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GRANT NUMBER 0458-SAM (SF)

GRANT AGREEMENT  
(Special Operations)  
(Samoa Submarine Cable Project)

between

INDEPENDENT STATE OF SAMOA

and

ASIAN DEVELOPMENT BANK

DATED 03 DECEMBER 2015

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SAM 47320

## **GRANT AGREEMENT (Special Operations)**

GRANT AGREEMENT dated 03 December 2015 between the INDEPENDENT STATE OF SAMOA (“Recipient”) and ASIAN DEVELOPMENT BANK (“ADB”).

### WHEREAS

(A) the Recipient has applied to ADB for a grant for the purposes of the Project described in Schedule 1 to this Grant Agreement;

(B) the Recipient has also applied to WB (as defined below), for a grant in an amount of sixteen million Dollars (\$16,000,000) for the purposes of financing a portion of the Project;

(C) the Recipient has also applied to the government of Australia for a grant in an amount of one million five hundred thousand Dollars (\$1,500,000) for the purposes of financing a portion of the Project; and

(D) ADB has agreed to make a grant to the Recipient from ADB's Special Funds resources upon the terms and conditions set forth herein;

NOW THEREFORE the parties agree as follows:

## **ARTICLE I**

### **Grant Regulations; Definitions**

Section 1.01. All provisions of the Special Operations Grant Regulations of ADB, dated 7 February 2005 (“Grant Regulations”), are hereby made applicable to this Grant Agreement with the same force and effect as if they were fully set forth herein.

Section 1.02. Wherever used in this Grant Agreement, the several terms defined in the Grant Regulations have the respective meanings therein set forth unless modified herein or the context otherwise requires. Additional terms used in this Grant Agreement have the following meanings:

(a) “Australian Grant” means the in the amount of \$1,500,000 from the Government of Australia and administered by WB;

(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 Grant as described in paragraph 2 of Schedule 1 to this Grant Agreement;

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

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

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

(g) “Initial Environmental Examination” or “IEE” means the initial environmental examination for the Project, including any update thereto, prepared and submitted by the Recipient and cleared by ADB;

(h) “Loan Disbursement Handbook” means ADB’s Loan Disbursement Handbook (2015, as amended from time to time);

(i) “MCIT” means the Recipient’s Ministry of Communications and Information Technology, or any successor thereto;

(j) “MOF” means the Recipient’s Ministry of Finance, or any successor thereto;

(k) “MOH” means the Recipient’s Ministry of Health, or any successor thereto;

(l) “OOTR” means Office of the Regulator;

(m) “PAM” means the project administration manual for the Project dated 30 September 2015 and agreed between the Recipient and ADB, as updated from time to time in accordance with the respective administrative procedures of the Recipient and ADB;

(n) “Procurement Guidelines” means ADB’s Procurement Guidelines (2015, as amended from time to time);

(o) “Procurement Plan” means the procurement plan for the Project dated 30 September 2015 and agreed between the Recipient and ADB, as updated from time to time in accordance with the Procurement Guidelines, the Consulting Guidelines, and other arrangements agreed with ADB;

(p) “Project Agreement” means the project agreement to be entered into by ADB and SSCC, once SSCC has been established and has been operational;

(q) “Project Executing Agency” or “EA” for the purposes, and within the meaning, of the Grant Regulations means MOF, or any successor thereto acceptable to ADB;

(r) “Project facilities” means the facilities, equipment and vehicles provided under the Project;

(s) "Project Implementing Agencies" or "IAs" means MOF, which is responsible for Parts A and B (before the establishment of the SSCC) of the Project; OOTR, which is responsible for Part C of the Project; and MOH, which is responsible for Part D of the Project, or any successor thereto acceptable to ADB;

(t) "Safeguard Policy Statement" or "SPS" means ADB's Safeguard Policy Statement (2009);

(u) "Safeguards Monitoring Report" means each report prepared and submitted by the Recipient to ADB that describes progress with implementation of and compliance with the EMP, including any corrective and preventative actions;

(v) "SCS" means the submarine cable system to be financed by ADB and WB;

(w) "SSCC" means the Samoa Submarine Cable Company, the special purpose vehicle to be established to manage and operate the SCS;

(x) "WB" means World Bank;

(y) "WB Grant" means the grant provided by WB to the Recipient in the amount of sixteen million Dollars (\$16,000,000) to finance a portion of the Project;

(z) "WB Grant Agreement" means the Grant Agreement signed by and between WB and the Recipient regarding the WB Grant; and

(aa) "Works" means construction or civil works to be financed out of the proceeds of the Grant, 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 Grant**

Section 2.01. ADB agrees to make available to the Recipient from ADB's Special Funds resources an amount of twenty-five million Dollars (\$25,000,000).

## **ARTICLE III**

### **Use of Proceeds of the Grant**

Section 3.01. The Recipient shall make available to SSCC the necessary funds under a subsidiary loan agreement on terms and conditions satisfactory to ADB.

