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LOAN NUMBER 3046-BAN(SF)

LOAN AGREEMENT  
(Special Operations)

(Second Public-Private Infrastructure Development Facility Project)

between

PEOPLE'S REPUBLIC OF BANGLADESH

and

ASIAN DEVELOPMENT BANK

DATED 6 APRIL 2014

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BAN 42180

**LOAN AGREEMENT  
(Special Operations)**

LOAN AGREEMENT dated 6 April 2014 between 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 Section 3.01 of this Loan Agreement;

(B) by a loan agreement of even date herewith between the Borrower and ADB ("Ordinary Operations Loan Agreement"), ADB has agreed to lend to the Borrower from ADB's ordinary capital resources an amount of one hundred million Dollars (\$100,000,000) in connection with the Project;

(C) the Project will be carried out by Infrastructure Development Company Limited ("IDCOL"), and for this purpose the Borrower will make available to IDCOL the proceeds of the loan provided for herein upon terms and conditions satisfactory to ADB; and

(D) ADB has agreed to make a loan to the Borrower from ADB's Special Funds resources upon the terms and conditions set forth herein and in the Project Agreement of even date herewith between ADB and IDCOL;

NOW THEREFORE the parties hereto agree as follows:

**ARTICLE I**

**Loan Regulations; Definitions**

Section 1.01. All the provisions of the Special Operations Loan Regulations of ADB, dated 1 January 2006 ("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 2.01(25) is deleted and the following is substituted therefor:

"Project Agreement" means the Project Agreement of even date herewith between ADB and IDCOL.

(b) The term "Project Executing Agency" appearing in Section 6.01(a), 8.01(d), 8.01(f), 8.01(k), 9.01(c) and 9.02(c) of the Loan Regulations shall be substituted by the term "IDCOL".

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

(b) "Consulting Services" means any consulting services to be financed out of the proceeds of the Loan;

(c) "GAF" means the gender action framework prepared and submitted by IDCOL and cleared by ADB;

(d) "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;

(e) "IDCOL" means the Infrastructure Development Company Limited, or any successor thereto acceptable to ADB;

(f) "Loan Disbursement Handbook" means ADB's Loan Disbursement Handbook (2012, as amended from time to time);

(g) "Memorandum and Articles" means IDCOL's Memorandum and Articles of Association, as amended from time to time;

(h) "PAM" means the project administration manual for the Project dated 19 August 2013 and agreed between the Borrower, IDCOL and ADB, as updated from time to time in accordance with the respective administrative procedures of the Borrower, IDCOL and ADB;

(i) "PO" means a participating organization that meets the eligibility criteria for participation in the SHS Program as set out in the PAM and to which IDCOL proposes to make or has made a Subloan;

(j) "Procurement Guidelines" means ADB's Procurement Guidelines (2013, as amended from time to time);

(k) "Qualified Beneficiary" means any person or enterprise to which a PO proposed to make or has made a loan for the purposes of a Qualified Subproject;

(l) "Qualified Subproject" means the installation of a solar home system under the SHS Program;

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

(n) "SHS Program" means IDCOL's solar home systems program, which is a component of IDCOL's renewable energy systems program;

(o) "Subloan" means a loan made, or proposed to be made, under the Project by IDCOL to a PO;

(p) "Subloan Agreement" means an agreement between IDCOL and a PO pursuant to which IDCOL shall provide a Subloan to such PO;

(q) "Subsidiary Loan Agreement" means the agreement between the Borrower and IDCOL referred to in Section 3.02 of this Loan Agreement;

(r) "Tk" means Bangladesh Taka, which is the lawful currency of the Borrower; and

(s) "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. ADB agrees to lend to the Borrower from ADB's Special Funds resources an amount in various currencies equivalent to six million five hundred ninety nine thousand Special Drawing Rights (SDR6,599,000).

Section 2.02. (a) The Borrower shall pay to ADB an interest charge at the rate of 2% per annum during the grace period and thereafter, on the amount of the Loan withdrawn from the Loan Account and outstanding from time to time.

(b) The term "grace period" as used in subsection (a) hereinabove means the period prior to the first Principal Payment Date in accordance with the amortization schedule set forth in Schedule 1 to this Loan Agreement.

Section 2.03. The interest charge and any other charge on the Loan shall be payable semiannually on 15 April and 15 October in each year.

Section 2.04. The Borrower shall repay the principal amount of the Loan withdrawn from the Loan Account in accordance with the amortization schedule set forth in Schedule 1 to this Loan Agreement.

Section 2.05. The currency of repayment of the principal amount of the Loan and the currency of payment of the interest charge for the purposes of Sections 4.03(a) and 4.04 of the Loan Regulations shall be the Dollar.

