
LOAN NUMBER 3138-BAN(SF)

LOAN AGREEMENT
(Special Operations)

(Flood and Riverbank Erosion Risk Management Investment Program – Project 1)

between

PEOPLE'S REPUBLIC OF BANGLADESH

and

ASIAN DEVELOPMENT BANK

DATED 14 AUGUST 2014

BAN 44167

**LOAN AGREEMENT
(Special Operations)**

LOAN AGREEMENT dated 14 August 2014 between PEOPLE'S REPUBLIC OF BANGLADESH ("Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) by a framework financing agreement dated 12 May 2014 between the Borrower and ADB, ADB has agreed to provide a multitranche financing facility to the Borrower for purposes of financing projects under the Flood and Riverbank Erosion Risk Management Investment Program;

(B) by a periodic financing request dated 12 May 2014, the Borrower has applied to ADB for a loan for the purposes of the Project described in Schedule 1 to this Loan Agreement;

(C) by a grant agreement of even date herewith between the Borrower and ADB ("Grant Agreement"), ADB has agreed to make available to the Borrower a grant from the Government of Netherlands in the amount of fifteen million three hundred thousand Dollars (\$15,300,000) ("Grant"), for the purpose of cofinancing expenditures under the Project;

(D) the Project will be carried out by Bangladesh Water Development Board ("BWDB"), and for this purpose the Borrower will make available to BWDB the proceeds of the loan provided for herein upon terms and conditions satisfactory to ADB; and

(E) 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 BWDB;

NOW THEREFORE the parties 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.

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) "BWDB" means the Bangladesh Water Development Board or any legal successor thereto acceptable to ADB;

(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 and/or the Grant, as described in paragraph 3 of Schedule 1 to this Loan Agreement;

(d) "DDM" means the Department of Disaster Management of the Borrower's Ministry of Disaster Management and Relief, or any legal successor thereto acceptable to ADB;

(e) "EARF" means the environmental assessment and review framework for the Investment Program, including any update thereto, agreed between the Borrower and ADB and incorporated by reference in the FFA;

(f) "EIA" means the environmental impact assessment for the Project, including any update thereto, prepared and submitted by the Borrower pursuant to the requirements set forth in the EARF and cleared by ADB;

(g) "EMP" means the environmental management plan for the Project, including any update thereto, incorporated in the EIA;

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

(i) "Facility" means the multitranche financing facility provided by ADB to the Borrower for purposes of financing projects under the Investment Program;

(j) "FAM" means the Facility administration manual dated 12 May 2014 and agreed between the Borrower and ADB, as updated from time to time in accordance with the respective administrative procedures of the Borrower and ADB;

(k) "FFA" means the framework financing agreement dated 12 May 2014 between ADB and the Borrower with respect to the Facility;

(l) "GAP" means the gender action plan for the Investment Program, developed by the Borrower and approved by ADB;

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

(n) "Grant" has the meaning given thereto in recital (C) of this Agreement;

(o) "Grant Agreement" has the meaning given thereto in recital (C) of this Agreement;

(p) "Investment Program" means the Flood and Riverbank Erosion Risk Management Investment Program;

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

(r) "ISPMC" means the institutional strengthening and project management consultant (to be) engaged for the purposes of the Project;

(s) "km" means kilometer;

(t) "Loan Disbursement Handbook" means ADB's Loan Disbursement Handbook (2012, as amended from time to time);

(u) "NGO" means nongovernment organization;

(v) "PFR" means the periodic financing request submitted or to be submitted by the Borrower, for the purposes of each loan under the Facility, and for the purpose of this Loan Agreement means the periodic financing request dated 12 May 2014;

(w) "PMO" means the project management office established by BWDB for the purposes of the Investment Program, that will also serve as the project management office for the Project;

(x) "PMU" means the project management unit established by DDM for the purposes of the Investment Program, that will also serve as its project management unit for the Project;

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

(z) "Procurement Plan" means the procurement plan for the Project dated 12 May 2014 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;

(aa) "Project Executing Agency" for the purposes of, and within the meaning of, the Loan Regulations means BWDB or any successor thereto acceptable to ADB;

(bb) "RF" means the resettlement framework for the Investment Program, including any update thereto, agreed between the Borrower and ADB and incorporated by reference in the FFA;

