
LOAN NUMBER 3070-PNG (SF)

LOAN AGREEMENT
(Special Operations)

(Civil Aviation Development Investment Program - Project 2)

between

INDEPENDENT STATE OF PAPUA NEW GUINEA

and

ASIAN DEVELOPMENT BANK

DATED 25 FEBRUARY 2014

PNG 43141

**LOAN AGREEMENT
(Special Operations)**

LOAN AGREEMENT dated 25 February 2014 between the INDEPENDENT STATE OF PAPUA NEW GUINEA ("Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) by a framework financing agreement dated 9 October 2009 between the Borrower and ADB ("FFA"), ADB has agreed to provide a multitranche financing facility to the Borrower for the purposes of financing projects under the Civil Aviation Development Investment Program ("Investment Program");

(B) by a periodic financing request dated 26 September 2013 submitted by the Borrower ("PFR"), the Borrower has applied to ADB for: (i) a loan from ADB's ordinary capital resources; and (ii) a loan from ADB's Special Funds resources, for the purposes of the Project described in Schedule 1 to this Loan Agreement;

(C) by an agreement of even date herewith between the Borrower and ADB ("Ordinary Operations Loan Agreement"), ADB has agreed to make to the Borrower a loan from ADB's ordinary capital resources in the amount of one hundred and fifteen million Dollars (\$115,000,000) for the purposes of the Project;

(D) the Project will be carried out by the National Airports Corporation ("NAC") established under the Civil Aviation Act, 2000, as amended, and for this purpose the Borrower will make available to NAC the proceeds of the loan provided for herein upon terms and conditions satisfactory to ADB; and

(E) ADB has agreed to make a loan to the Borrower 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 NAC;

NOW THEREFORE the parties agree as follows:

ARTICLE I

Loan Regulations; Definitions

Section 1.01. All the provisions of the Special Operations Loan Regulations of ADB, dated 1 January 2006 ("Loan Regulations"), are hereby made applicable to this Loan Agreement with the same force and effect as if they were fully set forth herein, subject, however, to the following modifications:

(a) Section 2.01(25) is deleted and the following is substituted therefor:

“Project Agreement” means the Project Agreement of even date herewith between ADB and NAC.

- (b) The term “Project Executing Agency” appearing in Sections 6.01(a), 8.01(d), 8.01(f), 8.01(k), 9.01(c) and 9.02(c) of the Loan Regulations shall be substituted by the term “NAC”.

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) “CASAPNG” means the Borrower’s Civil Aviation Safety Authority, or any successor thereto;

(b) “Consulting Guidelines” means the Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers (2013, as amended from time to time);

(c) “Consulting Services” means the services to be financed out of the proceeds of the Loan as referred to in paragraph 3 of Schedule 1 to this Loan Agreement;

(d) “Environmental Assessment and Review Framework” or “EARF” means the environmental assessment and review framework for the Investment Program, including any update thereto, agreed between the Borrower and ADB and incorporated by reference in the FFA;

(e) “Environmental Management Plan” or “EMP” means an environmental management plan for the Project, including any update thereto, incorporated in the IEE;

(f) “Environmental Safeguards” means the principles and requirements set for in Chapter V, Appendix 1, and Appendix 4 (as applicable) of the SPS;

(g) “Facility” means the multitranche financing facility provided by ADB to the Borrower for the purposes of financing projects under the Investment Program;

(h) “FAM” means the Facility administration manual dated 17 October 2013 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;

(i) “FFA” means the framework financing agreement dated 9 October 2009 between ADB and the Borrower with respect to the Facility;

(j) “Gender Action Plan” or “GAP” means a gender action plan prepared for the Project and agreed between the Borrower and ADB;

(k) “Goods” means equipment and materials to be financed out of the proceeds of the Loan, including related services such as transportation, insurance, installation, commissioning, training, and initial maintenance, but excluding Consulting Services;

