
LOAN NUMBER 2581 - NEP(SF)

GRANT NUMBER 0181 - NEP(SF)

FINANCING AGREEMENT
(Special Operations)
(Air Transport Capacity Enhancement Project)

between

NEPAL

and

ASIAN DEVELOPMENT BANK

DATED 25 MAY 2010

FAS:NEP 38349

**FINANCING AGREEMENT
(Special Operations)**

FINANCING AGREEMENT dated 25 May 2010 between NEPAL ("Nepal") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) Nepal has applied to ADB for a loan and a grant for the purposes of the Project described in Schedule 1 to this Financing Agreement;

(B) the Project will be carried out by the Civil Aviation Authority of Nepal ("CAAN"), and for this purpose Nepal will make available to CAAN the proceeds of the loan and the grant provided for herein upon terms and conditions satisfactory to ADB; and

(C) ADB has agreed to provide financing by making a loan and a grant to Nepal from ADB's Special Funds resources upon the terms and conditions set forth herein and in the Project Agreement of even date herewith between ADB and CAAN;

NOW THEREFORE the parties agree as follows:

ARTICLE I

Loan Regulations and Grant 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 the Loan made pursuant to this Financing Agreement with the same force and effect as if they were fully set forth herein, subject, however, to the following modifications:

(a) the term "Loan Agreement", wherever it appears in the Loan Regulations, shall be substituted by the term "Financing Agreement";

(b) the term "Borrower", wherever it appears in the Loan Regulations, shall be substituted by the term "Nepal".

Section 1.02. All provisions of the Special Operations Grant Regulations of ADB, dated 7 February 2005 (the "Grant Regulations"), are hereby made applicable to the Grant made pursuant to this Financing Agreement with the same force and effect as if they were fully set forth herein subject, however, to the following modifications:

(a) the term "Grant Agreement", wherever it appears in the Grant Regulations, shall be substituted by the term "Financing Agreement";

(b) the term "Recipient", wherever it appears in the Grant Regulations, shall be substituted by the term "Nepal".

Section 1.03. The definitions set forth in the Loan Regulations and Grant Regulations are applicable to this Financing Agreement, in each case unless the context requires otherwise. In addition, the following terms have the following meanings:

(a) "CAAN" means the Civil Aviation Authority of Nepal, established under and governed by the Civil Aviation Authority of Nepal Act, 2053, as amended to date;

(b) "Capacity Development Component" means the component of the Project described in paragraph 3 of Schedule 1 to this Financing Agreement;

(c) "Consulting Guidelines" means ADB's Guidelines on the Use of Consultants by Asian Development Bank and Its Borrowers (February 2007, as amended from time to time);

(d) "Consulting Services" means consulting services to be financed out of the proceeds of the Loan and the Grant, and excludes related services rendered under a contract for the supply of Goods or Works;

(e) "Environmental Management Plan" means the environmental management plan prepared for the Project under the IEE;

(f) "Goods" means materials and equipment to be financed out of the proceeds of the Loan and the Grant, and includes related services rendered under a contract for the supply of these materials and equipment, such as transportation, insurance, installation, inspection, commissioning, training, and initial maintenance;

(g) "IEE" means the initial environmental examination prepared for the Project by CAAN and approved by ADB;

(h) "Investment Component" means the component of the Project described in paragraph 2 of Schedule 1 to this Financing Agreement;

(i) "Loan Disbursement Handbook" means ADB's Loan Disbursement Handbook (January 2007, as amended from time to time);

(j) "PCU" means the Project Coordination Unit established in accordance with paragraph 1 of Schedule 5 to this Financing Agreement;

(k) "PIU" means each and any of the Project Implementation Units established in accordance with paragraph 3 of Schedule 5 to this Financing Agreement;

(l) "PIU-Capacity Development" means the PIU established for the Capacity Development Component;

(m) "PIU-Infrastructure" means the PIU established for the Investment Component of the Project;

(n) "PPMS" means the project performance and monitoring system referred to in paragraph 21 of Schedule 5 to this Financing Agreement;

(o) "Procurement Guidelines" means ADB's Procurement Guidelines (February 2007, as amended from time to time);

