on and after the effective date of the higher Fixed Spread that will be applied to new Loans.

(b) Following any announcement by ADB that its Funding Cost Margin calculations with respect to any Loan Currency (or Approved Currency) in any Semester resulted in

ADB incurring additional costs, the Borrower shall pay ADB a Surcharge. The amount of the Surcharge shall be determined by multiplying (i) the Funding Cost Margin (expressed as a percentage per annum) by (ii) the principal amount of the Loan on which the Borrower shall pay interest for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated. ADB shall add the amount of the Surcharge to the interest payable by the Borrower for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated.

Section 1.02. Wherever used in this Loan Agreement, the several terms defined in the Loan Regulations have the respective meanings therein set forth unless modified herein or the context otherwise requires. Additional terms used in this Loan Agreement have the following meanings:

(a) "Additional Financing" means the additional financing to Loan 2382-BAN(SF);

(b) "Consulting Guidelines" means the Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers (2013, as amended from time to time);

(c) "Consulting Services" means the services to be financed out of the proceeds of the Loan as described in paragraph 3 of Schedule 1 to this Loan Agreement;

(d) "DMAs" means district metered areas;

(e) "Environmental Management Plan" or "EMP" means an environmental management plan for a Subproject, including any update thereto, incorporated in the IEE;

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

(g) "FY" means fiscal year of the Borrower commencing on 1 July and ending on 30 June of the following year;

(h) "Gender Action Plan" or "GAP" means the gender action plan prepared for the Project in consultation with the Borrower and approved by ADB;

(i) "Goods" means equipment and materials to be financed out of the proceeds of the Loan, including related services such as transportation, insurance, installation, commissioning, training, and initial maintenance, but excluding Consulting Services;

(j) "Initial Environmental Examination" or "IEE" means an initial environmental examination for the Project, including any update thereto, prepared and submitted by the Borrower and cleared by ADB;

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

(l) "Loan Disbursement Handbook" means ADB's Loan Disbursement Handbook (2015, as amended from time to time);

(m) "PAM" means the project administration manual for the Project dated April 2016 and agreed between the Borrower, DWASA and ADB, as updated from time to time in accordance with the respective administrative procedures of the Borrower and ADB;

(n) "Procurement Guidelines" means ADB's Procurement Guidelines (2015, as amended from time to time);

(o) "Procurement Plan" means the procurement plan for the Project dated April 2016 and agreed between the Borrower and ADB, as updated from time to time in accordance with the Procurement Guidelines, the Consulting Guidelines, and other arrangements agreed with ADB;

(p) "Resettlement Plan" or "RP" means a resettlement plan for the Project, including any update thereto, prepared and submitted by the Borrower and cleared by ADB;

(q) "Safeguard Policy Statement" or "SPS" means ADB's Safeguard Policy Statement (2009);

(r) "Safeguards Monitoring Report" means each report prepared and submitted by the Borrower to ADB that describes progress within implementation of and compliance with the EMP and the RP, including any corrective and preventive measures;

(s) "Subsidiary Loan Agreement" means an agreement between the Borrower and DWASA referred to in Section 3.01(a) of this Loan agreement; and

(t) "Works" means construction or civil works to be financed out of the proceeds of the Loan, including services such as drilling or mapping, and project related services that are provided as part of a single responsibility or turnkey contract, but excluding Consulting Services.

## ARTICLE II

### The Loan

Section 2.01. (a) ADB agrees to lend to the Borrower from ADB's ordinary capital resources an amount of two hundred seventy five million Dollars (\$275,000,000), as such amount may be converted from time to time through a Currency Conversion in accordance with the provisions of Section 2.06 of this Loan Agreement.

(b) The Loan has a principal repayment period of 20 years, and a grace period as defined in subsection (c) hereinafter.

(c) The term "grace period" as used in subsection (b) hereinabove means the period prior to the first Principal Payment Date in accordance with the amortization schedule set forth in Schedule 2 to this Loan Agreement.

