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GRANT NUMBER 0390-TON (EF)

GRANT AGREEMENT  
(Externally Financed)  
(Cyclone Ian Recovery Project)

between

KINGDOM OF TONGA

and

ASIAN DEVELOPMENT BANK

DATED 25 JUNE 2014

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TON 48192

## **GRANT AGREEMENT (Externally Financed)**

GRANT AGREEMENT dated 25 June 2014 between KINGDOM OF TONGA (“Recipient”) and ASIAN DEVELOPMENT BANK (“ADB”).

### **WHEREAS**

(A) by a grant agreement of even date herewith between the Recipient and ADB (“ADB Grant Agreement”), ADB has agreed to make a grant (“ADB Grant”) to the Recipient from ADB's Special Funds resources in the amount of four million five hundred and twenty thousand Dollars (\$4,520,000) for the purposes of the Project described in Schedule 1 to the ADB Grant Agreement;

(B) the Recipient has also applied to the Government of New Zealand (“NZ Government”) for a grant, to be administered by ADB, for the purposes of cofinancing expenditures under Part 2 of the Project;

(C) by a cofinancing agreement dated 10 June 2014 between ADB and the NZ Government (“Cofinancing Agreement”), the NZ Government has agreed to provide, and ADB has agreed to administer, the grant provided for herein upon the terms and conditions set out in the Cofinancing Agreement;

(D) Part 2 of the Project will be carried out by the Recipient's Ministry of Finance and National Planning (“MFNP”) through the Recipient's Ministry of Infrastructure (“MOI”); and

(E) ADB has agreed to make the proceeds of the grant from NZ Government available to the Recipient 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 Externally Financed Grant Regulations of ADB, dated 8 April 2009 (“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 and the ADB Grant Agreement have the respective meanings therein set forth unless modified herein or the context otherwise requires. Additional term used in this Grant Agreement has the following meaning: “New Zealand Dollar” or the sign “NZ\$” each mean the lawful currency of New Zealand.

## **ARTICLE II**

### **The Grant**

Section 2.01. (a) ADB agrees to make available to the Recipient a grant from the NZ Government in the amount of four million two hundred sixty six thousand Dollars (\$4,266,000), as such amount may be adjusted from time to time in accordance with subsection (b) hereinafter.

(b) The amount of the Grant shall be adjusted from time to time to account for currency fluctuations, such that the amount of the Grant, denominated in Dollars, shall be equivalent to five million New Zealand Dollars (NZ\$5,000,000) at the time that ADB converted the resources made available to ADB by the NZ Government for the purposes of the Grant.

## **ARTICLE III**

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

Section 3.01. (a) The Recipient shall cause the proceeds of the Grant to be applied to the financing of expenditures on the Project in accordance with the provisions of this Grant Agreement.

(b) The Recipient agrees that the proceeds of the Grant may be used to pay ADB's administration fees and other charges pursuant to the Cofinancing Agreement. ADB shall be entitled to withdraw from the Grant Account and pay to itself, on behalf of the Recipient, the amounts required to meet payments, when due, of such administration fees and other charges.

Section 3.02. The proceeds of the Grant shall be allocated and withdrawn in accordance with the provisions of Schedule 1 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 the ADB Grant Agreement.

Section 3.04. The Grant Closing Date for the purposes of Section 8.02 of the Grant Regulations shall be 30 June 2018 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 the ADB 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 as well as on the use of the procedures for statement of expenditures) 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.

Section 4.04. The Recipient acknowledges and agrees that this Grant Agreement is entered into by ADB, not in its individual capacity, but as grant administrator for the NZ Government. Accordingly, the Recipient agrees that (i) it may only withdraw Grant proceeds to the extent that ADB has received proceeds for the Grant from the NZ Government, and (ii) that ADB does not assume any obligations or responsibilities of the NZ Government in respect of the Project or the Grant other than those set out in this Grant Agreement.

## **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 one or more of its obligations under the ADB Grant Agreement;
- (b) the ADB Grant shall have become liable for suspension or cancellation; and
- (c) the Cofinancing Agreement shall have been suspended or cancelled.

## **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 Recipient's Minister responsible for Finance and National Planning 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 and National Planning  
Vuna Road  
Nuku'alofa  
Kingdom of Tonga

Facsimile Number:

(676) 24040.

For ADB

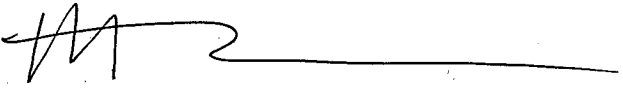
Asian Development Bank  
6 ADB Avenue  
Mandaluyong City  
1550 Metro Manila  
Philippines

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.

KINGDOM OF TONGA

By   
\_\_\_\_\_ 'AISAKE EKE  
Minister of Finance and National Planning

ASIAN DEVELOPMENT BANK

By   
\_\_\_\_\_ XIANBIN YAO  
Director General  
Pacific Department

## SCHEDULE 1

### 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 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, by notice to the Recipient, (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, by notice to the Recipient, 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.



TABLE

<b>ALLOCATION AND WITHDRAWAL OF GRANT PROCEEDS (Cyclone Ian Recovery Project)</b>			
<b>Number</b>	<b>Item</b>	<b>Total Amount Allocated for NZ Government Financing (\$) Category</b>	<b>Basis for Withdrawal from the Grant Account</b>
1	Works	2,882,607	68.1 percent of total expenditure claimed*
2	Mechanical and Equipment	539,560	100 percent of total expenditure claimed*
3	Consulting Services	123,000	71.1 percent of total expenditure claimed*
3	Unallocated**	720,833	
	Total	4,266,000	

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

\*\* This amount also serves as a reserve for (i) currency fluctuations; and (ii) payment of ADB's administration fees and bank charges or other charges pursuant to the Cofinancing Agreement.