
MEMORANDUM OF UNDERSTANDING
FOR COOPERATION, COORDINATION AND
EXCHANGE OF INFORMATION

(Samoa Connectivity Project)

between

ASIAN DEVELOPMENT BANK

and

**INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT/
INTERNATIONAL DEVELOPMENT ASSOCIATION**

Dated *28 October*, 2015

MEMORANDUM OF UNDERSTANDING

Memorandum of Understanding dated ~~28 October~~ 2015 between the Asian Development Bank (“ADB”) and the International Bank for Reconstruction and Development/ International Development Association (collectively, “World Bank” or “WB”, and together with ADB, the “Cofinanciers”).

WHEREAS:

- (A) The Independent State of Samoa (“Samoa”) has requested the ADB to assist in the financing of the Project (as defined below) and will enter into, an agreement or agreements with ADB setting forth the relevant terms and conditions of the financing (each such agreement being hereinafter referred to as an “ADB Agreement”); and
- (B) Samoa has similarly requested the World Bank to assist in the financing of the Project and has entered into an agreement with the World Bank setting forth the relevant terms and conditions of the financing (each such agreement being hereinafter referred to as a “World Bank Agreement”, and together with each ADB Agreement, the “Cofinancier Agreements”); and
- (C) the Cofinanciers consider it appropriate and advisable in the interest of the Project and in their own interest to cooperate in all matters of common interest relating to the Project.

NOW THEREFORE the Cofinanciers hereby set out their understanding as follows:

ARTICLE 1

Definitions

Section 1.01. Unless the subject of the context requires otherwise, the following terms shall have the following meanings wherever used in this Memorandum of Understanding:

- a. “Anti-Corruption Policies” means:
 - (i) ADB’s Anti-corruption Policy (1998, as amended to date) and ADB’s Integrity Principles and Guidelines (2015); and
 - (ii) the World Bank’s “Guidelines on Preventing and Combating Fraud and Corruption in Project Financed by IBRD Loans and IDA Credits and Grants”, dated October 15, 2006, and revised in January 2011.
- b. “Cofinanciers’ Coordination Committee” or “CCC” means a committee comprising representatives of each Cofinancier as described in Section 6.02 of this Memorandum of Understanding;
- c. “Coordinating Cofinancier” means the World Bank;

- d. "Debarment List" means any list used by ADB or the World Bank to identify those firms and individuals which are ineligible to participate and be awarded a contract financed by such Cofinancier as the result of debarment, suspension or other determination in accordance with such Cofinancier's policies;
- e. "Directors' Meeting" means a meeting of relevant directors of each Cofinancier;
- f. "Goods, Works and Services" means any goods, works or services required for the Project, including, without limitation, any consulting services;
- g. "Procurement Policies" means the respective procurement policies and procedures of ADB and the World Bank as follows:
 - (i) for ADB: ADB's Procurement Guidelines (2015) and ADB's Guidelines on the Use of Consultants (2013), as amended from time to time; and
 - (ii) for the World Bank: the World Bank's Guidelines: Procurement of Goods, Works and Non-consulting Services under IBRD Loans and IDA Credits and Grants by World Bank Borrowers, dated January 2011 (revised July 2014); and the World Bank's Guidelines: Selection and Employment of Consultants under IBRD Loans and IDA Credits and Grants by World Bank Borrowers, dated January 2011 (revised July 2014).
- h. "Project" means the project as described in Article 2 of this Memorandum of Understanding;
- i. "Project Executing Agency" means any agency or department of Samoa, as applicable, that is responsible for carrying out of the Project or a part of the Project under a Cofinancier Agreement; and
- j. "Safeguard Documents" means the documents set out in Schedule 3 to this Memorandum of Understanding, which comply with the environmental and social safeguard policy requirements of each Cofinancier.

ARTICLE 2

Description of the Project

Section 2.01. Without limitation to the description of the Project set forth in the respective Cofinancier Agreements, the Project consists of the following Parts:

Part 1: Samoa-Fiji Cable

(a) Submarine Cable System

Design, supply and installation of a submarine cable system to connect Samoa (Upolu and Savai'i) to Fiji (Suva), including undertaking a marine survey, financing the cable manufacture and cable deployment-marine operations.

(b) Landing stations and ancillary equipment

Construction of landing stations and ancillary facilities in Savaii and Upolu, including acquisition and installation of onshore equipment.

(c) Additional costs

Financing of indefeasible rights of use (including the acquisition of long-term landing services in Fiji and capacity) and management costs associated with the operation of the Samoa Submarine Cable Company (SSCC).