### ARTICLE III

#### Description of Project; Use of Proceeds of the Loan

Section 3.01. The Project shall comprises the provision by IDCOL of Subloans to POs which the POs shall onlend to Qualified Beneficiaries under the SHS Program. The Subloans shall comply with (a) the Memorandum and Articles; (b) this Loan Agreement; (c) the Project Agreement; (d) the Subsidiary Loan Agreement; and (e) Subloan Agreements.

Section 3.02. (a) The Borrower and IDCOL shall enter into a Subsidiary Loan Agreement, upon term and conditions acceptable to ADB, which shall specify (i) the terms for relending of the proceeds of the Loan; and (ii) the rights and obligations of the Borrower and IDCOL in respect of the Project.

(b) Except as ADB may otherwise agree, the Borrower shall relend the proceeds of the Loan to IDCOL in Tk at a fixed interest rate of 3% per annum for a term of at least 20 years including a grace period of 5 years. The Borrower shall bear the foreign exchange risks.

Section 3.03 Except as ADB may otherwise agree, any amount repaid or prepaid by IDCOL to the Borrower, shall, subject to the Borrower's obligations under Sections 2.04 and 2.05 of this Loan Agreement, be utilized by the Borrower for future renewable energy development purposes.

Section 3.04. (a) Except as ADB may otherwise agree, the proceeds of the Loan shall be used only for making Subloans to POs for Qualified Subprojects and shall be applied exclusively to the cost of Goods, Works and Consulting Services and other items of expenditure required to carry out such Subprojects.

(b) The Borrower shall ensure that IDCOL only makes a Subloan to a PO where such Subloan is required for the procurement of Goods, Works, and Consulting Services from member countries of ADB and the amount of such procurement is at least equal to the size of the Subloan.

(c) Except as ADB may otherwise agree, the Borrower shall procure, or cause to be procured, all Goods, Works and Consulting Services in accordance with the provisions of Schedule 2 to this Loan Agreement.

Section 3.05. Withdrawals from the Loan Account in respect of Goods, Works and Consulting Services shall be made only on account of expenditures relating to:

- (a) Goods which are produced in and supplied from, and Works and Consulting Services which are supplied from such member countries of ADB as shall have been specified by ADB from time to time as eligible sources for procurement; and

- (b) Goods, Works and Consulting Services which meet such other eligibility requirements as shall have been specified by ADB from time to time.

Section 3.06. The Project is expected to be completed by 31 January 2019 and the Loan Closing Date for the purposes of Section 8.02 of the Loan Regulations shall be 31 July 2019 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 IDCOL to carry out the Project 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, the Borrower shall perform, or cause to be performed, all the obligations set forth in Schedule 3 to this Loan 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. In addition to the reports and information set forth in Section 6.05 of the Loan Regulations, the Borrower shall furnish, or cause to be furnished, to ADB all such reports and information as ADB shall reasonably request concerning (a) the POs, the Qualified Subprojects, the Subloans and the Subloan Agreements; and (b) the administration, operations and financial condition of IDCOL.

Section 4.04. The Borrower shall enable ADB's representatives to inspect any PO, any Qualified Subproject, the Goods and Works, and any relevant records and documents maintained by IDCOL.

Section 4.05. ADB shall disclose the annual audited financial statements for the Project and the opinion of the auditors on the financial statements within 30 days of the date of their receipt by posting them on ADB's website.

Section 4.06. The Borrower shall promptly take all action, including the provision of funds, facilities, services and other resources, which shall be necessary on its part to enable IDCOL 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 4.07. (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**

### **Suspension; Acceleration of Maturity**

Section 5.01. The following are specified as additional events for suspension of the right of the Borrower to make withdrawals from the Loan Account for the purposes of Section 8.01(m) of the Loan Regulations:

(a) the Memorandum and Articles, or any provision thereof, shall have been repealed, suspended, amended or modified in any manner that in the opinion of ADB will or may adversely affect the carrying out of the Project or the provisions of this Loan Agreement;

(b) the Subsidiary Loan Agreement, or any provision thereof, shall have been suspended, amended or modified in any manner that, in the opinion of ADB, will or may adversely affect the carrying out of the Project or the provisions of this Loan Agreement;

(c) the Borrower or IDCOL shall have failed to perform one or more of their obligations under the Subsidiary Loan Agreement; and

(d) the Borrower shall have failed to perform one or more of its obligations under the Ordinary Operations Loan Agreement.

Section 5.02. The following is specified as an additional event for acceleration of maturity for the purposes of Section 8.07(d) of the Loan Regulations: any of the events specified in Section 5.01 of this Loan Agreement shall have occurred.