(l) “Indigenous Peoples Plan” or “IPP” means an indigenous peoples plan for the Project, including any update thereto, prepared and submitted by the Borrower and cleared by ADB;

(m) “Indigenous Peoples Safeguards” means the principles and requirements set forth in Chapter V, Appendix 3, and Appendix 4 (as applicable) of the SPS;

(n) “Initial Environmental Examination” or “IEE” means an initial environmental examination for the Project, including any update thereto, prepared and submitted by the Borrower pursuant to the requirements set forth in the EARF and cleared by ADB;

(o) “Investment Program” means the Civil Aviation Development Investment Program;

(p) “Involuntary Resettlement Safeguards” means the principles and requirements set forth in Chapter V, Appendix 2, and Appendix 4 (as applicable) of the SPS;

(q) “Loan Disbursement Handbook” means ADB’s Loan Disbursement Handbook (2012, as amended from time to time);

(r) “PFR” means the periodic financing request submitted or to be submitted by the Borrower, for the purposes of each loan under the Facility, and for the purposes of this Loan Agreement means the periodic financing request dated 26 September 2013;

(s) “PIU” means, for the purpose of this Loan Agreement, a project implementation unit;

(t) “PNGASL” means the Borrower’s Papua New Guinea Air Services Limited, or any successor thereto;

(u) “PPMS” means the Project Performance Monitoring System referred to in paragraph 22 of Schedule 5 of this Loan Agreement;

(v) “Procurement Guidelines” means ADB’s Procurement Guidelines (2013, as amended from time to time);

(w) “Procurement Plan” means the procurement plan for the Project dated 17 October 2013 and agreed between the Borrower and ADB, as updated from time to time in accordance with the Procurement Guidelines, the Consulting Guidelines, and other arrangements agreed with ADB;

(x) “Project Executing Agency” for the purposes of, and within the meaning of, the Loan Regulations means NAC or any successor thereto acceptable to ADB, which is responsible for the carrying out of the Project;

(y) “Project facilities” means the facilities to be improved, rehabilitated, constructed, and/or maintained, and the equipment to be provided and installed under the Project;

(z) “PSC” means, for the purposes of the Project, a project steering committee;

(aa) “Resettlement Framework” or “RF” means the resettlement framework for the Investment Program, including any update thereto, agreed between the Borrower and ADB and incorporated by reference in the FFA;

(bb) “Resettlement Plan” or “RP” means a resettlement plan for the Project, including any update thereto, prepared and submitted by the Borrower pursuant to the requirements set forth in the RF and cleared by ADB;

(cc) “Safeguard Policy Statement” or “SPS” means ADB’s Safeguard Policy Statement (2009);

(dd) “Safeguards Monitoring Report” means each report prepared and submitted by the Borrower to ADB that describes progress with implementation of, and compliance with the EMP, the RP and the IPP (as applicable), including any corrective and preventative actions;

(ee) “Subproject” means a subproject under the Project that meets the subproject eligibility criteria set forth in paragraphs 5 and 6 of Schedule 5 to this Loan Agreement; and

(ff) “Works” means construction or civil works to be financed out of the proceeds of the Loan, including services such as drilling or mapping, and project related services that are provided as part of a single responsibility or turnkey contract, but excluding Consulting Services.

ARTICLE II

The Loan

Section 2.01. ADB agrees to lend to the Borrower from ADB's Special Funds resources an amount in various currencies equivalent to nine million seven hundred seventy six thousand Special Drawing Rights (SDR9,776,000).

Section 2.02. (a) The Borrower shall pay to ADB an interest charge at the rate of 2% per annum during the grace period and 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 subsection (a) 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 2.03. The interest charge and any other charge on the Loan shall be payable semiannually on 1 May and 1 November in each year.

Section 2.04. The Borrower shall repay the principal amount of the Loan withdrawn from the Loan Account in accordance with the amortization schedule set forth in Schedule 2 to this Loan Agreement.

