
GRANT NUMBER 0378-TON(EF)

GRANT AGREEMENT
(ADB Strategic Climate Fund)
(Climate Resilience Sector Project)

between

KINGDOM OF TONGA

and

ASIAN DEVELOPMENT BANK
acting as an implementing entity of the
Strategic Climate Fund

DATED 25 FEBRUARY 2014

TON 46351

A. 20/2

GRANT AGREEMENT (Externally Financed)

GRANT AGREEMENT dated 25 February 2014 between KINGDOM OF TONGA (“Recipient”) and ASIAN DEVELOPMENT BANK (“ADB”), acting in its capacity as an implementing entity of the Strategic Climate Fund (“SCF”).

WHEREAS

(A) ADB has established the ADB Strategic Climate Fund to receive, hold in trust and administer SCF funds;

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

(C) ADB, acting in its capacity as an implementing entity of SCF in accordance with the Financial Procedures Agreement dated 18 March 2010 between the International Bank for Reconstruction and Development and ADB, has agreed to make a grant to the Recipient from the ADB Strategic Climate Fund upon the terms and conditions set forth herein; and

(D) ADB has agreed to make the proceeds of the grant from SCF 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 therein:

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) “CCTF” means the national climate change trust fund approved by the Recipient’s Cabinet under the Public Finance Management Act 2002 and described in paragraph 3(b) of Schedule 1 to this Grant Agreement;
- (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 3 of Schedule 1 to this Grant Agreement;

(d) "EMP" means any environmental management plan for the Project or any part thereof, 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) "Gender Action Plan" means the gender action plan, including any updates thereto, prepared by ADB in connection with the Project;

(g) "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;

(h) "IEE" means the initial environmental examination for the Project or any part thereof, including any update thereto prepared and submitted by the Recipient and cleared by ADB;

(i) "Implementing Agencies" means, in respect of the subprojects assigned to them in Schedule 1, each of MAFFF, MET, MOH, MOI and MLECCNR or any successors thereto acceptable to ADB;

(j) "JNAP" means the Joint National Action Plan for Climate Change Adaptation and Disaster Risk Management;

(k) "JNAP-TWG" means the JNAP Technical Working Group;

(l) "Loan Disbursement Handbook" means ADB's Loan Disbursement Handbook (2012, as amended from time to time);

(m) "MAFFF" means the Recipient's Ministry of Agriculture, Food, Forestry and Fisheries;

(n) "MFNP" means the Recipient's Ministry of Finance and National Planning;

(o) "MLECCNR" means the Recipient's Ministry for Lands, Environment, Climate Change and Natural Resources;


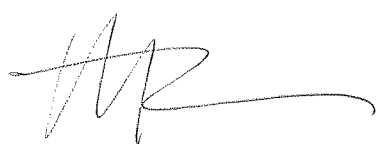
(p) "MET" means the Recipient's Ministry of Education and Training;

(q) "MOH" means the Recipient's Ministry of Health;

(r) "MOI" means the Recipient's Ministry of Infrastructure;

(s) "PAM" means the project administration manual for the Project dated December 2013 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;

(t) "PIU" means project implementing units for the Project;



(u) "PMU" means the project management unit for the Project;

(v) "Procurement Guidelines" means ADB's Procurement Guidelines (2013, as amended from time to time);

(w) "Procurement Plan" means the procurement plan for the Project dated December 2013 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;

(x) "Project Executing Agency" for the purposes of, and within the meaning of, the Grant Regulations means MFNP or any successor thereto acceptable to ADB, which is responsible for carrying out the Project;

(y) "PSC" means the Project Steering Committee;

(z) "RP" means any resettlement plan for the Project or any part thereof, including any update thereto;

(aa) "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 and RP, including any corrective and preventive actions;

(bb) "SPCR" means the Strategic Program for Climate Resilience prepared by the Recipient under Phase II of the Pilot Program for Climate Resilience;

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

(dd) "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 a grant from the Strategic Climate Fund in the amount of nineteen million two hundred fifty thousand Dollars (\$19,250,000).

Section 2.02. The Recipient acknowledges that the Grant is funded out of resources made available by the International Bank for Reconstruction and Development, acting as trustee to the SCF, to ADB as an implementing entity of the SCF. No withdrawals shall be made if, as a result of such withdrawal, the total amount of the Grant withdrawn from the Grant Account would exceed the amount available to ADB from resources provided to it for purposes of the Grant. Only the resources made available to ADB for the purpose of the Grant shall be

considered for the enforcement of any obligations, claims or liabilities under or in connection with the Grant.

ARTICLE III

Use of Proceeds of the Grant

Section 3.01. 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.

