

---

LOAN NUMBER 3445-REG(SF)

LOAN AGREEMENT  
(Special Operations)

(Higher Education in the Pacific Investment Program – Project 2)

between

UNIVERSITY OF THE SOUTH PACIFIC

and

ASIAN DEVELOPMENT BANK

DATED 3 NOVEMBER 2016

---

REG 42291

**LOAN AGREEMENT  
(Special Operations)**

LOAN AGREEMENT dated 3 November 2016 between UNIVERSITY OF THE SOUTH PACIFIC ("Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) by an amended and restated framework financing agreement dated 22 July 2016 between the Borrower, the Republic of Kiribati, the Solomon Islands ("Guarantor") and ADB, ADB has agreed to provide a multitranche financing facility to the Borrower for purposes of financing projects under the Higher Education in the Pacific Investment Program;

(B) by a periodic financing request dated 22 July 2016, the Borrower has applied to ADB for a loan for the purposes of the Project described in Schedule 1 to this Loan Agreement;

(C) the loan is to be guaranteed by the Guarantor under the terms of a Guarantee Agreement of even date herewith between the Guarantor and ADB;

(D) by an externally financed grant agreement of even date herewith between the Borrower and ADB ("Grant Agreement"), ADB has agreed to make available to the Borrower a grant from the Clean Energy Fund under the Clean Energy Financing Partnership Facility in the amount of one million five hundred thousand dollars (\$1,500,000), for the purpose of providing additional financing to the Project; and

(E) ADB has agreed to make a loan to the Borrower from ADB's Special Funds resources upon the terms and conditions set forth herein;

NOW THEREFORE the parties agree as follows:

**ARTICLE I**

**Loan Regulations; Definitions**

Section 1.01. All provisions of the Special Operations Loan Regulations of ADB, dated 1 January 2006 ("Loan Regulations"), are hereby made applicable to this Loan Agreement with the same force and effect as if they were fully set forth herein, subject, however, to the following modifications: Section 6.02(c) is deleted.

Section 1.02. Wherever used in this Loan Agreement, the several terms defined in the Loan Regulations have the respective meanings therein set forth unless modified herein or the context otherwise requires. Additional terms used in this Loan Agreement have the following meanings:

- (a) "Charter" means the constitutive documents of the Borrower;
- (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 Loan as described in paragraph 5 of Schedule 1 to this Loan Agreement;
- (d) "Council" means the supreme governing body of the Borrower;
- (e) "Development, Marketing and Communications Division" or "DMCD" means the development, marketing and communications division of the Borrower;
- (f) "Environmental Management Plan" or "EMP" means the environmental management plan for the Project, including any update thereto, incorporated in the IEE;
- (g) "Environmental Safeguards" means the principles and requirements set forth in Chapter V, Appendix 1, and Appendix 4 (as applicable) of the SPS;
- (h) "Facility" means the multitranche financing facility provided by ADB to the Borrower for purposes of financing projects under the Investment Program;
- (i) "Framework Financing Agreement" or "FFA" means the amended and restated framework financing agreement dated 22 July 2016 between ADB and the Borrower with respect to the Facility;
- (j) "Gender Action Plan" or "GAP" means the gender action plan prepared for the Project in consultation with the Borrower and approved by ADB;
- (k) "Goods" means equipment and materials to be financed out of the proceeds of the Loan, including related services such as transportation, insurance, installation, commissioning, training, and initial maintenance, but excluding Consulting Services;
- (l) "Guarantee" means the guarantee in respect of the Project provided pursuant to recital (C) above;
- (m) "Indigenous Peoples Safeguards" means the principles and requirements set forth in Chapter V, Appendix 3, and Appendix 4 (as applicable) of the SPS;
- (n) "Initial Environmental Examination" or "IEE" means the initial environmental examination for the Project, including any update thereto, prepared and submitted by the Borrower and cleared by ADB;
- (o) "International Financial Reporting Standards" or "IFRS" means the set of international accounting standards issued by the International Auditing Standards Board in and after 2001;
- (p) "Investment Program" means the Higher Education in the Pacific Investment Program;