Section 2.02. The Borrower shall pay to ADB interest on the principal amount of the Loan withdrawn and outstanding from time to time at a rate for each Interest Period equal to the sum of:

- (a) LIBOR;
- (b) 0.60% as provided by Section 3.02 of the Loan Regulations less a credit of 0.10% as provided by Section 3.03 of the Loan Regulations; and
- (c) a maturity premium of 0.10% as provided by Section 3.03 of the Loan Regulations.

Section 2.03. The Borrower shall pay a commitment charge of 0.15% per annum. Such charge shall accrue on the full amount of the Loan (less amounts withdrawn from time to time), commencing 60 days after the date of this Loan Agreement.

Section 2.04. Interest and other charges on the Loan shall be payable semiannually on 15 June and 15 December in each year.

Section 2.05. The Borrower shall repay the principal amount of the Loan withdrawn from the Loan Account in accordance with the provisions of Schedule 2 to this Loan Agreement.

Section 2.06. (a) The Borrower may at any time request any of the following Conversions of the terms of the Loan in order to facilitate prudent debt management:

- (i) a change of the Loan Currency of all or any portion of the principal amount of the Loan, whether withdrawn and outstanding or unwithdrawn, to an Approved Currency;
- (ii) a change of the interest rate basis applicable to all or any portion of the principal amount of the Loan withdrawn and outstanding from a Floating Rate to a Fixed Rate, or vice versa; and
- (iii) the setting of limits on the Floating Rate applicable to all or any portion of the principal amount of the Loan withdrawn and outstanding by the establishment of an Interest Rate Cap or Interest Rate Collar on said Floating Rate.

(b) Any conversion requested pursuant to subsection (a) hereinabove that is accepted by ADB shall be considered a "Conversion", as defined in Section 2.01(6) of the Loan Regulations, and shall be effected in accordance with the provisions of Article V of the Loan Regulations and the Conversion Guidelines.

### ARTICLE III

#### Use of Proceeds of the Loan

Section 3.01. (a) The Borrower shall relend the proceeds of the Loan together with other funds required for the Project to DWASA under a Subsidiary Loan Agreement upon terms and conditions satisfactory to ADB.

(b) The Borrower shall cause the proceeds of the Loan to be applied to the financing of expenditures on the Project in accordance with the provisions of this Loan Agreement and the Project Agreement.

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

Section 3.03. Except as ADB may otherwise agree, the Borrower shall procure, or cause to be procured, the items of expenditure to be financed out of the proceeds of the Loan in accordance with the provisions of Schedule 4 to this Loan Agreement. ADB may refuse to finance a contract where any such item has not been procured under procedures substantially in accordance with those agreed between the Borrower and ADB or where the terms and conditions of the contract are not satisfactory to ADB.

Section 3.04. Except as ADB may otherwise agree, the Borrower shall cause all items of expenditure financed out of the proceeds of the Loan to be used exclusively in the carrying out of the Project.

Section 3.05. The Loan Closing Date for the purposes of Section 9.02 of the Loan Regulations shall be 31 December 2021 or such other date as may from time to time be agreed between the Borrower and ADB.

### ARTICLE IV

#### Particular Covenants

Section 4.01. (a) The Borrower shall cause the Project to be carried out with due diligence and efficiency and in conformity with sound applicable technical, financial, business, and development practices.

(b) In the carrying out of the Project and operation of the Project facilities, the Borrower shall perform, or cause to be performed, all obligations set forth in Schedule 5 to this Loan Agreement and the Project Agreement.

Section 4.02. The Borrower shall make available, or cause to be made available, promptly as needed, the funds, facilities, services, as required, in addition to the proceeds of the Loan, for the carrying out of the Project.

Section 4.03. The Borrower shall enable ADB's representatives to inspect the Project, the Goods and Works, and any relevant records and documents.

Section 4.04. The Borrower shall take all actions which shall be necessary on its part to enable DWASA to perform its obligations under the Project Agreement, and shall not take or permit any action which would interfere with the performance of such obligations.

Section 4.05. (a) The Borrower shall exercise its rights under the Subsidiary Loan Agreement in such a manner as to protect the interests of the Borrower and ADB and to accomplish the purposes of the Loan.

(b) No rights or obligations under the Subsidiary Loan Agreement shall be assigned, amended, abrogated or waived without the prior concurrence of ADB.