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. Withdrawals from the Grant 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

Section 3.05. The Grant Closing Date for the purposes of Section 8.02 of the Grant Regulations shall be 30 June 2019 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 as well as on the use of the procedures for imprest funds and the statement of expenditures) and a management letter (which sets out the deficiencies in the internal controls 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) The Recipient shall (i) maintain separate accounts and records for the CCTF; (ii) prepare annual financial statements for the CCTF 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, within one month after their approval by the competent authority (such approval to occur 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.

(c) ADB shall disclose the annual audited financial statements for the Project and CCTF and the opinions of the auditors on the financial statements within 30 days of the date of their receipt by posting them on ADB's website.

(d) The Recipient shall enable ADB, upon ADB's request, to discuss the financial statements for the Project and CCTF and the Recipient's financial affairs where they relate to the Project and CCTF with the auditors appointed pursuant to subsections (a)(iii) and (b)(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. Technical audits of projects funded by CCTF shall also be carried out on a selective basis as recommended by the Recipient's Auditor General, to be funded by the CCTF. The technical auditor shall use international audit standards. The technical auditor shall present a report to the Recipient's Cabinet and promptly thereafter provide a copy to ADS which will give an opinion on the accuracy of the records and financial accounts of CCTF. The completeness of income of CCTF and the conformity of payments with the priorities laid down in the PAM.

Section 4.04. The Recipient acknowledges and agrees that this Grant Agreement is entered into by ADB, not in its individual capacity, but as implementing entity for SCF. Accordingly, the Recipient agrees that (a) it may only withdraw Grant proceeds to the extent

that ADB has received proceeds for the Grant from SCF; and (b) that ADB does not assume any obligations or responsibilities of SCF 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 is specified as an additional event of 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: the CCTF 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.

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 for Finance and National Planning (or his delegate) 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

Chief Executive Officer,
Ministry of Finance and National Planning
Vuna Road, PO Box 87
Nuku'alofa, Tonga

Facsimile Number:

(676) 26011.

For ADB

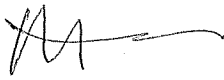
Asian Development Bank
6 ADB Avenue
Mandaluyong City
1550 Metro Manila
Philippines

Facsimile Numbers:

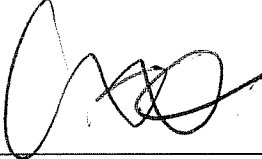
(632) 636-2444
(632) 636-9246.

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 VALU EKE
Minister of Finance and National Planning

ASIAN DEVELOPMENT BANK

By 
_____ XIANBIN YAO
Director General
Pacific Department

SCHEDULE 1

The Project

1. The purpose of the Project is to strengthen the enabling environment for climate change adaptation and disaster risk reduction at national and local, sector and community levels.
2. The Project shall, among other outputs:
 - (a) mainstream climate resilience into development planning of key vulnerable sectors, by: (i) upgrading climate resilience skills; (ii) integrating climate resilience in legal framework; (iii) strengthening coordination and monitoring of community vulnerability assessments and plans and (iv) improving water resource inventories and integrated water resource management and coastal zone monitoring;
 - (b) improve monitoring and management of Tonga climate data and information, by establishing national hydro-meteorological and coastal monitoring and data dissemination system;
 - (c) introduce a sustainable financing mechanism to support community based climate responsive investments by establishing the CCTF; and
 - (d) improve eco-system resilience of climate resilient infrastructure investments, by: (i) increasing ability of coral reefs to recover after climate related events; (ii) improving management of mangroves for climate adaptation; (iii) upgrading evacuation and post disaster access roads; (iv) enhancing coastal protection; (v) upgrading schools, and (vi) identifying additional candidate sector subprojects.
3. Consulting Services shall be provided to support the above activities. Without prejudice to the generality of the foregoing, these shall include project management, technical expertise and capacity building services.
4. The Project is expected to be completed by 31 December 2018.

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, 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.

Condition for Withdrawals from Grant Account in Respect of CCTF

5. Notwithstanding any other provision of this Grant Agreement, no withdrawals in respect of CCTF shall be made from the Grant Account until: (a) endowment and operational accounts for it shall have been established; and (b) an operational manual for the CCTF establishing its operational procedures satisfactory to ADB shall have been approved by the Board of CCTF.

Condition for Withdrawals from Grant Account in Respect of Works

6. Notwithstanding any other provision of this Grant Agreement, no withdrawals in respect of Works shall be made from the Grant Account until the consultants required for the PMU and the PIU in MOI shall have been recruited.