Section 3.02. The proceeds of the Grant shall be allocated and withdrawn in accordance with the provisions of Schedule 2 to this Grant Agreement, as such Schedule may be amended from time to time by agreement between the Recipient and ADB.

Section 3.03. Except as ADB may otherwise agree, the Recipient shall procure, or cause to be procured, the items of expenditure to be financed out of the proceeds of the Grant in accordance with the provisions of Schedule 3 to this Grant Agreement.

Section 3.04. Except as ADB may otherwise agree, the Recipient shall cause all items of expenditure financed out of the proceeds of the Grant to be used exclusively in the carrying out of the Project.

Section 3.05. The Grant Closing Date for the purposes of Section 8.02 of the Grant Regulations shall be 30 June 2020 or such other date as may from time to time be agreed between the Recipient and ADB.

## **ARTICLE IV**

### **Particular Covenants**

Section 4.01. In the carrying out of the Project and operation of the Project facilities, the Recipient shall perform, or cause to be performed, all obligations set forth in Schedule 4 to this Grant Agreement.

Section 4.02. (a) The Recipient 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 Grant proceeds and compliance with the financial covenants of this Grant 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 Recipient shall enable ADB, upon ADB's request, to discuss the financial statements for the Project and the Recipient'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 Recipient, unless the Recipient shall otherwise agree.

Section 4.03. The Recipient shall enable ADB's representatives to inspect the Project, the Goods and Works, and any relevant records and documents.

## **ARTICLE V**

### **Suspension**

Section 5.01. The following are specified as additional events for suspension of the right of the Recipient to make withdrawals from the Grant Account for the purposes of Section 8.01(k) of the Grant Regulations:

- (a) the Recipient shall have failed to perform any of its obligations under the WB Grant Agreement; and
- (b) SSCC, once established and in operation, shall have failed to enter into a Project Agreement with ADB and perform any of its obligations under the Project Agreement.

## **ARTICLE VI**

### **Effectiveness**

Section 6.01. A date 90 days after the date of this Grant Agreement is specified for the effectiveness of this Grant Agreement for the purposes of Section 9.04 of the Grant Regulations.

## **ARTICLE VII**

### **Miscellaneous**

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

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

For the Recipient

Ministry of Finance  
Private Bag  
Apia, Samoa

Facsimile Number:

(685) 21312  
(685) 24779.

For ADB

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

Facsimile Numbers:

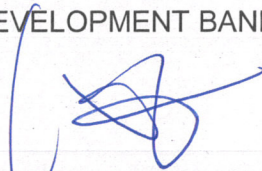
(632) 636-2444  
(632) 636-2446.

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

By   
\_\_\_\_\_  
BHIMANTARA WIDYAJALA  
Executive Director

ASIAN DEVELOPMENT BANK

By   
\_\_\_\_\_  
XIANBIN YAO  
Director General

## SCHEDULE 1

### Description of the Project

1. The objective of the Project is to have quality broadband services available at affordable price and used to enhance e-health.

2. The Project shall comprise:

Part A: Establishment of SSCC to procure, own and operate the SCS.

Part B: Construction and operation of SCS, including:

- (i) design, supply and installation of the SCS connecting Samoa to Fiji; and
- (ii) construction of landing stations, terrestrial cable placement and ancillary equipment in Upolu and Savaii and system connections in Suva.

Part C: Provision of support to OOTR on the improvement of ICT legal and regulatory environment, including:

- (i) review and develop ICT regulations, particularly on the wholesale market;
- (ii) establish wholesale tariffs including price and non-price terms for access to all international fiber option bandwidth services;
- (iii) procure spectrum management monitoring equipment;
- (iv) provision of training to OOTR staff; and
- (v) conduct consumer survey on benefits of ICT.

Part D: Support investments in e-health solutions through health information system, including:

- (i) conduct validation on the needs in health sector and define the required system;
- (ii) conduct technical and financial due diligence;
- (iii) procure integrated health information system components;
- (iv) install and configure the system including hardware and software components;
- (v) connect to users;
- (vi) migrate data sets from existing systems and other sources;
- (vii) ensure proper operations through comprehensive testing; and
- (viii) provision of training to user and system administration level.

Consulting services will be provided to support the above activities.

3. The Project is expected to be completed by 31 December 2019.



## SCHEDULE 2

### Allocation and Withdrawal of Grant 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 Grant and the allocation of the Grant 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 Grant Account

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

#### Reallocation

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

(a) if the amount of the Grant allocated to any Category appears to be insufficient to finance all agreed expenditures in that Category, ADB may (i) reallocate to such Category, to the extent required to meet the estimated shortfall, amounts of the Grant which have been allocated to another Category but, in the opinion of ADB, are not needed to meet other expenditures, and (ii) if such reallocation cannot fully meet the estimated shortfall, reduce the withdrawal percentage applicable to such expenditures in order that further withdrawals under such Category may continue until all expenditures thereunder shall have been made; and

(b) if the amount of the Grant allocated to any Category appears to exceed all agreed expenditures in that Category, ADB may reallocate such excess amount to any other Category.

