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GRANT NUMBER 0392-SAM

PROJECT AGREEMENT  
(Samoa AgriBusiness Support Project)

between

ASIAN DEVELOPMENT BANK

and

WESTPAC BANK SAMOA LIMITED

DATED 30 August 2014

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SAM 46436

A handwritten signature in black ink, appearing to be 'H. M.', is written over the text 'SAM 46436'.

## **PROJECT AGREEMENT**

PROJECT AGREEMENT dated \_\_\_\_\_ 2014 between ASIAN DEVELOPMENT BANK ("ADB") and WESTPAC BANK SAMOA LIMITED ("Westpac").

### **WHEREAS**

(A) by a Grant Agreement of 19 June 2014 between the Independent State of Samoa ("Recipient") and ADB, ADB agreed to make to the Recipient a grant of five million Dollars (\$5,000,000) on the terms and conditions set forth in the Grant Agreement, but only on the condition that a portion of the proceeds of the Grant be made available to participating financial institutions ("PFIs") and that those PFIs agree to undertake certain obligations towards ADB as set forth in the Grant Agreement; and

(B) Westpac, in consideration of ADB entering into the Grant Agreement with the Recipient, has agreed to undertake the obligations of a PFI as set forth in the Grant Agreement and as set forth herein;

NOW THEREFORE the parties hereto agree as follows:

## **ARTICLE I**

### **Definitions**

Section 1.01. Wherever used in this Project Agreement, unless the context otherwise requires, the several terms defined in the Grant Agreement and in the Grant Regulations (as so defined) have the respective meanings therein set forth, except that for purposes of this Project Agreement: the term "Project" means Part 1 of the Project, as described in Schedule 1 to the Grant Agreement.

## **ARTICLE II**

### **Subloans**

Section 2.01. (a) Except as ADB may otherwise agree, the proceeds of the Grant shall be used only for making Subloans to Qualified Enterprises for Qualified Subprojects and shall be applied exclusively to the cost of Goods, Works and Consulting Services and other items of expenditure required to carry out such Qualified Subprojects.

(b) Except as ADB may otherwise agree, all Goods, Works and Consulting Services shall be procured in accordance with the provisions of Schedule 3 to the Grant Agreement.

Section 2.02. In carrying out of the Project, Westpac shall ensure that the eligibility criteria with respect to Qualified Enterprises, Qualified Subprojects and Subloans as set forth in Schedule 4 of the Grant Agreement are satisfied.

Section 2.03. (a) Each Subloan A shall (i) carry interest at an appropriate rate that takes into account the Cash Collateral obtained, cost of funds, administrative costs, credit and other applicable risks associated with the Subloan A; (ii) have a repayment period not exceeding 7 years; (iii) satisfy the conditions for Subloan A set forth in Schedule 4 of the Grant Agreement; and (iv) be made on terms whereby Westpac shall obtain, by a written Subloan Agreement with the Qualified Enterprise in form acceptable to ADB, rights adequate to protect the interests of the Recipient, Westpac and ADB.

(b) Each Subloan B shall (i) have a bullet repayment period not exceeding 7 years; (ii) satisfy the conditions for Subloan B set forth in Schedule 4 of the Grant Agreement; and (iii) be made on terms set out in the Subloan Agreement with the Qualified Enterprise referred to in subparagraph (a) hereinabove.

(c) Westpac shall submit the first Subloan A and the first Subloan B for ADB's review and approval prior to entering into the relevant Subloan Agreement.

Section 2.04. Without limiting the generality of the foregoing provisions of Section 2.03 of this Project Agreement and in addition to any other provisions which a prudent lender would request, each Subloan Agreement shall include provisions to the effect that:

- (a) the Qualified Enterprise shall carry out and operate the Qualified Subproject with due diligence and efficiency and in accordance with sound applicable technical, financial, business and development practices, including maintenance of adequate accounts and records;
- (b) the proceeds of the Grant shall be used only for procurement in member countries of ADB, in accordance with procedures acceptable to ADB, of Goods which are produced in and supplied from, and Works and Consulting Services which are supplied from, such countries;
- (c) the Goods, Works and Consulting Services shall be used exclusively in the carrying out of the Qualified Subproject;
- (d) ADB and Westpac shall each have the right to inspect such Goods and Works, the Qualified Enterprise, the Qualified Subproject and any relevant records and documents;
- (e) where available and appropriate for the Qualified Subproject, the Qualified Enterprise shall take out and maintain with responsible insurers insurance against such risks and in such amounts as shall be consistent with sound business practice, and without any limitation upon the foregoing, such insurance shall cover hazards incident to the acquisition, transportation and delivery of Goods to the place of use or installation, and for such insurance any indemnity shall be payable in a currency freely usable to replace or repair such Goods;

- (f) ADB and Westpac shall each be entitled to obtain all such information as each shall reasonably request relating to the Subloans, the Goods, Works and Consulting Services, the Qualified Subproject, the Qualified Enterprise and other related matters; and
- (g) Westpac shall be entitled to suspend or terminate further access by the Qualified Enterprise to the use of the proceeds of the Grant upon failure by the Qualified Enterprise to perform its obligations under its agreement with Westpac.

Section 2.05. Westpac shall promptly and effectively exercise its rights in relation to each Qualified Subproject in accordance with the standards of a prudent lender and in such manner as to protect the interests of the Recipient, Westpac and ADB.

### **ARTICLE III**

#### **Particular Covenants**

Section 3.01. (a) Westpac shall carry out the Project with due diligence and efficiency and in conformity with sound applicable technical, financial, business and development practices and in accordance with the PAM.

(b) In the carrying out of the Project and in the conduct of its business, Westpac shall (i) perform all the obligations set forth in the Grant Agreement, including complying with and performing all of the obligations applicable to it set forth in Schedule 4 of the Grant Agreement; and (ii) remain in compliance with applicable corporate and financial governance regulations and guidelines of the Recipient and CBS throughout the Project implementation period.

Section 3.02. Westpac shall not make a Subloan A to any Qualified Enterprise unless such Qualified Enterprise has at its disposal, or has made appropriate arrangements to obtain as and when required, all local currency funds, including adequate working capital, and other resources (including the prospective provision of Subloan B) which are required by such Qualified Enterprise for the carrying out of its Qualified Subproject in respect of which the Subloan A is to be made.

Section 3.03. Westpac shall maintain records and accounts adequate to record the progress of the Project and of each Qualified Subproject (including the cost thereof) and to reflect, in accordance with consistently maintained sound accounting principles, the operations and financial condition of Westpac.

Section 3.04. (a) ADB and Westpac shall cooperate fully to ensure that the purposes of the Grant shall be accomplished.

(b) Westpac shall promptly inform PMU and ADB of any condition which interferes with, or threatens to interfere with, the progress of the Project, the performance of

its obligations under this Project Agreement or the Subsidiary Financing Agreement, or the accomplishment of the purposes of the Grant.

(c) ADB and Westpac shall from time to time, at the request of either party, exchange views through their representatives with regard to any matters relating to the Project, Westpac and the Grant.

Section 3.05. (a) Westpac shall furnish to ADB all such reports and information as ADB shall reasonably request concerning (i) the Grant and the expenditure of the proceeds thereof; (ii) the Project; (iii) the Qualified Enterprises, the Qualified Subprojects and the Subloans; (iv) the administration, operations and financial condition of Westpac; and (v) any other matters relating to the purposes of the Grant.

(b) Without limiting the generality of the foregoing, Westpac shall furnish to ADB periodic reports on the execution of the Project and on the operation and management of Westpac. Such reports shall be submitted in such form and in such detail and within such a period as ADB shall reasonably request, and may indicate, among other things, progress made and problems encountered during the period under review, steps taken or proposed to be taken to remedy these problems, and proposed program of activities and expected progress during the following period.

(c) Promptly after the Grant Closing Date, but in any event not later than 3 months after the said closing date or such later date as ADB may agree for this purpose, Westpac shall prepare and furnish to ADB a report, in such form and in such detail as ADB shall reasonably request, on the utilization of the Grant, the execution of the Qualified Subprojects, their costs, the performance by Westpac of its obligations under this Project Agreement and the accomplishment of the purposes of the Grant.

