LOAN NUMBER 3347-PAL (SF)

# LOAN AGREEMENT
(Special Operations)

(North Pacific Regional Connectivity Investment Project)

between

REPUBLIC OF PALAU

and

ASIAN DEVELOPMENT BANK

DATED 07 MARCH 2016

PAL 46832

**LOAN AGREEMENT**
**(Special Operations)**

LOAN AGREEMENT dated 07 March 2016 between REPUBLIC OF PALAU ("Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) the Borrower has applied to ADB for a loan for the purposes of the Project described in Schedule 1 to this Loan Agreement;

(B) the Project will be carried out by Borrower and Belau Submarine Cable Corporation ("BSCC"), and for this purpose the Borrower will make available to BSCC the proceeds of the loan provided for herein upon terms and conditions satisfactory to ADB;

(C) by agreement of even date herewith entered between ADB and the Borrower ("Ordinary Operations Loan Agreement"), ADB has agreed to provide to the Borrower a loan from ADB's ordinary capital resources for an amount of sixteen million four hundred seventy thousand Dollars ($16,470,000) for the purposes of the Project; and

(D) 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 BSCC;

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 BSCC.

(b) The term "Project Executing Agency" appearing in Section 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 "BSCC".

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) "ADF Subsidiary Loan Agreement" means the agreement between the Borrower and BSCC in respect of the proceeds of the Loan relent under the Project as described in Section 3.01(a) of this Loan Agreement;

(b) "BSCC" means the Belau Submarine Cable Corporation, or any successor thereto acceptable to ADB;

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

(d) "Consulting Services" means the services to be financed out of the proceeds of the Loan as described in paragraph 3 of Schedule 1 to this Loan Agreement;

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

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

(g) "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;

(h) "ICT" means information and communications technology;

(i) "Initial Environmental Examination" or "IEE" means the initial environmental examination for the Project, including any update thereto, prepared and submitted by the Borrower and cleared by ADB;

(j) "IRU" means indefeasible right of use;

(k) "IRU Agreement" means the agreement, dated 26 February 2016, between BSCC, and GTI Corporation, a member of the SEA-US Consortium relating to the IRU of Palau;

(l) "Loan Disbursement Handbook" means ADB's Loan Disbursement Handbook (2015, as amended from time to time);

(m) "OCR Subsidiary Loan Agreement" means the agreement between the Borrower and BSCC in respect of the proceeds of the loan under the Ordinary Operations Loan Agreement relent under the Project as described in Section 3.01(a) of the Ordinary Operations Loan Agreement;

(n) "PAM" means the project administration manual for the Project dated 20 October 2015 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) "PNCC" means the Palau National Communication Corporation;

(p) "Procurement Guidelines" means ADB's Procurement Guidelines (2015, as amended from time to time);

(q) "Procurement Plan" means the procurement plan for the Project dated 20 October 2015 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;

(r) "Project facilities" means the facilities to be constructed and/or maintained, and the equipment to be installed and maintained under the Project;

(s) "Safeguard Policy Statement" or "SPS" means ADB's Safeguard Policy Statement (2009);

(t) "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 including any corrective and preventative actions;

(u) "SEA-US Consortium" means the consortium of companies that are included in the SEA-US cable subsystem, including Globe Telecom Inc., PT Telekom Indonesia International, Teleguam Holdings LLC, GTI Corporation, Hawaiian Telcom Services Company, Inc., RAM Telecom International, Inc.;

(v) "Subsidiary Loan Agreements" means the ADF Subsidiary Loan Agreement and the OCR Subsidiary Loan Agreement;

(w) "Supply Contract" means the Supply Contract for the Palau Spur Part 1, dated 26 February 2016, between BSCC and NEC Corporation relating to the supply and installation of the submarine cable system for the Palau spur between the landing station to be constructed in Palau and a branching unit to be installed by NEC as part of the SEA-US System; and

(x) "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 six million thirty-two thousand Dollar equivalent Special Drawing Rights (SDR 6,032,000).

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 June and 1 December 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 Dollar.

## ARTICLE III

## Use of Proceeds of the Loan

Section 3.01. (a) The Borrower shall relend the proceeds of the Loan to BSCC under the ADF Subsidiary Loan Agreement upon terms and conditions satisfactory to ADB. Except as ADB may otherwise agree, the terms for relending the proceeds of the Loan shall substantially mirror the terms being provided under this Loan Agreement.

(b) The Borrower shall cause the proceeds of the Loan to be applied 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 2018 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.

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. 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.

Section 4.04. The Borrower shall take all actions which shall be necessary on its part to enable the Project Executing Agency 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 4.05. (a) The Borrower shall exercise its rights under the Subsidiary Loan Agreements in such a manner as to protect the interests of the Borrower and ADB and to accomplish the purposes of the Loan.