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

ARTICLE III

Use of Proceeds of the Loan

Section 3.01. The Borrower shall make the proceeds of the Loan available to NAC as budgetary support upon terms and conditions satisfactory to ADB and shall cause NAC to apply such proceeds to the financing of expenditures on the Project in accordance with the provisions of this Loan Agreement and the Project 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 expenditure 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. Except as ADB may otherwise agree, the Borrower shall cause all items of expenditure financed out of the proceeds of the Loan to be used exclusively in the carrying out of the Project.

Section 3.05. Withdrawals from the Loan 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 3.06. The Loan Closing Date for the purposes of Section 8.02 of the Loan Regulations shall be 30 September 2017 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 the Project and operation of the Project facilities, the Borrower shall perform, or cause to be performed, all obligations set forth in Schedule 5 to this Loan Agreement and the Project Agreement.

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

Section 4.03. (a) The Borrower shall (i) maintain separate accounts and records for the Project; (ii) prepare annual financial statements for the Project in accordance with accounting principles 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 international standards for auditing or the national equivalent acceptable to ADB; (iv) as part of each such audit, have the auditors prepare a report (which includes the auditors' opinion on the financial statements, use of the Loan proceeds and compliance with the financial covenants of this Loan Agreement) 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 30 days of the date of their receipt 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 4.04. The Borrower shall take all actions which shall be necessary on its part to enable NAC 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.

ARTICLE V

Suspension; Acceleration of Maturity

Section 5.01. The following is specified as an additional event for suspension of the right of the Borrower to make withdrawals from the Loan Account for the purposes of Section 8.01(m) of the Loan Regulations: the Borrower shall have failed to perform any of its obligations under the Ordinary Operations Loan Agreement.

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

ARTICLE VI

Effectiveness

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

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

Section 6.03. 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 VII

Delegation of Authority

Section 7.01. The Borrower hereby designates NAC as its agent for the purposes of taking any action or entering into any agreement required or permitted under Sections 3.02, 3.03 and 3.05 of this Loan Agreement and under Sections 5.01, 5.02, 5.03 and 5.04 of the Loan Regulations.

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

Section 7.03. The authority conferred on NAC under Section 7.01 of this Loan Agreement may be revoked or modified by agreement between the Borrower and ADB.

ARTICLE VIII

Miscellaneous

Section 8.01. The Minister of Treasury of the Borrower is designated as representative of the Borrower for the purposes of Section 11.02 of the Loan Regulations.

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

For the Borrower

Secretary, Department of Treasury
Vulupindi Haus
P.O. Box 542
Waigani, National Capital District
Papua New Guinea

Facsimile Numbers:

+675 312-8803
+675 312-8808.

For ADB

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

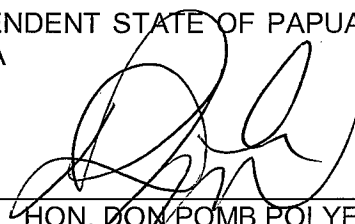
Facsimile Numbers:

+63 2 636-2444
+63 2 636-2446.

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.

