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GRANT NUMBER 0571-REG(SF)

GRANT AGREEMENT  
(Special Operations)

(Improving Internet Connectivity for Micronesia Project)

between

NAURU

and

ASIAN DEVELOPMENT BANK

DATED 2 MAY 2018

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REG 50348

**GRANT AGREEMENT  
(Special Operations)**

GRANT AGREEMENT dated 2 May 2018 between NAURU ("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 Project will be carried out by Nauru Cable Corporation ("NCC"), and for this purpose the Recipient will make available to NCC the proceeds of the grant provided for herein upon terms and conditions satisfactory to ADB; and

(C) ADB has agreed to make a grant to the Recipient 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 NCC;

NOW THEREFORE the parties agree as follows:

**ARTICLE I**

**Grant Regulations; Definitions**

Section 1.01. All provisions of ADB's Special Operations Grant Regulations, dated 1 January 2017 ("Grant Regulations"), are hereby made applicable to this Grant 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(m) is deleted and the following is substituted therefor:

"Project Agreement" means the Project Agreement of even date herewith between ADB and NCC, as such agreement may be amended from time to time; and such project agreement includes all schedules to the Project Agreement.

(b) The term "Project Executing Agency" appearing in Sections 6.01(a)(i), 8.01(c), 8.01(e), 8.01(i), 9.01(b) and 9.02(b) of the Grant Regulations shall be substituted by the term "NCC".

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) "BNL" means the Bwebweriki Net Limited established under the laws and regulations of Kiribati with registered address at Nanikai, South Tarawa, Republic of Kiribati;
- (b) "C&MA" means the Construction and Maintenance Agreement for the East Micronesia Cable System Contract to be entered into between NCC, BNL, and FSM TCC;
- (c) "Cable Landing Station Contract" means the Works contract for the cable landing stations in Nauru;
- (d) "Consulting Guidelines" means the Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers (2013, as amended from time to time);
- (e) "Consulting Services" means the services to be financed out of the proceeds of the Grant as described in paragraph 3 of Schedule 1 to this Grant Agreement;
- (f) "EA" or the "Project Executing Agency" for the purposes of, and within the meaning of, the Grant Regulations means Department of Finance and Economic Planning or any successor thereto acceptable to ADB, which is responsible for the carrying out of the Project;
- (g) "EMC" or "East Micronesia Cable System" means the regional submarine cable system that connects Nauru, Kosrae State of FSM, and Tarawa of Kiribati;
- (h) "EMP" means the environmental management plan (also known as the environmental and social management plan) for the Project, including any update thereto, incorporated in the IEE;
- (i) "Environmental Safeguards" means the principles and requirements set forth in Chapter V, Appendix 1, and Appendix 4 (as applicable) of the SPS;
- (j) "FSM" means the Federated States of Micronesia;
- (k) "FSM TCC" means the Federated States of Micronesia Telecommunications Cable Corporation established under the laws and regulations of the Federated States of Micronesia with registered address at Pohnpei, Federated States of Micronesia;
- (l) "IA" or the "Project Implementing Agency" for the purposes of, and within the meaning of, the Grant Regulations means NCC or any successor thereto acceptable to ADB, which is responsible for the carrying out of the Project;
- (m) "IEE" means the initial environmental examination (also known as the environmental assessment document) for the Project, including any

update thereto, prepared and submitted by the Recipient and cleared by ADB;

- (n) "IPP" means the indigenous peoples plan for the Project (if any), including any update thereto, prepared and submitted by the Recipient and cleared by ADB;
- (o) "Loan Disbursement Handbook" means ADB's Loan Disbursement Handbook (2017, as amended from time to time);
- (p) "NCC" means the Nauru Cable Corporation established under the laws and regulations of the Recipient with registered address at Government Buildings, CL/ICT Department, Yaren District, Republic of Nauru;
- (q) "PAM" means the project administration manual for the Project dated 19 February 2018 and agreed between the Recipient, the EA, the IA and ADB, as updated from time to time in accordance with the respective administrative procedures of the Recipient and ADB;
- (r) "Procurement Guidelines" means ADB's Procurement Guidelines (2015, as amended from time to time);
- (s) "Procurement Plan" means the procurement plan for the Project dated 19 February 2018 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;
- (t) "RP" means the resettlement plan for the Project (if any), including any update thereto, prepared and submitted by the Recipient and cleared by ADB;
- (u) "Safeguards Monitoring Report" means each report prepared and submitted by the Recipient through the IA to ADB that describes progress with implementation of and compliance with the EMP, any RP and any IPP (as applicable), including any corrective and preventative actions; and
- (v) "SPS" means ADB's Safeguard Policy Statement (2009);
- (w) "Subsidiary Grant Agreement" means the agreement between the Recipient and NCC described in Section 3.01(a) of this Grant Agreement; and
- (x) "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 fifteen million Dollars (\$15,000,000).