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

## ARTICLE V

### Suspension; Acceleration of Maturity

Section 5.01. The following are specified as additional events 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:

(a) the Borrower shall have failed to perform any of its obligations under the Ordinary Operations Loan Agreement;

(b) BSCC shall have failed to perform any of its obligations under the Project Agreement or the Supply Contract, or the IRU Agreement; and

(c) Republic of Palau Public Law No. 9-47 on the establishment of the BSCC or any provision thereof shall have been repealed, suspended or amended in any manner which in the reasonable opinion of ADB shall or may adversely affect the carrying out of the Project or the operation of the Project facilities.

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: any of the events specified in Section 5.01 of this Loan Agreement shall have occurred.

## ARTICLE VI

### Effectiveness

Section 6.01. The following are specified as additional conditions to the effectiveness of this Loan Agreement for the purposes of Section 9.01(f) of the Loan Regulations:

(a) 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; and

(b) the Subsidiary Loan Agreements shall have been duly executed and delivered on behalf of the Borrower and the BSCC and all conditions to

its effectiveness shall have been fulfilled, on terms and conditions satisfactory to ADB.

Section 6.02. The following are specified as additional matters, 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:

(a) 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; and

(b) the Subsidiary Loan Agreements shall have been duly authorized or ratified by, and executed and delivered on behalf of the Borrower and the BSCC and are legally binding upon the Borrower and BSCC in accordance with their 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

## Miscellaneous

Section 7.01. The Minister of Finance of the Borrower is designated as representative of the Borrower for the purposes of Section 11.02 of the Loan Regulations.

Section 7.02. The following addresses are specified for the purposes of Section 11.01 of the Loan Regulations:

For the Borrower

The Minister
Ministry of Finance
PO Box 6011, Koror
Republic of Palau 96940

Facsimile Number:

(680) 767-2168.

For ADB

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

Facsimile Numbers:

(632) 636-2444
(632) 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.

REPUBLIC OF PALAU

By _____
ELBUCHEL SADANG
Minister of Finance and Governor

ASIAN DEVELOPMENT BANK

By _____
XIANBIN YAO
Director General
Pacific Department

## SCHEDULE 1

### Description of the Project

1. The objective of the Project is to decrease cost and increase quality of internet service.

2. The Project shall comprise establishing a submarine cable connection from Palau to the submarine cable system owned by the SEA-US Consortium that connects to the international cable hub in Guam.

3. Consulting Services will be provided to manage and implement the above.

4. The Project is expected to be completed by 31 March 2018.

## SCHEDULE 2

### Amortization Schedule

### (North Pacific Regional Connectivity Investment Project)

| Date Payment Due | Payment of Principal (expressed in Special Drawing Rights) |
|---|---|
| 1 June 2021 | 150,800 |
| 1 December 2021 | 150,800 |
| 1 June 2022 | 150,800 |
| 1 December 2022 | 150,800 |
| 1 June 2023 | 150,800 |
| 1 December 2023 | 150,800 |
| 1 June 2024 | 150,800 |
| 1 December 2024 | 150,800 |
| 1 June 2025 | 150,800 |
| 1 December 2025 | 150,800 |
| 1 June 2026 | 150,800 |
| 1 December 2026 | 150,800 |
| 1 June 2027 | 150,800 |
| 1 December 2027 | 150,800 |
| 1 June 2028 | 150,800 |
| 1 December 2028 | 150,800 |
| 1 June 2029 | 150,800 |
| 1 December 2029 | 150,800 |
| 1 June 2030 | 150,800 |
| 1 December 2030 | 150,800 |
| 1 June 2031 | 150,800 |
| 1 December 2031 | 150,800 |
| 1 June 2032 | 150,800 |
| 1 December 2032 | 150,800 |
| 1 June 2033 | 150,800 |
| 1 December 2033 | 150,800 |
| 1 June 2034 | 150,800 |
| 1 December 2034 | 150,800 |
| 1 June 2035 | 150,800 |
| 1 December 2035 | 150,800 |
| 1 June 2036 | 150,800 |
| 1 December 2036 | 150,800 |
| 1 June 2037 | 150,800 |
| 1 December 2037 | 150,800 |
| 1 June 2038 | 150,800 |
| 1 December 2038 | 150,800 |

Schedule 2

| Date Payment Due | Payment of Principal (expressed in Special Drawing Rights) |
|---|---|
| 1 June 2039 | 150,800 |
| 1 December 2039 | 150,800 |
| 1 June 2040 | 150,800 |
| 1 December 2040 | 150,800 |
| **TOTAL** | **6,032,000** |

* 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 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 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 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.

Retroactive Financing

6. Withdrawals from the Loan Account may be made for reimbursement of eligible expenditures incurred under the Project before the Effective Date, but not earlier than

12 months before the date of this Loan Agreement, subject to a maximum amount equivalent to 20% of the Loan amount.