## **ARTICLE V**

### **Effectiveness**

Section 5.01. The following is specified as an additional condition to the effectiveness of this Loan Agreement for the purposes of Section 10.01(f) of the Loan Regulations: the Subsidiary Loan Agreement, in form and substance satisfactory to ADB, shall have been duly executed and delivered and shall have become legally binding upon the Borrower and DWASA in accordance with its terms.

Section 5.02. The following is specified as an additional matter, for the purposes of Section 10.02(d) of the Loan Regulations, to be included in the opinion or opinions to be furnished to ADB: that the Subsidiary Loan Agreement has been duly authorized by, and executed and delivered and is legally binding upon the Borrower and DWASA in accordance with its terms, subject only to the effectiveness of this Loan Agreement.

Section 5.03. A date 90 days after the date of this Loan Agreement is specified for the effectiveness of this Loan Agreement for the purposes of Section 10.04 of the Loan Regulations.

## **ARTICLE VI**

### **Miscellaneous**

Section 6.01. The Senior Secretary or Secretary or any Additional Secretary, Joint Secretary or Joint Chief, Deputy Secretary or Deputy Chief, Senior Assistant Secretary or Senior Assistant Chief, Assistant Secretary or Assistant Chief of the Economic Relations Division of the Borrower's Ministry of Finance is designated as representative of the Borrower for the purposes of Section 12.02 of the Loan Regulations.



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

For the Borrower

Economic Relations Division  
Ministry of Finance  
Government of the People's Republic of Bangladesh  
Sher-e-Bangla Nagar  
Dhaka 1207, Bangladesh

Facsimile Number:

+ 880 2 918 0788

For ADB

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

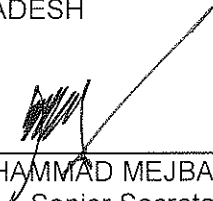
Facsimile Numbers:

(632) 636-2444  
(632) 636-2293.

IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Loan Agreement to be signed in their respective names as of the day and year first above written and to be delivered at the principal office of ADB.

PEOPLE'S REPUBLIC OF  
BANGLADESH

By

  
\_\_\_\_\_  
MOHAMMAD MEJBAHUDDIN  
Senior Secretary  
Economic Relations Division  
Ministry of Finance

ASIAN DEVELOPMENT BANK

By

  
\_\_\_\_\_  
KAZUHIKO HIGUCHI  
Country Director  
Bangladesh Resident Mission

**SCHEDULE 1****Description of the Project**

1. The objective of the Project is provision of more sustainable, reliable and climate-resilient water supply in Dhaka.
2. The Project shall comprise:
  - (a) strengthening of distribution network, including (i) new DMAs in seven zones not financed under Loans 2382-BAN(SF) and 3051-BAN(SF), and (ii) additional financing to complete civil work contracts of DMAs under Loan 2382-BAN(SF);
  - (b) enhancement of sustainable DMA management capacity of DWASA, including the assistance for DWASA to (i) prepare and implement a sustainable non revenue water reduction plan, (ii) strengthen monitoring capacity at the zone level, and (iii) enhance in-house design capacity for sustainable DMA management; and
  - (c) enhancement of DWASA's capacity for quality service delivery, including (i) prepare and implement operational and financial improvement plan, (ii) enhance its capacity for planning, design, construction supervision and project management, (iii) prepare and implement a public awareness program, (iv) enhance quality of service delivery to low-income communities, (v) prepare and implement a water quality monitoring system, (vi) implement a gender action plan, and (vii) enhance project readiness of future investment.
3. Consulting Services shall be provided to support the above activities.
4. The Project is expected to be completed by 30 June 2021.

**SCHEDULE 2**

**Amortization Schedule**

**(Dhaka Water Supply Network Improvement Project)**

1. The following table sets forth the Principal Payment Dates of the Loan and the percentage of the total principal amount of the Loan payable on each Principal Payment Date (Installment Share). If the proceeds of the Loan shall have been fully withdrawn as of the first Principal Payment Date, the principal amount of the Loan repayable by the Borrower on each Principal Payment Date shall be determined by ADB by multiplying: (a) the total principal amount of the Loan withdrawn and outstanding as of the first Principal Payment Date; by (b) the Installment Share for each Principal Payment Date, such repayment amount to be adjusted, as necessary, to deduct any amounts referred to in paragraph 4 of this Schedule, to which a Currency Conversion applies.