## **ARTICLE III**

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

Section 3.01. (a) The Recipient shall make available the proceeds of the Grant required for the Project to NCC under a Subsidiary Grant Agreement upon terms and conditions satisfactory to ADB.

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

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. The Grant Closing Date for the purposes of Section 8.02 of the Grant Regulations shall be 31 December 2022 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 and the Project Agreement.

Section 4.02. ADB shall disclose the annual audited financial statements for the Project and the opinion of the auditors on the financial statements within 14 days of the date of ADB's confirmation of their acceptability by posting them on ADB's website.

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 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 Recipient shall exercise its rights under the Subsidiary Grant Agreement in such a manner as to protect the interests of the Recipient and ADB and to accomplish the purposes of the Grant.

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

## **ARTICLE V**

### **Effectiveness**

Section 5.01. The following are specified as additional conditions to the effectiveness of this Grant Agreement for the purposes of Section 9.01(e) of the Grant Regulations:

- (a) the C&MA has been signed on behalf of NCC, BNL and FSM TCC upon terms and conditions satisfactory to ADB;
- (b) NCC, BNL and FSM TCC have obtained approval for the financing of their respective shares of the C&MA, including cofinancing from development partners (if applicable); and
- (b) the execution and delivery of the Subsidiary Grant Agreement on behalf of the Recipient and NCC, in form and substance satisfactory to ADB, shall have become legally binding upon the Recipient and NCC in accordance with its terms.

Section 5.02. 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 VI**

### **Termination**

Section 6.01. The Grant Agreement and all obligations of the parties thereunder shall terminate on a date 25 years after the date of this Agreement.

**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  
Government Offices, Yaren District  
Republic of Nauru

Telephone Number:

+674 557-3133

Facsimile Number:

not available

For ADB

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

Facsimile Numbers:

(632) 636-2444

(632) 636-2388.

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.

NAURU

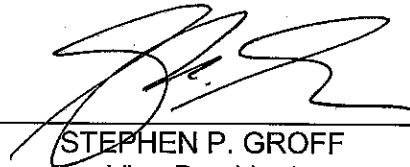
By

A handwritten signature in black ink, appearing to read 'David Adeang', written over a horizontal line.

DAVID ADEANG  
Minister of Finance

ASIAN DEVELOPMENT BANK

By

A handwritten signature in black ink, appearing to read 'Stephen P. Groff', written over a horizontal line.

STEPHEN P. GROFF  
Vice-President



**SCHEDULE 1****Description of the Project**

1. The objective of the Project is to improve telecommunications in Micronesia.
2. The Project shall comprise the Recipient's share of the EMC, including additional spurs and branching units to connect to the Recipient. Specifically:
  - (a) the construction of the EMC, including additional spurs and branching units to connect to the Recipient;
  - (b) the construction of the landing stations in the Recipient; and
  - (c) project management support for NCC.
3. Consulting Services will be provided to support the above stated activities.
4. The Project is expected to be completed by 30 June 2022.

## **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 allocated to items of expenditure, and 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

ALLOCATION AND WITHDRAWAL OF GRANT PROCEEDS			
Number	Item	Total Amount Allocated for ADB Financing (\$)	Basis for Withdrawal from the Grant Account
1	EMC Supply and Installation**	\$13,500,000	100% of the total expenditure claimed*
2	Cable Landing Station Construction and Fit Out**	\$1,000,000	100% of total expenditure claimed*
3	PMU	\$500,000	100% of total expenditure claimed
	<b>TOTAL</b>	<b>\$15,000,000</b>	

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

\*\* The EMC Contract is financed by NCC, BNL and FSM TCC pursuant to the C&MA. The Project finances a portion of the EMC Contract.