(cc) "RP" means the resettlement plan for the Project, including any update thereto, prepared and submitted by the Borrower pursuant to the requirements set forth in the RF and cleared by ADB;

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

(ee) "Safeguards Monitoring Report" means each report prepared and submitted by the Borrower to ADB that describes progress with implementation of, and compliance with, the EMP and the RP (as applicable), including any corrective and preventative actions;

(ff) "SMO" means each subproject management office established by BWDB and managed by the PMO;

(gg) "Subproject area" means each and any of (i) the right bank of Jamuna River-1 in Sirajganj District; (ii) the left bank of Jamuna River-2 in Manikganj, Sirajganj and Tangail Districts; and (iii) the left bank of Padma River-1 in Dhaka and Manikganj Districts, each as specified further in the FFA; and

(hh) "Works" means construction or civil works to be financed out of the proceeds of the Loan and/or the Grant, 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 forty one million seven hundred and fifty five thousand Special Drawing Rights (SDR 41,755,000).

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 2 to this Loan Agreement.

Section 2.03. The interest charge and any other charge on the Loan shall be payable semiannually on 15 December and 15 June 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 2 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

Use of Proceeds of the Loan

Section 3.01. The Borrower shall make the proceeds of the Loan available to BWDB upon terms and conditions satisfactory to ADB and shall cause BWDB to apply such proceeds 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.

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 8.02 of the Loan Regulations shall be 30 June 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. In the carrying out 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.

Section 4.02. The Borrower shall enable ADB's representatives to inspect the Project, the Goods and Works, and any relevant records and documents.

Section 4.03. 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 4.04. The Borrower shall take all actions which shall be necessary on its part to enable BWDB 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.

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 Borrower shall have failed to perform one or more of its obligations under the Grant Agreement; and
- (b) the Bangladesh Water Development Board Act, 2000, shall have been repealed, suspended or amended in any manner which, in the reasonable opinion of ADB, may adversely affect the carrying out of the Project or the operation of the Project facilities.

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. 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 BWDB as its agent for the purposes of taking any action or entering into any agreement required or permitted under Sections 3.02, 3.03 and 3.05 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 BWDB 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 BWDB 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, 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 1207
Bangladesh

Facsimile Number:

+88-02-9180788.

For ADB

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

Facsimile Numbers:

(632) 636-2444

(632) 636-2391.

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

ASIAN DEVELOPMENT BANK

By  _____
KAZUHIKO HIGUCHI
Country Director
Bangladesh Resident Mission

SCHEDULE 1

Description of the Project

1. The objective of the Investment Program is to reduce flood and riverbank erosion risks along the Jamuna, Padma and Ganges rivers. The objective of the Project is to reduce flood and riverbank erosion risks in the three Subproject areas.
2. The Project shall consist of the following components and subcomponents, as more fully described in the PFR:
 - A. Flood and Riverbank Erosion Risk Mitigation**, comprising:
 - A.1. *Infrastructure improvement.* This shall include: (i) construction of about 15 km of riverbank erosion protection structures in the three Subproject areas; (ii) construction/ rehabilitation of about 23 km of flood embankments in the Jamuna river right bank area with 7 associated gated sluiceways and about 5 km of paved roads on the embankments; and (iii) emergency and/or adaptive riverbank protections works, including in reaches outside of the Subproject areas.
 - A.2. *Community-based flood risk management.* Form about 40 community disaster management units at the ward level (under upazila and union levels) in the three Subproject areas and provide for their capacity development, particularly on flood and riverbank erosion risk management.
 - A.3. *Participatory regular operation and maintenance.* Develop the capacity of communities to undertake regular operation and maintenance activities of flood management infrastructures in the Subproject areas.
 - A.4. *Livelihood support for project affected people.* Construct approximately 2 resettlement areas with basic infrastructure and livelihood support, with improved resilience to flood, erosion and climate risks.
 - B. Strengthen the Institutional System for Flood and Riverbank Erosion Risk Management of the Jamuna, Padma and Ganges rivers**, comprising:
 - B.1. *Institutional capacity strengthening.* Enhance BWDB's institutional capacity for flood and riverbank erosion risk management.
 - B.2. *Data and knowledge base development.* Support BWDB in establishing a data, information and knowledge base for flood and riverbank erosion management, including land recovery and river training piloting.
 - C. Program Management.** Support the management, implementation and timely completion of the Project, including (i) establishing the overall design of the management information system; and (ii) preparing PFRs for subsequent projects.
3. The Project will include Consulting Services for the above components.
4. The Project is expected to be completed by 31 December 2018.