Condition for Withdrawals from Grant Account in Respect of Training

7. Notwithstanding any other provision of this Grant Agreement, no withdrawals in respect of training (under paragraph 2 (a)(i) of Schedule 1 to this Grant Agreement) shall be made from the Grant Account until scholarship selection criteria has been developed in agreement with ADB.

TABLE

ALLOCATION AND WITHDRAWAL OF GRANT PROCEEDS (Climate Resilience Sector Project)			
Number	Item	Total Amount Allocated for Strategic Climate Fund Financing (\$)	Basis for Withdrawal from the Grant Account
	Category		
1	Works*	5,169,955	100 percent of total expenditure claimed**
2	Equipment	2,815,429	100 percent of total expenditure claimed**
3	Consulting Services	4,386,395	100 percent of total expenditure claimed**
4	Training ***	459,750	100 percent of total expenditure claimed**
5	CCTF****	5,000,000	100 percent of total expenditure claimed**
6	Unallocated	1,418,471	
	Total	19,250,000	

* Subject to the condition for withdrawals described in paragraph 6 of Schedule 2

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

*** Subject to the condition for withdrawals described in paragraph 7 of Schedule 2

**** Subject to the condition for withdrawals described in paragraph 5 of Schedule 2

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 for Goods and Works;
 - (b) National Competitive Bidding for Works;
 - (c) Shopping for Goods and Works;
 - (d) Limited International Bidding for Goods and Works; and
 - (e) Community participation in procurement.
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.

National Competitive Bidding

5. The Recipient and ADB shall ensure that, prior to the commencement of any procurement activity under national competitive bidding, the Recipient's national competitive bidding procedures are consistent with the Procurement Guidelines. Any modifications or clarifications to such procedures agreed between the Recipient and ADB shall be set out in the Procurement Plan. Any subsequent change to the agreed modifications and clarifications shall become effective only after approval of such change by the Recipient and ADB.

Conditions for Award of Contracts

6. The Recipient shall not, and shall not permit the Project Executing Agency to, award any Works contract under the Climate Infrastructure Investments and Eco-System Resilience Component which involves environmental impacts until: (a) the MLECCNR has granted the final approval of the IEE updated for the relevant facility site; and (b) the Recipient has incorporated the relevant provisions from the EMP into the Works contract.

7. The Recipient shall not, and shall not permit the Project Executing Agency to, award any Works contract involving involuntary resettlement impacts under the Climate Infrastructure Investments and Eco-System Resilience Component until the Recipient has prepared and submitted to ADB the final RP based on the relevant detailed design and obtained ADB's clearance of such RP. The Recipient shall not award and shall not permit the Project Executing Agency to award any Works contract involving involuntary resettlement impacts under the remaining components of the Project, if RP is required to be prepared, until the Recipient has prepared and submitted to ADB the final RP based on the relevant detailed design and obtained ADB's clearance of such RP.

8. The Recipient shall not, and shall ensure that the Project Executive Agency shall not, award any Works contract which involves impacts on indigenous peoples; provided however that in the event that Works in respect of any facility site are later determined to potentially involve any impacts on indigenous peoples, as determined under the SPS, no Works contract shall be awarded until the Recipient has prepared and submitted to ADB a final IPP and obtained ADB's clearance of such IPP.

Consulting Services

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

Industrial or Intellectual Property Rights

10. (a) The Recipient shall ensure that all Goods and Works (including without limitation all computer hardware, software and systems, whether separately procured or incorporated within other goods and services procured) and Consulting 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 ADB-financed contracts for the procurement of Goods, Works, and Consulting Services contain appropriate representations, warranties and, if appropriate, indemnities from the contractor, supplier or consultant with respect to the matters referred to in subparagraph (a) of this paragraph.

ADB's Review of Procurement Decisions

11. Contracts procured under international competitive bidding, national competitive bidding, limited international bidding or shopping 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.

12. In the case of a contract for Goods or Works which is subject to ADB's prior review, the Recipient shall seek ADB's prior approval of any modification or waiver of the terms and conditions of the contract, including:

- (a) granting an extension of the stipulated time for completion of a contract for a period of 1 month or more, or which is likely to require an extension of the Grant Closing Date; and

- (b) increases in aggregate of the original price by more than 5% (for the avoidance of doubt, such increase shall take into account any previous change under such contract).

13. In the case of a contract for Goods or Works, which is subject to ADB's post review, ADB shall review the required contract modification or waiver and respond to the Recipient as soon as practicable, but not later than 1 month after the receipt of the required document.

14. The Recipient shall provide to ADB copies of all time extensions, modifications or waivers to the contracts (including charge orders) within 1 month following amendment of the contract.

