
LOAN NUMBER 3045-BAN

LOAN AGREEMENT
(Ordinary Operations)

(Second Public-Private Infrastructure Development Facility Project)

between

PEOPLE'S REPUBLIC OF BANGLADESH

and

ASIAN DEVELOPMENT BANK

DATED 6 APRIL 2014

BAN 42180

**LOAN AGREEMENT
(Ordinary 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 ("Special Operations Loan Agreement"), ADB has agreed 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) 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 ordinary capital 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 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 2.01(50) 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 7.04(b), 9.01(d), 9.01(f), 9.01(k), 10.01(c) and 10.02(c) of the Loan Regulations shall be substituted by the term "IDCOL".

- (c) 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.

- (d) 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.

- (e) 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) “Bank Rate” means the rate published by Bangladesh Bank in accordance with Article 21 of the Bangladesh Bank Order, 1972;

(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 any consulting services to be financed out of the proceeds of the Loan;

(d) “EMP” means an environmental management plan for a Qualified Subproject, including any update thereto, incorporated in an IEE;

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

(f) "ESSF" means the environmental and social safeguards framework for the Project, including any update thereto, prepared and submitted by IDCOL and cleared by ADB;

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

(h) "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;

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

(j) "IEE" means an initial environmental examination for a Qualified Subproject, including any update thereto, prepared and submitted by IDCOL pursuant to the requirements set forth in the ESSF 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 (2012, as amended from time to time);

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

(n) "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;

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

(p) "Qualified Enterprise" means an enterprise, which satisfies the eligibility criteria set out in paragraph 2(b) of Schedule 3 to this Loan Agreement;

(q) "Qualified Subproject" means a specific subproject, which satisfies the eligibility criteria set out in paragraph 2(c) of Schedule 3 to this Loan Agreement, to be carried out by a Qualified Enterprise;

(r) "RP" means a resettlement plan for a Qualified Subproject, including any update thereto, prepared and submitted by IDCOL pursuant to the requirements set forth in the ESSF and cleared by ADB;

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

(t) “Safeguards Monitoring Report” means each report prepared and submitted by the Borrower to ADB on IDCOL’s performance with regard to the ESSF, including any corrective and preventative actions;

(u) “SECP” means a small ethnic communities plan for a Qualified Subproject, including any update thereto, prepared and submitted by IDCOL pursuant to the requirements set forth in the ESSF and cleared by ADB;

(v) “Small Ethnic Communities Safeguards” means the principles and requirements set forth in Chapter V, Appendix 3, and Appendix 4 (as applicable) of the SPS;

(w) “Sponsor” means an individual, company, institution or organization which takes responsibility for the initiation and/or financing of a Qualified Subproject;

(x) “Subloan” means a loan to a Qualified Enterprise for a Qualified Subproject made or proposed to be made by IDCOL from the proceeds of the Loan;

(y) “Subloan Agreement” means an agreement between IDCOL and a Qualified Enterprise pursuant to which IDCOL provides a Subloan to such Qualified Enterprise;

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

(aa) “Tk” means Bangladesh Taka, which is the lawful currency of the Borrower; and

(bb) “Works” means construction or civil works to be financed out of the proceeds of a 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 one hundred million Dollars (\$100,000,000), 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 1 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 0.20% 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 April and 15 October 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 1 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

Description of Project; Use of Proceeds of the Loan

Section 3.01. The Project shall comprise the provision by IDCOL of Subloans to Qualified Enterprises for Qualified Subprojects. 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) the 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 Dollars or Tk on the following terms:

- (i) in Dollars at an interest rate equal to Libor plus 100 basis points per annum for a term of at least 20 years including a grace period of 5 years; and
- (ii) in Tk at the Bank Rate for a term of at least 20 years including a grace period of 5 years.

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 infrastructure development purposes.

Section 3.04. (a) Except as ADB may otherwise agree, the Borrower shall ensure and shall cause IDCOL to ensure that the proceeds of the Loan are used solely for the purposes of providing Subloans to Qualified Enterprises 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 Qualified Subprojects.

(b) The Borrower shall ensure that IDCOL only makes a Subloan to a Qualified Enterprise 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. The Project is expected to be completed by 31 January 2019 and the Loan Closing Date for the purposes of Section 9.02 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 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, 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 7.04 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 Qualified Enterprises, the Qualified Subprojects and the Subloans; and (b) the administration, operations and financial condition of IDCOL.

Section 4.04. The Borrower shall enable ADB's representatives to inspect any Qualified Enterprise, 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 take all actions 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 9.01(l) 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 sole opinion of ADB, will or may adversely affect the carrying out of the Project or the performance 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 sole opinion of ADB, will or may adversely affect the carrying out of the Project or the performance 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 Special Operations Loan Agreement.