SCHEDULE 2**Amortization Schedule****(Flood and Riverbank Erosion Risk Management Investment Program – Project 1)**

<u>Date Payment Due</u>	<u>Payment of Principal</u> (expressed in Special Drawing Rights)*
15 December 2019	1,043,875
15 June 2020	1,043,875
15 December 2020	1,043,875
15 June 2021	1,043,875
15 December 2021	1,043,875
15 June 2022	1,043,875
15 December 2022	1,043,875
15 June 2023	1,043,875
15 December 2023	1,043,875
15 June 2024	1,043,875
15 December 2024	1,043,875
15 June 2025	1,043,875
15 December 2025	1,043,875
15 June 2026	1,043,875
15 December 2026	1,043,875
15 June 2027	1,043,875
15 December 2027	1,043,875
15 June 2028	1,043,875
15 December 2028	1,043,875
15 June 2029	1,043,875
15 December 2029	1,043,875
15 June 2030	1,043,875
15 December 2030	1,043,875
15 June 2031	1,043,875
15 December 2031	1,043,875
15 June 2032	1,043,875
15 December 2032	1,043,875
15 June 2033	1,043,875
15 December 2033	1,043,875
15 June 2034	1,043,875
15 December 2034	1,043,875
15 June 2035	1,043,875
15 December 2035	1,043,875
15 June 2036	1,043,875

<u>Date Payment Due</u>	<u>Payment of Principal</u> (expressed in Special Drawing Rights)*
15 December 2036	1,043,875
15 June 2037	1,043,875
15 December 2037	1,043,875
15 June 2038	1,043,875
15 December 2038	1,043,875
15 June 2039	<u>1,043,875</u>
TOTAL	41,755,000

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

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 Charge

3. The amount allocated to Category 8 is for financing the interest charge on the Loan during the implementation period of the Project.

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 reimbursement of eligible expenditures incurred under the Project before the Effective Date, but not earlier than 12 months before the date of this Loan Agreement, 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 expenditures under Categories 3C, 6C and 7B until BWDB and DDM have entered into a memorandum of understanding, acceptable to ADB, setting out the terms and practical arrangements for their collaboration.

TABLE

ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (Flood and Riverbank Erosion Risk Management Investment Program – Project 1)				
Number	Item	Total Amount Allocated for ADB Financing (SDR)		Basis for Withdrawal from the Loan Account
		Category	Subcategory	
1	Works	23,126,000		91% of total expenditure claimed
2	Materials	10,150,000		100% of total expenditure claimed*
3	Vehicles and Equipment	366,000		
3A	Vehicles – BWDB		224,000	28% of total expenditure claimed
3B	Equipment – BWDB		71,000	95% of total expenditure claimed
3C	Equipment – DDM**		71,000	95% of total expenditure claimed
4	Resettlement	96,000		100% of total expenditure claimed
5	Training	803,000		94% of total expenditure claimed
6	Consulting Services	3,617,000		
6A	Project management – BWDB		1,131,000	13% of total expenditure claimed
6B	NGO services, surveys and studies – BWDB		1,799,000	87% of total expenditure claimed
6C	NGO services – DDM**		687,000	87% of total expenditure claimed
7	Project Management	520,000		
7A	Project Management – BWDB		417,000	88% of total expenditure claimed
7B	Project Management – DDM**		103,000	88% of total expenditure claimed
8	Interest Charge	1,407,000		100% of amounts due
9	Unallocated	1,670,000		
	Total	41,755,000		

* Exclusive of taxes and duties imposed within the territory of the Borrower.

