
LOAN NUMBER 4088-NEP(COL)

LOAN AGREEMENT
(Ordinary Operations [Concessional])

(Responsive COVID-19 Vaccines for Recovery Project Under the Asia Pacific Vaccine
Access Facility)

between

NEPAL

and

ASIAN DEVELOPMENT BANK

DATED 11 AUGUST 2021

NEP 55084

LOAN AGREEMENT
(Ordinary Operations [Concessional])

LOAN AGREEMENT dated 11 August 2021 between NEPAL ("Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) ADB has received from the Borrower a governor's letter dated 2 June 2021 ("Governor's Letter"), confirming the Borrower's commitment to implement its Vaccination Allocation Plan (as defined hereinafter) and setting forth certain objectives, policies and actions of the Borrower designed to provide access within its territory to vaccines for the coronavirus disease ("COVID-19");

(B) the Borrower has applied to ADB for a loan for the purposes of the Project; and

(C) ADB has agreed to make a concessional loan to the Borrower from ADB's ordinary capital resources upon the terms and conditions set forth herein;

NOW THEREFORE the parties agree as follows:

ARTICLE I

Loan Regulations; Definitions

Section 1.01. All the provisions of ADB's Ordinary Operations (Concessional) Loan Regulations, dated 1 January 2017 ("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, the several terms defined in the Loan Regulations have the respective meanings therein set forth unless modified herein or the context otherwise requires. Additional terms used in this Loan Agreement have the following meanings:

- (a) "Consulting Services" means consulting services as described in the Procurement Regulations and set out in the Procurement Plan, and to be financed out of the proceeds of the Loan;
- (b) "COVAX" means COVID-19 Vaccines Global Access Facility, the mechanism co-led by the Coalition for Epidemic Preparedness Innovations, Gavi, the Vaccine Alliance and the WHO, established to ensure equitable access to COVID-19 vaccines by all participating members;
- (c) "COVID-19" means coronavirus disease;

- (d) "DDA" means the Borrower's Department of Drug Administration, or any successor thereto, which is the national drug regulatory authority;
- (e) "Eligibility Criteria" means criteria, as described in paragraph 29 (including footnotes 28, 29 and 30) of ADB's policy on Support to Enhance COVID-19 Vaccine Access;
- (f) "Eligible Expenditures" means categories of expenditures agreed between ADB and the Borrower, to be financed out of the proceeds of the Loan, as set forth in the table to Schedule 3 to this Loan Agreement and as further detailed in the PAM;
- (g) "Eligible Vaccine" means a COVID-19 vaccine eligible for financing out of the proceeds of the Loan which, at all times during the Project implementation period, (i) satisfies the Eligibility Criteria, and (ii) has received all necessary authorizations of the Borrower for its distribution and administration within the territory of the Borrower, including authorization for use, and any other necessary authorizations for its manufacture, marketing or importation;
- (h) "GESIP" means a gender equality and social inclusion plan prepared for the Project, including any update thereto;
- (i) "Goods" means equipment and materials as set out in the Procurement Plan and to be financed out of the proceeds of the Loan, including Eligible Vaccines and any related Nonconsulting Services such as transportation and insurance;
- (j) "Loan Disbursement Handbook" means ADB's Loan Disbursement Handbook (2017, as amended from time to time);
- (k) "MOF" means the Borrower's Ministry of Finance;
- (l) "MOHP" means the Borrower's Ministry of Health and Population, or any successor thereto, acceptable to ADB, which is responsible for implementing the Project;
- (m) "Nonconsulting Services" means nonconsulting services as described in the Procurement Regulations and set out in the Procurement Plan, and to be financed out of the proceeds of the Loan;
- (n) "PAM" means the project administration manual for the Project dated 7 June 2021 and agreed between the Borrower and ADB, as updated from time to time in accordance with the respective administrative procedures of the Borrower and ADB;
- (o) "Procurement Plan" means the procurement plan for the Project dated 7 June 2021 and agreed between the Borrower and ADB, as updated from time to time in accordance with the Procurement Policy, the Procurement Regulations, and other arrangements agreed with ADB;

