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GRANT NUMBER 0088/0089- BHU (SF)

PROJECT AGREEMENT

(Micro, Small, and Medium-Sized Enterprise Sector Development Project)

between

ASIAN DEVELOPMENT BANK

and

BHUTAN DEVELOPMENT FINANCE CORPORATION

DATED 19 FEBRUARY 2008

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PAG: BHU 39221

## **PROJECT AGREEMENT**

PROJECT AGREEMENT dated 19 February 2008 between ASIAN DEVELOPMENT BANK ("ADB") and BHUTAN DEVELOPMENT FINANCE CORPORATION ("BDFC").

### **WHEREAS**

(A) by a Grant Agreement of even date herewith ("Project Grant Agreement") between the Kingdom of Bhutan (the "Recipient") and ADB, ADB has agreed to provide a grant to the Recipient in an amount of nine million dollars (\$9,000,000) on the terms and conditions set forth in the Project Grant Agreement, but only on condition that a portion of the proceeds of the grant in an amount of five million dollars (\$5,000,000) be lent to BDFC and that BDFC agree to undertake certain obligations towards ADB as set forth in this Project Agreement; and

(B) BDFC in consideration of ADB entering into the Project Grant Agreement with the Recipient 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 Project Grant Agreement and in the Grant Regulations (as so defined) have the respective meanings therein set forth, except that for purposes of this Project Agreement, the term "the Project" means Part A of the Project, as described in Schedule 1 to the Project Grant Agreement.

## **ARTICLE II**

### **Subloans**

Section 2.01. Except as ADB may otherwise agree, the proceeds of each part of the Grant made available by the Recipient to BDFC shall be used by BDFC only for making a Subloan to a Qualified Enterprise in respect of which such part of the Grant was withdrawn from the Grant Account and shall be applied exclusively to the cost of Goods, Works and consulting services and other items of expenditure required to carry out the Qualified Project.

Section 2.02. (a) BDFC shall submit to ADB the first five micro Subloans (below Nu50,000) and first three small Subloans (below Nu100,000) for prior concurrence. Such submission shall be in a form satisfactory to ADB and shall contain a description and appraisal of the Qualified Project, the terms and conditions of the proposed Subloan and such other information as ADB shall reasonably request. No withdrawal shall be made in respect of a Subloan falling within the provisions of this paragraph unless ADB shall have authorized withdrawals from the Grant Account.

(b) All subsequent Subloans approved by BDFC shall be subject to post-monitoring and review by ADB.

(c) In the carrying out of the Project, BDFC shall comply with the Subloan eligibility criteria and financing parameters as set out in Schedule 4 to the Project Grant Agreement.

Section 2.03. (a) Each Subloan shall carry interest at the prevailing market rate, based on BDFC's cost of funds, plus a spread that covers transaction costs and risk on the Subloan, and shall be made on terms whereby BDFC shall obtain, by a written agreement with the Qualified Enterprise in form acceptable to ADB, rights adequate to protect the interests of the Recipient, BDFC and ADB.

(b) Except as ADB may otherwise agree, the amortization schedule applicable to each Subloan (i) shall not extend beyond seven (7) years, including a grace period not exceeding one (1) year, from the date when such Subloan is approved, or authorized for withdrawal from the Grant Account; and (ii) shall provide for approximately equal semi-annual aggregate payments of principal plus interest.

Section 2.04. Without limiting the generality of the foregoing provisions of Section 2.03(a) 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 Project 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 Grant shall be used only for procurement in eligible source countries as specified by ADB, in accordance with ADB's Procurement Guidelines;
- (iii) the Qualified Enterprise shall carry out and operate the Qualified Project in compliance with ADB's safeguards policies as set out in Schedule 4 to the Project Grant Agreement;
- (iv) the Goods, Works and consulting services to be financed out of the proceeds of the Grant shall be used exclusively in the carrying out of the Qualified Project;

- (v) ADB and BDFC shall each have the right to inspect such Goods and Works, the Qualified Enterprise, the Qualified Project and any relevant records and documents;
- (vi) 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 Grant 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;
- (vii) ADB and BDFC 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 Grant, the Qualified Project, the Qualified Enterprise and other related matters; and
- (viii) BDFC shall be entitled to suspend or terminate further access by the Qualified Enterprise to the use of the proceeds of the Grant upon failure by the Qualified Enterprise to perform its obligations under its agreement with BDFC.

Section 2.05. BDFC shall promptly and effectively exercise its rights in relation to each Qualified Project in accordance with the standards of a prudent lender and in such manner as to protect the interests of the Recipient, BDFC and ADB.

