
LOAN NUMBER 3627-SAM(COL)

LOAN AGREEMENT
(Ordinary Operations [Concessional])
(Pacific Disaster Resilience Program)

between

INDEPENDENT STATE OF SAMOA

and

ASIAN DEVELOPMENT BANK

DATED 18 DECEMBER 2017

SAM 50028

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LOAN AGREEMENT
(Ordinary Operations [Concessional])

LOAN AGREEMENT dated 18 December 2017 between INDEPENDENT STATE OF SAMOA ("Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) ADB has received from the Borrower a development policy letter dated 13 November 2017 ("Policy Letter"), setting forth certain objectives, policies and actions, described in Schedule 1 to this Loan Agreement, designed to develop the Borrower's resilience to disaster events and strengthen disaster risk management ("Program");

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

(C) by a grant agreement of even date herewith between the Borrower and ADB ("Grant Agreement"), ADB has agreed to provide a grant ("Grant") to the Borrower from ADB's Special Funds resources in the amount of two million nine hundred thousand Dollars (\$2,900,000), for the purposes of financing the Program; and

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

NOW THEREFORE the parties agree as follows:

ARTICLE I

Loan Regulations; Definitions

Section 1.01. All the provisions of ADB's Ordinary Operations (Concessional) Loan Regulations, dated 1 January 2017 ("Loan Regulations"), are hereby made applicable to this Loan Agreement with the same force and effect as if they were fully set forth herein, subject, however, to the following modifications:

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

"Program" means the program for which ADB has agreed to make the Loan and Grant, as described in the Loan Agreement and as the description thereof may be amended from time to time by agreement between ADB and the Borrower;

(b) The term "Project" wherever it appears in the Loan Regulations shall be substituted by the term "Program".

(c) Section 2.01(x) is deleted and the following is substituted therefor:

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“Program Executing Agency” means the entity or entities responsible for the carrying out of the Program as specified in the Loan Agreement;

- (d) The term “Project Executing Agency” wherever it appears in the Loan Regulations shall be substituted by the term “Program Executing Agency”.
- (e) Section 5.01(b) is deleted.

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) “Deposit Account” means the account referred to in paragraph 3 of Schedule 3 to this Loan Agreement;
- (b) “Grant Account” means the account opened or to be opened by ADB on its books in the name of the Borrower to which the amount of the Grant has been or will be credited;
- (c) “Loan Disbursement Handbook” means ADB’s Loan Disbursement Handbook (2017, as amended from time to time);
- (d) “Policy Matrix” means the policy matrix as agreed between the Borrower and ADB, which sets forth actions accomplished or to be accomplished by the Borrower under the Program and is attached to the Policy Letter; and
- (e) “Program Executing Agency” for the purposes of, and within the meaning of, the Loan Regulations means Ministry of Finance of the Borrower or any successor thereto acceptable to ADB, which is responsible for the carrying out of the Program.

ARTICLE II

The Loan

Section 2.01. (a) ADB agrees to lend to the Borrower from ADB’s ordinary capital resources an amount of three million one hundred thousand Dollars (\$3,100,000).

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

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

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

Section 2.03. The interest charge and any other charge on the Loan shall be payable semiannually on 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 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 cause the proceeds of the Loan to be applied to the financing of expenditures on the Program in accordance with the provisions of this Loan Agreement.

Section 3.02. The proceeds of the Loan shall be 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. The Loan Closing Date for the purposes of Section 8.02 of the Loan Regulations shall be 31 December 2022 or such other date as may from time to time be agreed between the Borrower and ADB.

ARTICLE IV

Particular Covenants

Section 4.01. In the carrying out of the Program, the Borrower shall perform, or cause to be performed, all obligations set forth in Schedule 4 to this Loan Agreement.

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Section 4.02. As part of the reports and information referred to in Section 6.05 of the Loan Regulations, the Borrower shall furnish, or cause to be furnished, to ADB all such reports and information as ADB shall reasonably request concerning the implementation of the Program, including the accomplishment of the targets and carrying out of the actions set out in the Policy Letter.

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 Grant under the Grant Agreement shall have become liable for suspension or cancellation.

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 execution and delivery of the Grant Agreement on behalf of Borrower shall have been duly authorized or ratified by all necessary action and all conditions precedent to its effectiveness (other than a condition requiring the 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: that the Grant Agreement has been duly authorized or ratified by, and executed and delivered on behalf of, Borrower and is legally binding upon Borrower in accordance with its terms, subject only to the effectiveness of this Loan Agreement.