(p) "Procurement Plan" means the procurement plan for the Project dated 9 October 2009 and agreed between CAAN and ADB, as updated from time to time in accordance with the Procurement Guidelines, Consulting Guidelines, and other arrangements agreed with ADB;

(q) "Project Executing Agency" for the purposes of, and within the meaning of, the Loan Regulations and the Grant Regulations means CAAN, and any successor thereto acceptable to ADB, which is responsible for the carrying out of the Project;

(r) "Project facilities" means the facilities to be constructed or rehabilitated under the Project;

(s) "Subsidiary Financing Agreement" means the agreement between Nepal and CAAN described in Section 3.01 of this Financing Agreement;

(t) "TIA" means Tribhuvan International Airport, in Kathmandu, Nepal; and

(u) "Works" means construction, civil and electrical works to be financed out of the proceeds of the Loan and the Grant, and includes related services rendered under a contract to perform these works, such as drilling or mapping, and project-related services that are provided as part of a single responsibility or turnkey contract.

ARTICLE II

The Loan and the Grant

Section 2.01. ADB agrees to provide to Nepal from ADB's Special Funds resources, on terms and conditions set forth in this Financing Agreement:

(a) a loan in various currencies equivalent to SDR 44,388,000 (forty four million three hundred eighty eight thousand Special Drawing Rights) (the "Loan"); and

(b) a grant in the amount of \$10,000,000 (ten million Dollars) (the "Grant").

Section 2.02. (a) Nepal 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 Financing Agreement.

Section 2.03. The interest charge and any other charge on the Loan shall be payable semiannually on 15 May and 15 November in each year.

Section 2.04. Nepal 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 Financing Agreement.

Section 2.05. The currency of repayment of the principal amount of the Loan and the currency of payment of the interest charge for the purposes of Section 4.03(a) and 4.04 of the Loan Regulations shall be the Dollar.

ARTICLE III

Use of Proceeds of the Financing

Section 3.01. (a) Nepal shall relend the proceeds of the Loan and the Grant, together with other funds required for the Project, to CAAN under a Subsidiary Financing Agreement upon terms and conditions satisfactory to ADB. Except as ADB shall otherwise agree, the terms for relending the proceeds of the Loan shall include interest at the rate of 5% per annum and a repayment period of 32 years including a grace period of 8 years. CAAN will bear the foreign exchange risk.

(b) Nepal shall cause CAAN to apply the proceeds of the Loan and the Grant to the financing of expenditures on the Project in accordance with the provisions of this Financing Agreement and the Project Agreement.

Section 3.02. The categorization of the Goods, Works, Consulting Services and other items of expenditure and the respective allocation of amounts of the Loan and the Grant among the different categories of Goods, Works, Consulting Services and other items of expenditure shall be in accordance with the provisions of Schedule 3A and Schedule 3B to this Financing Agreement respectively, as such Schedule 3A and Schedule 3B may be amended from time to time by agreement between Nepal and ADB.

Section 3.03. Except as ADB may otherwise agree, all Goods, Works and Consulting Services shall be procured in accordance with the provisions of Schedule 4 to this Financing Agreement.

Section 3.04. Withdrawals from the Loan Account and the Grant Account in respect of Goods, Works and Consulting Services shall be made only on account of expenditures relating to:

- (a) Goods which are produced in and supplied from, and Works 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 and the Grant Closing Date for the purposes of Section 8.02 of the Grant Regulations shall be 30 June 2015 or, in each case, such other date as may from time to time be agreed between Nepal and ADB.

ARTICLE IV

Particular Covenants

Section 4.01. In the carrying out of the Project and operation of the Project facilities, Nepal shall perform, or cause to be performed, all obligations set forth in Schedule 5 to this Financing Agreement and the Project Agreement.

Section 4.02. Nepal shall enable ADB's representatives to inspect the Project, the Goods, the Works, and any relevant records and documents.

Section 4.03. Nepal shall take all action which shall be necessary on its part to enable CAAN 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 4.04. (a) Nepal shall exercise its rights under the Subsidiary Financing Agreement in such a manner as to protect the interests of Nepal and ADB and to accomplish the purposes of the Loan and the Grant.

