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LOAN NUMBER 3554-BAN

LOAN AGREEMENT  
(Ordinary Operations)

(Third Public-Private Infrastructure Development Facility – Tranche 1)

between

PEOPLE'S REPUBLIC OF BANGLADESH

and

ASIAN DEVELOPMENT BANK

DATED 19 NOVEMBER 2017

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BAN 42180

**LOAN AGREEMENT  
(Ordinary Operations)**

LOAN AGREEMENT dated 19 November 2017 between PEOPLE'S REPUBLIC OF BANGLADESH ("Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) by a framework financing agreement dated 8 November 2016 between the Borrower and ADB, ADB has agreed to provide a multitranche financing facility to the Borrower for the purposes of financing projects under the Third Public-Private Infrastructure Development Facility;

(B) by a periodic financing request dated 8 November 2016, the Borrower has applied to ADB for two loans for the purpose of the Project described in Section 3.01 of this Loan Agreement;

(C) by a loan agreement of even date herewith between the Borrower and ADB ("Ordinary Operations [Concessional] Loan Agreement"), ADB has agreed to lend to the Borrower from ADB's ordinary capital resources an amount of seven million two hundred twenty-nine thousand Special Drawing Rights (SDR7,229,000) in connection with the Project;

(D) the Project will be carried out by the 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

(E) ADB has agreed to make a regular loan to the Borrower from ADB's ordinary operations 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 Regular Loans Made from ADB's Ordinary Capital Resources, dated 1 January 2017 ("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, as such agreement

may be amended from time to time; and such term includes all agreements supplementary to the Project Agreement and all schedules to the Project Agreement.

- (b) The term "Project Executing Agency" appearing in Sections 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".

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) "Bangladesh Bank Rate" means the rate published by Bangladesh Bank in accordance with Article 21 of the Bangladesh Bank Order (PO127 of 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 the 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 updates thereto, prepared and submitted by IDCOL and cleared by ADB;
- (g) "Facility" means the multitranche financing facility provided by ADB to the Borrower for purposes of financing projects under the Investment Program;
- (h) "FAM" means the Facility administration manual dated 8 November 2016 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) "FFA" means the framework financing agreement dated 8 November 2016 between ADB and the Borrower with respect to the Facility;
- (j) "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;

- (k) "IDCOL" means the Infrastructure Development Company Limited, established under the laws and regulations of the Borrower and has its registered address at UTC Building, Level 16, 8 Panthapath, Kawran Bazar, Dhaka-1215, Bangladesh or any successor thereto acceptable to ADB;
- (l) "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;
- (m) "Involuntary Resettlement Safeguards" means the principles and requirements set forth in Chapter V, Appendix 2, and Appendix 4 (as applicable) of the SPS;
- (n) "Loan Disbursement Handbook" means ADB's Loan Disbursement Handbook (2015, as amended from time to time);
- (o) "Memorandum and Articles" means IDCOL's Memorandum and Articles of Association, as amended from time to time;
- (p) "Procurement Guidelines" means ADB's Procurement Guidelines (2015, as amended from time to time);
- (q) "Qualified Enterprise" means an enterprise, which satisfies the eligibility criteria set out in paragraph 2(b) of Schedule 3 to this Loan Agreement;
- (r) "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;
- (s) "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;
- (t) "SPS" means ADB's Safeguard Policy Statement (2009);
- (u) "Safeguards Monitoring Report" means each report prepared and submitted by IDCOL to ADB on its performance with regard to the ESSF, including any corrective and preventative actions;
- (v) "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;
- (w) "Small Ethnic Communities Safeguards" means the principles and requirements set forth in Chapter V, Appendix 3, and Appendix 4 (as applicable) of the SPS;

- (x) "Subloan" means a loan made, or proposed to be made, by IDCOL out of the proceeds of the Loan to a Qualified Enterprise for a Qualified Subproject;
- (y) "Subloan Agreement" means an agreement between IDCOL and a Qualified Enterprise pursuant to which IDCOL shall provide 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) "Takeout Financing" means financing by IDCOL of Qualified Subprojects in accordance with its applicable policies on taking over of existing loans;
- (bb) "Tk" means Bangladesh Taka, which is the lawful currency of the Borrower; and
- (cc) "Works" means construction or civil works to be financed out of the proceeds of the Loan, including services such as drilling or mapping, and project related services that are provided as part of a single responsibility or turnkey contract, but excluding Consulting Services.

## ARTICLE II

### The Loan

Section 2.01. (a) ADB agrees to lend to the Borrower from ADB's ordinary capital resources an amount of two hundred fifty million Dollars (\$250,000,000), 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 15 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; and
- (b) 0.60% as provided by Section 3.02 of the Loan Regulations less a credit of 0.10% as provided by Section 3.03 of the Loan Regulations.