<u>Payment Due</u>	<u>Installment Share</u> (Expressed as a %)
15 December 2021	2.500000
15 June 2022	2.500000
15 December 2022	2.500000
15 June 2023	2.500000
15 December 2023	2.500000
15 June 2024	2.500000
15 December 2024	2.500000
15 June 2025	2.500000
15 December 2025	2.500000
15 June 2026	2.500000
15 December 2026	2.500000
15 June 2027	2.500000
15 December 2027	2.500000
15 June 2028	2.500000
15 December 2028	2.500000
15 June 2029	2.500000
15 December 2029	2.500000
15 June 2030	2.500000
15 December 2030	2.500000
15 June 2031	2.500000
15 December 2031	2.500000
15 June 2032	2.500000
15 December 2032	2.500000
15 June 2033	2.500000
15 December 2033	2.500000
15 June 2034	2.500000
15 December 2034	2.500000
15 June 2035	2.500000
15 December 2035	2.500000
15 June 2036	2.500000
15 December 2036	2.500000

<u>Payment Due</u>	<u>Installment Share</u> (Expressed as a %)
15 June 2037	2.500000
15 December 2037	2.500000
15 June 2038	2.500000
15 December 2038	2.500000
15 June 2039	2.500000
15 December 2039	2.500000
15 June 2040	2.500000
15 December 2040	2.500000
15 June 2041	<u>2.500000</u>
<b>TOTAL</b>	<b>100.000000</b>

2. If the proceeds of the Loan shall not have been fully withdrawn as of the first Principal Payment Date, the principal amount of the Loan repayable by the Borrower on each Principal Payment Date shall be determined as follows:

(a) To the extent that any proceeds of the Loan shall have been withdrawn as of the first Principal Payment Date, the Borrower shall repay the amount withdrawn and outstanding as of such date in accordance with paragraph 1 of this Schedule.

(b) Any withdrawal made after the first Principal Payment Date shall be repaid on each Principal Payment Date falling after the date of such withdrawal in amounts determined by ADB by multiplying the amount of each such withdrawal by a fraction, the numerator of which shall be the original Installment Share specified in the table in paragraph 1 of this Schedule for said Principal Payment Date (the Original Installment Share) and the denominator of which shall be the sum of all remaining Original Installment Shares for Principal Payment Dates falling on or after such date, such repayment amounts to be adjusted, as necessary, to deduct any amounts referred to in paragraph 4 of this Schedule, to which a Currency Conversion applies.

3. Withdrawals made within two calendar months prior to any Principal Payment Date shall, for the purposes solely of calculating the principal amounts payable on any Principal Payment Date, be treated as withdrawn and outstanding on the second Principal Payment Date following the date of withdrawal and shall be repayable on each Principal Payment Date commencing with the second Principal Payment Date following the date of withdrawal.

4. Notwithstanding the provisions of paragraphs 1 and 2 of this Schedule, upon a Currency Conversion of all or any portion of the withdrawn principal amount of the Loan to an Approved Currency, the amount so converted in said Approved Currency that shall be repayable on any Principal Payment Date occurring during the Conversion Period, shall be determined by ADB by multiplying such amount in its currency of denomination immediately prior to said Conversion by either: (i) the exchange rate that reflects the amounts of principal in said Approved Currency payable by ADB under the Currency Hedge Transaction relating to said Conversion; or (ii) if ADB so determines in accordance with the Conversion Guidelines, the exchange rate component of the Screen Rate.

5. If the principal amount of the Loan withdrawn and outstanding from time to time shall be denominated in more than one Loan Currency, the provisions of this Schedule shall apply separately to the amount denominated in each Loan Currency, so as to produce a separate amortization schedule for each such amount.