Part 2. ICT Regulatory Technical Assistance

Carrying out a program of activities designed to enhance regulatory capacity of the Office of the Regulator, such program to include, *inter alia*: (a) review, development and implementation of effective regulation for the ICT sector with a particular focus on wholesale markets; (b) review and update of existing legal regulatory framework; and (c) carrying out a nationwide consumer survey on the benefits of ICT.

Part 3. Project implementation and administration

Carrying out a program of activities designed to strengthen the capacity of the Recipient to handle Project transactions, implementation and management, such program to include: (a) Project finance and transactional assistance in connection with the institutional design and operationalization of the SSCC pursuant to public private partnership arrangements, including independent appraisal of the proposed structure of the SSCC; (b) overall Project coordination, financial and contract management, procurement, communications and outreach plus reporting, audit, monitoring and evaluation.

ARTICLE 3

Project Financing

Section 3.01. Schedule 1 to this Memorandum of Understanding sets out the amount of financing that: (a) ADB intends to provide to Samoa under the ADB Agreement, and (b) the World Bank intends to provide to Samoa under the World Bank Agreement, in each case, for purposes of the Project.

Section 3.02. The Cofinanciers will finance eligible expenditures in respect of the reasonable costs of Goods, Works and Services in accordance with the terms and conditions set forth or referred to in their respective Cofinancier Agreements with Samoa, as applicable, and the Cofinanciers will coordinate such financing to the end that disbursements of funds will be made so as not to delay the implementation of the Project or to cause an increase in the cost thereof.

ARTICLE 4

Procurement of Goods, Works and Services

Section 4.01. Schedule 2 to this Memorandum of Understanding sets out the detailed cooperation and coordination arrangements in relation to procurement of (i) contract packages for Goods, Works or Services to be financed exclusively by one of the Cofinanciers and (ii) contract packages for Goods, Works or Services to be financed jointly by the World Bank and ADB.

ARTICLE 5

Management of Safeguards Requirements

Section 5.01. The Cofinanciers recognize the importance of environmental and social safeguards compliance requirements under the Project and agree to cooperate with each other in the coordination, implementation and monitoring of the requirements of each of the Safeguard Documents.

Section 5.02. (a) Subject to the provisions of paragraphs (b) through (d) of this Section, the Cofinanciers agree that any change in the Safeguard Documents shall be subject to the written agreement of each Cofinancier and such changes shall be made only if it is determined that even after such changes the documents will continue to remain compliant with the relevant safeguard policy requirements of the Cofinanciers, if any.

- (b) The safeguard compliance review process will be conducted with the aim of reaching a joint, mutually acceptable view among all the Cofinanciers in all decisions.
- (c) If no mutually agreed decision can be reached within 30 days or such other period as considered necessary by the CCC, then the views of the Coordinating Cofinancier will prevail and the Coordinating Cofinancier may implement its decision promptly.

- (d) If the other Cofinancier, acting reasonably, is unable to accept the Coordinating Cofinancier's view, that Cofinancier will have the right to take such actions as it reasonably considers necessary (i) to ensure compliance with its policies and procedures and the terms and conditions of its Cofinancier Agreement(s); and (ii) to realize the intended development objectives of the Project.

ARTICLE 6

Cooperation, Coordination and Exchange of Information

Section 6.01. The Cofinanciers will cooperate to ensure that the various components of the Project will be phased, timed and integrated in accordance with an implementation schedule to be agreed among the Cofinanciers and Samoa. To facilitate such cooperation, the Coordinating Cofinancier will assume the role of coordinator for the Cofinanciers, and in that capacity will:

- (a) ensure the prompt channeling of information regarding the Project and its progress to and from the other Cofinancier;
- (b) arrange and organize regular joint project review missions and other joint missions, as and when it considers it necessary or advisable;
- (c) arrange and organize meetings of the Cofinanciers, as and when it considers it necessary or advisable, to discuss and resolve any issues arising during the implementation of the Project; and
- (d) take necessary steps to coordinate procurement and consultant selection activities as needed.

Section 6.02. To ensure the smooth operation and efficient implementation and monitoring of Project implementation, the Cofinanciers have agreed to put in place a Cofinanciers' Coordination Committee composed of representatives of each Cofinancier. The CCC will, among others, oversee and monitor Project implementation, as well as the adequacy of overall Project funding, hold meetings as required, to discuss overall status and Project issues, and liaise with Samoa's agencies, respectively, to coordinate and facilitate smooth implementation of the Project.