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.

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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

Ministry of Finance
Private Bag
Central Bank Building, Beach Road
Apia, Samoa

Facsimile Numbers:

(685) 21312
(685) 24779

For ADB

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

Facsimile Number:

(632) 636-2444.

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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 SAMOA

By  _____
SILI EPA TUIOTI
Minister
Ministry of Finance

ASIAN DEVELOPMENT BANK

By  _____
ROBERT ANDREW JAUNCEY
Regional Director
Pacific Regional Office

SCHEDULE 1**Description of the Program**

1. The principal objective of the Program is to strengthen disaster risk management and the scope includes (a) strengthening regional collaboration on disaster risk financing; and (b) strengthening enabling framework for disaster risk management. The Program shall support additional public spending to meet short-term and medium-term post-disaster financing needs, in the event the Borrower is affected by a disaster. The Program is described in more detail in the Policy Letter.
2. The Program is expected to be completed by 31 December 2022.

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SCHEDULE 2
Amortization Schedule

Date Payment Due	Payment of Principal (Expressed in USD)*
1 June 2026	96,875
1 December 2026	96,875
1 June 2027	96,875
1 December 2027	96,875
1 June 2028	96,875
1 December 2028	96,875
1 June 2029	96,875
1 December 2029	96,875
1 June 2030	96,875
1 December 2030	96,875
1 June 2031	96,875
1 December 2031	96,875
1 June 2032	96,875
1 December 2032	96,875
1 June 2033	96,875
1 December 2033	96,875
1 June 2034	96,875
1 December 2034	96,875
1 June 2035	96,875
1 December 2035	96,875
1 June 2036	96,875
1 December 2036	96,875
1 June 2037	96,875
1 December 2037	96,875
1 June 2038	96,875
1 December 2038	96,875
1 June 2039	96,875
1 December 2039	96,875
1 June 2040	96,875
1 December 2040	96,875
1 June 2041	96,875
1 December 2041	96,875
Total	3,100,000

* The arrangements for payment are subject to the provisions of Sections 3.04 and 4.03 of the Loan Regulations.

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SCHEDULE 3**Withdrawal of Loan and Grant Proceeds**

1. Except as set out in this Schedule or as ADB may otherwise agree, the Loan and Grant proceeds shall be disbursed in accordance with the Loan Disbursement Handbook.
2. An application for withdrawal from the Loan Account and/or Grant Account shall be submitted to ADB by the Borrower and shall be in a form satisfactory to ADB.
3. (a) Prior to submitting the first application to ADB for withdrawal from the Loan Account and/or Grant Account, the Borrower shall nominate an account (the Deposit Account) at Central Bank of Samoa into which all withdrawals from the Loan Account and/or Grant Account shall be deposited. The Deposit Account shall be established, managed and liquidated in accordance with the applicable regulations and procedures of the Borrower.

(b) Separate accounts and records in respect of the Deposit Account shall be maintained in accordance with accounting principles acceptable to ADB. Upon ADB's request, the Borrower shall have the financial statements for the Deposit Account audited 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. Promptly after their preparation but in any event not later than 6 months after the date of ADB's request, copies of such audited financial statements and the opinion of the auditors on the financial statements, in the English language, shall be furnished to ADB.
4. No Loan or Grant proceeds shall be withdrawn to finance any item specified in the Attachment to this Schedule.
5. The Loan and Grant proceeds shall be disbursed through one or more withdrawals. Notwithstanding any other provisions of this Loan Agreement or Grant Agreement and except as ADB may otherwise agree, no withdrawal shall be made from the Loan Account or Grant Account unless all the policy actions that were met for the Program continue to be complied with by the Borrower, as of the Effective Date and (a) the Borrower has "proclaimed emergency" in accordance with Article 105 of the Constitution following a disaster caused by natural hazard, and the Borrower and ADB have agreed on the withdrawal amount; or (b) at the end of the Program as confirmed by ADB, and to be used for strengthening disaster resilience by the Borrower. Notwithstanding sub-clause (a), if the circumstances to be addressed otherwise warrant the formal proclamation of emergency, but the head of state is absent or unavailable, Borrower may use the "declaration of a disaster" in accordance with Article 19(2)(a) of the Disaster and Emergency Management Act 2007 as the disbursement condition.