** 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.

National Competitive Bidding

5. The Borrower and ADB shall ensure that, prior to the commencement of any procurement activity under national competitive bidding, the Borrower'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 Award of Contract

6. The Borrower shall not award any Works contract which involves environmental impacts until the Borrower has:
 - (a) obtained the final approval of the EIA from the Department of Environment, under the Ministry of Environment and Forest; and
 - (b) incorporated the relevant provisions from the EMP into the Works contract.
7. Except for a Works contract involving underwater Works, the Borrower shall not award any Works contract involving involuntary resettlement impacts until the Borrower has prepared and submitted to ADB the final version of the relevant RP based on the detailed

design for the activities to be implemented in the relevant Subproject area, and obtained ADB's clearance of such RP.

Consulting Services

8. Except as ADB may otherwise agree, and except as set forth in the paragraph below, the Borrower shall apply quality- and cost-based selection for selecting and engaging Consulting Services.

9. The Borrower shall apply the following methods for selecting and engaging the specified Consulting Services, in accordance with, among other things, the procedures set forth in the Procurement Plan:

- (a) Consultants' Qualifications Selection for support for implementation of the RP; capacity development for community participation in operation and maintenance and for livelihood development; underwater river surveying; management information system development; and environmental management and risk mitigation program development; and
- (b) Single Source Selection for short-term riverbank erosion prediction.

Industrial or Intellectual Property Rights

10. (a) The Borrower 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) The Borrower 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.

11. The Borrower 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

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

SCHEDULE 5

Execution of Project; Financial Matters

Implementation Arrangements

1. The Borrower and BWDB shall ensure that the Project is implemented in accordance with the detailed arrangements set forth in the FAM. Any subsequent change to the FAM shall become effective only after approval of such change by the Borrower, BWDB, and ADB. In the event of any discrepancy between the FAM and this Loan Agreement, the provisions of this Loan Agreement shall prevail.
2. The Borrower and BWDB shall ensure that the PMO, the SMOs and the PMU employ sufficient staff for the duration of the Investment Program with adequate and relevant expertise in the field of project management, financial management, engineering, procurement, environmental and social safeguards implementation. The Borrower and BWDB shall keep the PMO, the SMOs and the PMU equipped with the necessary office space, facilities, equipment, transport arrangements, support staff and management information systems for the entire duration of the Investment Program.
3. The Borrower and BWDB shall (a) ensure that all counterpart staff assigned to the PMO and each Subdivisional Engineer assigned to the SMOs are allocated to the Investment Program and the Project on a full-time basis; and (b) undertake best efforts to ensure that all persons assigned to the PMO, the SMOs and the PMU remain in their positions for a reasonable period of time and that staff replacements will not unduly disrupt implementation of the Investment Program and the Project. The Borrower and BWDB shall provide ADB reasonable opportunity to comment on any proposed appointment of persons to key positions in the PMO and SMOs, including, without limitation, the position of Project Director of the PMO and Executive Engineer of each SMO.
4. The Project Director of the PMO shall hold the position not less than the rank of Superintending Engineer.
5. ADB acknowledges that BWDB is in the process of seeking approval for its proposal entitled "Need-Based Set-up of BWDB 2013", and that, if adopted, the new set-up would create a separate office in BWDB with responsibility for flood and riverbank erosion risk management, led by the Chief Engineer River Management. Should this proposal, or any other proposal to reorganize BWDB that may have implications on the implementation of the Investment Program and the Project, be adopted, the Borrower and BWDB shall consult in good faith and agree with ADB on any changes to the implementation arrangements laid down in the FAM, FFA and/or the PFR before taking any affirmative action thereon.

Counterpart Support

6. In the unforeseen event that the Borrower cannot avail of the proceeds of the Grant when needed, the Borrower shall undertake best efforts to find an alternative source of funding for the expenditures set out in the Grant Agreement, failing which ADB may require the Borrower to seek a reduction of the Project scope. In all other respects, the Borrower shall make available to BWDB all counterpart funds required for timely and effective implementation of the Project, including, without limitation, any funds required to keep the

PMO and the SMOs fully equipped and fully staffed in accordance with the requirements set out in the FAM, to mitigate unforeseen environmental and social impacts, and to meet additional costs arising from design changes, price escalation in construction costs and/or unforeseen circumstances. The Borrower shall make the resources thus required available to BWDB on a quarterly basis for each fiscal year.