INDEPENDENT STATE OF PAPUA NEW
GUINEA

By



HON. DON POMB POLYE
Minister of Treasury

ASIAN DEVELOPMENT BANK

By



MARCELO J. MINC
Country Director
Papua New Guinea Resident Mission

SCHEDULE 1

Description of the Project

1. The objective of the Investment Program is safer, more efficient, and more accessible all-weather air transport services in the Project areas.
2. As a part of the Investment Program, the Project aims to strengthen air transport institutions, and improve selected air traffic infrastructure, operations and services.
3. The Project shall consist of:
 - (a) Provision of support and capacity development to NAC, PNGASL, and CASAPNG to update strategy, prepare and implement projects, and improve compliance with International Civil Aviation Organization safety and security standards;
 - (b) Improvement of airside and landside infrastructure, and operations and maintenance at selected airports, through the provision of support for:
 - (i) Improvements to airport pavements at Chimbu, Girua, Goroka, and Vanimo airports;
 - (ii) Installment of security fences at Buka, Chimbu, Girua, Momote, and Vanimo airports;
 - (iii) Extension of the runway at Goroka airport;
 - (iv) Improvements to the terminal buildings at Goroka, Girua, and Vanimo airports;
 - (v) Replacement of visual approach slope indicator systems at Goroka, Kavieng, and Vanimo airports;
 - (vi) Replacement of standby airport power supply at Buka, Gurney, Kavieng, Madang, Momote, Nadzab, Port Moresby, Tokua, and Wewak airports;
 - (vii) Establishment of a market shed for women as community service obligation at Buka, Chimbu, Girua, Goroka, Momote, and Vanimo airports;
 - (viii) Implementation of a pavement management system, establishment of an asset management plan, and the award of performance-based maintenance contracts, for selected national airports; and
 - (ix) Airport safety awareness activities for the public;
 - (c) Improvement of airport operations through the provision of support for:
 - (i) Improvement of a network of communication, navigation and surveillance (CNS) and air traffic management (ATM) system;
 - (ii) Improvement of airport rescue and firefighting services at Mount Hagen, Nadzab, and Tokua airports; and
 - (iii) Implementation of an airport management system at Port Moresby, Mount Hagen, Nadzab, and Tokua airports.

as more fully described in the PFR. The Project also includes Consulting Services for each of components (a), (b) and (c) above.

4. The Project is expected to be completed by 31 March 2017.

SCHEDULE 2
Amortization Schedule

(Civil Aviation Development Investment Program - Project 2)

<u>Date Payment Due</u>	<u>Payment of Principal</u> (expressed in Special Drawing Rights)*
1 May 2019	244,400
1 November 2019	244,400
1 May 2020	244,400
1 November 2020	244,400
1 May 2021	244,400
1 November 2021	244,400
1 May 2022	244,400
1 November 2022	244,400
1 May 2023	244,400
1 November 2023	244,400
1 May 2024	244,400
1 November 2024	244,400
1 May 2025	244,400
1 November 2025	244,400
1 May 2026	244,400
1 November 2026	244,400
1 May 2027	244,400
1 November 2027	244,400
1 May 2028	244,400
1 November 2028	244,400
1 May 2029	244,400
1 November 2029	244,400
1 May 2030	244,400
1 November 2030	244,400
1 May 2031	244,400
1 November 2031	244,400
1 May 2032	244,400
1 November 2032	244,400
1 May 2033	244,400
1 November 2033	244,400
1 May 2034	244,400
1 November 2034	244,400
1 May 2035	244,400
1 November 2035	244,400
1 May 2036	244,400
1 November 2036	244,400
1 May 2037	244,400
1 November 2037	244,400
1 May 2038	244,400
1 November 2038	244,400
Total	9,776,000

*The arrangement for payment is 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 expenditure 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 or Subcategory of the Table.)

Basis for Withdrawal from the Loan Account

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

Interest Charge

3. The amount allocated to Category 5 is for financing the interest charges 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 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, by notice to the Borrower, reallocate such excess amount to any other Category.

Disbursement Procedures

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

TABLE

ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (Civil Aviation Development Investment Program - Project 2)				
Number	Item	Total Amount Allocated for ADB Financing (SDR)		Basis for Withdrawal from the Loan Account
		Category	Subcategory	
1	Works	5,448,000		9% of total expenditure claimed
2	Mechanical and Equipment	1,968,000		9% of total expenditure claimed
3	Consulting Services	579,000		
3A	Project Management		362,000	9% of total expenditure claimed
3B	Capacity Development		217,000	9% of total expenditure claimed
4	Equipment Operation and Maintenance	278,000		9% of total expenditure claimed
5	Interest Charges	408,000		100% of total amount due
6	Unallocated	1,095,000		
	Total	9,776,000		

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

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:
 - (a) International Competitive Bidding;
 - (b) National Competitive Bidding; and
 - (c) Shopping.
4. The methods of procurement are subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. The Borrower may only modify the methods of procurement or threshold values with the prior agreement of ADB, and modifications must be set out in updates to the Procurement Plan.