## **ARTICLE VI**

### **Effectiveness**

Section 6.01. The following are specified as additional conditions to the effectiveness of this Loan Agreement for the purposes of Section 9.01(f) of the Loan Regulations:

(a) the Subsidiary Loan Agreement, in form and substance satisfactory to ADB, shall have been duly executed and delivered on behalf of the Borrower and IDCOL and shall have become legally binding upon the Borrower and IDCOL in accordance with its terms, subject only to the effectiveness of this Loan Agreement; and

(b) the execution and delivery of the Ordinary Operations Loan Agreement on behalf of the Borrower on behalf of Borrower shall have been duly authorized by all

necessary action and all conditions precedent to its effectiveness (other than a condition requiring the effectiveness of this Loan Agreement) shall have been fulfilled.

Section 6.02. The following is specified as an additional matter, for the purposes of Section 9.02(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 on behalf of, the Borrower and IDCOL and is legally binding upon the Borrower and IDCOL in accordance with its terms.

Section 6.03. A date 90 days after the date of this Loan Agreement is specified for the effectiveness of the Loan Agreement for the purposes of Section 9.04 of the Loan Regulations.

## **ARTICLE VII**

### **Delegation of Authority**

Section 7.01. The Borrower hereby designates IDCOL as its agent for the purposes of taking any action or entering into any agreement required or permitted under Sections 3.03 and 3.06 of this Loan Agreement and under Sections 5.01, 5.02, 5.03 and 5.04 of the Loan Regulations.

Section 7.02. Any action taken or any agreement entered into by IDCOL pursuant to the authority conferred under Section 7.01 of this Loan Agreement shall be fully binding on the Borrower and shall have the same force and effect as if taken by the Borrower.

Section 7.03. The authority conferred on IDCOL under Section 7.01 of this Loan Agreement may be revoked or modified by agreement between the Borrower and ADB.



**ARTICLE VIII**

**Miscellaneous**

Section 8.01. The Secretary, or any Additional Secretary, Joint Secretary, Joint Chief or Deputy Secretary of the Economic Relations Division of the Ministry of Finance of the Borrower is designated as representative of the Borrower for the purposes of Section 11.02 of the Loan Regulations.

Section 8.02. The following addresses are specified for the purposes of Section 11.01 of the Loan Regulations:

For the Borrower

Economic Relations Division  
Ministry of Finance  
Sher-e-Bangla Nagar  
Dhaka, Bangladesh

Facsimile Number:

(8802) 9180788.

For ADB

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

Facsimile Numbers:

(632) 636-2444

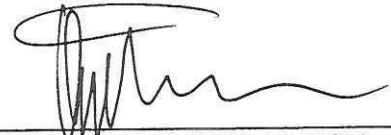
(632) 636-2337.

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  
Secretary  
Economic Relations Division  
Ministry of Finance

ASIAN DEVELOPMENT BANK

By   
\_\_\_\_\_  
OLEG TONKONOJENKOV  
Officer-in-Charge  
Bangladesh Resident Mission

**SCHEDULE 1****Amortization Schedule****(Second Public-Private Infrastructure Development Facility Project)**

<b><u>Date Payment Due</u></b>	<b><u>Payment of Principal</u> (expressed in Special Drawing Rights)*</b>
15-Apr-2019	165,000.00
15-Oct-2019	165,000.00
15-Apr-2020	165,000.00
15-Oct-2020	165,000.00
15-Apr-2021	165,000.00
15-Oct-2021	165,000.00
15-Apr-2022	165,000.00
15-Oct-2022	165,000.00
15-Apr-2023	165,000.00
15-Oct-2023	165,000.00
15-Apr-2024	165,000.00
15-Oct-2024	165,000.00
15-Apr-2025	165,000.00
15-Oct-2025	165,000.00
15-Apr-2026	165,000.00
15-Oct-2026	165,000.00
15-Apr-2027	165,000.00
15-Oct-2027	165,000.00
15-Apr-2028	165,000.00
15-Oct-2028	165,000.00
15-Apr-2029	165,000.00
15-Oct-2029	165,000.00
15-Apr-2030	165,000.00
15-Oct-2030	165,000.00
15-Apr-2031	165,000.00
15-Oct-2031	165,000.00
15-Apr-2032	165,000.00
15-Oct-2032	165,000.00
15-Apr-2033	165,000.00
15-Oct-2033	165,000.00
15-Apr-2034	165,000.00
15-Oct-2034	165,000.00
15-Apr-2035	165,000.00
15-Oct-2035	165,000.00
15-Apr-2036	165,000.00
15-Oct-2036	165,000.00
15-Apr-2037	165,000.00
15-Oct-2037	165,000.00
15-Apr-2038	165,000.00
15-Oct-2038	164,000.00
<b>Total</b>	<b>6,599,000.00</b>

\*The arrangements for payment are subject to the provisions of Sections 3.04 and 4.03 of the Loan Regulations.