Condition for Withdrawals from Loan Account:

7. Notwithstanding any other provision of this Loan Agreement, no withdrawals shall be made from Categories 1 or 2 until:

(a) the IRU Agreement shall have been duly executed and delivered on behalf of the parties thereto, upon terms and conditions acceptable to ADB, and all conditions to effectiveness shall have been fulfilled. In addition, legal opinions satisfactory to ADB shall have been submitted to ADB, confirming that the IRU Agreement have been duly authorized by, and executed and delivered on behalf of the parties thereto, and are legally binding upon the parties thereto in accordance with their terms; and

(b) the Supply Contract shall have been duly executed and delivered on behalf of the parties thereto, upon terms and conditions acceptable to ADB, and all conditions to effectiveness shall have been fulfilled. In addition, legal opinions satisfactory to ADB shall have been submitted to ADB, confirming that the Supply Contract have been duly authorized by, and executed and delivered on behalf of the parties thereto, and are legally binding upon the parties thereto in accordance with their terms.

8. Notwithstanding any other provision of this Loan Agreement, no withdrawals shall be made from Category 3 until a landing agreement between BSCC and PNCC for the use of PNCC land and facility will have been signed and made effective.

**TABLE**

| ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (North Pacific Regional Connectivity Investment Project) | | | |
|---|---|---|---|
| **Number** | **Item** | **Total Amount Allocated for ADB Financing (SDR) Category** | **Basis for Withdrawal from the Loan Account** |
| 1 | Spur to connect SEA-US Cable System** | 3,055,000 | 34.1% of total expenditure claimed* |
| 2 | IRU** | 1,259,000 | 34.1% of total expenditure claimed* |
| 3 | Cable station construction and fit out ** | 389,000 | 34.1% of total expenditure claimed* |
| 4 | Project Management Unit | 198,000 | 33.3% of total expenditure claimed |
| 5 | Interest during implementation | 49,000 | 100% of amounts due |
| 6 | Unallocated | 1,082,000 | |
| | Total | 6,032,000 | |

* Exclusive of taxes and duties imposed within the territory of the Borrower.
** Subject to the conditions for withdrawal described in paragraphs 7 and 8 of Schedule 3.

## 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; and
(b) Direct Contracting

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.

Conditions for Award of Contract

5. The Borrower shall not award any Works contract which involves environmental impacts until:

(a) the Environmental Quality Protection Board has granted the final approval of the IEE; and

(b) the Borrower has incorporated the relevant provisions from the EMP into the Works contract.

Consulting Services

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

Industrial or Intellectual Property Rights

7. (a) The Borrower 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) The Borrower 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.

8. The Borrower 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.

ADB's Review of Procurement Decisions

9. 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 and BSCC 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.

Counterpart Support

2. The Borrower shall make available to BSCC all counterpart funds required for timely and effective implementation of the Project, including, without limitation, any funds required 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.

Government Coordination

3. The Borrower is fully committed to the Project and shall ensure that all its ministries, agencies and divisions relevant in the implementation of the Project give their full cooperation to ensure smooth implementation of the Project. Specifically, the Borrower shall cause BSCC and/or all relevant ministries to give full, timely and efficient cooperation in providing resources, issuing any licenses, permits or approvals required in connection with the laying of the submarine cables.

Corporate Governance

4. The Borrower shall ensure, and shall cause BSCC to ensure, that throughout Project implementation (i) no material organizational changes to BSCC (either financial, operational, or structural), nor material asset transfers to or from BSCC, including a change in ownership of the Project facilities, are approved or implemented without prior approval of ADB; and (ii) any such changes are carried out in a transparent manner and in accordance with applicable laws and regulations.

Organizational Matters

5. In relation to the Project, no later than 31 December 2017, BSCC shall have recruited and engaged key personnel for its operations and finance departments, including permanent staff with adequate qualifications; and (ii) other staff required to meet substantially all its other staffing requirements to function as a functioning corporation, without the support of the project management unit funded by the Project.

6. Subject to BSCC's recruitment and promotion rules, BSCC shall generally recruit all personnel on a competitive and transparent basis through open advertisements in the relevant printed media and on their websites.

ICT Strategy

7. Within twelve months from the Effective Date, the Borrower shall have adopted a national ICT strategy, the features of which will include a time-bound program to implement legislative reforms that effect an enabling environment for secure electronic transactions, ensure online security, protect against cyber-crimes, protect personal data, and regulate intellectual property rights.