Section 6.03. (a) The Cofinanciers will cooperate fully on all matters relating to the execution of the Project and, to that end, will keep each other informed of any event which, in their opinion, interferes with or threatens to interfere with the carrying out of the Project or the realization of the benefits thereof or which may lead to a substantial increase in the cost of the Project. Each Cofinancier will furnish the other Cofinancier with copies of letters or notices to or from Samoa, as applicable, or a Project Executing Agency, related to the Project, subject to the Cofinanciers' respective policies on disclosure of information.

- (b) The Cofinanciers will keep each other informed of the status of (i) fulfillment of conditions of effectiveness of their respective Cofinancier Agreement(s) or arrangements with Samoa, as applicable; and (ii) disbursement of funds under their respective Cofinancier Agreement(s) with Samoa, as applicable.
- (c) Each Cofinancier will promptly inform the other Cofinancier of any substantial breach committed by Samoa, as applicable, under the respective Cofinancier Agreement with the Cofinancier concerned.

Section 6.04. Each Cofinancier will promptly inform the other Cofinancier prior to:

- (a) declaring its respective Cofinancier Agreement effective;
- (b) granting any waivers pursuant to its respective Cofinancier Agreement; and
- (c) agreeing to any substantive changes in the specifications, scope of construction works, costs and work schedules for the relevant Goods, Works and Services.

Section 6.05. Each Cofinancier will promptly inform the other Cofinancier and, to the extent possible, consult with the other Cofinancier and seek the best solution for the Project prior to:

- (a) amending materially its Cofinancier Agreement(s) for the Project;
- (b) suspending or terminating in whole or in part, the right of the Borrower to make withdrawals of proceeds for its financing for the Project or cancelling any amounts thereof; or
- (c) declaring its financing to be due and payable prior to the agreed maturity thereof.

Section 6.06. Notwithstanding any other provision of this Memorandum of Understanding, each Cofinancier reserves the right to enforce its rights and perform its obligations under its Cofinancier Agreement(s).

ARTICLE 7

Resolution of Differences

Section 7.01. The Cofinanciers will to the extent possible, strive to resolve promptly and amicably questions of interpretation and application of this Memorandum of Understanding and any disputes arising out of or in relation to this Memorandum of Understanding. Any material differences on the implementation of the Project and the interpretation and application of this Memorandum of Understanding will be resolved through consultation and dialogue by the CCC. If the CCC is not able to resolve any such differences, the differences will be referred to a Directors' Meeting convened at the request of either Cofinancier. If the Directors' Meeting is not able to resolve the differences, the Directors' Meeting will refer the differences to senior management of each Cofinancier. In the event that any differences remain unresolved nevertheless, each Cofinancier reserves the right to take such actions as it reasonably considers necessary (a) to ensure compliance with its policies and procedures and the terms and conditions of its Cofinancier Agreement(s), and (b) to realize the intended development objectives of the Project.

ARTICLE 8

Execution, Effectiveness, Termination, Amendments and Miscellaneous

Section 8.01. This Memorandum of Understanding may be signed in two counterparts, each of which will be an original.

Section 8.02. This Memorandum of Understanding will come into operation upon signature by the last signatory among the Cofinanciers.

Section 8.03. This Memorandum of Understanding will terminate on the earlier of: (i) the date that a Cofinancier has notified the other Cofinancier of its decision not to proceed with its proposed financing of the Project; or (ii) the latest loan closing date as set forth in the Cofinancier Agreement(s) of either Cofinancier.

Section 8.04. All additions, amendments or variations to this Memorandum of Understanding will be binding only if in writing and signed by the duly authorized representative(s) of the Cofinanciers.

Section 8.05. This Memorandum of Understanding represents the entire understanding between the Cofinanciers in relation to the subject matter thereof and supersedes any or all previous agreements or arrangements between the Cofinanciers in respect of arrangements for matters of common interest relating to the Project, whether oral or written.

Section 8.06 Nothing in this Memorandum of Understanding will operate or will be construed as a waiver, renunciation or any other modification of any of the privileges, immunities or exemptions of any Cofinancier under its organizational documents, or any international convention, or any applicable law, including, without limiting the generality of the foregoing, the privileges, immunities and exemptions of the Asian Development Bank under the Agreement Establishing the Asian Development Bank and the privileges, immunities and exemptions of the World Bank under the Articles of Agreement of the International Bank for Reconstruction and Development or the Articles of Agreement of the International Development Association, respectively.

Section 8.07: The World Bank will exercise the same care in the discharge of its functions as Coordinating Cofinancier under this Memorandum of Understanding as it exercises with respect to the administration and management of its own affairs, and will have no further responsibility in respect thereof to the other Cofinancier.