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

ARTICLE V

Suspension; Cancellation; Acceleration of Maturity

Section 5.01. The following is specified as an additional event for suspension of the right of Nepal to make withdrawals from (a) the Loan Account for the purposes of Section 8.01(m) of the Loan Regulations, and (b) the Grant Account for the purposes of Section 8.01(k) of the Grant Regulations, respectively: Nepal or CAAN has failed to perform any of its obligations under the Subsidiary Financing Agreement.

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

ARTICLE VI

Effectiveness

Section 6.01. The following is specified as an additional condition to the effectiveness of this Financing Agreement for the purposes of Section 9.01(f) of the Loan Regulations and Section 9.01 (e) of the Grant Regulations, respectively: the Subsidiary Financing Agreement, in form and substance satisfactory to ADB, has been duly executed and delivered on behalf of Nepal and CAAN and has become legally binding on Nepal and CAAN in accordance with its terms, subject only to the effectiveness of this Financing Agreement.

Section 6.02. The following is specified as an additional matter, for the purposes of Section 9.02(d) of the Loan Regulations and Section 9.02 (c) of the Grant Regulations, respectively, to be included in the opinion or opinions to be furnished to ADB: the Subsidiary Financing Agreement has been duly authorized or ratified by, and executed and delivered on behalf of Nepal, and CAAN, and is legally binding on Nepal and CAAN in accordance with its terms, subject only to the effectiveness of this Financing Agreement.

Section 6.03. A date ninety (90) days after the date of this Financing Agreement is specified for the effectiveness of the Financing Agreement for the purposes of Section 9.04 of the Loan Regulations and Section 9.04 of the Grant Regulations.

ARTICLE VII

Delegation of Authority

Section 7.01. Nepal hereby designates CAAN its agent for the purposes of taking any action or entering into any agreement required or permitted under Sections 3.02 and 3.05 of this Financing Agreement and under Sections 5.01, 5.02, 5.03 and 5.04 of the Loan Regulations, and Sections 5.01, 5.02, 5.03 and 5.04 of the Grant Regulations.

Section 7.02. Any action taken or any agreement entered into by CAAN pursuant to the authority conferred under Section 7.01 of this Financing Agreement shall be fully binding on Nepal and shall have the same force and effect as if taken by Nepal.

Section 7.03. The authority conferred on CAAN under Section 7.01 of this Financing Agreement may be revoked or modified by agreement between Nepal and ADB.

ARTICLE VIII**Miscellaneous**

Section 8.01. The Secretary, Ministry of Finance of Nepal is designated as representative of Nepal for the purposes of Section 11.02 of the Loan Regulations and Section 11.02 of the Grant Regulations.

Section 8.02. The following addresses are specified for the purposes of Section 11.01 of the Loan Regulations and Section 11.01 of the Grant Regulations:

For Nepal

Secretary
Ministry of Finance
Singha Durbar
Kathmandu, Nepal

Facsimile Numbers:

(977 1) 4211164
(977 1) 4211165.

For ADB

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

Facsimile Number:

(632) 636-2340.

IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Financing 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.

NEPAL

By 
RAMESHORE PRASAD KHANAL
Secretary
Ministry of Finance

ASIAN DEVELOPMENT BANK

By 
BARRY J. HITCHCOCK
Country Director
Nepal Resident Mission

SCHEDULE 1

Description of the Project

1. The expected impact of the Project is a contribution to broad-based economic growth through improved air transport connectivity. The expected outcomes of the Project are improvements to (i) air traffic safety and air traffic capacity at TIA; (ii) air traffic safety at the domestic airports of Lukla, Simikot, and Rara; and (iii) CAAN's capacity to regulate the civil aviation sector and develop and manage its airports. The Project comprises an investment component and a capacity development component.
2. Under the investment component, the Project will (i) reconfigure, upgrade and/or expand TIA's airside infrastructure, including taxiways, hangar area, runways, light systems and power supply, communication, navigation and surveillance equipment, and an international and domestic parking apron; (ii) improve TIA's landside infrastructure, including rehabilitation of the international terminal and construction of a temporary domestic terminal; and (iii) improve basic safety features at the domestic airports of Lukla, Simikot, and Rara, including a visual guidance system (Lukla), runway lights, visual aids and meteorological equipment (Simikot and Rara), and runway pavement (Rara).
3. Under the capacity development component, the Project will develop and implement a 3-year capacity development program under which – among other things – CAAN will (i) adopt civil aviation regulations in accordance with international standards; (ii) prepare a strategy and implementation plan to separate its regulatory and airport operation functions; (iii) develop a national air transport development plan and a corporate business plan; (iv) devise and implement a human resources development plan; (v) improve and integrate its management and financial planning systems, and provide training for their efficient operation; and (vi) conduct feasibility studies for private sector participation in the development and operation of airport infrastructure.
4. The Project is expected to be completed by 31 December 2014.