**SCHEDULE 3****Allocation and Withdrawal of Loan Proceeds**General

1. The table attached to this Schedule sets forth the Categories of items of expenditure to be financed out of the proceeds of the Loan and the allocation of the Loan proceeds to each such Category ("Table"). (Reference to "Category" in this Schedule is to a Category or Subcategory of the Table).

Basis for Withdrawal from the Loan Account

2. Except as ADB may otherwise agree, the proceeds of the Loan shall be disbursed on the basis of the withdrawal percentage for each item of expenditure set forth in the Table.

Interest and Commitment Charges

3. The amount allocated to Category 5 is for financing interest and commitment charges on the Loan during the implementation period of the Project. ADB shall be entitled to withdraw from the Loan Account and pay to itself, on behalf of the Borrower, the amounts required to meet payments, when due, of such interest and commitment charges.

Reallocation

4. Notwithstanding the allocation of Loan proceeds and the withdrawal percentages set forth in the Table,

- (a) if the amount of the Loan allocated to any Category appears to be insufficient to finance all agreed expenditures in that Category, ADB may, by notice to the Borrower, (i) reallocate to such Category, to the extent required to meet the estimated shortfall, amounts of the Loan which have been allocated to another Category but, in the opinion of ADB, are not needed to meet other expenditures, and (ii) if such reallocation cannot fully meet the estimated shortfall, reduce the withdrawal percentage applicable to such expenditures in order that further withdrawals under such Category may continue until all expenditures thereunder shall have been made; and
- (b) if the amount of the Loan allocated to any Category appears to exceed all agreed expenditures in that Category, ADB may, by notice to the Borrower, reallocate such excess amount to any other Category.

Disbursement Procedures

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

Retroactive Financing

6. Withdrawals from the Loan Account may be made for eligible expenditures incurred under the Project before the Effective Date, but not earlier than 12 months before the date of this Loan Agreement in connection with civil works (including those under Loan 2382-BAN(SF)), project management and capacity development, subject to a maximum amount equivalent to 20% of the Loan amount.

Condition for Withdrawals from Loan Account

7. Notwithstanding any other provision of this Loan Agreement, no withdrawals shall be made from the Loan Account for Additional Financing until all the loan resources under Loan 2382-BAN(SF) have been exhausted, except when the balance under Loan 2382-BAN(SF) is insufficient for any expenditure for which the Borrower claims disbursement.



TABLE

ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (Dhaka Water Supply Network Improvement Project)				
Number	Item	Total Amount Allocated for ADB Financing (\$)		Percentage and Basis for Withdrawal from the Loan Account
		Category	Subcategory	
1	Civil works	180,260,000		
1A	New DMAs		143,366,000	74.5% of total expenditure claimed
1B	Additional Financing*		36,894,000	84.0% of total expenditure claimed
2	Equipment	15,347,000		95.0% of total expenditure claimed
3	Project Management and Capacity Development	17,183,000		75.0% of total expenditure claimed
4	Incremental Administrative Costs	6,134,000		97.6% of total expenditure claimed
5	Interest and Commitment Charges	15,254,000		100% of amounts due
6	Unallocated	40,822,000		
	<b>Total</b>	<b>275,000,000</b>		

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

**SCHEDULE 4****Procurement of Goods, Works and Consulting Services**General

1. The procurement of Goods, Works and Consulting Services shall be subject to and governed by the Procurement Guidelines, and the Consulting Guidelines, respectively.
2. All terms used in this Schedule and not otherwise defined in this Loan Agreement have the meanings provided in the Procurement Guidelines and/or the Consulting Guidelines, as applicable.

Goods and Works

3. Except as ADB may otherwise agree, Goods and Works shall only be procured on the basis of the methods of procurement set forth below:
  - (a) International Competitive Bidding;
  - (b) National Competitive Bidding; and
  - (c) Shopping.
4. The methods of procurement are subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. The Borrower may only modify the methods of procurement or threshold values with the prior agreement of ADB, and modifications must be set out in updates to the Procurement Plan.

Domestic Preference

5. DWASA may grant a margin of preference in the evaluation of bids under international competitive bidding in accordance with paragraphs 2.55(a) and 2.56 of the Procurement Guidelines for domestically manufactured Goods.

