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LOAN NUMBER 2549-BAN(SF)

PROJECT AGREEMENT

(Small and Medium-Sized Enterprise Development Project)

between

ASIAN DEVELOPMENT BANK

and

BANGLADESH BANK

DATED 12 OCTOBER 2009

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PAG:BAN 36200

## **PROJECT AGREEMENT**

PROJECT AGREEMENT dated 12 October 2009 between ASIAN DEVELOPMENT BANK ("ADB") and the BANGLADESH BANK ("BB").

### **WHEREAS**

(A) by a Loan Agreement of even date herewith between the People's Republic of Bangladesh ("Borrower") and ADB, ADB has agreed to make to the Borrower a loan in various currencies equivalent to forty eight million nine hundred twenty seven thousand Special Drawing Rights (SDR 48,927,000) on the terms and conditions set forth in the Loan Agreement, but only on the condition that the proceeds of the Loan be made available to BB and that BB agrees to undertake certain obligations towards ADB as set forth in this Project Agreement; and

(B) BB, in consideration of ADB entering into the Loan Agreement with the Borrower, has agreed to undertake the obligations set forth in this Project Agreement;

NOW THEREFORE the parties agree as follows:

## **ARTICLE I**

### **Definitions**

Section 1.01. Wherever used in this Project Agreement, unless the context otherwise requires, the terms defined in the Loan Agreement and in the Loan Regulations (as so defined) have the respective meanings therein set forth.

## **ARTICLE II**

### **Use of Proceeds of the Loan**

Section 2.01 BB shall make available the proceeds of the Loan, in Taka equivalent, to each PFI, under a Participation Agreement upon terms and conditions satisfactory to ADB and the Borrower. Except as ADB may otherwise agree, the terms for relending the proceeds of the Loan shall include interest at the prevailing bank rate of BB, and a repayment period not exceeding 20 years.

## ARTICLE III

### Subloans

Section 3.01. (a) Except as ADB may otherwise agree, BB shall ensure that the proceeds of each part of the Loan shall be used by the PFI for making a Subloan to the Qualified Enterprise, and shall be applied exclusively to the cost of Goods, Works and consulting services required to carry out the Qualified Subproject in respect of which such part of the Loan was withdrawn from the Loan Account.

(b) In the carrying out of the Project, BB shall ensure that the eligibility criteria with respect to PFI, Qualified Enterprise, Qualified Subproject, and Subloan as set out in Schedule 3 to the Loan Agreement is satisfied at all times.

(c) Except as ADB may otherwise agree, all Goods, Works and consulting services to be financed out of the proceeds of the Subloan shall be procured in accordance with the provisions of Schedule 2 to the Loan Agreement.

(d) All Subloans by the PFIs approved by BB shall be subject to post-monitoring and review by ADB.

Section 3.02. BB shall cause each PFI to ensure that:

- (i) each Subloan carries interest at an appropriate rate that reflects the cost of funds plus a spread that covers transaction costs and risk adjusted returns, and shall be made on terms whereby the PFI shall obtain, by a written agreement with the Qualified Enterprise in form acceptable to ADB, with rights adequate to protect the interests of the Borrower, the PFI, and ADB;
- (ii) each Subloan, along with BB's own contribution, finances not more than 75% of the cost of the Qualified Subproject, and that the PFI finances at least 15%, and the Qualified Enterprise finances at least 10%, of the cost of the Qualified Subproject;
- (iii) subject to the provisions of paragraph (ii) of this Section 3.02 to the Project Agreement, each Subloan is not in excess of Taka 7 million for a single borrower, or for a term of less than 2 years;
- (iv) qualified female entrepreneurs are given preference to access financing under the Project by earmarking a minimum of 15% of the Subloans for lending to women entrepreneurs; and in the event these funds are not utilized within a period of 2 years from the Effective Date, such funds revert to the general pool; and
- (v) a wide geographical and sectoral dispersion of the Subloans is achieved and preference is given to underdeveloped areas and

priority sectors as outlined in the Industrial Policy of the Borrower.