SCHEDULE 2

AMORTIZATION SCHEDULE NEP: Air Transport Capacity Enhancement Project

<u>Payment Due Date</u>	<u>Payment of Principal</u> * (expressed in SDR)
15-May-2018	924,750
15-November-2018	924,750
15-May-2019	924,750
15-November-2019	924,750
15-May-2020	924,750
15-November-2020	924,750
15-May-2021	924,750
15-November-2021	924,750
15-May-2022	924,750
15-November-2022	924,750
15-May-2023	924,750
15-November-2023	924,750
15-May-2024	924,750
15-November-2024	924,750
15-May-2025	924,750
15-November-2025	924,750
15-May-2026	924,750
15-November-2026	924,750
15-May-2027	924,750
15-November-2027	924,750
15-May-2028	924,750
15-November-2028	924,750
15-May-2029	924,750
15-November-2029	924,750
15-May-2030	924,750
15-November-2030	924,750
15-May-2031	924,750
15-November-2031	924,750
15-May-2032	924,750
15-November-2032	924,750
15-May-2033	924,750
15-November-2033	924,750
15-May-2034	924,750
15-November-2034	924,750

* 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 relevant provisions of the Special Operations Loan Regulations.

<u>Payment Due Date</u>	<u>Payment of Principal</u> * (expressed in SDR)
15-May-2035	924,750
15-November-2035	924,750
15-May-2036	924,750
15-November-2036	924,750
15-May-2037	924,750
15-November-2037	924,750
15-May-2038	924,750
15-November-2038	924,750
15-May-2039	924,750
15-November-2039	924,750
15-May-2040	924,750
15-November-2040	924,750
15-May-2041	924,750
15-November-2041	<u>924,750</u>
Total	44,388,000

* 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 relevant provisions of the Special Operations Loan Regulations.

SCHEDULE 3A

Allocation and Withdrawal of Loan Proceeds

General

1. The table attached to this Schedule sets forth the Categories of 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 to each such Category (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 5 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 by notice to Nepal, (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, by notice to Nepal, reallocate such excess amount to any other Category.

Disbursement Procedures

5. Except as ADB may otherwise agree, the Loan proceeds for financing Goods, Works, Consulting Services and other items shall be disbursed in accordance with the Loan Disbursement Handbook.

Imprest Account; Statement of Expenditures

6. (a) Except as ADB may otherwise agree, CAAN shall establish immediately after the Effective Date, an imprest account at Nepal Rastra Bank. The imprest account shall be established, managed, replenished and liquidated in accordance with the Loan Disbursement Handbook and detailed arrangements agreed upon between CAAN and ADB. The currency of the imprest account shall be the Dollar. The amount to be deposited into the imprest account shall not exceed the lower of (i) the estimated expenditure to be financed from the imprest account 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 replenish and liquidate advances provided into the imprest account, in accordance with the Loan Disbursement Handbook and detailed arrangements agreed upon between Nepal, CAAN and ADB. Any individual payment to be reimbursed or liquidated under the SOE procedure shall not exceed the equivalent of \$100,000.

Retroactive Financing

7. 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 Financing Agreement in connection with Consulting Services, subject to a maximum amount equivalent to 20 percent of the Loan amount.

