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LOAN NUMBER 2317-BAN(SF)

LOAN AGREEMENT  
(Special Operations)

(Railway Sector Investment Program – Reform Project)

between

PEOPLE'S REPUBLIC OF BANGLADESH

and

ASIAN DEVELOPMENT BANK

DATED 15 FEBRUARY 2007

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LAS:BAN 32234

## **LOAN AGREEMENT (Special Operations)**

LOAN AGREEMENT dated 15 February 2007 between PEOPLE'S REPUBLIC OF BANGLADESH (the "Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

### **WHEREAS**

(A) the Borrower has entered into a Framework Financing Agreement (hereinafter called "FFA") with ADB to seek financing for a roadmap and an investment program (as described in Schedule 1 to the FFA) for the development of the railway sector (hereinafter called the "Investment Program");

(B) the Investment Program has two components, namely (i) a reform project, described in Schedule 1 to this Loan Agreement for the reorganization of Bangladesh Railway ("BR") by lines of business, and subsequent transformation of BR into a government owned corporate entity (hereinafter called the "Project") and (ii) an investment project for various subprojects (hereinafter called "Investment Subprojects") within the Investment Program;

(C) the Borrower has submitted a periodic financing request (hereinafter called a "PFR") to ADB for a loan for the purposes of the Project;

(D) the Borrower has applied to ADB for a loan from its Special Funds resources for the purposes of the Project;

(E) the Borrower has also applied to ADB for a loan from its ordinary capital resources for the purposes of the investment project as described in a loan agreement of even date (hereinafter called the Ordinary Operations Loan Agreement); and

(F) ADB has, on the basis inter alia of the foregoing, agreed to make a loan to the Borrower from ADB's Special Funds resources upon the terms and conditions hereinafter set forth;

NOW THEREFORE the parties agree as follows:

## **ARTICLE I**

### **Loan Regulations; Definitions**

Section 1.01. All provisions of the Special Operations Loan Regulations of ADB, dated 1 January 2006 (the "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, unless the context otherwise requires, the several terms defined in the Loan Regulations and in

Section 1.02 of the Ordinary Operations Loan Agreement have the respective meanings therein set forth. In addition, the following term has the following meaning: "LOB" means line of business.

## **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 twenty million eighty-eight thousand Special Drawing Rights (SDR 20,088,000).

Section 2.02. (a) The Borrower shall pay to ADB an interest charge at the rate of one percent (1%) per annum during the grace period, and one and one-half percent (1.5%) per annum 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 paragraph (a) of this Section means the period prior to payment of the first principal amount of the Loan on the 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 November and 15 May 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 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 Dollar.

## **ARTICLE III**

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

Section 3.01. The Borrower shall cause the proceeds of the Loan to be applied to the financing of expenditures on the Project in accordance with the provisions of this Loan Agreement.

Section 3.02. The Goods, Works and consulting services and other items of expenditure to be financed out of the proceeds of the Loan and the allocation of amounts of the Loan among different categories of such Goods, Works and consulting services and other items of expenditure shall be 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, all Goods, Works and consulting services to be financed out of the proceeds of the Loan shall be procured in accordance with the provisions of Schedule 4 to this Loan Agreement.

Section 3.04. Withdrawals from the Loan Account in respect of goods and services shall be made only on account of expenditures relating to

- (a) Goods or Works which are produced in and supplied from and consulting services which are supplied from such member countries of ADB as shall have been specified by ADB from time to time as eligible sources for procurement, and
- (b) Goods, Works and consulting services which meet such other eligibility requirements as shall have been specified by ADB from time to time.

Section 3.05. The Loan Closing Date for the purposes of Section 8.02 of the Loan Regulations shall be 30 June 2011 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 of 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. (a) The Borrower shall (i) maintain, or cause to be maintained, separate accounts for the Project; (ii) have such accounts and related financial 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; (iii) furnish to ADB, as soon as available but in any event not later than 6 months after the end of each related fiscal year, 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 this Loan Agreement as well as on the use of the procedures for imprest account/statement of expenditures), all in the English language; and (iv) furnish to ADB such other information concerning such accounts and financial statements and the audit thereof as ADB shall from time to time reasonably request.

(b) The Borrower shall enable ADB, upon ADB's request, to discuss the Borrower's financial statements for the Project and its financial affairs related to the Project from time to time with the auditors appointed by the Borrower pursuant to Section 4.02(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 the Borrower unless the Borrower shall otherwise agree.

Section 4.03. The Borrower shall enable ADB's representatives to inspect the Project, the goods financed out of the proceeds of the Loan, and any relevant records and documents.

## **ARTICLE V**

### **Suspension; Cancellation; 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 Act or any provision thereof shall have been repealed, suspended or amended in any manner which in the reasonable opinion of ADB will or may adversely affect the carrying out of the Project or the operation of the Project facilities; or

(b) the Borrower shall have failed to perform any of its obligations under the Ordinary Operations Loan Agreement.