- (p) "Procurement Policy" means ADB's Procurement Policy – Goods, Works, Nonconsulting and Consulting Services (2017, as amended from time to time);
- (q) "Procurement Regulations" means ADB's Procurement Regulations for ADB Borrowers - Goods, Works, Nonconsulting and Consulting Services (2017, as amended from time to time);
- (r) "Project Executing Agency" for the purposes of, and within the meaning of, the Loan Regulations means MOF, or any successor thereto acceptable to ADB, which is responsible for the carrying out of the Project;
- (s) "Services" means Consulting Services and Nonconsulting Services;
- (t) "SPS" means ADB's Safeguard Policy Statement (2009);
- (u) "SRA" means entity designated by the World Health Organization as a stringent regulatory authority for purposes of assessment and approval of COVID-19 vaccines;
- (v) "UNICEF" means United Nations Children's Fund;
- (w) "Vaccination Allocation Plan" means the National Deployment and Vaccination Plan adopted by the Borrower on 22 January 2021 and attached to and endorsed in the Governor's Letter, which, amongst other things, describes the Borrower's prioritization of COVID-19 vaccine access consistent with international norms and safeguards against exclusion of marginalized and vulnerable groups and sets out the national policy in relation to vaccine selection, acquisition, procurement, distribution, deployment and administration, as well as any related medical waste management, in the territory of the Borrower; and
- (x) "WHO" means the World Health Organization, a specialized agency established within the terms of Article 57 of the Charter of the United Nations.

ARTICLE II

The Loan

Section 2.01. (a) ADB agrees to lend to the Borrower from ADB's ordinary capital resources (concessional) an amount of one hundred sixty-five million Dollars (\$165,000,000).

(b) The Loan has a principal repayment period of 16 years, and a grace period as defined in subsection (c) hereinafter.

(c) The term "grace period" as used in subsection (b) hereinabove means the period prior to the first Principal Payment Date in accordance with the amortization schedule set forth in Schedule 2 to this Loan Agreement.

Section 2.02. The Borrower shall pay to ADB an interest charge at the rate of 1% per annum during the grace period, and 1.5% per annum thereafter, on the amount of the Loan withdrawn from the Loan Account and outstanding from time to time.

Section 2.03. The interest charge and any other charge on the Loan shall be payable semiannually on 15 February and 15 August 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.

ARTICLE III

Use of Proceeds of the Loan

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

Section 3.02. The proceeds of the Loan shall be allocated and withdrawn 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, the Borrower shall procure, or cause to be procured, the items of Eligible Expenditures to be financed out of the proceeds of the Loan in accordance with the provisions of Schedule 4 to this Loan Agreement.

Section 3.04. The Loan Closing Date for the purposes of Section 8.02 of the Loan Regulations shall be 31 January 2025 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, the Borrower shall perform, or cause to be performed, all obligations set forth in Schedule 4 to this Loan Agreement.

Section 4.02. (a) The Borrower shall (i) maintain separate accounts and records for the Project; (ii) prepare annual financial statements for the Project in accordance with financial reporting standards acceptable to ADB; (iii) have such financial statements audited annually by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB, in accordance with auditing standards acceptable to ADB; (iv) as part of each such audit, have the auditors prepare a report, which includes the auditors' opinion(s) on the financial statements and the use of the Loan proceeds, and a management letter (which sets out the deficiencies in the internal control of the Project that were identified in the course of the audit, if any); and (v) furnish to ADB, no later than 6 months after the end of each related fiscal year, copies of such audited financial statements, audit report and management letter, all in the English language, and such other information concerning these documents and the audit thereof as ADB shall from time to time reasonably request.

(b) ADB shall disclose the annual audited financial statements for the Project and the opinion of the auditors on the financial statements within 14 days of the date of ADB's confirmation of their acceptability by posting them on ADB's website.

(c) The Borrower shall enable ADB, upon ADB's request, to discuss the financial statements for the Project and the Borrower's financial affairs where they relate to the Project with the auditors appointed pursuant to subsection (a)(iii) hereinabove, and shall authorize and require any representative of such auditors to participate in any such discussions requested by ADB. This is provided that such discussions 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 and Services, and any relevant records and documents.

ARTICLE V

Effectiveness

Section 5.01. A date 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 VI

Miscellaneous

Section 6.01. The Secretary or Joint Secretary (International Economic Cooperation Coordination Division) of MOF is designated as representative of the Borrower for the purposes of Section 11.02 of the Loan Regulations.

Section 6.02. The following addresses are specified for the purposes of Section 11.01 of the Loan Regulations:

For the Borrower

Ministry of Finance
Singha Durbar
Kathmandu, Nepal

Facsimile Number:

977-1-421-1720

For ADB

Asian Development Bank
6 ADB Avenue
Mandaluyong City
1550 Metro Manila
Philippines

Facsimile Numbers:

(632) 8636-2444

(632) 8636-2340.