SCHEDULE 4

Execution of Project; Financial Matters

Implementation Arrangements

1. The Recipient and the Project Executing Agency 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.

Indigenous Peoples

2. The Recipient shall ensure that the Project does not have any indigenous peoples impacts within the meaning of SPS. In the event that the Project does have any such impact, the Recipient shall take, or cause the Project Executing Agency to take, all steps required to ensure that the Project complies with the applicable laws and regulations of the Recipient and with the principles and requirements set forth in Chapter V, Appendix 3 and Appendix 4 (as applicable) of the SPS.

Environment

3. The Recipient shall (a) ensure that the preparation, design, construction, implementation, operation and decommissioning of the Project and all Project facilities comply with (i) all applicable laws and regulations of the Recipient relating to environment; (ii) the Environmental Safeguards; (iii) all measures and requirements set forth in the IEEs and EMPs; and (iv) any corrective or preventive actions set forth in a Safeguards Monitoring Report; and (b) ensure that Works do not commence until and unless environmental clearance, satisfactory in form and content to ADB, in respect of the relevant site has been received from the MLECCNR.

Land Acquisition and Involuntary Resettlement

4. The Recipient shall ensure that:

- (a) all land and all rights-of-way required for the Project and all Project facilities are made available to the Works contractor in accordance with the schedule agreed under the related Works contract; and
- (b) all land acquisition and resettlement activities are implemented in compliance with all applicable laws and regulations of the Recipient relating to land acquisition and involuntary resettlement.

5. The Recipient shall ensure that the Project does not have any involuntary resettlement impacts 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 principles and requirements set forth in Chapter V, Appendix 2 and Appendix 4 (as applicable) of the SPS.

Safeguards – Related Provisions in Bidding Documents and Works Contracts

6. The Recipient shall ensure that all bidding documents and contracts for Works contain provisions that require contractors to:

- (a) comply with the measures and requirements relevant to the contractor set forth in the IEE, the EMP, and the RPs (to the extent they concern impacts on affected people during construction), and any corrective or preventative actions set out in a Safeguards Monitoring Report;
- (b) make available a budget for all such environmental and social measures;
- (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 and the RP;
- (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

7. The Recipient shall:

- (a) submit annual environmental monitoring reports in accordance with the requirements of the SPS for category B projects, and semiannual Safeguards Monitoring Reports in respect of the social impacts of the Project, 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 constructions, implementation or operation of the Project that were not considered in the IEEs, the EMPs and the RPs, promptly inform ADB of the occurrence of such risks or impacts, with a 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 EMPs or the RPs promptly after becoming aware of the breach.

Labor

8. The Recipient shall ensure that specific clauses are included in bidding documents to ensure that Works contractors: (a) comply with all applicable labor laws and regulations of the Recipient; (b) do not employ child labor for construction and maintenance activities; and (c) provide appropriate facilities (latrines, etc.) for women and children at construction sites.

Health

9. The Recipient shall ensure that Works contractors: (a) follow all applicable health and safety laws and regulations of the Recipient; (b) carry out awareness programs for workers on the risks of sexually transmitted diseases and human trafficking; and (c) disseminate information at worksites on the risks of sexually transmitted diseases. Specific clauses shall be included in bidding documents for Works contracts to ensure adherence to these provisions, and compliance with the foregoing shall be strictly monitored during Project implementation.

Gender

10. The Recipient shall ensure that the Gender Action Plan is implemented, and specifically, that the following gender targets therein are achieved by the completion of the Project: (i) 50% of training participants are women; (ii) at least 30% of members of PSC and JNAP-TWG are women; (iii) at least 30% of CCTF grants are awarded to women's groups; (iv) at least 50% of approved livelihoods projects under CCTF bring improvements to women's livelihoods; and (v) at least 30% of training scholarships are granted to women.

Governance and Anticorruption

11. The Recipient 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.

12. The Recipient 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.

13. The Recipient shall (a) comply with applicable laws and regulations of the Recipient on combating money laundering and financing of terrorism; and (b) ensure that Grant proceeds are not used, directly or indirectly, in money laundering or financing of terrorism.

Financial Management

14. The Recipient shall make available through budgetary allocations or other means all counterpart funds required for the timely and effective implementation of the Project including any funds required to (a) mitigate unforeseen environmental and social impacts, and (b) meet any additional costs resulting from design changes, price escalations in construction or installation costs or other unforeseen circumstances.

15. The Recipient shall (a) ensure that a 5-year performance-based maintenance provision is incorporated in the bidding documents for all Goods and Works; (b) provide any

necessary funding in budgets from fiscal year 2015 onwards for that purpose; and (c) ensure that Goods are used, during the life of the Project, substantially only for the purpose of achieving the Project outcomes.