Section 8.08. This Memorandum of Understanding may be disclosed by either Cofinancier in accordance with such Cofinancier's policy on disclosure of information.

ARTICLE 9

Notices

Section 9.01. Any notice or request required or permitted to be given or made under this Memorandum will be in writing. Such notice or request will be deemed to have been duly given or made when it will be delivered by hand or mail, facsimile or electronic mail to the party to which it is required to be given or made at such party's address specified below:

World Bank:

Franz R. Drees-Gross
Country Director
The World Bank Group
Level 19, 14 Martin Place
Sydney 2000, Australia

Facsimile Number:

(612) 9235-6593

Asian Development Bank:

Xianbin Yao
Director General, Pacific Department
Asian Development Bank
6 ADB Avenue
1550 Metro Manila, Philippines

Facsimile Number:

(632) 636-2444

(632) 636-2442

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives, have caused this Memorandum of Understanding to be signed in their respective names as of the date first hereinabove mentioned.

ASIAN DEVELOPMENT BANK

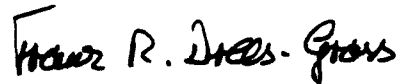
By



Rune Stroem
Head
Office of Cofinancing

INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT/INTERNATIONAL
DEVELOPMENT ASSOCIATION

By



COUNTRY DIRECTOR
EACNF
Authorized Representative

Schedule 1

Project Financing Plan

Table 1. Project Financing Plan

World Bank^a

Components	US\$	Financier(s)				
		IDA	ADB	DFAT	SSCC	GoS
1. Samoa – Fiji Cable						
1(a) Submarine cable system (including approximately 8% contingency)	37.38	14.00	18.50	0.00	0.00	4.88
1(b) Landing stations & ancillary equipment	2.85	0.00	0.00	1.50	0.98	0.37
1(c) Additional costs	8.07	0.00	0.00	0.00	7.20	0.87
<i>Subtotal</i>	<i>48.30</i>	<i>14.00</i>	<i>18.50</i>	<i>1.50</i>	<i>8.18</i>	<i>6.12</i>
2. Regulatory TA	1.44	1.25	0.00	0.00	0.00	0.19
3. Project Management and Administration	0.86	0.75	0.00	0.00	0.00	0.11
GRANT TOTAL	50.60	16.00	18.50	1.50	8.18	6.42

^aProject Appraisal Document

ADB^a

Components	US\$	Financier(s)				
		IDA	ADB	DFAT ^b	SSCC	GoS
1. Establishment of SSCC	0.75	0.00	0.00	0.00	0.75	0.00
2. Investment costs						
2 (a) Samoa-Fiji submarine cable system	29.32	12.8	16.52	0.00	0.00	0.00
2 (b) Landing stations & ancillary equipment	2.48	0.00	0.00	1.50	0.98	0.00
2 (c) Additional costs	0.65	0.00	0.00	0.00	0.65	0.00
2 (d) Southern Cross and Fiji IRUs	5.8	0.00	0.00	0.00	5.80	0.00
<i>Subtotal</i>	<i>38.25</i>	<i>12.8</i>	<i>16.52</i>	<i>1.50</i>	<i>7.43</i>	<i>0.00</i>
3. Regulatory TA	1.25	1.25	0.00	0.00	0.00	0.00
4. E-health Solutions^c	5.91	0.00	5.91	0.00	0.00	0.00
5. Other costs						
Project management and administration	0.75	0.75	0.00	0.00	0.00	0.00
Contingencies (2(a) and 4)	3.77	1.20	2.57	0.00	0.00	0.00
Taxes and Duties (excluding 2(d))	6.73	0.00	0.00	0.00	0.00	6.73
<i>Subtotal</i>	<i>11.25</i>	<i>1.95</i>	<i>2.57</i>	<i>0.00</i>	<i>0.00</i>	<i>6.73</i>
GRANT TOTAL	57.41	16.00	25.00	1.50	8.18	6.73

^aReport and Recommendation of the President

^b DFAT's funds are being channeled through the World Bank and it is therefore covered by this MOU. No separate MOU will be signed between ADB and DFAT.

^c included in response to government request after World Bank approval in June 2015.

Schedule 2

Procurement of Goods, Works and Services

Contract packages (to be) financed exclusively by one of the Cofinanciers

1. The procurement process will be conducted in accordance with the Procurement Policies and standard bidding documents of the Cofinancier financing the contract package.
2. The Cofinancier financing the contract package will consult with the other Cofinancier on the scope and specifications for the relevant Goods, Works and Services, including the terms of reference for any consulting services, so as to ensure that each Cofinancier is satisfied in accordance with its respective policies that the contract package will deliver the benefits to the Project as intended.