(q) "Involuntary Resettlement Safeguards" means the principles and requirements set forth in Chapter V, Appendix 2, and Appendix 4 (as applicable) of the SPS;

(r) "King George VI School" means the King George VI School in Honiara;

(s) "Loan Disbursement Handbook" means ADB's Loan Disbursement Handbook (2015, as amended from time to time);

(t) "Outputs" means each and any of the outputs of the Project described in paragraph 3 of Schedule 1 to this Loan Agreement;

(u) "Procurement Guidelines" means ADB's Procurement Guidelines (2015, as amended from time to time);

(v) "Procurement Plan" means the procurement plan for the Project dated August 2016 and agreed between the Borrower and ADB, as updated from time to time in accordance with the Procurement Guidelines, the Consulting Guidelines, and other arrangements agreed with ADB;

(w) "Project Administration Manual" or "PAM" means the project administration manual for the Project dated August 2016 and agreed between the Borrower and ADB, as updated from time to time in accordance with the respective administrative procedures of the Borrower and ADB;

(x) "Project Facilitation Letter" means the undertakings to be provided to ADB and the Borrower by the Guarantor as further described in paragraph 7 of Schedule 5 to this Loan Agreement, in form and substance satisfactory to ADB;

(y) "Project Implementation Unit" or "PIU" means the Project implementation unit created within DMCD;

(z) "Project Performance Management System" or "PPMS" means the Project performance management system described in paragraph 27 of Schedule 5 to this Loan Agreement, in form and substance satisfactory to ADB;

(aa) "Project Steering Committee" or "PSC" means the Project steering committee, comprised of representatives of the Pacific island member countries of the Borrower and chaired by the Borrower's Vice-Chancellor;

(bb) "Project Website" means the Project website described in paragraph 32 of Schedule 5 to this Loan Agreement;

(cc) "Resettlement Plan" or "RP" means the resettlement plan for the Project, including any update thereto, prepared and submitted by the Borrower and cleared by ADB;

(dd) "Safeguards Monitoring Report" means each report prepared and submitted by the Borrower to ADB that describes progress with implementation of and compliance with the EMP and the RP (as applicable), including any corrective and preventive actions;

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

(ff) "Works" means construction or civil works to be financed out of the proceeds of the Loan, 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 Loan

Section 2.01. ADB agrees to lend to the Borrower from ADB's Special Funds resources an amount in various currencies equivalent to ten million nine hundred seventy-three thousand Special Drawing Rights (SDR10,973,000).

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

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

Section 2.03. The interest charge and any other charge on the Loan shall be payable semiannually on 1 June and 1 December in each year.

Section 2.04. The Borrower shall repay the principal amount of the Loan withdrawn from the Loan Account in accordance with the amortization schedule set forth in Schedule 2 to this Loan Agreement.

Section 2.05. The currency of repayment of the principal amount of the Loan and the currency of payment of the interest charge for the purposes of Sections 4.03(a) and 4.04 of the Loan Regulations shall be the Dollar.

## ARTICLE III

### Use of Proceeds of the Loan

Section 3.01. The Borrower shall cause the proceeds of the Loan to be applied to the financing of expenditures on the Project in accordance with the provisions of this Loan Agreement.

Section 3.02. The proceeds of the Loan shall be allocated and withdrawn in accordance with the provisions of Schedule 3 to this Loan Agreement, as such Schedule may be amended from time to time by agreement between the Borrower and ADB.

Section 3.03. Except as ADB may otherwise agree, the Borrower shall procure, or cause to be procured, the items of expenditure to be financed out of the proceeds of the Loan in accordance with the provisions of Schedule 4 to this Loan Agreement.

Section 3.04. Except as ADB may otherwise agree, the Borrower shall cause all items of expenditure financed out of the proceeds of the Loan to be used exclusively in the carrying out of the Project.

Section 3.05. The Loan Closing Date for the purposes of Section 8.02 of the Loan Regulations shall be 30 June 2020 or such other date as may from time to time be agreed between the Borrower and ADB.

## ARTICLE IV

### Particular Covenants

Section 4.01. In the carrying out of the Project and operation of the Project facilities, the Borrower shall perform, or cause to be performed, all obligations set forth in Schedule 5 to this Loan Agreement.