### **ARTICLE III**

#### **Particular Covenants**

Section 3.01. (a) BDFC 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 and in the conduct of its business, BDFC shall perform all the obligations set forth in the Project Grant Agreement, to the extent that they are applicable to BDFC.

Section 3.02. BDFC shall at all times make adequate provision to protect itself against any loss resulting from changes in the rate of exchange between Nu and the currency or currencies in which BDFC's outstanding money obligations will have to be met.

Section 3.03. BDFC 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 Project in respect of which the Subloan is to be made.

Section 3.04. BDFC shall maintain records and accounts adequate to record the progress of the Project and of each Qualified Project (including the cost thereof) and to reflect, in accordance with consistently maintained sound accounting principles, the operations and financial condition of BDFC.

Section 3.05. (a) ADB and BDFC shall cooperate fully to ensure that the purposes of the Grant will be accomplished.

(b) BDFC 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 BDFC Loan Agreement, or the accomplishment of the purposes of the Grant.

(c) ADB and BDFC 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, BDFC and the Grant.

Section 3.06. (a) BDFC shall furnish to ADB all such reports and information as ADB shall reasonably request concerning (i) the Grant and the expenditure of the proceeds thereof; (ii) the Project; (iii) the Qualified Enterprises, the Qualified Projects and the Subloans; (iv) the administration, operations and financial condition of BDFC; and (v) any other matters relating to the purposes of the Grant.

(b) Without limiting the generality of the foregoing, BDFC shall furnish to ADB semi-annual reports on the execution of the Project and on the operation and management of BDFC. 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 six months.

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

Section 3.07. (a) BDFC shall have its accounts and 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 shall, promptly after their preparation but in any event not later than 6 months after the close of the fiscal year to which they relate, furnish to ADB (i) certified copies of such audited accounts and financial statements and (ii) the report of the auditors relating thereto (including the auditors' opinion on the use of Grant proceeds and compliance with the financial covenants of the Project Grant Agreement), all in the English language. BDFC 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) BDFC shall enable ADB, upon ADB's request, to discuss BDFC's financial statements and its financial affairs from time to time with the auditors appointed by BDFC pursuant to Section 3.07(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 BDFC unless BDFC shall otherwise agree.

Section 3.08. BDFC shall enable ADB's representatives to inspect any Qualified Enterprise, any Qualified Project, the Goods and Works financed out of the proceeds of the Grant, and any relevant records and documents.

Section 3.09. (a) BDFC shall, promptly as required, take all action within its powers to maintain its corporate 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) BDFC 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, BDFC shall not (i) sell, lease, transfer or otherwise dispose of any of its assets, except in the ordinary course of its business; or (ii) establish or acquire any subsidiary.

Section 3.10. BDFC shall cause each of its subsidiaries (if any) to observe and perform the obligations of BDFC 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 3.11. Except as ADB may otherwise agree, BDFC shall duly perform all its obligation under the BDFC Loan 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 BDFC Loan Agreement.

## **ARTICLE IV**

### **Effective Date; Termination**

Section 4.01. This Project Agreement shall come into force and effect on the date on which the Project Grant Agreement shall come into force and effect. ADB shall promptly notify BDFC of such date.

Section 4.02. All the provisions of this Project Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the Project Grant Agreement.

**ARTICLE V****Miscellaneous**

Section 5.01. 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, telegram, cable, telex, facsimile or radiogram 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

Cable Address:

ASIANBANK  
MANILA

Telex Numbers:

29066 ADB PH (RCA)  
42205 ADB PM (ITT)  
63587 ADB PN (ETPI)

Facsimile Numbers:

(632) 636-2444  
(632) 636-2337.

For BDFC

Bhutan Development Finance Corporation  
Post Box 256  
Thimphu, Bhutan

Cable Address:

BHUDEF CORP

Facsimile Number:

(975)-2-323428

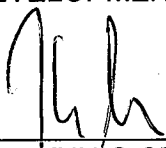
Section 5.02. (a) Any action required or permitted to be taken, and any documents required or permitted to be executed, under this Project Agreement or by or on behalf of BDFC may be taken or executed by its Managing Director or by such other person or persons as he shall so designate in writing notified to ADB.

(b) BDFC 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.

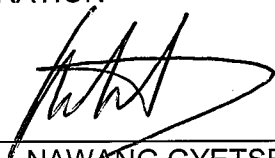
Section 5.03. No delay in exercising, or omission to exercise, any right, power or remedy accruing to either party under this Project Agreement upon any default shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence in such default; nor shall the action 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   
KUNIO SENGA  
Director General  
South Asia Department

BHUTAN DEVELOPMENT FINANCE CORPORATION

By   
NAWANG GYETSE  
Authorized Representative