TABLE

ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (Air Transport Capacity Enhancement Project)			
			ADB FINANCING
Number	Item	Amount Allocated SDR	Percentage and Basis for Withdrawal from the Loan Account
1	Works	32,568,000	87 percent of total expenditure claimed
2	Equipment	3,076,000	87 percent of total expenditure claimed
3	Consulting Services	146,000	100 percent of total expenditure claimed *
4	Project Management (Incremental Expenditures)	63,000	100 percent of total expenditure claimed *
5	Interest During Implementation	1,103,000	100 percent of amount due
6	Unallocated	7,432,000	
	Total	44,388,000	

* Exclusive of taxes and duties imposed within the territory of Nepal

SCHEDULE 3B**Allocation and Withdrawal of Grant Proceeds**General

1. The table attached to this Schedule sets forth the Categories of Goods, Works, Consulting Services and other items of expenditure to be financed out of the proceeds of the Grant and the allocation of amounts of the Grant to each such Category (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 Grant on the basis of the percentages set forth in the Table.

Reallocation

3. Notwithstanding the allocation of Grant proceeds and the withdrawal percentages set forth in the Table,

(a) if the amount of the Grant allocated to any Category appears to be insufficient to finance all agreed expenditures in that Category, ADB may by notice to Nepal, (i) reallocate to such Category, to the extent required to meet the estimated shortfall, amounts of the Grant 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 Grant then allocated to any Category appears to exceed all agreed expenditures in that Category, ADB may, by notice to Nepal, reallocate such excess amount to any other Category.

Disbursement Procedures

4. Except as ADB may otherwise agree, the Grant proceeds for financing Goods, Works, Consulting Services and other items shall be disbursed in accordance with the Loan Disbursement Handbook.

Imprest Account; Statement of Expenditures

5. (a) Except as ADB may otherwise agree, CAAN shall establish immediately after the Effective Date, an imprest account at Nepal Rastra Bank. The imprest account shall be established, managed, replenished and liquidated in accordance with the Loan Disbursement Handbook and detailed arrangements agreed upon between Nepal, CAAN and ADB. The currency of the imprest account shall be Dollar. The amount to be deposited into the imprest account shall not exceed the lower of (i) the estimated expenditure to be financed from

the imprest account for the first six months of Project implementation, or (ii) the equivalent of ten (10) percent of the Grant amount.

(b) The statement of expenditures (SOE) procedure may be used for reimbursement of eligible expenditures and to replenish and liquidate advances provided into the imprest account, in accordance with the Loan Disbursement Handbook and detailed arrangements agreed upon between Nepal, CAAN and ADB. Any individual payment to be reimbursed or liquidated under the SOE procedure shall not exceed the equivalent of \$80,000.

Retroactive Financing

6. Withdrawals from the Grant 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 Financing Agreement in connection with Consulting Services, subject to a maximum amount equivalent to 20 percent of the Grant amount.

TABLE

ALLOCATION AND WITHDRAWAL OF GRANT PROCEEDS (Air Transport Capacity Enhancement Project)			
			ADB FINANCING
Number	Item	Amount Allocated \$	Percentage and Basis for Withdrawal from the Grant Account
1	Equipment	210,000	87 percent of total expenditure claimed
2	Consulting Services	9,690,000	100 percent of total expenditure claimed *
3	Project Management (Incremental Expenditures)	100,000	100 percent of total expenditure claimed *
	Total	10,000,000	

* Exclusive of taxes and duties imposed within the territory of Nepal

SCHEDULE 4

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 and not otherwise defined in this Financing Agreement have the meanings provided in the Procurement Guidelines and/or the Consulting Guidelines, as applicable.

Procurement of 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
National Competitive Bidding
Shopping

The methods of procurement are subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. CAAN may only modify the methods of procurement or threshold values with the prior approval of ADB, and modifications must be set out in updates to the Procurement Plan.

4. CAAN 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.
5. CAAN and ADB shall ensure that, prior to the commencement of any procurement activity under national competitive bidding, CAAN's national competitive bidding procedures are consistent with the Procurement Guidelines. Any modifications or clarifications to such procedures agreed between CAAN and ADB shall be set out in the Procurement Plan. Any subsequent change to the agreed modifications and clarifications shall become effective only after written approval of such change by CAAN and ADB.

Selection of Consulting Services

6. Except as ADB may otherwise agree, Nepal and CAAN shall apply quality- and cost-based selection for selecting and engaging Consulting Services.
7. CAAN shall recruit individual consultants for project management in accordance with procedures acceptable to ADB for recruiting individual consultants.
8. The methods for selection and engagement of Consulting Services are subject to, among other things, the detailed arrangements and threshold values set forth in the

Procurement Plan. CAAN may only modify these methods or threshold values with the prior approval of ADB, and modifications must be set out in updates to the Procurement Plan.