Section 3.03. Without limiting the foregoing provisions of Section 3.02 of this Project Agreement and in addition to any other provisions which a prudent lender would request, each Subloan agreement shall include provisions to the effect that:

- (i) the Qualified Enterprise shall carry out and operate the Qualified Subproject with due diligence and efficiency and in accordance with sound administrative, financial, business and environmental practices, including maintenance of adequate accounts and records;
- (ii) the proceeds of the Loan shall be used only for procurement in eligible source countries as specified by ADB, in accordance with procedures acceptable to ADB;
- (iii) 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;
- (iv) ADB, BB and the PFI shall each have the right to inspect such Goods and Works, the Qualified Enterprise, the Qualified Subproject and any relevant records and documents;
- (v) 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 practice, 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;
- (vi) ADB, BB and the PFI shall each be entitled to obtain 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
- (vii) the PFI 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 the PFI.

Section 3.04. BB shall ensure that each PFI promptly and effectively exercises its rights in relation to each Qualified Subproject in accordance with the standards of a prudent lender and in such manner as to protect the interests of the Borrower, BB, the PFI, and ADB.

## ARTICLE IV

### Particular Covenants

Section 4.01. (a) BB shall carry out the Project with due diligence and efficiency, and in conformity with sound banking, administrative, financial, engineering, environmental and business practices.

(b) In the carrying out of the Project, BB shall (i) perform all its obligations set forth in the Loan Agreement and the Project Agreement; and (ii) cause the PFIs to perform all their obligations under the Participation Agreements.

Section 4.02. Upon request of the Borrower, BB shall make adequate provision to protect against any loss resulting from changes in the rate of exchange between Taka and the currency or currencies in which the Borrower's outstanding money obligations have to be met.

Section 4.03. BB shall not make a Subloan to any Qualified Enterprise unless such Qualified Enterprise has at its disposal, or has made appropriate arrangements to obtain as and when required, all local currency funds, including adequate working capital, and other resources which are required by such Qualified Enterprise for the carrying out of its Qualified Subproject in respect of which the Subloan is to be made.

Section 4.04. BB shall maintain records and accounts adequate to record the progress of the Project and of each Qualified Subproject (including the cost thereof) and to reflect, in accordance with consistently maintained sound accounting principles, the operations and financial condition of BB.

Section 4.05. (a) BB shall furnish to ADB all such reports and information as ADB shall reasonably request concerning (i) the Loan and the expenditure of the proceeds thereof; (ii) the Project; (iii) the Qualified Enterprises, the Qualified Subprojects and the Subloans; (iv) the administration, operations and financial condition of BB and the PFIs; and (v) any other matters relating to the purposes of the Loan.

(b) Without limiting the generality of the foregoing, BB shall furnish to ADB quarterly reports on the execution of the Project. Such reports shall be submitted in such form and in such detail and within such a period as ADB shall reasonably request, and shall indicate, among other things, progress made and problems encountered during the period under review, steps taken or proposed to be taken to remedy these problems, and proposed program of activities and expected progress during the following 3 months.

(c) Promptly after the closing date for withdrawals from the Loan Account, but in any event not later than 3 months after the said closing date or such later date as ADB may agree for this purpose, BB shall prepare and furnish through the Borrower to ADB a report, in such form and in such detail as ADB shall reasonably request, on the utilization of the Loan, the execution of the Qualified Subprojects, their costs, the performance by BB of its obligations under this Project Agreement, the performance by the PFIs under the Participation Agreements, and the accomplishment of the purposes of the Loan.

Section 4.06. (a) ADB and BB shall cooperate fully to ensure that the purposes of the Loan will be accomplished.

(b) BB shall promptly inform ADB of any condition which interferes with, or threatens to interfere with, the progress of the Project, the performance of its obligations under this Project Agreement or the Participation Agreements, or the accomplishment of the purposes of the Loan.

(c) ADB and BB shall from time to time, at the request of either party, exchange views through their representatives with regard to any matters relating to the Project, BB and the Loan.

Section 4.07. (a) BB shall (i) maintain separate accounts for the Project; (ii) have such accounts and related financial statements (balance sheet, statement of income and expenses, and related statements) audited annually, in accordance with appropriate auditing standards consistently applied, by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB; and (iii) furnish to ADB, promptly after their preparation but in any event not later than 6 months after the close of the fiscal year to which they relate, certified copies of such audited accounts and financial statements and the report of the auditors relating thereto (including the auditors' opinion on the use of the Loan proceeds and compliance with the financial covenants of the Loan Agreement as well as on the use of the procedures for imprest account and statement of expenditures), all in the English language. BB shall furnish to ADB such further information concerning such accounts and financial statements and the audit thereof as ADB shall from time to time reasonably request.