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 May and 15 November 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 for which the Loan is made is the financing by IDCOL of Qualified Subprojects by making Subloans. 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. The Borrower shall relend the proceeds of the Loan to IDCOL either in Dollars at the interest rate of 100 basis points above LIBOR per annum or in Tk at Bangladesh Bank Rate, in either case providing a grace period of 5 years and a repayment period of 15 years thereafter, under a Subsidiary Loan Agreement which shall also include provisions for the carrying out of the Project, and the rights of the Borrower and

ADB with respect thereto. Such Subsidiary Loan Agreement shall be in such form and have such additional terms and conditions as acceptable to ADB, and shall be without prejudice to, and without limitation on, the obligations of the Borrower under this Loan Agreement.

Section 3.03. (a) Except as ADB may otherwise agree, the proceeds of the Loan shall be used only for making 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) 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 3.04. Withdrawals from the Loan Account may be made for reimbursement of reasonable 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.

Section 3.05. The Loan Closing Date for the purposes of Section 9.02 of the Loan Regulations shall be 31 December 2020 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. 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 4.03. 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 4.04. 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 4.05. (a) The Borrower shall exercise its rights under the Subsidiary Loan Agreement in such a manner as to protect the interests of the Borrower and ADB and to accomplish the purposes of the Loan.

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

## **ARTICLE V**

### **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(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; and
- (c) the Borrower or IDCOL shall have failed to perform one or more of their obligations under the Subsidiary 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, subject only to the effectiveness of this Loan Agreement;



- (b) the execution and delivery of the Special Operations Loan Agreement on behalf of the 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; and
- (c) IDCOL shall have appointed (i) a senior manager with background in risk management as the risk management head and to be a voting member of IDCOL's credit risk management committee; (ii) a unit head to manage IDCOL's newly established loan recovery unit reporting to the credit management head; (iii) an internal auditor at senior level to head IDCOL's internal audit unit reporting directly to IDCOL board; and (iv) a senior officer for IDCOL's large infrastructure unit, all with such terms of reference and in a manner acceptable to ADB.

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 Section 3.04 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 Senior Secretary or Secretary, Additional Secretary or Chief, Joint Secretary or Joint Chief, Deputy Secretary or Deputy Chief, Senior Assistant Secretary or Senior Assistant Chief, Assistant Secretary or Assistant Chief of the Economic Relations Division of the 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) 918-0788

**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  \_\_\_\_\_  
KAZI SHOFIQL AZAM  
Secretary  
Economic Relations Division  
Ministry of Finance

ASIAN DEVELOPMENT BANK

By  \_\_\_\_\_  
MANMOHAN PARKASH  
Country Director  
Bangladesh Resident Mission

## SCHEDULE 1

### Amortization Schedule

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

<u>Date Payment Due</u>	<u>Installment Share</u> (expressed as a %)
15 May 2022	3.333333
15 November 2022	3.333333
15 May 2023	3.333333
15 November 2023	3.333333
15 May 2024	3.333333
15 November 2024	3.333333
15 May 2025	3.333333
15 November 2025	3.333333
15 May 2026	3.333333
15 November 2026	3.333333
15 May 2027	3.333333
15 November 2027	3.333333
15 May 2028	3.333333
15 November 2028	3.333333
15 May 2029	3.333333
15 November 2029	3.333333
15 May 2030	3.333333
15 November 2030	3.333333
15 May 2031	3.333333
15 November 2031	3.333333
15 May 2032	3.333333
15 November 2032	3.333333
15 May 2033	3.333333
15 November 2033	3.333333
15 May 2034	3.333333
15 November 2034	3.333333
15 May 2035	3.333333
15 November 2035	3.333333
15 May 2036	3.333333
15 November 2036	<u>3.333343</u>
<b>TOTAL</b>	<b>100.000000</b>

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

- (a) to the extent that any proceeds of the Loan shall have been withdrawn as of the first Principal Payment Date, the Borrower shall repay the amount withdrawn and outstanding as of such date in accordance with paragraph 1 of this Schedule; and
  - (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 2 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.
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 Qualified Enterprise undertakes procurement of Goods, Works, and Consulting Services with due attention to economy and efficiency and in accordance with established private sector or commercial practices, acceptable to ADB.

Industrial or Intellectual Property Rights

4. (a) The Borrower shall cause IDCOL to 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 shall cause IDCOL to 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.
5. The Borrower shall cause IDCOL to 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 FAM. Any subsequent change to the FAM shall become effective only after approval of such change by the Borrower, IDCOL and ADB. In the event of any discrepancy between the FAM 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 (at least 51%) owned 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 proven track record of successfully developing, financing and operating medium- to large-sized infrastructure projects similar to the Qualified Subproject or have made formal or contractual arrangements with third parties with such proven track record;
- (iii) have equity, or be able to procure equity, equal to at least 20% of the total cost of the relevant 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;
- (vii) maintain appropriate financial records of income and expenditure to the satisfaction of IDCOL and ADB; and