Industrial or Intellectual Property Rights

9. (a) CAAN 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) CAAN 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.

10. CAAN shall ensure 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.

Execution of Works Contracts

11. Nepal and CAAN shall ensure that Works do not commence unless CAAN has obtained all necessary statutory clearances, including environmental clearance under the Environmental Protection Act, 1997.

ADB's Review of Procurement Decisions

12. All contracts for Goods, Works and Consulting Services shall be subject to prior review by ADB, unless otherwise agreed between CAAN and ADB and set forth in the Procurement Plan.

SCHEDULE 5

Execution of Project and Operation of Project Facilities; Financial Matters

PROJECT EXECUTION ARRANGEMENTS

Project Coordination Unit

1. Nepal shall designate CAAN as the Project Executing Agency. CAAN shall establish and maintain a Project Coordination Unit (PCU) that carries responsibility for overall project management, including, without limitation, (i) procurement of the Goods and the Works; (ii) selection and engagement of the Consulting Services; (iii) administration of the contracts relating to the Goods, Works and Consulting Services; (iv) consolidation and submission of Loan or Grant withdrawal requests to ADB; (v) monitoring compliance with the social and environmental safeguards requirements for the Project; (vi) submission of consolidated progress reports from the Project Implementation Units (PIUs) in accordance with the requirements of Section 2.08 of the Project Agreement, (vii) maintenance of project accounts and financial statements in accordance with the requirements of Section 2.09 of the Project Agreement; (viii) supervising the activities of the PIUs and offering technical and policy guidance to the PIUs; (ix) obtaining such support from other governmental departments or agencies in Nepal as may be required to ensure effective implementation of the Project.

2. CAAN shall appoint the Deputy Director General of the Air Transport Planning and Development Directorate, or an officer of similar rank acceptable to ADB, as the Project Coordinating Director and head of the PCU. The PCU shall further comprise dedicated and motivated staff with expertise relevant to its mandate, including a procurement officer, an environmental and social officer, a chief project accountant and an assistant project accountant.

Project Implementation Units

3. Under the PCU, CAAN shall establish two PIUs: a PIU-Infrastructure for the Investment Component and a PIU-Capacity Development for the Capacity Development Component. The PIUs carry day-to-day responsibility for execution and monitoring of their respective Project components, including, without limitation, (i) managing the activities of consultants and incorporating the deliverables of the consultants into the Project, (ii) supervising the Works contractors and monitoring their progress and compliance with relevant provisions of this Financing Agreement, the Project Agreement and the Works contracts; (iii) preparation of progress reports for consolidation by the PCU; and (iv) any supervision, coordination, support, and liaison activities necessary for the successful implementation of the Project components for which the PIUs are responsible.

4. CAAN shall designate the Project Director of the TIA Improvement Project Directorate, or an officer of similar rank acceptable to ADB, as full-time Project Manager and head of the PIU-Infrastructure. The PIU-Infrastructure shall further comprise dedicated and motivated staff with expertise relevant to its mandate, including a senior civil engineer, a civil engineer 1, a civil engineer 2, an electrical mechanical engineer and a CNS/ATM engineer.

5. CAAN shall appoint the Deputy Director of the Domestic Airports Division, or an officer of similar rank and seniority, acceptable to ADB, as full-time Project Manager and head of the PIU-Capacity Development. The PIU-Capacity Development shall further comprise dedicated and motivated staff with expertise relevant to its mandate, including an assistant project manager and four focal persons for the following core areas: (i) financial management and accounting, (ii) human resource development, (iii) law, policy and institutional reform, and (iv) airport development planning and private sector coordination.

Coordination and resources

6. The Project Coordinating Director and the Project Managers of the PIUs shall meet as required, at least once a week, to assess the progress of the Project, identify and address any issues, and formulate action plans. They shall invite staff assigned to other ADB-financed projects, as necessary, to coordinate any issues of common interest, such as the introduction of a management information system and development of a business plan for Gautam Buddha Airport under the proposed South Asia Tourism Infrastructure Development Project.