7. The Borrower shall reimburse BWDB for any taxes and duties imposed in the territory of the Borrower for Goods, Works and Consulting Services used in the carrying out of the Project no later than the fiscal year after the year in which the taxes and duties were incurred.

Selection of Subproject areas

8. The Borrower and BWDB shall ensure that each Subproject area is selected and approved in accordance with the selection criteria and approval process set out in Schedule 4 of the FFA. The Borrower and BWDB shall ensure that all relevant documents forming the basis for screening, selection and processing of Subproject areas are made available to ADB upon request and are kept available for such purposes for a minimum period of five years from the date of the project completion report for the Project.

Environment

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

Land Acquisition and Involuntary Resettlement

10. The Borrower and BWDB shall ensure that all land and all rights-of-way required for all Project facilities 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 RF; 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.

11. Without limiting the application of the Involuntary Resettlement Safeguards, the RF or the RP, the Borrower and BWDB shall ensure that no physical or economic displacement takes place in a Subproject area until:

- (a) compensation and other entitlements have been provided to affected people in accordance with the relevant RP; and
- (b) a comprehensive income and livelihood restoration program has been established in accordance with the relevant RP.

Indigenous Peoples

12. The Borrower and BWDB shall ensure that the Project does not have any indigenous peoples impacts within the meaning of ADB's Safeguard Policy Statement (2009). In the unforeseen event that the Project does have any such impact, the Borrower and BWDB shall take all steps required to ensure that the Project complies with the applicable laws and regulations of the Borrower relating to indigenous peoples and with ADB's Safeguard Policy Statement.

Human and Financial Resources to Implement Safeguards Requirements

13. The Borrower and BWDB shall make available the necessary budgetary and human resources to fully implement the EMPs and the RPs.

Safeguards – Related Provisions in Bidding Documents and Works Contracts

14. The Borrower and BWDB shall ensure that all bidding documents and contracts for Works contain provisions that require contractors to:

- (a) comply with the measures and requirements relevant to the contractor set forth in the relevant EIA, EMP and RP (to the extent they concern impacts on affected people during construction), and any corrective or preventative actions set out in a Safeguards Monitoring Report;
- (b) make available a budget for all such environmental and social measures;
- (c) provide BWDB 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 relevant EIA, EMP or RP;
- (d) adequately record the condition of roads, agricultural land and other infrastructure prior to starting to transport materials and construction; and
- (e) fully reinstate pathways, other local infrastructure, and agricultural land to at least their pre-project condition upon the completion of construction.

Safeguards Monitoring and Reporting

15. The Borrower and BWDB shall 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 relevant EIA, EMP or RP, promptly inform ADB of the occurrence of such risks or impacts, with detailed description of the event and proposed corrective action plan;

- (c) no later than 6 months after effectiveness, engage qualified and experienced external experts or qualified NGOs under a selection process and terms of reference acceptable to ADB, to verify information produced through the Project monitoring process in respect of land acquisition and involuntary resettlement, and facilitate the carrying out of any verification activities related to land acquisition and involuntary resettlement by such external experts; and
- (d) report any actual or potential breach of compliance with the measures and requirements set forth in an EMP or RP promptly after becoming aware of the breach.

Prohibited List of Investments

16. The Borrower and BWDB shall ensure that no proceeds of the Loan and/or the Grant are used to finance any activity included in the list of prohibited investment activities provided in Appendix 5 of the SPS.

Labor Standards

17. The Borrower shall ensure that all bidding documents and contracts for construction or civil works under the Project contain provisions that require contractors:

- (a) to comply with applicable core labor standards, labor laws and incorporate applicable workplace occupational and health and safety principles;
- (b) to eliminate discrimination in respect of employment and to not differentiate payment between men and women for work of equal value;
- (c) not to employ child labor; to eliminate forced or compulsory labor; to allow for freedom of association;
- (d) to maximize employment of local poor and disadvantaged persons for construction purposes to the extent possible, provided that the requirements for efficiency are adequately met;
- (e) to disseminate, or engage appropriate service providers to disseminate, information on the risks of sexually transmittable infections, including HIV/AIDS, to their employees and to members of the local communities surrounding the Project facilities, particularly to females; and
- (f) to implement the applicable provisions of the GAP developed for the Investment Program.