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

NEPAL

By 

MADHU KUMAR MARASINI
Secretary
Ministry of Finance

ASIAN DEVELOPMENT BANK

By 

ARNAUD CAUCHOIS
Country Director
Nepal Resident Mission

SCHEDULE 1

Description of the Project

1. The objective of the Project is to vaccinate target populations of the Borrower against COVID-19. The Project is described in more detail in the Governor's Letter.
2. The Project shall comprise supporting the procurement of safe and effective vaccines against COVID-19 through the COVAX, UNICEF and other United Nations agencies, bilateral arrangements with vaccine manufacturers or distributors, or through government-to-government procurement.
3. The Project is expected to be completed by 31 July 2024.

SCHEDULE 2

Amortization Schedule

| <u>Date Payment Due</u> | <u>Payment of Principal</u> (expressed in USD)* |
|-------------------------|--|
| 15 August 2029 | 5,156,250 |
| 15 February 2030 | 5,156,250 |
| 15 August 2030 | 5,156,250 |
| 15 February 2031 | 5,156,250 |
| 15 August 2031 | 5,156,250 |
| 15 February 2032 | 5,156,250 |
| 15 August 2032 | 5,156,250 |
| 15 February 2033 | 5,156,250 |
| 15 August 2033 | 5,156,250 |
| 15 February 2034 | 5,156,250 |
| 15 August 2034 | 5,156,250 |
| 15 February 2035 | 5,156,250 |
| 15 August 2035 | 5,156,250 |
| 15 February 2036 | 5,156,250 |
| 15 August 2036 | 5,156,250 |
| 15 February 2037 | 5,156,250 |
| 15 August 2037 | 5,156,250 |
| 15 February 2038 | 5,156,250 |
| 15 August 2038 | 5,156,250 |
| 15 February 2039 | 5,156,250 |
| 15 August 2039 | 5,156,250 |
| 15 February 2040 | 5,156,250 |
| 15 August 2040 | 5,156,250 |
| 15 February 2041 | 5,156,250 |
| 15 August 2041 | 5,156,250 |
| 15 February 2042 | 5,156,250 |
| 15 August 2042 | 5,156,250 |
| 15 February 2043 | 5,156,250 |
| 15 August 2043 | 5,156,250 |
| 15 February 2044 | 5,156,250 |
| 15 August 2044 | 5,156,250 |
| 15 February 2045 | 5,156,250 |
| Total | 165,000,000 |

* The arrangements for payment 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 items of Eligible Expenditures to be financed out of the proceeds of the Loan and the allocation of the Loan proceeds to each such Category ("Table"). (Reference to "Category" in this Schedule is to a Category of the Table.)

Basis for Withdrawal from the Loan Account

2. Except as ADB may otherwise agree, the proceeds of the Loan shall be allocated to items of Eligible Expenditures, and disbursed on the basis of the withdrawal percentage for each item of expenditure set forth in the Table.

3. With respect to any COVID-19 vaccine, ADB shall only finance those that continue to qualify as an Eligible Vaccine at the time a withdrawal request is made from the Loan Account.

Interest Charge

4. The amount allocated to Category "Interest Charge" is for financing the interest charge on the Loan during the implementation period of the Project. ADB shall be entitled to withdraw from the Loan Account and pay to itself, on behalf of the Borrower, the amounts required to meet payments, when due, of such interest charge.

Reallocation

5. 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 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 allocated to any Category appears to exceed all agreed expenditures in that Category, ADB may, in consultation with the Borrower, reallocate such excess amount to any other Category.

Disbursement Procedures

6. Except as ADB may otherwise agree, the Loan proceeds shall be disbursed in accordance with the Loan Disbursement Handbook.

Advance Financing and Retroactive Financing

7. Withdrawals from the Loan Account may be made for advance financing for up to 6 months of estimated Eligible Expenditures or 50% of the total Loan amount, whichever is lower, in accordance with the advance fund procedures described in the Loan Disbursement Handbook.

8. Withdrawals from the Loan Account may be made for Eligible Expenditures incurred under the Project before the Effective Date in connection with Goods, subject to a maximum amount equivalent to 30% of the Loan amount; provided that the expenditures have been incurred not earlier than 12 months before the date of this Loan Agreement.

9. The aggregate of the outstanding balance of the advance financing amount and the percentage approved for retroactive financing shall not, at any time, exceed 60% of the Loan amount.