Section 4.02. (a) The Borrower shall (i) maintain separate accounts and records for the Project; (ii) prepare annual financial statements for the Project in accordance with financial reporting standards 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 auditing standards acceptable to ADB; (iv) as part of each such audit, have the auditors prepare a report, which includes the auditors' opinion(s) on the financial statements and the use of the Loan proceeds, 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, 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) 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.

(c) In addition to annual audited financial statements referred to in subsection (a) hereinabove, the Borrower shall (i) provide its annual financial statements prepared in accordance with 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 auditing

standards acceptable to ADB; (iii) as part of each such audit, have the auditors prepare the auditors' opinion(s) on the financial statements; and (iv) furnish to ADB, no later than 1 month after approval by the relevant authority, copies of such audited financial statements and auditors' opinion(s), 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.

(d) The Borrower shall enable ADB, upon ADB's request, to discuss the financial statements for the Project and the Borrower and the Borrower's financial affairs where they relate to the Project with the auditors appointed pursuant to subsections (a)(iii) and (c) 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 Borrower, unless the Borrower shall otherwise agree.

Section 4.03. The Borrower shall enable ADB's representatives to inspect the Project, the Goods and Works, and any relevant records and documents.

Section 4.04. (a) The Borrower shall, promptly as required, take all action within its powers 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) The Borrower shall at all times conduct its business in accordance with sound technical, financial, business and development practices, and under the supervision of competent and experienced management and personnel.

(c) The Borrower shall at all times operate and maintain its plants, equipment and other property, and from time to time, promptly as needed, make all necessary repairs and renewals thereof, all in accordance with sound applicable technical, financial, business, development, operational and maintenance practices.

Section 4.05. Except as ADB may otherwise agree, the Borrower 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 the ability of the Borrower to perform satisfactorily any of its obligations under this Loan Agreement.

## ARTICLE V

### Effectiveness

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

- (a) the execution and delivery of the Project Facilitation Letter on behalf of the Guarantor shall have been duly authorized or ratified by all necessary governmental action; and

- (b) the execution and delivery of the Grant Agreement on behalf of the Borrower shall have been duly authorized or ratified by all necessary action.

Section 5.02. The following is specified as an additional matter, for the purposes of Section 9.02(d) of the Loan Regulations, to be included in the opinion or opinions to be furnished to ADB: the Project Facilitation Letter has been duly authorized or ratified by, and executed and delivered on behalf of, the Guarantor, and is legally binding upon it in accordance with its terms, subject only to the effectiveness of this Loan Agreement.

Section 5.03. A date 90 days after the date of this Loan Agreement is specified for the effectiveness of this Loan Agreement for the purposes of Section 9.04 of the Loan Regulations.

## ARTICLE VI

### Miscellaneous

Section 6.01. The Vice-Chancellor and President of the Borrower is designated as representative of the Borrower for the purposes of Section 11.02 of the Loan Regulations.

Section 6.02. The following addresses are specified for the purposes of Section 11.01 of the Loan Regulations:

#### For the Borrower

University of the South Pacific  
Laucala Campus, Private Mail Bag  
Suva, Fiji

Facsimile Numbers:

+679 323 1521  
+679 323 1520

#### For ADB

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



Facsimile Numbers:

(632) 636-2444  
(632) 636-2446.

IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Loan Agreement to be signed in their respective names as of the day and year first above written and to be delivered at the principal office of ADB.

UNIVERSITY OF THE SOUTH PACIFIC

By *Rajesh Chandra*  
RAJESH CHANDRA  
Vice-Chancellor and President

ASIAN DEVELOPMENT BANK

By *Robert Jauncey*  
ROBERT JAUNCEY  
Regional Director  
South Pacific Subregional Office

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

1. The objective of the Investment Program is to support the Borrower in expanding access to higher education in 12 Pacific island countries with improved quality of learning environments and programs.
2. As part of the Investment Program, the Project aims to enable the Borrower to provide expanded and equitable access to higher quality education in the Solomon Islands, especially for women and students from rural/remote areas.
3. The Project shall consist of: (a) strengthening the Borrower's regional campus in the Solomon Islands; (b) enhancing information and communication technology-based education in the Solomon Islands; (c) improving student services; and (d) strengthening the Borrower's governance and management.
4. The Project is expected to be completed by 31 December 2019.
5. Consulting Services shall be provided to support the above activities.