8. Within eighteen months from the Effective Date, the Borrower shall have completed the legal and regulatory reforms necessary to incorporate into national law (i) the Borrower's specific commitments regarding telecommunications to the World Trade Organization, including as set out in the *Reference Paper to the GATS Agreement on Basic Telecommunications*; and (ii) international best practices in the field of telecommunications regulation, with a view to creating an enabling telecommunications and information and communication technology environment providing, among other things, for (a) open interconnection access on non-discriminatory terms and with transparent and reasonable, cost-oriented rates; (b) appropriate measures to prevent anti-competitive behavior; (c) transparency in license administration and regulatory decision making; (d) independent appeals mechanisms and dispute resolution processes; (e) efficient administration of scarce resources (such as frequencies and numbers) in an objective, timely, transparent and non-discriminatory manner; and (f) adequate provisions regarding consumer protection.

9. Within eighteen months from the Effective Date, the Borrower shall have adopted a detailed road map with corresponding budget allocation to deploy ICT-based public service delivery in education, health, public administration and disaster risk reduction within the existing national development strategy.

Telecom Regulatory Office

10. Within eighteen months from the Effective Date, the Borrower shall establish a telecom regulatory office.

Supply Contract

11. The Borrower shall ensure and shall cause BSCC to ensure that the Supply Contract includes a provision stating that unless ADB prior approval is obtained, sub-contractors and/or suppliers to be contracted to carry out any work or supply any goods and services shall be from ADB member countries.

Cable Protection Measures

12. Within twelve months after the Effective Date, the Borrower shall have adopted executive orders and/or submitted to parliament draft legislation, as may be needed to ensure adequate protection of the submarine cable system in Palau's territorial waters, including, without limitation, that no trawl fishing or anchoring will be permitted in the area within Palau's territorial waters through which the submarine cable will pass.

13. In the event that the submarine survey shows that Project facilities will cross another submarine cable, the Borrower, shall ensure that BSCC approaches the owner and

enters into a cable crossing agreement in accordance with the recommendations issued by the International Cable Protection Committee.

Environment

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

Land Acquisition and Involuntary Resettlement

15. The Borrower shall ensure that the Project does not involve any land acquisition or involuntary resettlement risks or impacts within the meaning of the SPS. If due to unforeseen circumstances the Project involves any such impacts, the Borrower shall take all steps necessary or desirable to ensure that the Project complies with all applicable laws and regulations of the Borrower and with the SPS.

Indigenous Peoples

16. The Borrower shall ensure that the Project does not involve any indigenous people risks or impacts within the meaning of the SPS. If due to unforeseen circumstances, the Project involves any such impacts, the Borrower shall take all steps necessary or desirable to ensure that the Project complies with all applicable laws and regulations of the Borrower and with the SPS.

Human and Financial Resources to Implement Safeguards Requirements

17. The Borrower shall make available or cause BSCC to make available necessary budgetary and human resources to fully implement the EMP.

Safeguards – Related Provisions in Bidding Documents and Works Contracts

18. The Borrower shall ensure or cause BSCC 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 IEE and the EMP, 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 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 IEE, and the EMP;

(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

19. The Borrower shall do the following or cause BSCC to do the following:

(a) submit semi-annual 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 IEE and the EMP, 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 promptly after becoming aware of the breach.

Prohibited List of Investments

20. 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.

Gender and Development

21. The Borrower shall ensure that the principles of gender equity aimed at increasing Project benefits and impacts on women in the Project area consistent with ADB's Policy on Gender and Development (1998) are followed during implementation of the Project, including (a) equal pay to men and women for work of equal value; (b) enabling working conditions for women workers; and (c) taking necessary actions to encourage women living in the Project area to participate in the design and implementation of Project activities.

Project Website

22. Within twelve months from the Effective Date, BSCC shall create a Project website to disclose information about various matters on the Project, including procurement. With regard to procurement, the website shall include information on the list of participating bidders, name of the winning bidder, basic details on bidding procedures adopted, amount of contract awarded, and the list of goods/services procured.

Labor Standards, Health and Safety

23. The Borrower shall ensure that the core labor standards and the Borrower's applicable laws and regulations are complied with during project implementation. The Borrower shall include specific provisions in the bidding documents and contracts financed by ADB under the Project requiring that the contractors, among other things: (a) comply with the Borrower's applicable labor law and regulations and incorporate applicable workplace occupational safety norms; (b) do not use child labor; (c) do not discriminate workers in respect of employment and occupation; (d) do not use forced labor; (e) allow freedom of association and effectively recognize the right to collective bargaining; and (f) disseminate, or engage appropriate service providers to disseminate, information on the risks of sexually transmitted diseases, including HIV/AIDS, to the employees of contractors engaged under the Project and to members of the local communities surrounding the Project area, particularly women.

24. The Borrower shall strictly monitor compliance with the requirements set forth in paragraph 18 above and provide ADB with regular reports.

Governance and Corruption

25. The Borrower and BSCC 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.

26. The Borrower and BSCC 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.