#### Disbursement Procedures

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

#### Condition for Withdrawals from Grant Account

5. Notwithstanding any other provision of this Grant Agreement, no withdrawals shall be made from the Grant Account for any activities under Part B until SSCC is established, fully operational and has entered into a Project Agreement with ADB.

TABLE

<b>ALLOCATION AND WITHDRAWAL OF GRANT PROCEEDS (Samoa Submarine Cable Project)</b>				
<b>Number</b>	<b>Item</b>	<b>Total Amount Allocated for ADB Financing (\$)</b>		<b>Basis for Withdrawal from the Grant Account</b>
		<b>Category</b>	<b>Subcategory</b>	
1	Samoa-Fiji Submarine Cable System <sup>1</sup>	16,520,000		
1A	Route surveys and marine operations		12,770,000	100.0 percent of total expenditure claimed*
1B	Equipment and system		3,750,000	61.5 percent of total expenditure claimed*
2	Health Information Management System	5,454,545		100.0 percent of total expenditure claimed*
3	Project Management Support	454,545		100.0 percent of total expenditure claimed*
4	Unallocated	2,570,910		
	<b>Total</b>	<b>25,000,000</b>		

\* Exclusive of taxes and duties imposed within the territory of the Recipient.

<sup>1</sup> Disbursement subject to meeting the conditions set out in paragraph 5 of Schedule 2 of this Grant Agreement.

### **SCHEDULE 3**

#### **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 Grant 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) Limited International Bidding.
4. The methods of procurement are subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. The Recipient 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 Recipient shall not award the SCS contract until:
  - (a) the final approval of the IEE from the Ministry of Natural Resources and Environment has been obtained;
  - (b) the relevant provisions from the EMP has been incorporated into the contract; and
  - (c) the landing permit on the Samoa and Fiji sides have been obtained.
6. The Recipient and EA shall ensure that no Works can commence under the contract, until the Recipient has obtained the landing permit on the Samoa and Fiji sides.

##### Consulting Services

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

##### Industrial or Intellectual Property Rights

8. (a) The Recipient 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 Recipient 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.

9. The Recipient 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

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

## **SCHEDULE 4**

### **Execution of Project; Financial Matters**

#### Implementation Arrangements

1. The Recipient, the Project Executing Agency and the Project Implementing Agencies 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 Recipient and ADB. In the event of any discrepancy between the PAM and this Grant Agreement, the provisions of this Grant Agreement shall prevail.

#### Samoa Submarine Cable Company

2. Within 3 months after the Effective Date, the Recipient and the EA shall have incorporated SSCC in accordance with the Recipient's company laws and legislations. Within 6 months after the Effective Date, the SSCC have recruited and appointed its key staff, as detailed in the PAM, and shall have started its operation. Once established, the SSCC shall assume the role as IA for Part B of the Project. SSCC shall assume IA role after (i) ADB is satisfied that SSCC has the capacity and resources to carry out its duty as an IA, and (ii) a Project Agreement has been signed between ADB and the SSCC.

#### Safeguards

##### Environment

3. The Recipient shall ensure, or cause the Project Executing Agency 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 Recipient 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.

##### Involuntary Resettlement and Indigenous People

4. The Recipient shall ensure that the Project does not have any indigenous peoples or involuntary resettlement impacts, all within the meaning of ADB's Safeguard Policy Statement (2009). In the event that the Project does have any such impact, the Recipient shall take all steps required to ensure that the Project complies with the applicable laws and regulations of the Recipient and with ADB's Safeguard Policy Statement

##### Human and Financial Resources to Implement Safeguards Requirements

5. The Recipient shall make available, or cause the Project Executing Agency to make available, necessary budgetary and human resources to fully implement the EMP.

Safeguards – Related Provisions in Bidding Documents and Works Contracts

6. The Recipient shall ensure, or cause the Project Executing Agency 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
- (c) provide the Recipient 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.

Safeguards Monitoring and Reporting

7. The Recipient shall do the following, or cause the Project Executing Agency 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 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

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

Labor Standards, Health and Safety

9. The Recipient shall ensure that the core labor standards and the Recipient's applicable laws and regulations are complied with during Project implementation. The Recipient 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 Recipient'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; and (e) allow freedom of association and effectively recognize the right to collective bargaining.

10. The Recipient shall strictly monitor compliance with the requirements set forth in paragraph 9 above and provide ADB with regular reports.

#### Gender and Development

11. The Recipient 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.

#### Counterpart funds

12. The Recipient shall provide counterpart funds for project implementation on time. The MOF shall provide the required counterpart funds for the project to MOH and OOTR together with the proceeds of the grants.

#### Governance and Anticorruption

13. The Recipient, the Project Executing Agency, and the 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 relating to the Project; and (b) cooperate with any such investigation and extend all necessary assistance for satisfactory completion of such investigation.

14. The Recipient, the Project Executing Agency and the 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.