**SCHEDULE 2**

**Amortization Schedule**

**(Higher Education in the Pacific Investment Program – Project 2)**

<u>Date Payment Due</u>	<u>Payment of Principal</u> (expressed in Special Drawing Rights)*
1 December 2024	228,604
1 June 2025	228,604
1 December 2025	228,604
1 June 2026	228,604
1 December 2026	228,604
1 June 2027	228,604
1 December 2027	228,604
1 June 2028	228,604
1 December 2028	228,604
1 June 2029	228,604
1 December 2029	228,604
1 June 2030	228,604
1 December 2030	228,604
1 June 2031	228,604
1 December 2031	228,604
1 June 2032	228,604
1 December 2032	228,604
1 June 2033	228,604
1 December 2033	228,604
1 June 2034	228,604
1 December 2034	228,604
1 June 2035	228,604
1 December 2035	228,604
1 June 2036	228,604
1 December 2036	228,604
1 June 2037	228,604
1 December 2037	228,604
1 June 2038	228,604
1 December 2038	228,604
1 June 2039	228,604
1 December 2039	228,604
1 June 2040	228,604
1 December 2040	228,604
1 June 2041	228,604
1 December 2041	228,604
1 June 2042	228,604
1 December 2042	228,604
1 June 2043	228,604
1 December 2043	228,604
1 June 2044	228,604
1 December 2044	228,604

<u>Date Payment Due</u>	<u>Payment of Principal</u> (expressed in Special Drawing Rights)
1 June 2045	228,604
1 December 2045	228,604
1 June 2046	228,604
1 December 2046	228,604
1 June 2047	228,604
1 December 2047	228,604
1 June 2048	<u>228,612</u>
<b>TOTAL</b>	<b>10,973,000</b>

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

**SCHEDULE 3****Allocation and Withdrawal of Loan 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 Loan and the allocation of the Loan 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 Loan Account

2. Except as ADB may otherwise agree, the proceeds of the Loan shall be disbursed on the basis of the withdrawal percentage for each item of expenditure set forth in the Table.

Interest Charge

3. The amount allocated to Category 4 is for financing the interest charge on the Loan during the implementation period of the Project.

Reallocation

4. Notwithstanding the allocation of Loan proceeds and the withdrawal percentages set forth in the Table,

- (a) if the amount of the Loan allocated to any Category appears to be insufficient to finance all agreed expenditures in that Category, ADB may, by notice to the Borrower, (i) reallocate to such Category, to the extent required to meet the estimated shortfall, amounts of the Loan 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 Loan allocated to any Category appears to exceed all agreed expenditures in that Category, ADB may, by notice to the Borrower, reallocate such excess amount to any other Category.

Disbursement Procedures

5. Except as ADB may otherwise agree, the Loan proceeds shall be disbursed in accordance with the Loan Disbursement Handbook.

Retroactive Financing

6. Withdrawals from the Loan Account may be made to finance eligible expenditures incurred under the Project before the Effective Date, but not earlier than 12 months before the date of this Loan Agreement in connection with Consulting Services, subject to a maximum amount equivalent to 20% of the Loan amount.

TABLE

ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (Higher Education in the Pacific Investment Program – Project 2)			
Number	Item	Total Amount Allocated for ADB Financing (SDR) Category	Basis for Withdrawal from the Loan Account
1	Civil Works	8,177,000	91% of total expenditure claimed
2	Consulting Services	1,061,000	89% of total expenditure claimed
3	Equipment and Project Administration Costs	730,000	100% of total expenditure claimed
4	Interest Charge	95,000	100% of amounts due
5	Unallocated	910,000	
	<b>TOTAL</b>	<b>10,973,000</b>	

**SCHEDULE 4****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. Except as ADB may otherwise agree, Goods and 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 Borrower may only modify the procurement methods and the selection methods or threshold values with the prior agreement of ADB, and modifications must be set out in updates to the Procurement Plan.