National Competitive Bidding

6. DWASA and ADB shall ensure that, prior to the commencement of any procurement activity under national competitive bidding, DWASA's national competitive bidding procedures are consistent with the Procurement Guidelines. Any modifications or clarifications to such procedures agreed between the Borrower and ADB shall be set out in the Procurement Plan. Any subsequent change to the agreed modifications and clarifications shall become effective only after approval of such change by the Borrower and ADB.

Conditions for Issuance of Notice to Commence Works

7. DWASA shall not issue a notice to commence Works under:
  - (a) any Works contracts which involves environmental impacts until: (i) the Borrower's Department of Environment has granted the approval of the IEE (including approval of separate environmental impact assessment required to be prepared under Bangladesh law); and (ii) DWASA has

incorporated the relevant provisions from the EMP into the Works contract; and

- (b) any Works contracts which involves involuntary resettlement impacts, until DWASA has prepared and submitted to ADB the final RP based on the Project's detailed design, and obtained ADB's clearance of such RP.

#### Consulting Services

8. Except as ADB may otherwise agree, DWASA shall apply quality- and cost-based selection for selecting and engaging Consulting Services.

#### Industrial or Intellectual Property Rights

9. (a) DWASA shall ensure that all Goods and Works procured (including without limitation all computer hardware, software and systems, whether separately procured or incorporated within other goods and services procured) do not violate or infringe any industrial property or intellectual property right or claim of any third party.

(b) DWASA shall ensure that all contracts for the procurement of Goods and Works contain appropriate representations, warranties and, if appropriate, indemnities from the contractor or supplier with respect to the matters referred to in subparagraph (a) of this paragraph.

10. DWASA shall ensure that all ADB-financed contracts with consultants contain appropriate representations, warranties and, if appropriate, indemnities from the consultants to ensure that the Consulting Services provided do not violate or infringe any industrial property or intellectual property right or claim of any third party.

#### ADB's Review of Procurement Decisions

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

## SCHEDULE 5

### Execution of Project

#### Implementation Arrangements

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

2. The Borrower shall promptly notify ADB of any proposal to amend, suspend or repeal any provision of the Water Supply & Sewerage Authority Act 1996, which, if implemented, could adversely affect the carrying out of the Project or the operation of the Project facilities. The Borrower shall afford ADB an adequate opportunity to comment on such proposal prior to taking any affirmative action thereon.

#### Additional Financing

3. The Borrower shall continue to comply with the obligations under paragraphs 6, 10, 11, 12, 15 and 16 (second sentence) of Schedule 5 to the loan agreement for Loan 2382-BAN(SF).

#### Financial Sustainability

4. The Borrower shall ensure that DWASA meets the following financial indicators for maintaining its financial sustainability through necessary tariff adjustments or other means, as necessary, to allow DWASA to have sufficient funds for its debt service obligations and O&M costs and to move towards full cost recovery:

- (a) its debt service coverage ratio (its free cash flows from operations divided by its total debt service obligations) shall be more than 1.0 from FY2017 to FY2019, and more than 1.2 from FY2020 onwards; and
- (b) its operating ratio (its operating expenses divided by its total revenue) shall be less than 100% from FY2017 to FY2019, and less than 85% from FY2020 onwards.

#### Environment

5. The Borrower shall ensure, or cause DWASA to ensure, that the preparation, design, construction, implementation, operation and decommissioning of the Project and all Project facilities comply with (a) all applicable laws and regulations of the Borrower relating to environment, health and safety; (b) the Environmental Safeguards; and (c) all measures and requirements set forth in the IEE, the EMP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

Land Acquisition and Involuntary Resettlement

6. The Borrower shall ensure, or cause DWASA to ensure, that:
- (a) all land and all rights-of-way required for the Project are made available to the Works contractor in accordance with the schedule agreed under the related Works contract and all land acquisition and resettlement activities are implemented in compliance with (i) all applicable laws and regulations of the Borrower relating to land acquisition and involuntary resettlement; (ii) the Involuntary Resettlement Safeguards; and (iii) all measures and requirements set forth in the RP, and any corrective or preventative actions set forth in the Safeguards Monitoring Report; and
  - (b) no Works involving involuntary resettlement impacts are commenced until ADB has cleared the final RP of each package.
7. Without limiting the application of the Involuntary Resettlement Safeguards or the RP, the Borrower shall ensure, or cause DWASA to ensure, that no physical or economic displacement takes place in connection with the Project until:
- (a) compensation and other entitlements have been provided to affected people in accordance with the RP; and
  - (b) a comprehensive income and livelihood restoration program has been established in accordance with the RP.