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

## **ARTICLE VI**

### **Effectiveness**

Section 6.01. The following is specified as an additional condition to the effectiveness of this Loan Agreement for the purposes of Section 9.01(f) of the Loan Regulations: the Ordinary Operations Loan Agreement shall have been duly executed and delivered on behalf of the Borrower, and all conditions precedent to its effectiveness (other than a condition requiring the effectiveness of this Loan Agreement) shall have been fulfilled.

Section 6.02. The following is specified as an additional matter, for the purposes of Section 9.02(d) of the Loan Regulations, to be included in the opinion or opinions to be furnished to ADB: the Ordinary Operations Loan Agreement has been duly executed and delivered on behalf of and is legally binding upon the Borrower in accordance with its terms.

Section 6.03. A date ninety (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**

### **Miscellaneous**

Section 7.01. The Secretary, or any Additional Secretary, Joint Secretary, Deputy Secretary or Deputy Chief of Economic Relations Division, 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 7.02. 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  
Government of the People's Republic of Bangladesh  
Sher-e-Bangla Nagar  
Dhaka 1207, Bangladesh

Facsimile Number:

(8802) 8113088

#### For ADB

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


Facsimile Numbers:

(632) 636-2444

(632) 636-2340

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 and to be delivered at the principal office of ADB, as of the day and year first above written.

PEOPLE'S REPUBLIC OF BANGLADESH

By   
MD. AMINUL ISLAM BHUIYAN  
Authorized Representative

ASIAN DEVELOPMENT BANK

By   
HUA DU  
Country Director  
Bangladesh Resident Mission

## **SCHEDULE 1**

### **Description of the Project**

1. The objective of the Project is to promote economic growth by improving the performance of the railway sector, with specific regard to implementing sector policy and organizational reforms as well as institutional strengthening actions to improve BR's commercial orientation. The Project will reform BR in accordance with the sector roadmap as described in Schedule 1 to the FFA. It will encompass (i) restructuring BR into an LOB structure in order to ensure greater commercial focus on its major market segments, (ii) improving financial governance, management and accounting systems to support effective decision-making and good governance in financial matters, (iii) improving human resource governance and utilization to enable BR to recruit and retain staff with the requisite skills, (iv) improving BR operational and maintenance performance, (v) transforming BR into a government owned corporate entity in order to preserve its operational and managerial autonomy, and (vi) enhancing the safety and technical regulatory framework for the rail subsector.

2. The Project will finance the following:

Part A: Consultancy services for (a) restructuring BR by LOB; (b) preparing BR's asset register and improving BR's financial governance, management and accounting systems, (c) improving human resource management, and (d) providing advisory services for the transformation of BR into a government owned corporate entity.

Part B: Computer hardware and software to implement improved financial management, accounting and human resource management systems.

Part C: Equipment needed to improve rail safety.

3. The Project is expected to be completed by 31 December 2010.



## SCHEDULE 2

### Amortization Schedule

#### (Railway Sector Investment Program – Reform Project)

<u>Date Payment Due</u>	<u>Payment of Principal</u> (expressed in Special Drawing Rights)*
15-Mar-2015	418,500.00
15-Sep-2015	418,500.00
15-Mar-2016	418,500.00
15-Sep-2016	418,500.00
15-Mar-2017	418,500.00
15-Sep-2017	418,500.00
15-Mar-2018	418,500.00
15-Sep-2018	418,500.00
15-Mar-2019	418,500.00
15-Sep-2019	418,500.00
15-Mar-2020	418,500.00
15-Sep-2020	418,500.00
15-Mar-2021	418,500.00
15-Sep-2021	418,500.00
15-Mar-2022	418,500.00
15-Sep-2022	418,500.00
15-Mar-2023	418,500.00
15-Sep-2023	418,500.00
15-Mar-2024	418,500.00
15-Sep-2024	418,500.00
15-Mar-2025	418,500.00
15-Sep-2025	418,500.00
15-Mar-2026	418,500.00
15-Sep-2026	418,500.00
15-Mar-2027	418,500.00
15-Sep-2027	418,500.00
15-Mar-2028	418,500.00
15-Sep-2028	418,500.00
15-Mar-2029	418,500.00
15-Sep-2029	418,500.00
15-Mar-2030	418,500.00
15-Sep-2030	418,500.00
15-Mar-2031	418,500.00
15-Sep-2031	418,500.00
15-Mar-2032	418,500.00
15-Sep-2032	418,500.00
15-Mar-2033	418,500.00
15-Sep-2033	418,500.00
15-Mar-2034	418,500.00
15-Sep-2034	418,500.00