Eligible Sources of Procurement of Goods, Works and Consulting Services

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

4. All terms used in this Schedule and not otherwise defined in this Loan Agreement have the meanings provided in the Procurement Guidelines and/or the Consulting Guidelines, as applicable.

Goods and Works

5. Goods and Works shall be procured on the basis of the procurement methods set forth below:

- (a) International Competitive Bidding; and
- (b) Shopping.

Conditions for Award of Contract

6. The Borrower shall not award any Works contract which involves environmental impacts until:

- (a) all applicable environmental clearances have been obtained, and, if necessary under local law, the final approval of the IEE from the Guarantor's environmental authorities has been granted; and
- (b) the Borrower has incorporated the relevant provisions from the EMP into the Works contract.

7. The Borrower shall not award any Works contract which involves involuntary resettlement impacts until the Borrower has prepared and submitted to ADB the final RP based on the Project's detailed design and obtained ADB's clearance of such RP.



Consulting Services

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

Industrial or Intellectual Property Rights

9. (a) The Borrower shall ensure that all Goods and 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 Borrower shall ensure that all contracts for the procurement of Goods and 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 Borrower 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 Borrower and ADB and set forth in the Procurement Plan.

## SCHEDULE 5

### Execution of Project

#### Implementation Arrangements

1. The Borrower 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 Borrower and ADB. In the event of any discrepancy between the PAM and this Loan Agreement, the provisions of this Loan Agreement shall prevail.

2. The Borrower shall ensure that the PIU has been established within the DMCD and is operating in a manner satisfactory to ADB, including that the director thereof has been appointed, the PIU team leader has been engaged and commenced work, and existing staff of the Borrower with part time duties in the PIU shall have been designated therefor in accordance with the details set out in Section III of the PAM. The PIU shall carry out day-to-day implementation of the Project, as further detailed in the PAM.

3. The PSC shall be established within 30 days after the Effective Date, as further detailed in the PAM.

#### Organization and Structure of Borrower

4. The Borrower shall maintain its existence as a regional cross-border entity and shall not change any provision of its organizational documents, including the Charter in any manner that would (a) be inconsistent with its status as a regional international organization or (b) result in the Borrower ceasing to provide educational services to students throughout the Pacific region.

5. The Borrower shall ensure that ADB (a) is granted observer status on the Council, (b) maintains its observer status on the Council until the Loan Closing Date, and (c) receives copies of all proposed amendments to the Charter or other constitutive documents at the same time as other members of the Council receive such proposals.

6. The Borrower shall not sell, transfer, lease or otherwise dispose of all or a substantial part of its assets (whether in a single transaction or in a series of transactions, related or otherwise), or undertake or permit any merger, consolidation or reorganisation.

#### Counterpart Obligations; Project Facilitation Letter

7. The Borrower shall ensure that the Guarantor provides, in a timely manner, all necessary counterpart funds and in-kind contributions to compensate for taxes and duties in the approximate amount of \$510,000 or the equivalent, and land contribution in the approximate amount of \$340,000 or the equivalent, relating to the conduct of the Project in its territory, constituting an aggregate \$850,000 or its equivalent. The Borrower shall ensure that the Guarantor shall deliver to ADB through the Project Facilitation Letter its undertakings (a) in relation to contributions toward taxes and duties; (b) its support for the conduct of the Project in its territory, confirming the availability of any required land, permits, licenses, and

rights-of-way therefor; and (c) to ensure the application of and compliance with the SPS in its territory in connection with the Project.

#### Selection Criteria

8. The following criteria shall apply to the Project:
- (a) The Project shall contribute to the regional higher education sector outputs as set out in Schedule 1 of the FFA, and specifically to the Outputs.
  - (b) The Outputs shall be reflected in the Borrower's annual budgets or work plans.
  - (c) The Guarantor shall have provided the Guarantee.
  - (d) The Guarantor shall have provided to ADB the Project Facilitation Letter to confirm its no-objection, contribution towards taxes and duties, support for safeguards compliance, provision of land use rights, and related matters.
  - (e) The Council shall have endorsed the Project.
  - (f) The Project does not involve land acquisition or involuntary resettlement impacts: all civil works under the Project shall be undertaken on land being used by the Borrower or on land provided by the government of the Guarantor, free of any claims or encumbrances.
  - (g) All Works and equipment installations under the Project shall not involve adverse or negative environmental impacts, and shall comply with relevant national regulations and ADB's safeguard policies, as presented in Schedule 5 to the FFA and in this Schedule 5 to the Loan Agreement.