**SCHEDULE 2****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.

Procurement

3. The Borrower shall cause IDCOL to ensure that each PO (a) undertakes procurement of Goods, Works, and Consulting Services in accordance with the Procurement Guidelines and Consulting Guidelines, as applicable, and with due attention to economy and efficiency and in accordance with established private sector or commercial practices, acceptable to ADB; and (b) certifies these matters to ADB if requested, including that the Goods, Works and Consulting Services procured are suitable for the Subloans and that relevant factors such as procurement efficiency and reliability of Goods were taken into account.

Industrial or Intellectual Property Rights

4. (a) The Borrower and IDCOL shall ensure that all Goods and Works procured by a PO (including without limitation all computer hardware, software and systems, whether separately procured or incorporated within other goods and services procured) do not violate or infringe any industrial property or intellectual property right or claim of any third party.  
  
(b) The Borrower and IDCOL shall ensure that all contracts entered into by the PO 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) hereinabove.
5. The Borrower and IDCOL shall ensure that all ADB-financed contracts entered into by a PO 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.

### **SCHEDULE 3**

#### **Execution of Project; Financial Matters**

##### Implementation Arrangements

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

##### SHS Program, POs and Approval Procedure

2. The Borrower and IDCOL shall use their best efforts to ensure that (a) at least 20% of the Qualified Beneficiaries are women; (b) at least 40% of the participants in user training are women; and (c) new technologies such as light-emitting diode lights and gel based batteries are gradually introduced in the SHS Program.

3. The Borrower and IDCOL shall ensure that each PO (a) initially qualifies and continues to remain qualified under the eligibility criteria set out in the PAM; and (b) does not provide to a Qualified Beneficiary more than 80% of the cost of a solar home system or USD260, whichever is lower.

4. IDCOL shall submit to ADB a summary sheet in respect of each PO detailing the following information (a) the PO's compliance with exposure limits set by IDCOL; (b) the name and address of each Qualified Beneficiary; (c) cost of equipment procured and any other related costs; (d) total grant amounts, if any, received from other sources for the SHS Program; and (e) the total amount of funds lent to the PO by IDCOL for implementation of the SHS Program.

##### No Environmental or Social Impacts

5. The Borrower and IDCOL shall ensure and shall cause the POs to ensure that the Qualified Subprojects financed or to be financed out of the proceeds of the Loan do not have any adverse environmental impacts nor any involuntary resettlement impacts or indigenous peoples impacts, all within the meaning of the SPS.

##### Prohibited List of Investments

6. The Borrower shall ensure or cause IDCOL and the POs to 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

7. The Borrower shall ensure or cause IDCOL and the POs to ensure that provisions are stipulated in all Works contracts to require contractors employed for Qualified Subprojects to (a) incorporate workplace occupational health and safety norms in accordance with national legislation; (b) comply with all applicable labor laws; (c) not employ child labor, as

defined in national legislation, in any aspect of their activities; (d) provide appropriate training, and information materials, for workers on HIV/AIDS prevention; and (e) not differentiate wages between men and women for work of equal value.

#### Gender and Development

8. The Borrower shall cause IDCOL and the POs to comply with and implement the GAF in accordance with its terms, to allocate adequate resources for such implementation, and to monitor and report to ADB on compliance with the measures, targets and requirements set out in the GAF.

#### Governance and Anticorruption

9. The Borrower, IDCOL and the POs 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.

10. The Borrower shall ensure or cause IDCOL and the POs to ensure that all contracts in relation to the Project include provisions specifying the right of ADB to audit and examine the records and accounts of the contractors, suppliers, consultants, and other service providers as they relate to the Project.

#### Combating Money Laundering and Financing of Terrorism

11. The Borrower shall ensure that IDCOL:

(a) complies with applicable laws and regulations of the Borrower on combating money laundering and financing of terrorism and that Loan proceeds are not used, directly or indirectly, in money laundering or financing of terrorism;

(b) formulates and implements internal control procedures, including customer due diligence procedures, to prevent violation of subparagraph (a) hereinabove; and

(c) promptly informs the Borrower and ADB if there is any violation or potential violation of subparagraph (a) hereinabove. In the event that ADB informs IDCOL of its concern that there has been such an alleged violation, IDCOL shall: (i) cooperate in good faith with ADB and its representatives so that ADB can determine whether such a violation has occurred; (ii) respond promptly and in reasonable detail to any query from ADB; and (iii) furnish documentary support for such response upon ADB's request.