

**Draft**

**Participation Agreement under Financing Brick Kiln Efficiency Improvement Project between Bangladesh Bank and .....**

This Agreement is signed on the day.....of.....2012.

**BETWEEN**

The Bangladesh Bank established by the Bangladesh Bank Order, 1972 (P.O.No.127 of 1972), having its head office at Motijheel Commercial Area, Dhaka (hereinafter called BB) represented by the Sustainable Finance Department (hereinafter called SFD).

**And**

a)<sup>1</sup> ..... duly established under the ..... Order/Act/Ordinance and having its head office at ....., Dhaka (hereinafter called Participating Bank).

**Or**

b)<sup>2</sup> .....duly established under the Companies Act of 1994 and carrying on its business under BB's license No..... dated..... having its head office at ....., Dhaka (hereinafter called the Participating Bank & Financial Institution).

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<sup>1</sup> **Applicable for Specialized Banks**

<sup>2</sup> **Applicable for SCBs and PCBs and Financial Institution.**

**Preamble**

Whereas:

(A) In pursuance of Section 2.01 of Article II of the Loan Agreements (ADB Loan 2865 and 2866-BAN: Financing Brick Kiln Efficiency Improvement Project) between the People's Republic of Bangladesh (the Borrower) and the Asian Development Bank (ADB) executed on 20 June 2012 for the respective amounts equivalent to US\$ 30,000,000 (Thirty million) from ADB's ordinary capital resources for upgrading Fixed Chimney Kiln (FCK) facilities to improved zigzag kiln facilities and an amount of SDR 12,972,000 (Twelve million Nine hundred Seventy Two thousand) from ADB's Special Funds resources for constructing new Vertical Shaft Brick Kiln (VSBK), Hybrid Hoffman Kiln (HHK) and tunnel kiln facilities respectively.

AND

An Administration Agreement has been signed between the Government of Bangladesh and Bangladesh Bank (BB)

It is required to enter into a separate participation agreement between BB and the lending Bank/Financial Institution interested to relend the proceeds of the Loans, in Taka equivalent to the PFIs pursuant to this Participation Agreements upon terms and conditions acceptable to ADB.

Now, therefore, the parties hereto hereby agree as follows:-

**Article-I**

**Definition:**

Section: 1

The Project comprises the financing of energy efficiency improvements in the brick kiln sector by PFIs to make Subloans to Qualified Enterprises for Qualified Subprojects. The Project consists of the following components: (i) Part A : upgrading FCK facilities to *improved* zigzag kiln facilities as acceptable to the DOE; and (ii) Part B: construction of new VSBK, HHK, tunnel kiln or any other efficient facilities as acceptable to the DOE.

Section: 2

Unless the context otherwise requires the several terms used to the preamble, to this Agreement have the respective meaning therein set forth and the following additional terms have the following meanings :-

- (a) 'BB' means Bangladesh Bank.
- (b) 'SFD' means Sustainable Finance Department of Bangladesh Bank.
- (c) 'Bank' means any banking company operating in Bangladesh having license from Bangladesh Bank.
- (d) Financial Institution means any Financial Institution (FI) operating in Bangladesh having license from Bangladesh Bank.
- (e) 'Subloans' means a loan made, or proposed to be made, by a PFI out of proceeds of the ADB Loan to a Qualified Enterprise for a Qualified Subproject.
- (f) 'Qualified Subproject' means a specific subproject, which satisfies the eligibility criteria set out in Section 1 through Section 3 of Article 3 of this Participation Agreement, as applicable;
- (g) 'GAP' means Gender Action Plan.

- (h) “Qualified Enterprise” means an enterprise, which satisfies the eligibility criteria set out in Section 4 and Section 5 of Article 3 of this Participation Agreement, as applicable;
- (i) ‘PFI’ means participating Bank/Financial Institution.
- (j) ‘ESMS’ means "Environment and Social Management System"
- (k) ‘EMP’ means the environmental management plan incorporated in an initial environmental examination (IEE) including any update thereto
- (l) IEE means an initial environmental examination for a Qualified Subproject, including any update thereto, prepared jointly by a Qualified Enterprise, a PFI and Bangladesh Bank for a Qualified Subproject, pursuant to the requirements set forth in the ESMS of the relevant PFI.
- (m) Safeguard Policy Statement” or ‘SPS’ means ADB's Safeguard Policy Statement (2009);

### **Article-II**

#### **Section 1:**

To be eligible as a PFI, a financial institution must:

1. have a strategy, a lending policy and a satisfactory track record of performance in financing brick kiln and energy efficiency projects;
2. have a credit rating of at least BBB– in accordance with the Bangladesh long-term national rating scale of Credit Rating Information and Services Limited, or an equivalent rating by any other credit rating agency acceptable to ADB;
3. be in compliance with applicable prudential regulations and guidelines of Bangladesh Bank, including but not limited to those relating to minimum risk-weighted capital, recognition of income, loan classification, loss provisioning, ratio of nonperforming loans to overall loans, and anti-money laundering;
4. have demonstrated compliance with Bangladesh Bank’s guidelines on corporate governance of banks and financial institutions, which includes (a) corporate governance structures that promote effective identification, monitoring, and management of all material business risks; (b) systems for ensuring compliance with all statutory and regulatory requirements; (c) implementation of financial disclosure requirements for market participants and observers; and (d) setting of corporate governance objectives, strategies, and techniques;
5. have a demonstrated capacity for (a) proper risk management with adequate processes and procedures covering, among others, credit risk, asset liability risk, and operational risk, and (b) monitoring its portfolio, pursuing loan recoveries and submission of compliance reports;
6. have prepared and adopted an ESMS and have environmental and social safeguards management systems and trained personnel to monitor compliance with the ESMS;
7. have a business plan, approved by its senior management or board of directors, pertaining to the financing of energy efficiency improvements in the brick sector, which includes (a) a pipeline of prospective Qualified Subprojects, and (b) adequate internal organizational arrangements to implement the business plan, including the institutional and human resources required for originating, evaluating, approving and monitoring Qualified Subprojects in accordance with the provisions of this Loan Agreement and the Project Agreement; and
8. have the capacity to comply with the terms and conditions of the Participation Agreement.

**Section 2:**

PFI's will have to perform their obligations under the Participation Agreements and ensure the compliance to all provisions set out in Section 2.03 of the Project Agreement. The terms and conditions of the Participation Agreement are as follows:

1. at all times during the term of the Participation Agreement, continue to satisfy the eligibility criteria for PFI's set forth in Section 1 of this Participation Agreement;
2. use proceeds made available from ADB's ordinary capital resources only for Part A of the project and use proceeds made available ADB's Special Operations resources only for Part B of the project;
3. not extend a Subloan with proceeds of the Loans other than to Qualified Enterprises for a Qualified Subproject in accordance with the provisions of this Participation Agreement;
4. give financing preference to Qualified Subprojects under Part B of the Project according to technology in the order of, first tunnel kilns, second HHKs, and third VSBKs, except as ADB and Bangladesh Bank may otherwise agree;
5. determine the amount and the terms of each Subloan in accordance with its own loan management procedures, provided that the PFI shall charge interest on Subloans at rates that reflect its cost of funds plus a reasonable spread that covers transaction costs and risk adjusted returns following BB's rules and guidelines;
6. make necessary budgetary and human resources available to fully implement its ESMS and cause each Qualified Enterprise to whom it extends a Subloan to make available necessary budget and human resources to fully implement the respective EMP;
7. cause each Qualified Enterprise to whom it extends a Subloan to construct, implement and operate the Qualified Subproject in compliance with the applicable laws and regulations of the Borrower relating to health and safety, and the core labour standards, as set out in the relevant conventions of the International Labour Organization, on (i) prohibition of child labour, (ii) equal pay for equal work of equal value regardless of gender, ethnicity or caste, (iii) elimination of forced labour, and (iv) freedom of association;
8. cause each Qualified Enterprise to whom it extends a Subloan to implement the relevant provisions of the Gender Access Plan (GAP), including, without limitation, that (i) at least 10% of its workforce for the Qualified Subproject must be women, (ii) it offers preferential treatment for women displaced due to the closure of FCKs in the recruitment of workers; (iii) it must offer equal pay for work of equal value; and (iv) it must provide separate facilities for male and female workers;