Domestic Preference

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

National Competitive Bidding

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

Conditions for Award of Contract

7. The Borrower and NAC shall not award any Works contract which involves environmental impacts until NAC has:
 - (a) Obtained the final approval of the IEE from the appropriate environmental authority of the Borrower; and

- (b) Incorporated the relevant provisions from the EMP into the Works contract.

8. The Borrower and NAC shall not award any Works contract which involves involuntary resettlement impacts for a Subproject until the Borrower has prepared and submitted to ADB the final RP for the such Subproject based on the Subproject's detailed design, and obtained ADB's clearance of such RP.

9. The Borrower and NAC shall not award any Works contract which involves impacts on indigenous peoples until the Borrower has prepared and submitted to ADB the final IPP, if applicable, and obtained ADB's clearance of such IPP.

Consulting Services

10. Except as ADB may otherwise agree, the Borrower shall cause NAC to apply quality- and cost-based selection for selecting and engaging Consulting Services.

11. The Borrower shall recruit, or cause NAC to recruit, individual consultants in accordance with the Procurement Plan and procedures acceptable to ADB for recruiting individual consultants.

Industrial or Intellectual Property Rights

12. (a) The Borrower shall ensure, or cause NAC to ensure, that all Goods and Works procured (including without limitation all computer hardware, software and systems, whether separately procured or incorporated within other goods and services procured) do not violate or infringe any industrial property or intellectual property right or claim of any third party.

(b) The Borrower shall ensure, or cause NAC to 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.

13. The Borrower shall ensure or cause NAC to 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.

ADB's Review of Procurement Decisions

14. Contracts procured under international competitive bidding procedures and contracts for Consulting Services shall be subject to prior review by ADB, unless otherwise agreed between the Borrower and ADB and set forth in the Procurement Plan.

SCHEDULE 5

Execution of Project; Financial Matters

Implementation Arrangements

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

2. The Borrower is fully committed to the Investment Program and the Project, and shall ensure that NAC, all its ministries, agencies and divisions involved in the implementation of the Project, including PNGASL and CASAPNG, (a) give their full cooperation to ensure smooth implementation of the Project, and (b) carry out their respective roles and responsibilities, and fulfill their obligations, in accordance with the FAM.

3. The Borrower shall cause NAC: (a) to 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, and (b) to advise ADB of any changes in relevant operational policies or programs that may materially or adversely affect the financial viability of any part of the Project.

Loan Proceeds; Counterpart Support

4. The Borrower shall make available the Loan proceeds to NAC under appropriate arrangements acceptable to ADB. The Borrower shall also provide, through budgetary allocations or other means, all counterpart funds, land and facilities required for timely and effective implementation of the Project, including without limitation, any funds required: (a) to meet any shortfall between cost and revenues for the operation and maintenance of the facilities created or rehabilitated under the Project, (b) to mitigate any unforeseen environmental and social impacts, and (c) to meet additional costs arising from design changes, price escalation in construction costs and/or unforeseen circumstances. The Borrower shall ensure, or cause NAC to ensure, that the resources thus required are made available on an annual basis for each fiscal year.

Subproject Selection Criteria

5. The Borrower shall ensure, and cause NAC to ensure, that all Subprojects are selected in accordance with the selection criteria stipulated in Schedule 4 of the FFA.

6. The Borrower shall ensure, and cause NAC to ensure, that all documents forming the basis for the screening, selection and processing of Subprojects are made available to ADB upon request and are kept for such purposes for a minimum of 5 years from the date of the Project completion.