Indigenous Peoples

8. The Borrower and DWASA shall ensure that the Project does not involve any indigenous peoples risks or impacts within the meaning of the SPS. If due to unforeseen circumstances, the Project involves any such impacts, the Borrower and DWASA shall take all steps necessary or desirable to ensure that the Project complies with all applicable laws and regulations of the Borrower and with the SPS.

Human and Financial Resources to Implement Safeguards Requirements

9. The Borrower shall make available, or cause DWASA to make available, necessary budgetary and human resources to fully implement the EMP and the RP.

Safeguards – Related Provisions in Bidding Documents and Works Contracts

10. The Borrower shall ensure, or cause DWASA to ensure, that all bidding documents and contracts for Works contain provisions that require contractors to:
- (a) comply with the measures relevant to the contractor set forth in the IEE, the EMP, and the final RP (to the extent they concern impacts on affected people during construction), and any corrective or preventative actions set forth in a Safeguards Monitoring Report;

- (b) make available a budget for all such environmental and social measures;
- (c) provide the Borrower with a written notice of any unanticipated environmental, resettlement or indigenous peoples risks or impacts that arise during construction, implementation or operation of the Project that were not considered in the IEE, the EMP, and the RP;
- (d) adequately record the condition of roads, agricultural land and other infrastructure prior to starting to transport materials and construction; and
- (e) reinstate pathways, other local infrastructure, and agricultural land to at least their pre-project condition upon the completion of construction.

#### Safeguards Monitoring and Reporting

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

#### Prohibited List of Investments

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

#### Labor Standards, Health and Safety

13. The Borrower shall ensure that the core labor standards and the Borrower's applicable laws and regulations are complied with during Project implementation. The Borrower shall include specific provisions in the bidding documents and contracts financed by ADB under the Project requiring that the contractors, among other things: (a) comply with the Borrower's applicable labor law and regulations and incorporate applicable workplace occupational safety norms; (b) do not use child labor; (c) do not discriminate workers in respect of employment and occupation; (d) do not use forced labor; (e) allow freedom of association and effectively recognize the right to collective bargaining; and (f) disseminate, or engage appropriate service providers to disseminate, information on the risks of sexually

transmitted diseases, including HIV/AIDS, to the employees of contractors engaged under the Project and to members of the local communities surrounding the Project area, particularly women. The Borrower shall strictly monitor compliance with the requirements set forth above and provide ADB with regular reports.

#### Gender and Development

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

#### Counterpart Support

15. The Borrower shall make available through budgetary allocations or other means all counterpart funds required for timely and effective implementation of the Project, including funds to mitigate unforeseen environmental and social impacts, and to meet additional costs arising from design changes, price escalation in construction or installation costs or other unforeseen circumstances. In addition to the foregoing, the Borrower shall ensure that DWASA has sufficient funds to satisfy its liabilities arising from any Works, Goods and/or Consulting Services contract.

#### Governance and Anticorruption

16. The Borrower shall, and shall ensure that DWASA shall, (a) comply with ADB's Anticorruption Policy (1998, as amended to date) and acknowledge that ADB reserves the right to investigate directly, or through its agents, any alleged corrupt, fraudulent, collusive or coercive practice relating to the Project; and (b) cooperate with any such investigation and extend all necessary assistance for satisfactory completion of such investigation.

17. The Borrower shall, and shall ensure that DWASA shall, ensure that the anticorruption provisions acceptable to ADB are included in all bidding documents and contracts, including provisions specifying the right of ADB to audit and examine the records and accounts of the executing and implementing agencies and all contractors, suppliers, consultants, and other service providers as they relate to the Project.