9. undertake only to finance brick kiln investments comprising (i) the upgrading of FCKs to improved zigzag kiln facilities or (ii) the construction of new VSBK, HHK or tunnel kiln facilities, provided that these brick kilns are constructed and operated in compliance with the core labour standards as set out in the relevant conventions of the International Labour Organization(ILO);
10. establish and maintain sound operational policies and procedures for supervision and monitoring the Subloans so as to ensure achievement of the Project objectives;
11. furnish to Bangladesh Bank quarterly reports on the execution of the Qualified Subprojects, in such form, in such detail and within such a period as Bangladesh Bank shall reasonably request to fulfil its onward reporting requirements to ADB.
12. establish and maintain separate accounts for the Project in accordance with sound accounting principles following Bangladesh Accounting Standard(BSA)/International Financial Reporting Standard (IFRS) (ii) have such accounts and related financial statements (balance sheet, statement of income and expenses) audited annually in accordance with appropriate auditing standards consistently applied by an independent auditor selected and engaged in accordance with the competitive selection procedures, acceptable to ADB and Bangladesh Bank, (iii) have such auditor's report, related accounts and financial statements (all in English) submitted to Bangladesh Bank annually not later than 6 months after the end of the fiscal year, and (iv) submit semi-annual unaudited accounts to Bangladesh Bank within the seventh month of a fiscal year; and
13. ensure that no material organizational changes (financial, operational, or structural), will be approved or implemented by the PFI without prior approval of Bangladesh Bank. Material organizational change means an organizational change in the PFI or a merger, amalgamation, acquisition, winding-up or dissolution of the PFI which could hinder or prevent the PFI from performing its obligations under the Participation Agreement.

### **Article III**

#### **Eligibility of a Qualified Subproject (Design standards):**

##### **Section 1:**

To be eligible as a Qualified Subproject under Part A of the Project, a subproject must comprise the upgrading of a FCK to an improved zigzag kiln facilities as acceptable to the DOE and must have obtained certification from DOE that it has been designed in accordance with the design standards, specifications and construction methods published by DOE in their website.

##### **Section 2:**

To be eligible as a Qualified Subproject under Part B of the Project, a subproject must comprise the construction of a new VSBK, HHK, tunnel kiln or any other efficient facilities as acceptable to the DOE and must have obtained certification from DOE that it has been designed accordance with the design standards, specifications and construction methods published by DOE in their website or, in the absence of such standards, in accordance with design standards, specifications and construction methods that reflect best international practice.

**Section 3:**

In addition to the requirements hereinabove, as applicable, each Qualified Subproject must:

- (a) be located in Bangladesh;
- (b) neither involve any involuntary resettlement impacts nor affect small ethnic group within the meaning of the Safeguard Policy Statement;
- (c) not involve any environmental impacts that would make the subproject a Category A subproject as defined by ADB Environmental Assessment Guidelines (2003 as revised from time-to-time);
- (d) comply with the Borrower's and ADB's requirements on environmental and social safeguards and core labor standards;
- (e) comply with the applicable provisions of the Gender Action Plan(GAP);
- (f) be economically and financially viable; and
- (g) not involve financing any activity included in the list of prohibited investment activities provided in Appendix 5 of the Safeguard Policy Statement.

**Section 4:**

To be eligible as a Qualified Enterprise for a Subloan under **Part A** of the Project, an enterprise must:

- (a) operate, and be licensed by the competent authorities to operate, FCK facilities within the country;
- (b) make an upfront contribution of at least 30% of the estimated cost of the Qualified Subproject;
- (c) commit in writing only to own or operate improved zigzag kilns, VSBK, HHK and/or tunnel kiln facilities and not to own or operate any less energy efficient brick kiln facilities, such as bull's trench kiln, Greenfield zigzag kiln or FCK facilities, after the Qualified Subproject has been completed; and
- (d) have the capacity, and commit in writing, to implement the Qualified Subproject in accordance with the provisions of this Participation Agreement.

## **Section 5**

To be eligible as a Qualified Enterprise for a Subloan under **Part B** of the Project, an enterprise must:

- (a) be financially sound and have demonstrated previous experience in the operation and managing of a brick field/construction material manufacturing facility;
- (b) submit a sound business plan for construction and operation of the proposed Qualified Subproject;
- (c) make an upfront contribution of at least 30% of the estimated cost of the proposed Qualified Subproject;
- (d) meet such reasonable other financial or commercial viability criteria as may be imposed by the PFI;
- (e) undertake in writing only to own or operate improved zigzag kiln, VSBK, HHK and/or tunnel kiln facilities and not to own or operate any less energy efficient brick kiln facilities, such as bull's trench kiln, Greenfield zigzag kiln or FCK facilities, after the Qualified Subproject has been completed; and
- (f) have the capacity, and commit in writing, to implement the Qualified Subproject in accordance with the provisions of this Participation Agreement.

## **Article IV**

### **Subloan**

1. Each Subloan must:

- (a) be screened and approved by PFI and subsequently submitted to BB;
- (b) finance not more than 50% of the estimated cost of a Qualified Subproject out of proceeds of the Loans; and
- (c) finance at least 20% of the estimated cost of the Qualified Subproject from resources at the disposal of the PFI other than (i) proceeds of the Loans or (ii) proceeds made available by other national, bilateral or multilateral development agencies or institutions.
- (d) have a repayment period of 7 years, excluding a grace period of up to 18 months.