<u>Date Payment Due</u>	<u>Payment of Principal (expressed in Special Drawing Rights)*</u>
15-Mar-2035	418,500.00
15-Sep-2035	418,500.00
15-Mar-2036	418,500.00
15-Sep-2036	418,500.00
15-Mar-2037	418,500.00
15-Sep-2037	418,500.00
15-Mar-2038	418,500.00
15-Sep-2038	418,500.00
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<b>TOTAL</b>	<b>20,088,000.00</b>
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\* The figures in this column represent SDR equivalents determined as of the respective dates of withdrawal. The arrangements for payment of each maturity 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 Goods, Works, consulting services and other items to be financed out of the proceeds of the Loan and the allocation of amounts of the Loan to each such Category (hereinafter called the Table). (Reference to "Category" or "Categories" in this Schedule is to a Category or Categories of the Table.)

##### Percentages of ADB Financing

2. Except as ADB may otherwise agree, the items of the Categories listed in the Table shall be financed out of the proceeds of the Loan on the basis of the percentages set forth in the Table.

##### Interest Charge

3. The amount allocated to Category 3 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, in consultation with and 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 then allocated to any Category appears to exceed all agreed expenditures in that Category, ADB may, in consultation with and by notice to the Borrower, reallocate such excess amount to any other Category.

##### Disbursement Procedures

5. Except as ADB may otherwise agree, all Goods, Works and consulting services to be financed out of the Loan proceeds shall be disbursed in accordance with ADB's "Loan Disbursement Handbook" dated January 2001 (ADB's Loan Disbursement Handbook) as amended from time to time.

Imprest Account: Statement of Expenditures

6. (a) Except as ADB may otherwise agree, the Borrower shall establish immediately after the Effective Date, an imprest account at the Bangladesh Bank. The imprest account shall be established, managed, replenished and liquidated in accordance with ADB's Loan Disbursement Handbook and detailed arrangements agreed upon between the Borrower and ADB. The currency of the imprest account shall be in U.S. Dollars. The initial amount to be deposited into the imprest account shall not exceed the lower of (i) the estimated expenditure for the first six months of Project implementation, or (ii) the equivalent of ten (10) percent of the Loan amount.

(b) The statement of expenditures (SOE) procedure may be used for reimbursement of eligible expenditures and to liquidate advances provided into the imprest account, in accordance with ADB's Loan Disbursement Handbook and detailed arrangements agreed upon between the Borrower and ADB. Any individual payment to be reimbursed or liquidated under the SOE procedure shall not exceed \$100,000.

**TABLE**

<b>ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (Railway Sector Investment Program – Reform Project)</b>			
<b>CATEGORY</b>			<b>ADB FINANCING</b>
<b>Number</b>	<b>Item</b>	<b>Amount Allocated SDR Category</b>	<b>Percentage and Basis for Withdrawal from the Loan Account</b>
1	Equipment	13,727,000	92.8 percent of total expenditure*
2	Consulting Services	3,415,000	100 percent of total expenditure*
3	Interest Charge	937,000	100 percent of amount due
4	Unallocated	2,009,000	
	<b>Total</b>	<b>20,088,000</b>	

\* Exclusive of taxes and duties

## SCHEDULE 4

### Procurement of Goods and Works, and Consulting Services

#### A. General

1. All Goods and Works, and consulting services, to be financed out of the proceeds of the Loan shall be subject to and governed by the Procurement Guidelines, and the Consulting Guidelines, respectively.
2. All terms used and not otherwise defined in this Loan Agreement have the meanings provided in the Procurement Guidelines and/or the Consulting Guidelines, as applicable.

#### B. Procurement for 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:

International Competitive Bidding

The method of procurement is 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.

4. Domestic Preference. The Borrower may grant a margin of preference in the evaluation of bids under international competitive bidding in accordance with paragraphs 2.55(a) and 2.56 of the Procurement Guidelines for domestically manufactured Goods and paragraphs 2.55(b) and 2.56 of the Procurement Guidelines for domestic Works.

#### C. Selection of Consulting Services.

5. Quality and Cost-Based Selection. Except as ADB may otherwise agree, the Borrower shall apply quality and cost based selection for selecting and engaging consulting services.
6. The Borrower's standard procedures for selecting and engaging consultants are subject to the following modifications: Chapter II of the Consulting Guidelines is hereby modified to the extent necessary to permit ADB to carry out the selection process for consulting services, up to and including selection of the consulting services provider, but not including negotiations for finalization of the consulting services contract.

**D. Industrial or Intellectual Property Rights**

7. (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; and 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.

**E. ADB's Review of Procurement Decisions**

8. All contracts 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 and Implementation of Project; Auditing and Accounting; Good Governance; and Social Safeguards**

1. The Borrower shall ensure that the Project is carried out in accordance with the FFA and all the Schedules (including Annexes) attached thereto.