7. CAAN shall keep the PCU and the PIUs equipped with adequate office space, facilities, equipment, support staff and management information systems for the entire duration of the Project. CAAN shall undertake its best efforts to ensure that the same persons will continue to be assigned to key positions in the PCU and the PIUs, including – without limitation – the heads of the PCU and the PIUs.

GENERAL PROJECT IMPLEMENTATION MATTERS

Counterpart Funds and Subsidiary Financing Agreement

8. Nepal shall make available, or shall cause the CAAN to make available, all counterpart funds required for timely and effective implementation of the Project, including any funds required to make land available for the Project, to mitigate unforeseen environmental and social impacts and to meet additional costs arising from design changes, price escalation in construction costs and/or unforeseen circumstances. Nepal and/or CAAN (as applicable) shall make the resources thus required available on an annual basis for each fiscal year.

9. Nepal shall ensure that the Subsidiary Financing Agreement, in form and substance satisfactory to ADB, is submitted to ADB within one (1) month of the date of this Agreement.

Financial Sustainability

10. From the end of fiscal year 2009/2010 onwards, CAAN shall maintain a debt service coverage ratio of at least 1.3.

Operation and Maintenance of the Project facilities

11. CAAN shall develop and implement a year-round program for preventive and routine maintenance of the Project facilities in accordance with international standards. Nepal and CAAN shall ensure that sufficient funds are provided to meet any shortfall between the cost and revenues for the operation and maintenance of the Project facilities in accordance

with the program. Nepal and/or CAAN (as applicable) shall make the resources thus required available on an annual basis for each fiscal year.

Environmental safeguards

12. Nepal and CAAN shall ensure that (a) the Project is carried out in accordance with the project design, and construction and operations will comply with applicable environmental laws of Nepal, ADB's *Environment Policy* (2002), the IEEs and the Environmental Management Plans; (b) the environmental mitigation measures specified in the Environmental Management Plans are incorporated in the relevant tender and bidding documents; (c) the tender and bidding documents for Works include the requirements under the Environmental Management Plans as a bill of quantity, and include a line item for reviewing and upgrading the Environmental Management Plans in case of Project design changes; (d) Works contractors are closely supervised to ensure proper implementation of mitigation and management measures; (e) the quarterly progress reports referred to in Section 2.08 of the Project Agreement include a summary assessment on the implementation of the Environmental Management Plans and relevant environmental mitigation measures; and (f) a comprehensive monitoring report describing the progress in implementing the Environmental Management Plans and measures adopted to address environmental issues, if any, is prepared and submitted annually to ADB.

No Resettlement and Land Acquisition

13. Nepal and CAAN shall ensure that the Project does not require resettlement or land acquisition as described in ADB's *Involuntary Resettlement Policy* (1995). In the unforeseen event that the Project does require resettlement or land acquisition, Nepal and CAAN (i) shall take all steps reasonably required by ADB to ensure that the Project complies with all applicable laws and regulations of Nepal and ADB's *Involuntary Resettlement Policy*, and (ii) will agree to any amendments to this Financing Agreement and the Project Agreement reflecting the compliance requirements.

Indigenous Peoples

14. Nepal and CAAN shall ensure that the Project does not negatively impact vulnerable groups, such as indigenous peoples. In the unforeseen event that indigenous people are affected by the Project, Nepal and CAAN (i) shall take all steps reasonably required by ADB to ensure that the Project complies with all applicable laws and regulations of Nepal and ADB's *Policy on Indigenous Peoples* (1998), and (ii) will agree to any amendments to this Financing Agreement and the Project Agreement reflecting the compliance requirements.

Labor Law and Social Protection

15. Nepal and CAAN shall ensure that the bidding documents for the Works contracts include specific provisions to ensure that the Works contractors (a) comply with applicable core labor standards, labor laws and incorporate applicable workplace occupational safety norms; (b) do not differentiate payment between men and women or between people from different castes for work of equal value (c) do not employ child labor; (d) eliminate forced or compulsory labor; (e) eliminate discrimination in respect of employment; (f) provide appropriate facilities for women and children in construction campsites; and (g) to the extent possible, maximize employment of local poor and disadvantaged persons for construction

purposes, provided that the requirements for efficiency are adequately met. CAAN shall monitor the compliance with these provisions in collaboration with Nepal's Department of Labor.