2. PFI shall not approve any Subloan that finances more than the equivalent of \$5,000,000 out of proceeds of the Loans. The PFI shall ensure that each Subloan agreement includes 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 applicable technical, financial, business and development practices, including maintenance of adequate accounts and records;

- (ii) the proceeds of the Loans shall be used only for procurement in member countries of ADB, in accordance with procedures acceptable to ADB, of Goods which are produced in and supplied from, and Works which are supplied from, such countries;
  - (iii) the Goods and Works shall be used exclusively in the carrying out of the Qualified Subproject;
  - (iv) ADB, Bangladesh Bank and the PFI shall each have the right to inspect the 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 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, Bangladesh Bank and the PFI shall each be entitled to obtain all such information as each shall reasonably request relating to the Subloan, the Goods and Works, 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 proceeds of the Subloan, and demand immediate repayment of any outstanding balance under the Subloan agreement, upon failure by the Qualified Enterprise to perform its obligations under its agreement with the PFI.
3. The PFIs will ensure that before any Qualified Subproject is approved for financing:
- (a) the ESMS of the relevant PFI is used to screen and categorize the significance of potential environmental, small ethnic group or involuntary resettlement impacts associated with such Qualified Subproject; and
  - (b) an IEE and EMP are prepared for such Qualified Subproject as required pursuant to the relevant ESMS.

#### **Article V**

#### **Environmental and Social Safeguards; Health and Labor Standards; Governance**

The PFI shall ensure that the preparation, design, construction, implementation, operation and decommissioning of each Qualified Subproject comply with (a) all applicable laws and regulations of the Bangladesh relating to environment, health, and safety; (b) the ADB's environmental safeguards requirements; (c) the ESMS; 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. The



PFI shall ensure that the Qualified Subprojects neither involve any involuntary resettlement impacts nor affect indigenous peoples within the meaning of the Safeguard Policy Statement. In the unforeseen event that such resettlement impacts do occur or indigenous peoples are affected, the PFI shall take all measures required to ensure compliance with (a) all applicable laws and regulations of the Borrower relating to involuntary resettlement or indigenous peoples, and (b) the ESMS.

The PFI shall do the following:

submit semi-annual Safeguards Monitoring Reports to Bangladesh Bank; if any unanticipated environmental and/or social risks and impacts *arise* during Qualified Subproject implementation, promptly inform Bangladesh Bank of the occurrence of such risks or impacts, with detailed description of the event and proposed corrective action plan; and report to Bangladesh Bank and DOE any actual or potential breach of compliance with the measures and requirements set forth in the ESMS and any EMP promptly after becoming aware of the breach. The PFI shall ensure that works contracts and bidding documents under the Qualified Subprojects include specific provisions requiring contractors to comply (a) with all applicable laws and regulations of the Borrower relating to health and safety and with the core labor standards, as set out in the relevant conventions of the International Labor Organization, on

(i) prohibition of child labor, (ii) equal pay for equal work of equal value regardless of gender, ethnicity or caste, (iii) elimination of forced labor and (iv) freedom of association; and (b) with the requirement to disseminate information on sexually transmitted diseases including HIV/AIDS to employees and local communities surrounding the Qualified Subproject sites. The PFIs shall do and shall require Qualified Enterprises to do, the following: (i) 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 (ii) cooperate with any such investigation and extend all necessary assistance for satisfactory completion of such investigation.

The PFI 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.

The PFI shall:

- (a) comply with applicable laws and regulations of the government 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; and
- (b) formulate and implement internal control procedures, including customer due diligence procedures, to prevent violation of subparagraph (a) hereinabove; and promptly informs the Bangladesh Bank if there is any violation or potential violation of subparagraph (a) hereinabove.

**Article VI**

**Miscellaneous:**

- i. Selection of subborrower, loan sanction, disbursement, documentation, determination of debt-equity ratio, monitoring of the proper utilization of loan will be decided by Bangladesh Bank’s policy and on the basis of the bank's/ Financial Institution's own rules and regulations and the bank-customer relationship.
- ii. BB reserves the right to change any terms and conditions of the scheme or make any addition, deletion or amendment regarding the fund, but if it is done then BB will inform it to the concerned Banks/ Financial Institutions in time.

1.Witness:

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For and on behalf of  
Bangladesh Bank

General Manager  
(SFD)

2.Witness:

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1.Witness:

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For and on behalf of  
Participating Bank/Financial Institutions.

Managing Director

2.Witness:

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