Condition for Withdrawals from Loan Account

10. Notwithstanding any other provision of this Loan Agreement, no withdrawals shall be made from the Loan Account for financing Eligible Vaccines until:

- (a) ADB has received a letter from the Borrower confirming (i) which COVID-19 vaccine(s) has/have been selected to be procured using the proceeds of the Loan; (ii) which of the Eligibility Criteria has been satisfied in respect of the selected COVID-19 vaccines; and (iii) that such COVID-19 vaccine(s) has/have received all necessary authorizations of the Borrower, and have been authorized by the DDA and any other relevant regulatory authorities for distribution and administration within the territory of the Borrower; and
- (b) ADB has, based on the information provided in the aforementioned letter, notified the Borrower that the COVID-19 vaccine(s) to be procured are designated as Eligible Vaccines.

TABLE

| ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS | | | |
|--|--|--|---|
| Number | Item | Total Amount Allocated for ADB Financing \$ | Basis for Withdrawal from the Loan Account |
| | | Category | |
| 1 | Goods (including vaccines**, syringes, and safety boxes) | 159,900,000 | 100% of total expenditure claimed* |
| 2 | Interest Charge | 3,070,000 | 100% of amounts due |
| 3 | Unallocated | 2,030,000 | |
| | TOTAL | 165,000,000 | |

* Exclusive of taxes and duties imposed within the territory of the Borrower.

** Subject to the condition for withdrawal described in paragraph 10 of Schedule 3.

SCHEDULE 4**Project Implementation and Other Matters**Implementation Arrangements

1. The Borrower shall ensure that the Project is implemented in accordance with the detailed arrangements set forth in the PAM. Any subsequent change to the PAM shall become effective only after approval of such change by the Borrower and ADB. In the event of any discrepancy between the PAM and this Loan Agreement, the provisions of this Loan Agreement shall prevail.

Procurement

2. The Borrower shall ensure that:
- (a) unless otherwise approved by ADB, the procurement of Goods and Services is carried out in accordance with the Procurement Policy and the Procurement Regulations;
 - (b) Goods and Services shall be procured based on the detailed arrangements set forth in the Procurement Plan, including the procurement and selection methods, the type of bidding documents, and ADB's review requirements. The Borrower may modify the detailed arrangements set forth in the Procurement Plan only with the prior agreement of ADB, and such modifications must be set out in updates to the Procurement Plan;
 - (c) Goods and Services may also be procured under the Project from non-member countries of ADB; and
 - (d) (i) all Goods procured and Services obtained (including 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; and (ii) all contracts for the procurement of Goods and Services contain appropriate representations, warranties and, if appropriate, indemnities from the contractor, supplier, consultant or service provider with respect to the matters referred to in this subparagraph.
3. The Borrower may appoint a procurement agent to carry out procurement of eligible vaccines in accordance with the terms and conditions set forth in the Procurement Plan. The Borrower shall ensure that such procurement agent follows all of the requirements of this Loan Agreement and the Procurement Plan.

Safeguards

4. The Borrower shall ensure that the Project does not have any environmental, indigenous peoples or involuntary resettlement impacts, all within the meaning of the SPS. In the event that the Project does have any such impact, the Borrower shall take all steps required to ensure that the Project complies with the applicable laws and regulations of the Borrower and with the SPS.

Prohibited List of Investments

5. The Borrower shall ensure that no proceeds of the Loan are used to finance any activity included in the list of prohibited investment activities provided in Appendix 5 of the SPS.

Vaccine Selection; Vaccination Allocation Plan

6. The Borrower:

- (a) represents that it has conducted its own due diligence, and made its own independent determination of, the quality, safety, and efficacy of the Eligible Vaccines to be procured under the Project;
- (b) shall ensure that Loan proceeds allocated for financing of vaccines shall only be used for the procurement, distribution or administration of a vaccine which has been confirmed by ADB to be an Eligible Vaccine;
- (c) assumes sole responsibility for the selection, importation, procurement, distribution, marketing or administration, of any Eligible Vaccine under the Project, and agrees that ADB shall have no responsibility or liability in respect thereof;
- (d) shall ensure that the deployment, distribution and administration of Eligible Vaccines are implemented in accordance with the Vaccination Allocation Plan; and
- (e) shall (i) inform and exchange views with ADB on any changes to the Vaccination Allocation Plan and any sector, legal, regulatory or policy reform discussions that may be held with other bilateral or multilateral agencies that may have implications on the implementation of the deployment, distribution and administration of the Eligible Vaccines; and (ii) provide ADB a reasonable opportunity to comment on any resulting policy proposal.