16. The Recipient shall include in the budgets for FY2015 onwards financial support for the proper maintenance of the schools which are subject to climate proofing under the Project.

17. The Recipient shall (a) cause the new hospital (relocated in Ha'apai) to be the main hospital for the Ha'apai Island group, (b) transfer sufficient equipment to the new hospital to enable it to properly function, and (c) include in the budgets for FY2015 onwards financial support for the proper maintenance of the new hospital.

18. The Recipient shall ensure that funds for CCTF are used exclusively for climate change and disaster risk reduction purposes, and that the CCTF is managed consistent with its operating procedures and fiduciary responsibilities.

19. The Recipient shall ensure that funds in the CCTF endowment account shall be deposited in banks or financial institutions whose long-term debt is at all times rated AA- or better by Standard & Poor's and Aa2 or better by Moody's (or which have full credit support from another financial institution with such ratings).

Operational Management

20. The Recipient shall use best efforts to retain its employees who have participated in train-the-trainer program or received scholarships.

21. The Recipient shall (a) submit to the Legislative Assembly, substantially in the form received from the TA consultant, the recommendations to incorporate climate change and disaster risk reduction considerations in relevant legislation, and (b) implement, substantially in the form received, the recommendations to incorporate climate change and disaster risk reduction considerations in building codes or other regulations not requiring Legislative Assembly approval.

22. The Recipient shall, following completion of the Project, designate a focal point which shall be responsible for continuing to monitor the sections of coastline which will be protected under the Project in order better under better understand construction methods and design future coastal projects.

23. The Recipient shall submit to CCTF within one year following Grant effectiveness a proposal (based on the completed study) to address water supply requirements for the island of Niufo'u.

24. The Recipient shall insure the civil works and equipment to be provided under the project against unforeseen and other damages.

25. The Recipient agrees that (a) the Project shall be exempt from the taxes and duties as stated in the Memorandum of Understanding for the Project; and (b) the Tongan environmental impact assessment levy shall be included in its contribution to the Project.

Public Disclosure

26. Within 90 days following effectiveness of this Grant Agreement, the Recipient shall establish and maintain a Project website which will be regularly updated to include information on (a) the following general matters: (i) bidding procedures, bidders and contract awards for Works, Goods, and Consulting Services imprest account; (ii) use of imprest account funds disbursed; (iii) physical progress of the Works and procurement of Goods; and (iv) audited Project financial accounts, Project review reports (e.g. mid-term review), and quarterly progress reports, consolidated annual reports and post-completion report, in each case promptly after submission to ADB (unless, in the case of Project review reports and quarterly progress reports, the Recipient believes, and ADB agrees, that these should not be made publicly available); and (b) the following matters relating to CCTF: (i) its operating procedures (including grant application procedures) and operational manual; (ii) use of funds disbursed; (iii) current available funds; (iv) physical progress of the small-scale community initiatives financed by CCTF; and (v) CCTF's audited accounts and other financial statements, annual report, any technical audits of the small-scale community initiatives financed by CCTF, and any other reports or documents provided to bi-lateral and multi-lateral development partners who have contributed to CCTF (unless, in the case of any technical audits and other reports or documents provided to bi-lateral and multi-lateral development partners, the Recipient believes, and ADB agrees, that these should not be made publicly available).

Taxes and Duties Exemption

27. The Recipient shall exempt the following from import duties and other government taxes such as consumption, excise and income taxes as applicable:

- (a) Project supplies: (i) materials and supplies imported into the Recipient's territory for the Project; (ii) materials and supplies purchased in the Recipient's territory, provided that the supplier is registered for consumption tax; and (iii) vehicles purchased in the Recipient's territory for the Project; provided that if any asset purchased by the Grant is later disposed of to a private party within a five year period, then any consumption tax and duties that would have been paid on the asset if not given exemption status shall be required to be paid at the normal rate to the Recipient's Ministry of Revenue and Customs; and
- (b) Project personnel: (i) salaries and benefits of Project personnel who are not nationals or permanent residents of the Recipient's territory, with the exception of any consumption taxes on their accommodation in the Recipient's territory; (ii) for six months following the date of the initial arrival in the Recipient's territory of Project personnel, from import and other duties and taxes, including consumption tax, on their and their dependants' personal and household effects, with the exception of consumable items, such as food and drink; and (iii) for six months following the date of the initial arrival in the Recipient's territory of Project personnel, from excise tax and consumption tax on one motor vehicle per Project person provided that it be re-exported on the Project person's departure, or excise tax and consumption tax are paid on its assessed value at time of sale or disposal within the Recipient's territory.