Section 5.02. The following is specified as an additional event for acceleration of maturity for the purposes of Section 9.07(a)(iv) 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 10.01(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; and

(b) the execution and delivery of the Special Operations Loan Agreement 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 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 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 10.04 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 6.01, 6.02, 6.03 and 6.04 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 12.02 of the Loan Regulations.

Section 8.02. 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
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.

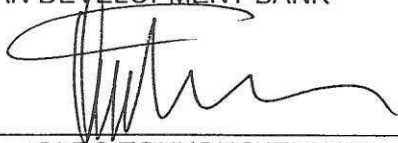
IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Loan Agreement to be signed in their respective names as of the day and year first above written and to be delivered at the principal office of ADB.

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)**

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.

Date Payment Due	Installment Share (Expressed as a %)
15 April 2019	2.500000
15 October 2019	2.500000
15 April 2020	2.500000
15 October 2020	2.500000
15 April 2021	2.500000
15 October 2021	2.500000
15 April 2022	2.500000
15 October 2022	2.500000
15 April 2023	2.500000
15 October 2023	2.500000
15 April 2024	2.500000
15 October 2024	2.500000
15 April 2025	2.500000
15 October 2025	2.500000
15 April 2026	2.500000
15 October 2026	2.500000
15 April 2027	2.500000
15 October 2027	2.500000
15 April 2028	2.500000
15 October 2028	2.500000
15 April 2029	2.500000
15 October 2029	2.500000
15 April 2030	2.500000
15 October 2030	2.500000
15 April 2031	2.500000
15 October 2031	2.500000
15 April 2032	2.500000

15 October 2032	2.500000
15 April 2033	2.500000
15 October 2033	2.500000
15 April 2034	2.500000
15 October 2034	2.500000
15 April 2035	2.500000
15 October 2035	2.500000
15 April 2036	2.500000
15 October 2036	2.500000
15 April 2037	2.500000
15 October 2037	2.500000
15 April 2038	2.500000
15 October 2038	2.500000
Total	100.000000

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 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, as applicable to financial intermediaries.
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 for Goods and Works

3. The Borrower and IDCOL shall ensure that each Qualified Enterprise (a) adopts international competitive bidding procedures in accordance with the Procurement Guidelines when the amount of the Subloan is unusually large and such procedures will contribute to economy and efficiency; and (b) in all cases, 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.
4. For build, operate and transfer projects and variants, if the Qualified Enterprise or engineering, procurement and construction contractor is selected through competitive bidding among national and international entities in accordance with procedures acceptable to ADB, such Qualified Enterprise or contractor may apply its own procedures for procurement provided that such procurement is for Goods, Works and Consulting Services supplied from, or produced in ADB member countries and that the amount of such procurement of Goods, Works and Consulting Services from member countries of ADB is at least equal to the size of the Subloan for the Qualified Subproject.

Industrial or Intellectual Property Rights

5. (a) The Borrower and IDCOL shall ensure that all Goods and Works procured by the Qualified Enterprise (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 Qualified Enterprise 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.
6. The Borrower and IDCOL shall ensure that all ADB-financed contracts entered into by the Qualified Enterprise 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.

Selection Criteria

2. (a) Each Qualified Enterprise and Qualified Subproject shall, at all times, satisfy the selection criteria set out in paragraphs 2(b) and 2(c) below.

(b) Except as ADB may otherwise agree, each Qualified Enterprise shall:

- (i) be majority owned (i.e. at least 51% majority) by private sector parties who shall be significantly involved in the management of the Qualified Enterprise and shall continue to do so for the duration of the Subloan;
- (ii) have Sponsors with a proven track record of successfully developing, financing, and operating infrastructure projects that are similar to the Qualified Subproject;
- (iii) have equity or be able to procure equity equal to at least 20% of the total costs of the relevant Qualified Subproject;
- (iv) have, or its Sponsors shall be able to provide, adequate resources and financial capability to raise and maintain resources to complete and operate the relevant Qualified Subproject successfully;
- (v) not be, and nor shall its Sponsors be, in default of any prior loan from IDCOL or from any of the participating members of the consortium of lenders or from any bank or non-bank financial institutions in Bangladesh;
- (vi) be able to provide security as required by the consortium of lenders;
- (vii) maintain appropriate financial records of income and expenditure to the satisfaction of IDCOL and ADB;
- (viii) comply with and ensure that its relevant Qualified Subproject complies with ADB's applicable policies, and national laws and regulations relating to environment, involuntary resettlement and