(b) BB shall enable ADB, upon ADB's request, to discuss BB's financial statements and its financial affairs from time to time with the auditors, appointed by BB pursuant to Section 4.07(a) hereabove, and shall authorize and require any representative of such auditors to participate in any such discussions requested by ADB, provided that any such discussion shall be conducted only in the presence of an authorized officer of BB unless BB shall otherwise agree.

Section 4.08. BB shall enable, and cause each PFI to enable, ADB's representatives to inspect any Qualified Enterprise, any Qualified Subproject, the Goods and Works financed out of the proceeds of the Loan, and any relevant records and documents.

Section 4.09. (a) BB shall, promptly as required, take all action within its powers to maintain its statutory existence, to carry on its operations, and to acquire, maintain and renew all rights, properties, powers, privileges and franchises which are necessary in the carrying out of the Project or in the conduct of its business.

(b) BB shall at all times conduct its business in accordance with sound banking, administrative, financial, environmental, and business practices, and under the supervision of competent and experienced management and personnel.

(c) Except as ADB may otherwise agree, BB shall not sell, lease, transfer or otherwise dispose of any of its assets, except in the ordinary course of its business.

Section 4.10. BB shall cause each of its divisions or departments to observe and perform the obligations of BB under this Project Agreement to the extent to which such obligations may be applicable thereto, as though such obligations were binding upon each of such subsidiaries.

Section 4.11. Except as ADB may otherwise agree, BB shall duly perform all its obligations under the Administration Agreement and shall not take, or concur in, any action which would have the effect of assigning, amending, abrogating or waiving any rights or obligations of the parties under the Administration Agreement.

## ARTICLE V

### Effective Date; Termination

Section 5.01. This Project Agreement shall come into force and effect on the date on which the Loan Agreement shall come into force and effect. ADB shall promptly notify BB of such date.

Section 5.02. (a) This Project Agreement and all obligations of the parties hereunder shall terminate on the earlier of the following two dates:

- (i) the date on which the Loan Agreement shall terminate in accordance with its terms; or
- (ii) a date 20 years after the date of this Project Agreement.

(b) If the Loan Agreement terminates in accordance with its terms before the date specified in paragraph (a)(ii) of this Section, ADB shall promptly notify BB of this event.

Section 5.03. All the provisions of this Project Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the Loan Agreement.

**ARTICLE VI****Miscellaneous**

Section 6.01. Any notice or request required or permitted to be given or made under this Project Agreement and any agreement between the parties contemplated by this Project Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand or by mail or facsimile to the party to which it is required or permitted to be given or made at its address hereinafter specified, or at such other address as such party shall have designated by notice to the party giving such notice or making such request. The addresses so specified are:

For ADB

Asian Development Bank  
P.O. Box 789  
0980 Manila, Philippines

Facsimile Numbers:

632 636 2444  
632 636 2337

For BB

Agriculture Credit and Special Programs Department  
Bangladesh Bank, Head Office  
Motijheel C/A, Dhaka 1000  
Bangladesh

Facsimile Number:

880 2 7120356.

Section 6.02. (a) Any action required or permitted to be taken, and any documents required or permitted to be executed, under this Project Agreement or under Section 7.01 of the Loan Agreement by or on behalf of BB may be taken or executed by its Governor or by such other person or persons as he shall so designate in writing notified to ADB.


(b) BB shall furnish to ADB sufficient evidence of the authority of each person who will act under paragraph (a) of this Section, together with the authenticated specimen signature of each such person.

Section 6.03. No delay in exercising, or omission to exercise, any right, power or remedy accruing to either party under this Project Agreement upon any default shall impair any such right, power or remedy or be construed to be a waiver thereof or

an acquiescence in such default; nor shall the action of such party in respect of any default, or any acquiescence in any default, affect or impair any right, power or remedy of such party in respect of any other or subsequent default.

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

ASIAN DEVELOPMENT BANK

By   
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MD. NURUL HUDA  
Officer-in-Charge  
Bangladesh Resident Mission

BANGLADESH BANK

By   
\_\_\_\_\_  
S. M. MONIRUZZAMAN  
General Manager (ACSPD)