Contract packages (to be) financed jointly by the World Bank and ADB

3. In accordance with Section 6.01 of this Memorandum of Understanding, the Coordinating Cofinancier shall: (a) serve as the focal point of the relevant Project Executing Agency in all matters relating to the procurement process; and (b) promptly share with the other Cofinanciers any information that the Coordinating Cofinancier reasonably believes is relevant, including, without limitation, all information relating to any matter referred to in paragraph 12 below.
4. The procurement of the contract package financed jointly by the Cofinanciers will follow the provisions of the Coordinating Cofinancier for Limited International Bidding under the World Bank's Guidelines: Procurement of Goods, Works and Non-consulting Services under IBRD Loans and IDA Credits and Grants by World Bank Borrowers, dated January 2011 (revised July 2014).
5. The bidding documents will follow the Coordinating Cofinancier's standard bidding documents. In addition, the bidding documents will reflect that the Coordinating Cofinancier intends to finance the contract jointly with ADB, and each bidding document and contract will contain a provision permitting the World Bank, ADB or persons appointed by them to inspect the Project and to inspect and audit all records and accounts of any bidders, contractors, suppliers or service providers as they relate to the Project in accordance with their respective policies and procedures.
6. The Cofinanciers will make all reasonable efforts to reach a mutually acceptable position with respect to all procurement matters under the Project, consistent with the Procurement Policies of the Cofinanciers.
7. The Cofinanciers will independently review documents relating to the procurement process with the aim of forming a joint, mutually acceptable view on the manner in which each procurement process for each jointly cofinanced contract is carried out, including, without limitation, in relation to: (a) any request for no-objection to: (i) draft bidding documents and any subsequent amendments thereof, (ii) proposals for prequalification, bid and

technical evaluation reports and recommendations for contract award, draft contract and (iii) contract modifications; (b) responses to bidder communications and complaints; and (c) the exercise of remedies including declaration of misprocurement.

8. If no mutually agreed decision can be reached within 30 days, or such other period as reasonably considered necessary by the CCC, then the views of the Coordinating Cofinancier will prevail and the Coordinating Cofinancier may implement its decision promptly.
9. Notwithstanding the provision of paragraph 8 above, if ADB, acting reasonably, is unable to accept the Coordinating Cofinancier's view, ADB will have the right to take such actions as it reasonably considers necessary: (a) to ensure compliance with its Procurement Policies and related procedures, and the terms and conditions of its Cofinancier Agreement(s) with the Borrower; and (b) to realize the intended development objectives of the Project.
10. The Cofinanciers recognize that, among the differences that may exist among their respective Procurement Policies and Anti-corruption Policies, their eligibility requirements differ with particular respect to:
 - (a) in the case of ADB, giving effect to the Debarment List of the World Bank; and
 - (b) in the case of the World Bank, giving effect to the Debarment List of ADB. ADB will provide the World Bank with access to the ADB Debarment List.

With respect to these particular differences, the Cofinanciers undertake, for purposes of this Memorandum of Understanding, to use their best efforts to give effect to the other Cofinancier's eligibility requirements and Debarment Lists, including seeking policy waivers and exceptions from the appropriate approval authorities. If any Cofinancier is unable to obtain the waivers and exceptions necessary to give effect to other Cofinancier's eligibility requirements and Debarment Lists, then the other Cofinanciers' right to take necessary action to ensure compliance with their respective Procurement Policies, Anti-corruption Policies, and related procedures, and enforce their rights under their respective Cofinancier Agreements, will remain unaffected. Irrespective of the foregoing requirements to exercise best efforts to seek necessary waivers and exceptions, for the avoidance of any doubt, ADB reserves the right to unilaterally withdraw financing of any contract, if a contract is to be awarded to a party in contravention of the Debarment List of ADB.

11. The Project Executing Agencies for Samoa will be responsible for the implementation of the Project, in accordance with the terms of the ADB Agreement and the World Bank Agreement, as applicable, and with the terms of any agreements that may be entered into between such Project Executing Agencies for purposes of implementing the Project, such agreements to be satisfactory in form and substance satisfactory to each of the Cofinanciers.
12. The Cofinanciers will coordinate, cooperate and exchange information in relation to allegations of corrupt or fraudulent practices relating to the procurement process and/or

contract and Project implementation, and investigations relating to such allegations, all in accordance with Article 6 of this Memorandum of Understanding.

Schedule 3

Safeguards Documents