Gender and Development

18. The Borrower and BWDB shall comply with and implement the GAP in accordance with its terms, allocate adequate resources for such implementation, and shall monitor and report to ADB on key gender outcome and output targets in accordance with the project performance and monitoring system to be developed for the Investment Program and the Project.

Quality Assurance

19. To ensure that all underwater works of riverbank protection facilities to be constructed under the Project are carried out in accordance with the applicable design standards, specifications and construction methods, external experts shall inspect each section completed under each Works contract using high-resolution underwater echo sound surveying equipment with technical specifications acceptable to ADB and through diving inspections. BWDB shall ensure that all survey and inspection results are made available to ADB upon request and are kept available for such purposes for a minimum period of five years from the date of the project completion report for the Project.

Panel of Experts

20. If and when ADB may so request from time to time, BWDB shall recruit and engage experts with qualifications, experience and terms of reference acceptable to ADB in order to analyze difficulties or constraints encountered in implementing the Investment Program or the Project, and advise on remedial measures or technological innovations to promote efficiency in project implementation.

Inter-agency Coordination

21. BWDB shall timely notify the Bangladesh Inland Water Transportation Authority, DDM and other relevant agencies of any areas where riverbank protection infrastructure will be or has been constructed. BWDB shall take necessary measures in consultation with such agencies to ensure that dredging or construction works undertaken by such agencies do not cause any damage to the riverbank protection infrastructure.

Operation and Maintenance of Project Facilities

22. The Borrower and BWDB shall ensure that (a) BWDB inspects and maintains the embankments, regulators and riverbank protection works rehabilitated or constructed under the Project in accordance with the operation and maintenance plans to be developed under the Investment Program and/or the Project; (b) BWDB submits annually to the Ministry of Water Resources budget requests with a separate line item to cover the cost of maintenance and repair of the embankments, riverbank protection works and regulators in accordance with such operation and maintenance plans; and (c) the Borrower will allocate in its annual budget adequate resources for BWDB to carry out such maintenance and repair works and make the resources thus allocated available to BWDB on a quarterly basis.

23. BWDB shall create strategic stockpiles of geo-textile bags for emergency riverbank protection works and repairs in accordance with the emergency and operation and maintenance plans to be developed under Investment Program and/or the Project.

24. BWDB shall provide local communities with land use rights for embankment land-side slopes rehabilitated or constructed under the Project through five-year lease contracts that are designed to promote livestock grazing, cultivation of trees or other suitable vegetation, or other activities conducive to embankment maintenance in a manner consistent with the operation and maintenance plans to be developed under the Investment Program and/or the Project.

Road Map and Policy and Institutional Reforms

25. The Borrower and BWDB shall remain committed to the road map and the policy framework underlying the Investment Program and implement the policy and institutional reform actions identified under the road map in accordance with the time schedule set out therein.

Policy Dialogue and Coordination with Development Partners

26. The Borrower and BWDB shall keep ADB informed, through the Water Consultative Committee or otherwise, of discussions (a) among government and quasi-government bodies with responsibility for water sector development; and (b) with Japan International Cooperation Agency ("JICA"), the Kingdom of the Netherlands, World Bank and other multilateral and bilateral agencies, that have implications for the implementation of the Investment Program, and shall provide ADB with an opportunity to comment on any proposed interventions in the water sector resulting from such discussions. The Borrower and BWDB shall take ADB's views into consideration before finalizing and implementing any such proposals.

Governance and Corruption

27. The Borrower and BWDB 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.

28. The Borrower and BWDB 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 BWDB and all contractors, suppliers, consultants, and other service providers as they relate to the Project.

29. The Borrower and BWDB shall announce the Project and business opportunities associated with the Project on their websites. In addition, the websites shall at least disclose the following information in relation to Goods, Works and Consulting Services procured for the Project: (a) the list of participating bidders; (b) the name of the winning bidder; (c) the amount of the contracts awarded; and (d) the Goods, Works and Consulting Services procured.

30. The Borrower shall conduct periodic inspections and random spot checks of civil servants' and contractors' activities related to the procurement of Goods, Works and Consulting Services and to fund withdrawals and settlements under the Project.