Environment

7. The Borrower shall ensure, or cause NAC to ensure, that the preparation, design, construction, implementation, operation and decommissioning of each Subproject and all Project facilities comply with: (a) all applicable laws and regulations of Borrower relating to environment, health and safety; (b) the Environmental Safeguards; (c) the EARF; and (d) all measures and requirements set forth in the IEEs, the EMP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

Involuntary Resettlement

8. The Borrower shall ensure, or cause NAC to ensure, that all land and all rights-of-way required for a Subproject, and all Project facilities, are made available to the Works contractor in accordance with the schedule agreed under the related Works contract and any land acquisition and resettlement activities are implemented in compliance with: (a) all applicable laws and regulations of the Borrower relating to land acquisition and involuntary resettlement; (b) the Involuntary Resettlement Safeguards; (c) the RF; and (d) all measures and requirements set forth in any RP, and any corrective or preventative actions set forth in the Safeguards Monitoring Report. The Borrower shall finance all land acquisition and resettlement costs from its resources.

9. Without limiting the application of the Involuntary Resettlement Safeguards or the RP, if applicable, the Borrower shall ensure, or cause NAC to ensure, that no physical or economic displacement takes place in connection with any Subproject until:

- (a) compensation and other entitlements, as relevant, have been provided to affected people in accordance with the RP; and
- (b) a comprehensive income and livelihood restoration program has been established in accordance with the RP.

Indigenous Peoples

10. The Borrower shall ensure or cause NAC to ensure that the Project does not have any indigenous peoples impacts within the meaning of the Safeguard Policy Statement. In the event that the Project does have any such impact, the Borrower shall ensure, or cause NAC to ensure, that the preparation, design, construction, implementation and operation of the Project and all Project facilities comply with: (a) all applicable laws and regulations of the Borrower relating to indigenous peoples; and (b) the Indigenous Peoples Safeguards. If there is any discrepancy between the SPS and the Borrower's laws and regulations, the SPS shall prevail.

Human and Financial Resources to Implement Safeguard Requirements

11. The Borrower shall make available, or cause NAC to make available, necessary budgetary and human resources to fully implement the EMP, the RP and any IPP.

Safeguards – Related Provisions in Bidding Documents and Works Contracts

12. The Borrower shall ensure, or cause NAC to ensure, that all bidding documents and contracts for Works contain provisions that require contractors to:

- (a) comply with the measures relevant to the contractor set forth in the IEEs, the EMP, the RP if applicable, and any corrective or preventative actions set forth in a Safeguards Monitoring Report;
- (b) make available a budget for all such environmental and social measures;
- (c) provide the Borrower and NAC with a written notice of any unanticipated environmental, resettlement or indigenous peoples risks or impacts that arise during construction, implementation or operation of the Project that were not considered in the IEEs, the EMP, any RP;
- (d) adequately record the condition of roads, agricultural land and other infrastructure prior to starting to transport materials and construction; and
- (e) reinstate pathways, other local infrastructure, and agricultural land to at least their pre-project condition upon the completion of construction.

Safeguards Monitoring and Reporting

13. The Borrower shall do the following or cause NAC to do the following:

- (a) submit quarterly Safeguards Monitoring Reports to ADB and disclose relevant information from such reports to affected persons promptly upon submission;
- (b) if any unanticipated environmental and/or social risks and impacts arise during construction, implementation or operation of the Project that were not considered in the IEEs, the EMP, or any RP, promptly inform ADB of the occurrence of such risks or impacts, with detailed description of the event and proposed corrective action plan; and
- (c) report any actual or potential breach of compliance with the measures and requirements set forth in the EMP, or any RP promptly after becoming aware of the breach.

Prohibited List of Investments

14. The Borrower and NAC 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.

Gender Action Plan

15. The Borrower shall ensure, or cause NAC to ensure, that the GAP is adopted and implemented in a timely manner, and that adequate resources are allocated for this purpose. In particular, the Borrower and NAC shall ensure that the targets stated in the GAP will be achieved. NAC shall conduct training on GAP implementation for all staff involved in the Project. NAC shall ensure that the implementation of the GAP will be closely monitored, and the progress shall be reported to ADB.