- (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.
- (c) Except as ADB may otherwise agree, each Qualified Subproject shall:
- (i) form an integral part of the Borrower's priority plan for the infrastructure sector, including the renewable energy or energy efficiency sector;
  - (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 revenues for repaying the Subloan; in the case of a Dollar-denominated Subloan, be capable of generating sufficient foreign exchange revenues or revenue indexed to Dollar or demonstrate sufficient capacity to mitigate the currency risk for such repayments;
  - (iv) obtain all necessary Borrower approvals and licenses, and comply with its the national laws and regulations relating to environment, involuntary resettlement and indigenous peoples;
  - (v) comply with SPS and ESSF, and fall within category B or C for SPS purposes;
  - (vi) have an economic rate of return of not less than 12%; and
  - (vii) have a total project cost in excess of \$10 million equivalent.

#### Approval Process

3. (a) IDCOL shall submit to ADB for prior review and approval the first 3 proposals for Qualified Subprojects to be financed under the Loan. In order to prepare and process these Qualified Subprojects, IDCOL shall:
- (i) review the preliminary designs and cost estimates for the Qualified Subproject;
  - (ii) 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;
  - (iii) following ADB's approval of the concept paper, carry out a detailed due diligence and submit the following documents to ADB for approval: (A) a detailed information memorandum of business plan; (B) a copy of the extract of the relevant minutes from the meeting of the IDCOL board or credit committee through which the Subloan was approved; (C) compliance with



respect to ADB's Procurement Guidelines; (D) a copy of the Subloan agreement; and (E) any other relevant information;

- (iv) submit to ADB the safeguard documentation prepared for the Qualified Subproject pursuant to paragraph 9 to 13 below, together with a safeguards compliance certificate for the Qualified Subproject; and
- (v) periodically review ongoing Subprojects to ascertain their compliance with the approved safeguard plans and submit to ADB the reports.

(b) Following ADB's approval of the first 3 Qualified Subprojects, IDCOL may manage the review and approval of subsequent proposals. ADB reserves the right: (i) to request any supporting documentation for these proposals; and (ii) not to reimburse or liquidate any proposal that does not meet the criteria set forth in paragraph 2 above and in paragraphs 4 to 6 below.

#### Subloans

4. Each Subloan shall carry interest at an appropriate rate, which allows IDCOL to earn a risk-adjusted return 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 cost of the Qualified Enterprise, except that with prior approval of ADB the Subloan may exceed the limit and be up to 60% of the project cost for subprojects with an unusually high developmental impact and where long-term funds are not available.

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, 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 Enterprises shall carry out and operate the Qualified Subproject in compliance with SPS as required in paragraphs 9 to 13 of this Schedule 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 Enterprises to the use of the proceeds of the Loan upon failure by the Qualified Enterprise to perform its obligations under the agreement with IDCOL.

#### Takeout Financing

7. IDCOL may utilize not more than 20% of the proceeds of the Loan for Takeout Financing.

#### Screening, Categorization, and Environmental and Social Assessment and Planning

8. 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 (provided that no subproject shall be approved for financing if it is assessed as Category A for any of the safeguards within the meaning of the SPS).

Condition for Disbursement for Subprojects

9. Notwithstanding any other provision of this Loan Agreement, withdrawals may be made from the Loan Account for the purpose of any Qualified Subproject provided that the Borrower has caused IDCOL to maintain the ESSF in a manner satisfactory to ADB.

Environment

10. The Borrower shall ensure, or cause IDCOL to ensure, that the preparation, design, construction, implementation, operation and decommissioning of each Qualified Subproject comply with (a) all applicable laws and regulations of 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

11. 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.

12. 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

13. 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 indigenous peoples; (b) the Indigenous Peoples 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

14. The Borrower shall ensure, or cause IDCOL to ensure, that (a) necessary budgetary and human resources are made available to fully implement the ESSF; and (b) each sub-borrower under the Qualified Subproject makes necessary budget and human resources to fully implement the respective EMP, RP and SECP.

Safeguards Monitoring and Reporting

15. The Borrower shall do the following or cause IDCOL to do the following:
- (a) submit 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 Qualified Subproject construction or implementation that were not considered in the IEE, the EMP, the RP and the SECP, 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

16. The Borrower shall ensure, or cause IDCOL 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, Health and Safety

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

18. The Borrower and IDCOL shall strictly monitor compliance with the requirements set forth in paragraph 17 above and provide ADB with regular reports.

Gender and Development

19. The Borrower shall ensure that the principles of gender equality aimed at increasing Project benefits and impact on women in the Project area are followed during implementation of the Project. These include (a) equal pay to men and women for work of equal value; (b) enabling working conditions for women workers; and (c) taking necessary actions to encourage women living in the Project area to participate in the design and implementation of Project activities.

Financial Covenants

20. 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 reflect its cost of funds plus a spread to cover transaction costs and risks following full commercial and competitive terms.

Governance and Anticorruption

21. 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.

22. 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

23. 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.