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Negative List

No withdrawals of Loan or Grant proceeds will be made for the following:

- (i) expenditures for goods included in the following groups or sub-groups of the United Nations Standard International Trade Classification, Revision 3 (SITC, Rev. 3) or any successor groups or sub-groups under future revisions to the SITC, as designated by ADB by notice to the Borrower:

Table: Ineligible Items

Chapter	Heading	Description of Items
112		Alcoholic beverages
121		Tobacco, unmanufactured; tobacco refuse
122		Tobacco, manufactured (whether or not containing tobacco substitute)
525		Radioactive and associated materials
667		Pearls, precious and semiprecious stones, unworked or worked
718	718.7	Nuclear reactors, and parts thereof, fuel elements (cartridges), nonirradiated for nuclear reactors
728	728.43	Tobacco processing machinery
897	897.3	Jewelry of gold, silver or platinum-group metals (except watches and watch cases) and goldsmiths' or silversmiths' wares (including set gems)
971		Gold, nonmonetary (excluding gold ore and concentrates)

Source: United Nations.

- (ii) expenditures in the currency of the Borrower or for goods supplied from the territory of the Borrower;
- (iii) expenditures for goods supplied under a contract that any national or international financing institution or agency will have financed or has agreed to finance, including any contract financed under any loan or grant from the ADB;
- (iv) expenditures for goods intended for a military or paramilitary purpose or for luxury consumption;
- (v) expenditures for narcotics;
- (vi) expenditures for environmentally hazardous goods, the manufacture, use or import of which is prohibited under the laws of the Borrower or international agreements to which the Borrower is a party; and
- (vii) expenditures on account of any payment prohibited by the Borrower in compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations.

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

1. Ministry of Finance as the Program Executing Agency shall be responsible for the overall Program implementation.
2. In the event that a disaster event occurs and the Borrower contemplates withdrawal from Loan Account or Grant Account, the Borrower shall coordinate closely with ADB on the necessary actions to facilitate withdrawal as described in paragraph 5 of Schedule 3 to this Loan Agreement, including providing adequate information to ADB on the proposed withdrawal amount.

Policy Actions and Dialogue

3. The Borrower shall ensure that all policy actions adopted under the Program, as set forth in the Policy Letter and the Policy Matrix, continue to be in effect for the duration of the Program.
4. The Borrower shall keep ADB informed of policy discussions with other multilateral and bilateral aid agencies that may have implications for the implementation of the Program and shall provide ADB with an opportunity to comment on any resulting policy proposals. The Borrower shall take into account ADB's views before finalizing and implementing any such proposal.

Environmental and Social Safeguards

5. The Borrower shall ensure that the Loan and Grant proceeds are not used for any programs and activities which have any environmental, indigenous peoples or involuntary resettlement impacts, all within the meaning of ADB's Safeguard Policy Statement (2009). In the event that the Loan and Grant proceeds are used for any programs and activities which do have any such impact, the Borrower shall take all steps required to ensure that the Program complies with the applicable laws and regulations of the Borrower and with ADB's Safeguard Policy Statement (2009).

Governance and Anticorruption

6. The Borrower and the Program Executing Agency 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 Program; and (b) cooperate with any such investigation and extend all necessary assistance for satisfactory completion of such investigation.

Contingent Financing Mechanism

7. Within 12 months from the effective date of the memorandum of understanding signed by the Borrower for the establishment of the contingent financing mechanism, the Borrower shall:

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(a) collaborate with other participating developing member countries and agree on the most suitable design option for a contingent financing mechanism. This mechanism shall serve the following purposes: (i) enhance coordination and cooperation among the Pacific countries and development partners on disaster risk management related matters; (ii) provide a sustainable multi-country mechanism for channeling disaster contingent financing from participating countries and development partners; and allow quick disbursement of needed share of funds to a Participating Country upon a disaster event in that country; and

(b) enter into an agreement with other participating developing member countries that sets out the key principles and elements of the mechanism including the following: (i) objectives; (ii) governance arrangements; (iii) membership; (iv) acceptance of member and development partner contributions; (v) investment strategy; (vi) fund management; (vii) withdrawal policy and procedures; (viii) administrative requirements; (ix) operational costs and cost sharing; (x) dispute resolution; (xi) termination arrangements; and (xii) any other factors or criterion necessary for the contingent financing mechanism.

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