### **SCHEDULE 3**

#### **Procurement of Works and Consulting Services**

##### General

1. The procurement of Works and Consulting Services shall be subject to and governed by the Procurement Guidelines, and the Consulting Guidelines, respectively.
2. Except as ADB may otherwise agree, Works shall be procured and Consulting Services shall be selected and engaged only on the basis of the procurement methods and the selection method set forth below. These methods are subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. The Recipient may only modify the procurement methods and the selection method or threshold values with the prior agreement of ADB, and modifications must be set out in updates to the Procurement Plan.
3. 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.

##### Eligible Source of Procurement of Works and Consulting Services

4. Works and Consulting Services may also be procured under the Project from non-member countries of ADB.

##### Works

5. Works shall be procured on the basis of the following procurement methods:
  - (a) International Competitive Bidding; and
  - (b) Direct Contracting.

##### Procurement of the EMC Contract

6. The Recipient shall ensure that procurement of and contract administration for the EMC Contract is carried out by the project steering group represented by NCC, BNL and FSM TCC in accordance with the Procurement Guidelines, this Schedule and the terms and conditions set out in the Procurement Plan.

##### Conditions for Award of Contract

7. The Recipient shall not award any Works contracts until the Recipient:
  - (a) has obtained final approval of the IEE;
  - (b) updated the EMP based on the detailed design; and

- (c) has incorporated the relevant provisions from the EMP into the Works contract.

#### Consulting Services

8. The Recipient shall apply Quality- and Cost-Based Selection for Consulting Services.

#### Industrial or Intellectual Property Rights

9. (a) The Recipient shall ensure that all 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 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.

10. 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

11. 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 Recipient and ADB and set forth in the Procurement Plan.

## SCHEDULE 4

### Execution of Project; Financial Matters

#### Implementation Arrangements

1. The Recipient and NCC 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 and the Project Agreement, the provisions of this Grant Agreement and the Project Agreement shall prevail.
2. The Recipient shall ensure that all relevant ministries and agencies provide full cooperation to ensure smooth implementation of the Project. Specifically, the Recipient shall cause such relevant ministries and agencies to give full, timely and efficient cooperation in providing resources, issuing any licenses, permits or approvals in connection with the Project.

#### Environment

3. The Recipient shall ensure, or cause NCC to ensure, that the preparation, design, construction, implementation, operation and decommissioning of the Project 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. Moreover, the Recipient shall ensure, or cause NCC to ensure, that (a) the IEE and the EMP are updated of the pre-construction phase after completion of the hydrographic survey and finalization of the precise alignment of the cable route in connection with the EMC Contract; and (b) the cable route is in a "no anchor" zone and avoids sensitive habitats (such as corals and designated areas).

#### Indigenous Peoples and Involuntary Resettlement

4. The Recipient shall ensure, or cause NCC to ensure, that the Project does not have any indigenous peoples or involuntary resettlement impacts, all within the meaning of the SPS. 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 the SPS.

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

5. The Recipient shall make available, or cause the NCC to make available, necessary budgetary and human resources to fully implement the EMP, any RP and any IPP.

#### Safeguards – Related Provisions in Bidding Documents and Works Contracts

6. The Recipient shall ensure, or cause NCC 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, the EMP, any RP and any IPP (to the extent they concern impacts on

affected people during construction), 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; 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, the EMP, any RP and any IPP.

#### Safeguards Monitoring and Reporting

7. The Recipient shall do, or cause NCC 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, the EMP, any RP and any IPP, 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, any RP or any IPP promptly after becoming aware of the breach.

#### Prohibited List of Investments

8. The Recipient shall ensure, or cause NCC to 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, or cause NCC to 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) 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.

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

#### Counterpart Support

11. The Recipient shall provide any required counterpart funding for Project implementation on time to NCC. In addition to the foregoing, the Recipient shall ensure that NCC has sufficient funds to satisfy its liabilities arising from any Works and/or Consulting Services contract.

12. The Recipient shall provide, or cause the EA to provide, as necessary, respective counterpart staff, land, facilities, and funding required for timely and effective implementation of the Project, including, without limitation, any funds required (a) to meet any shortfall between cost and revenues for the O&M of Project facilities; (b) to mitigate unforeseen environmental or social impacts; and (c) to meet any additional costs arising from design changes, price escalation in construction costs and/or unforeseen circumstances. The Borrower shall cause the EA to make the resources thus required available on an annual basis for each fiscal year.

#### Change in Ownership

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

#### Governance and Anticorruption

14. The Recipient and the NCC 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.

15. The Recipient and the NCC 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.