16. Nepal and CAAN shall ensure that Works contractors disseminate, or engage appropriate service providers to disseminate, information on the risks of sexually transmittable infections, including HIV/AIDS, to the employees of Works contractors engaged under the Project and to members of the local communities surrounding the Project facilities, particularly to females.

Gender

17. Nepal and CAAN shall ensure that the Project considers gender issues at all appropriate stages of the project particularly during design, and that the Project will be carried out in accordance with ADB's *Policy on Gender and Development* (1998).

Anti-corruption and transparency

18. Consistent with ADB's and Nepal's commitment to good governance, accountability and transparency, Nepal and CAAN shall ensure that: (a) the proceeds of the Loan and the Grant are used to implement the Project efficiently and that necessary measures are undertaken to create and sustain a corruption-free environment; (b) Nepal's laws on anti-corruption and ADB's *Anticorruption Policy* (1998, as amended to date) are strictly enforced and that relevant provisions of ADB's *Anticorruption Policy* are included in all bidding documents for the Project; (c) CAAN and Nepal's agencies facilitate ADB's investigation, directly or through its agents, of any alleged corrupt, fraudulent, collusive or coercive practices relating to the Project and (d) CAAN conducts periodic inspections on the contractors' activities related to fund withdrawals and settlements; and (e) ensure that all contracts financed by ADB in connection with the Project include provisions specifying the right of ADB to audit and examine the records and accounts of all contractors, suppliers, consultants, and other service providers as they relate to the Project.

19. Nepal and CAAN shall announce the Project and business opportunities associated with the Project on their websites. In addition, the websites shall at least disclose the following information in relation to Goods, Works and Consulting Services procured for the Project: (i) the list of participating bidders, (ii) the name of the winning bidder, (iii) the amount of the contracts awarded, and (iv) the Goods, Works and Consulting Services procured.

20. CAAN will request Nepal's National Vigilance Center (NVC) to appoint auditors acceptable to ADB to perform technical audits on the Project in accordance with NVC's guidelines. The auditors will perform one technical audit upon completion of planning and detailed design (focusing primarily on design quality and adequacy), one technical audit upon completion of the procurement and consultant engagement procedures (focusing primarily on compliance with transparency provisions and procedural requirements of the funding agencies) and one technical audit upon completion of the Project facilities (focusing primarily on the quality of the facilities and their completion in accordance with the allocated time frame and budget).

Performance Monitoring and Reporting

21. Within 3 months of the Effective Date, CAAN shall establish a Project Performance Monitoring System (PPMS) in a form acceptable to ADB and based upon the PPMS indicators agreed upon between Nepal and ADB. Nepal and CAAN shall collect base line data for performance monitoring and undertake periodic Project performance review in accordance with the PPMS to evaluate the scope, implementation arrangements, progress and achievements of objectives of the Project.

Review

22. ADB, Nepal and CAAN shall meet annually to discuss the progress of the Project and any changes to implementation arrangements or remedial measures required to be undertaken towards achieving the objectives of the Project.

23. Two years from the Effective Date, Nepal, CAAN and ADB shall jointly undertake a comprehensive mid-term review of the Project. The mid-term review shall assess the Project's achievements and progress in implementing the Project against the PPMS indicators and the project implementation schedule in order to identify any difficulties or constraints encountered in implementing the Project and to make adjustments, if necessary, for the remaining project implementation period. In particular, the mid-term review shall, among others, evaluate the Project scope, costs, overall implementation progress, and status of compliance with the provisions of this Financing Agreement and the Project Agreement.

Material organizational changes

24. Nepal and CAAN shall ensure that any change in the organizational structure of CAAN does not affect its ability to perform its obligations under the Project Agreement. Nepal and CAAN shall ensure that any such change is carried out in a lawful and transparent manner. Without prejudice to any other rights that ADB may have under this Financing Agreement, including - without limitation – its rights under Article VIII of the Loan Regulations, ADB shall have the right to require changes to the terms of this Financing Agreement, the Project Agreement and/or the Subsidiary Financing Agreement in order to accommodate for the proposed change.