Labor Standards

16. The Borrower shall ensure, or cause NAC to ensure, that the contractors engaged under the Project, comply with all applicable labor, health, and safety laws and regulations of the Borrower and, in particular, (a) do not employ child labor for construction and maintenance activities, and (b) provide appropriate facilities (latrines, etc.) for workers at construction sites. NAC shall require contractors not to differentiate wages between men and women for work of equal value. NAC shall ensure that specific clauses shall be included in bidding documents to ensure adherence to these provisions, and that compliance shall be strictly monitored during Project implementation.

Health

17. The Borrower shall ensure, or cause NAC to ensure, that the Works contractors will disseminate information on the risk of transmission of sexually-transmitted diseases, including HIV/AIDS, in health and safety programs to all construction workers employed under the Project. Specific provisions to this effect shall be included in bidding documents and Works contracts, and compliance shall be monitored by NAC and reported to ADB.

Security and Safety

18. The Borrower shall cause NAC to regularly monitor and evaluate security and safety controls at all Project facilities, and to share such information through periodic briefings with Works contractors and providers of Consulting Services. Such Works contractors and providers of Consulting Services shall be required to prepare and submit to NAC a security and emergency evacuation plan prior to commencement of the Works or Consulting Services.

19. The Borrower shall cause NAC to provide airport safety awareness activities for the public with a view to changing behavior and perceptions regarding airport safety, including a media campaign and dissemination of relevant information.

Grievance Redress Mechanism

20. The Borrower shall establish and maintain, or cause NAC to establish and maintain, a grievance redress mechanism acceptable to ADB with representation from all Project stakeholders for the purpose of addressing any grievances arising out the Project, including those from affected peoples concerning land acquisition, environment and any other social issues in a timely manner.

Operation and Maintenance

21. The Borrower shall ensure, or cause NAC to ensure, that the Project facilities are adequately maintained and that proper technical supervision and adequate funds for this purpose are provided. The funds required for the operation and maintenance (O&M) shall be allocated annually and released on a timely basis. The Borrower shall cause NAC to prepare and maintain asset management plans and O&M management systems, and award performance-based maintenance contracts, for selected Project facilities. Furthermore, the Borrower shall ensure, or cause NAC to ensure, that all equipment and spare parts financed under the Project shall exclusively be used for the O&M of the Project.

Project Performance Monitoring System

22. Within 6 months after Loan effectiveness, the Borrower shall establish, or cause NAC to establish, a PPMS acceptable to ADB in line with the targets, indicators and procedures agreed between the Borrower and ADB. NAC shall monitor the indicators according to the agreed framework on a quarterly basis to determine the efficiency and effectiveness of the Project, and will provide to ADB quarterly reports from the establishment of PIU until project completion, and thereafter on an annual basis for the first 5 years after project completion.

Governance and Corruption

23. The Borrower, NAC, PNGASL and CASAPNG 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 relating to the Project; and (b) cooperate with any such investigation and extend all necessary assistance for satisfactory completion of such investigation.

24. The Borrower, NAC, PNGASL and CASAPNG 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 agency and implementing agencies and all contractors, suppliers, consultants, and other service providers as they relate to the Project. The Borrower and NAC agree and acknowledge that individuals and/or entities on ADB's anticorruption debarment list are ineligible to participate in ADB-financed activities and may not be awarded any contracts under the Project.

25. The Borrower shall prepare and implement, or cause NAC to prepare and implement, a robust code of conduct acceptable to ADB for the staff involved in the Project, ensuring, among others, that the staff members working with the PIU do not have any conflict of interest with any activities under the Project. The Borrower shall take necessary steps to further ensure that all applicable anticorruption laws of the Borrower which apply to public officers are vigorously enforced.