indigenous peoples; and

- (ix) have entered into relevant concession and/or license agreements which provide for satisfactory cost adjustment and escalation or have signed memoranda of understanding in respect thereof.
- (c) Except as ADB may otherwise agree, each Qualified Subproject shall:
- (i) form an integral part of the Borrower's priority plan for one or more of the following sectors or sub-sectors (aa) power generation, (bb) roads and bridges, (cc) railways, (dd) ports (including seaports and airports), (ee) gas and gas-related infrastructure, (ff) water supply, sewage and solid waste management, (gg) information technology or (hh) renewable energy;
 - (ii) use technology which has a successful track record;
 - (iii) be financially viable with robust and predictable cash flows and be capable of generating sufficient foreign exchange or US\$ indexed revenues to repay the Subloans or be financially viable through receipt of grants from the Borrower through schemes such as the Borrower's Viability Gap Fund;
 - (iv) be reviewed and approved by IDCOL for its economic and commercial viability and for adherence to the ESSF;
 - (v) obtain all necessary Borrower approvals and licenses and comply with ADB's applicable policies and national laws and regulations relating to environment, involuntary resettlement and indigenous peoples;
 - (vi) have an economic rate of return of not less than 12%; and
 - (vii) have total project cost in excess of US\$10,000,000.

Approval Procedure

3. The Borrower and IDCOL shall ensure that all proposals for Qualified Subprojects are submitted to ADB for prior review and approval. In order to prepare and process each Qualified Subproject, IDCOL shall:

- (a) review the preliminary designs and cost estimates for the Qualified Subproject as approved by the lending consortium;
- (b) submit to ADB a concept paper on the proposed Subproject which shall include preliminary data and information on the Qualified Subproject, its sponsors and the proposed financial terms;

- (c) following ADB's approval of the concept paper, IDCOL shall carry out a detailed due diligence and shall submit the following documents to ADB for approval (i) a detailed information memorandum or business plan;; (ii) a copy of the minutes from the meeting of IDCOL's board and credit committee through which the Subloan was approved; (iii) a certificate of compliance with respect to ADB's Procurement Guidelines and Consulting Guidelines; and (iv) a certified copy of the Subloan Agreement and any other relevant information; and
- (d) submit to ADB the safeguards documentation prepared for the Qualified Subproject pursuant to paragraph 10 below, together with a safeguards compliance certificate for the Qualified Subproject.

Subloans

4. Each Subloan shall carry interest at an appropriate rate acceptable to ADB and shall be made on terms under which IDCOL obtains rights adequate to protect the interests of ADB and the Borrower. IDCOL shall procure that each Subloan Agreement shall appropriately reflect the obligations that IDCOL and the Qualified Enterprise assumed under this Loan Agreement in respect of the Qualified Subproject.

5. IDCOL shall ensure that the maximum amount of each Subloan to a Qualified Enterprise does not exceed 40% of the total project costs of the Qualified Subproject.

6. Without limiting the generality of paragraph 4 above and in addition to any other provisions which a prudent lender would request, IDCOL shall ensure that each Subloan Agreement includes provisions to the effect that:

- (a) the Qualified Enterprise shall carry out and operate the Qualified Subproject with due diligence and efficiency and in accordance with sound administrative, financial, economic, engineering, environmental, social safeguards, and business practices, including maintenance of adequate accounts and records;
- (b) the proceeds of the Loan shall be used only for procurement in member countries of ADB, in accordance with procedures acceptable to ADB, of Goods produced in, and Consulting Services supplied from, such countries, and as set out in Schedule 2 to this Loan Agreement;
- (c) the Goods, Works and Consulting Services to be financed out of the proceeds of the Loan shall be used exclusively in the carrying out of the Qualified Subproject;
- (d) the Qualified Enterprise shall carry out and operate the Qualified Subproject in compliance with ADB's safeguards policies as required in paragraphs 10, 11, 12, 13, 14, 15, 16 and 17 of this Schedule 3 to this Loan Agreement;

- (e) ADB shall have the right to audit and examine the records and accounts of IDCOL, the Qualified Enterprise, the Qualified Subproject, suppliers, and contractors relating to the Qualified Subproject;
- (f) the Qualified Enterprise shall take out and maintain with responsible insurers insurance against such risks and in such amounts as shall be consistent with sound business practices, and, without any limitation upon the foregoing, such insurance shall cover hazards incident to the acquisition, transportation and delivery of Goods financed out of the proceeds of the Loan to the place of use or installation, and for such insurance any indemnity shall be payable in a currency freely usable to replace or repair such Goods;
- (g) ADB and IDCOL shall each be entitled to obtain from the Qualified Enterprise all such information as each shall reasonably request relating to the Subloan, the Goods, Works and Consulting Services financed out of the proceeds of the Loan, the Qualified Subproject, the Qualified Enterprise and other related matters; and
- (h) IDCOL shall be entitled to suspend or terminate further access by the Qualified Enterprise to the use of the proceeds of the Loan upon failure by the Qualified Enterprise to perform its obligations under its agreement with IDCOL.