Section 3.06. (a) Westpac shall (i) provide its annual financial statements prepared in accordance with national accrual-based financing reporting standards acceptable to ADB; (ii) have its 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; (iii) 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 the 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 (iv) furnish to ADB, no later than 6 months after the close of the fiscal year to which they relate, 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) Westpac shall enable ADB, upon ADB's request, to discuss the financial statements for Westpac and its financial affairs where they relate to the Project with the auditors appointed by Westpac pursuant to subsection (a)(ii) 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 Westpac, unless Westpac shall otherwise agree.

Section 3.07. Westpac shall enable ADB's representatives to inspect any Qualified Enterprise, any Qualified Subproject, the Goods and Works, and any relevant records and documents.

Section 3.08. (a) Westpac shall, promptly as required, take all action within its powers to maintain its corporate existence, to carry on its operations, and to acquire, maintain and renew all rights, properties, powers, privileges and franchises which are necessary in the carrying out of the Project or in the conduct of its business.

(b) Westpac shall at all times conduct its business in accordance with sound applicable technical, financial, and business practices, and under the supervision of competent and experienced management and personnel.

(c) Except as ADB may otherwise agree, Westpac shall not sell, lease or otherwise dispose of any of its assets which shall be required for the efficient carrying on of its operations or the disposal of which may prejudice its ability to perform satisfactorily any of its obligations under this Project Agreement.

Section 3.09. Except as ADB may otherwise agree, Westpac shall duly perform all its obligation under the Subsidiary Financing Agreement and shall not take, or concur in, any action which would have the effect of assigning, amending, abrogating or waiving any rights or obligations of the parties under the Subsidiary Financing Agreement.

Section 3.10. Westpac shall promptly notify ADB of any proposal to amend, suspend or repeal any provision of its constitutional documents, which, if implemented, could adversely affect the carrying out of the Project. Westpac shall afford ADB an adequate opportunity to comment on such proposal prior to taking any affirmative action thereon.

## **ARTICLE IV**

### **Effective Date; Termination**

Section 4.01. This Project Agreement shall come into force and effect on the date on which the Grant Agreement comes into force and effect. ADB shall promptly notify Westpac of such date.

Section 4.02. This Project Agreement and all obligations of the parties hereunder shall terminate on a date 10 years after the date of this Project Agreement.

Section 4.03. All the provisions of this Project Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the Grant Agreement.

**ARTICLE V****Miscellaneous**

Section 5.01. Any notice or request required or permitted to be given or made under this Project Agreement and any agreement between the parties contemplated by this Project Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand, mail or facsimile to the party to which it is required or permitted to be given or made at its address hereinafter specified, or at such other address as such party shall have designated by notice to the party giving such notice or making such request. The addresses so specified are:

For ADB

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

## Facsimile Numbers:

+63 2 636-2444  
+612 8270-9444.

For Westpac:

Westpac Bank Samoa Limited  
Beach Road  
Apia, Samoa

## Facsimile Number:

+685 26252.

Section 5.02. (a) Any action required or permitted to be taken, and any documents required or permitted to be executed, under this Project Agreement by or on behalf of Westpac may be taken or executed by its General Manager or by such other person or persons as he or she shall so designate in writing notified to ADB.

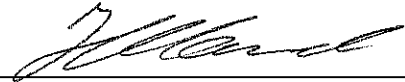
(b) Westpac shall furnish to ADB sufficient evidence of the authority of each person who shall act under subsection (a) hereinabove, together with the authenticated specimen signature of each such person.

Section 5.03. No delay in exercising, or omission to exercise, any right, power or remedy accruing to either party under this Project Agreement upon any default shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence in such default; nor shall the action of such party in respect of any default,

or any acquiescence in any default, affect or impair any right, power or remedy of such party in respect of any other or subsequent default.


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

ASIAN DEVELOPMENT BANK

By 

ANDREA IFFLAND  
Regional Director  
Pacific Department

WESTPAC BANK SAMOA LIMITED

By 

CAMERON PENFOLD  
General Manager