7. In instances where any COVID-19 vaccine which ADB has not confirmed as an Eligible Vaccine is proposed for procurement under the Project subsequent to the initial withdrawal from the Loan Account for any Eligible Vaccine, the Borrower shall ensure that no withdrawal request is made from the Loan Account in relation to such vaccine until:

- (a) ADB has received a letter from the Borrower confirming (i) which of the Eligibility Criteria has been satisfied in respect of such vaccine; and

- (ii) that such vaccine has received all necessary authorizations of the Borrower, and has been authorized by the DDA and any other relevant regulatory authorities for distribution and administration within the territory of the Borrower; and
- (b) based on the information provided in the aforementioned letter, ADB has notified the Borrower that such vaccine is designated as an Eligible Vaccine.

Compliance with Local Laws

8. The Borrower shall ensure that the selection, importation, procurement, deployment, distribution, marketing, administration and disposal of any Eligible Vaccine is conducted in accordance with the applicable laws and regulations of the Borrower.

9. The Borrower, through the DDA and any other relevant regulatory authorities, shall promptly take all such steps as may be necessary to facilitate the continuing authorization of Eligible Vaccines for distribution and administration within the territory of the Borrower, including through the prompt issuance or renewal of all the necessary authorizations, provided that the requisite quality, safety, efficacy and other legal requirements for authorization continue to be met. The Borrower shall promptly inform ADB of any event or circumstance which may arise that may prevent, hinder, delay or place conditions on such continuing authorization.

Vaccine Storage, Transportation and Waste Management

10. The Borrower shall ensure that:
- (a) Eligible Vaccines are properly stored, handled and transported within the territory of the Borrower to preserve their quality, efficacy and safety in accordance with, the relevant vaccine manufacturer's requirements, applicable laws and regulations of the Borrower and international good practice, including the effective vaccine management framework of the WHO and the UNICEF; and
 - (b) any medical or other waste generated in connection with the storage, transportation, distribution or administration of Eligible Vaccines and associated medical equipment is properly treated, disposed of and managed in accordance with the Vaccination Allocation Plan.

Limitation of Liability

11. The Borrower acknowledges and agrees that:
- (a) the confirmation by ADB of any vaccine as an Eligible Vaccine does not constitute an endorsement, or warranty of the fitness, by ADB of such vaccine for any particular purpose, including with regard to its quality, safety or efficacy, and the Borrower is exclusively responsible for authorizing the use of any Eligible Vaccines, for distribution and administration within the territory of the Borrower, including but not

limited to quality monitoring throughout the supply chain, compliance with applicable treatment guidelines and application of measures to monitor and address adverse reactions; and

- (b) ADB disclaims any and all financial or other liability and responsibility for any injury, death, loss, damage or other prejudice of any kind whatsoever that may arise as a result of or in connection with the selection, procurement, importation, manufacturing, fill and finish, distribution, marketing, administration or use of any vaccine under the Project or the treatment, disposal, or management of any medical or other waste generated in connection with the storage, handling, transportation, distribution or administration of any such vaccine.

Gender and Development

12. The Borrower shall ensure that (a) the GESIP is implemented in accordance with its terms; (b) the bidding documents and contracts include relevant provisions for contractors to comply with the measures set forth in the GESIP; (c) adequate resources are allocated for implementation of the GESIP; and (d) progress on implementation of the GESIP, including progress toward achieving key gender outcome and output targets, are regularly monitored and reported to ADB.

Counterpart Support

13. The Borrower shall ensure that the counterpart funding required for successful Project implementation is allocated and provided on a timely basis. In addition to the foregoing, the Borrower shall ensure that MOHP has sufficient funds to satisfy its liabilities arising from any Goods and/or Services contract.

Financial Matters

14. The Borrower shall ensure that the agreed financial management action plan set out in the PAM is implemented within the stipulated time frame and the progress toward achieving the targets, are monitored and reported to ADB.

Governance and Anticorruption

15. The Borrower, the Project Executing Agency, and implementing agencies shall (a) 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, or other integrity violations relating to the Project; and (b) cooperate with any such investigation and extend all necessary assistance for satisfactory completion of such investigation.

16. The Borrower, the Project Executing Agency, and implementing agencies shall ensure that the anticorruption provisions acceptable to ADB are included in all bidding documents and contracts, including provisions specifying the right of ADB to audit and examine the records and accounts of the executing and implementing agencies and all contractors, suppliers, consultants, and other service providers as they relate to the Project. Firms or

individuals who are debarred or temporarily suspended by ADB are ineligible to participate in ADB financed, administered or supported activities.