Condition for Disbursement

7. Notwithstanding any other provision of this Loan Agreement, no withdrawals shall be made from the Loan Account for the purpose of any Subloan until IDCOL has appointed a risk manager with qualifications, experience and terms of reference acceptable to ADB, to make independent assessments of the Qualified Subprojects proposed for financing and to assist IDCOL with the establishment of a risk management system in accordance with sound international practice.

Financial Criteria

8. IDCOL shall:
- (a) comply at all times with the prudential norms, as made applicable to it by the Borrower, including capital adequacy, income recognition, classification, and provisioning of non-performing assets;
 - (b) maintain a debt service coverage ratio of at least 1:0, and ensure that it has no arrears in repayment of its current debt obligations; and
 - (c) relend to Qualified Enterprises at rates that are market-based, and adequate to cover all costs and risks associated with relending.

Screening, Categorization, and Environmental and Social Assessment and Planning

9. The Borrower and IDCOL shall ensure that no Subloans are made for any Qualified Subproject that involves environmental, involuntary resettlement or indigenous peoples impacts which can be categorized as Category A within the meaning of the SPS.

10. The Borrower and IDCOL shall ensure that before any Qualified Subproject is approved for financing:

- (a) the ESSF is used to screen and categorize the significance of potential environmental, indigenous peoples or involuntary resettlement impacts associated with such Qualified Subproject;
- (b) an IEE, an EMP, a RP and/or an SECP are prepared for such Qualified Subproject as required pursuant to the ESSF; and
- (c) the IEE, the EMP, the RP and the SECP are cleared by ADB if such Qualified Subproject is Category B within the meaning of the SPS.

Environment

11. IDCOL shall ensure that the preparation, design, construction, implementation, operation and decommissioning of each Qualified Subproject and all Qualified Subproject facilities comply with (a) all applicable laws and regulations of the Borrower relating to environment, health, and safety; (b) the Environmental Safeguards; (c) the ESSF; and (d) all measures and requirements set forth in the respective IEE and EMP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

Land Acquisition and Involuntary Resettlement

12. The Borrower shall ensure or cause IDCOL to ensure that all land and all rights-of-way required for each Qualified Subproject 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 (a) all applicable laws and regulations of the Borrower relating to land acquisition and involuntary resettlement; (b) the Involuntary Resettlement Safeguards; (c) the ESSF; and (d) all measures and requirements set forth in the respective RP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

13. Without limiting the application of the Involuntary Resettlement Safeguards, the ESSF or the RP, the Borrower and IDCOL shall ensure that no physical or economic displacement takes place in connection with any Qualified Subproject 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.

Small Ethnic Communities

14. The Borrower and IDCOL shall ensure that the preparation, design, construction, implementation and operation of each Qualified Subproject comply with (a) all applicable laws and regulations of the Borrower relating to small ethnic communities; (b) the Small Ethnic Communities Safeguards; (c) the ESSF; and (d) all measures and requirements set forth in the respective SECP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

Human and Financial Resources to Implement Safeguards Requirements

15. The Borrower and IDCOL shall ensure that (a) necessary budgetary and human resources are made available to fully implement the ESSF; and (b) each Qualified Enterprise makes available necessary budget and human resources to fully implement the respective EMP, RP and SECP.

Safeguards Monitoring and Reporting

16. The Borrower shall do the following or cause IDCOL to do the following
- (a) submit annual Safeguards Monitoring Reports to ADB;
 - (b) if any unanticipated environmental and/or social risks and impacts arise during Qualified Subproject implementation 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 ESSF and any EMP, RP or SECP promptly after becoming aware of the breach.

Prohibited List of Investments

17. The Borrower and IDCOL 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

18. The Borrower and IDCOL shall ensure that provisions are stipulated in all Works contracts to require contractors employed by Qualified Enterprises in respect of 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 facilities for women and children in construction campsites if such sites are established; (e) provide appropriate training, and information materials, for workers on HIV/AIDS prevention; (f) observe local protocols concerning acceptable behavior toward the local population; (g) use local unskilled labor; and (h) not differentiate wages between men and women for work of equal value.

Gender and Development

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

Governance and Anticorruption

20. The Borrower and IDCOL 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.

21. The Borrower and IDCOL shall 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

22. IDCOL shall (a) comply with applicable laws and regulations of the Borrower on combating money laundering and financing of terrorism and ensure that Loan proceeds are not used, directly or indirectly, in money laundering or financing of terrorism; (b) formulate and implement internal control procedures, including customer due diligence procedures, to prevent violation of subparagraph (a) hereinabove; and (c) promptly inform 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.