#### Environment

9. The Borrower shall ensure that the preparation, design, construction, implementation, operation and decommissioning of the Project and all Project facilities comply with (a) all applicable laws and regulations of the Guarantor 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.

#### Land Acquisition and Involuntary Resettlement

10. The Borrower shall not require the affected government employees and their families residing at King George VI School grounds to relocate until alternative accommodation has been secured and made available for them.

11. The Borrower shall ensure that all land and all rights-of-way required for the Project are made available to the Works contractor in accordance with the schedule agreed under the related Works contract and all land acquisition and resettlement activities are implemented in compliance with (a) all applicable laws and regulations of the Guarantor relating to land acquisition and involuntary resettlement; (b) the Involuntary Resettlement Safeguards; and (c) all measures and requirements set forth in the RP, and any corrective or preventative actions set forth in the Safeguards Monitoring Report.

12. Without limiting the application of the Involuntary Resettlement Safeguards or the RP, the Borrower shall ensure that no physical or economic displacement takes place in connection with the Project until:

- (a) compensation and other entitlements have been provided to affected people in accordance with the RP; and
- (b) a comprehensive income and livelihood restoration program has been established in accordance with the RP.

#### Indigenous Peoples

13. The Borrower shall ensure that the Project has no adverse impacts on indigenous peoples within the meaning of the SPS. If any impact is anticipated, the Borrower shall take all steps required to ensure that the Project complies with the applicable laws and regulations of the Guarantor and the Indigenous Peoples Safeguards.

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

14. The Borrower shall make available necessary budgetary and human resources to fully implement the EMP and the RP.

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

15. The Borrower shall 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, and the final RP (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;
- (c) provide the Borrower 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

16. The Borrower shall 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, and the RP, 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, and the RP promptly after becoming aware of the breach.

#### Prohibited List of Investments

17. The Borrower shall ensure that no proceeds of the Loan 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

18. The Borrower shall ensure that the core labor standards and the Guarantor's applicable laws and regulations are complied with during Project implementation. The Borrower 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 Guarantor'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; (e) allow freedom of association and effectively recognize the right to collective bargaining; and (f) disseminate, or engage appropriate service providers to disseminate, information on the risks of sexually transmitted infections, including HIV, to the employees of contractors engaged under the Project and to members of the local communities surrounding the Project area, particularly women. The Borrower shall strictly monitor compliance with the requirements set forth above and provide ADB with regular reports.

Gender and Development

19. The Borrower shall ensure that (a) the GAP is implemented in accordance with its terms; (b) the bidding documents and contracts include relevant provisions for contractors to comply with the measures set forth in the GAP; (c) adequate resources are allocated for implementation of the GAP; and (d) progress on implementation of the GAP, including progress toward achieving key gender outcome and output targets, are regularly monitored and reported to ADB. In particular, the Borrower shall ensure that by 31 December 2020 (i) at least 12% of all female students registered in USP Solomon Islands campus are enrolled in degree programs, and (ii) at least 50% of USP Solomon Islands campus enrollees in distance learning programs are female.

Governance and Anticorruption

20. The Borrower 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.

21. The Borrower 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.

Construction Quality

22. The Borrower shall ensure that the Project is carried out in accordance with applicable standards and international best practice for design, technical specifications, construction supervision, quality control and project management.

Debt to Net Revenues

23. Except as ADB shall otherwise agree, the Borrower shall not incur any debt unless a reasonable forecast of the revenues and expenditures of the Borrower shows that the estimated net revenues of the Borrower for each fiscal year during the term of the debt to be incurred shall be at least three times the estimated debt service requirements of the Borrower in such year on all debt of the Borrower including the debt to be incurred. The Borrower confirms that no event has occurred since the date of the most recent forecast provided to ADB which has, or may reasonably be expected in the future to have, a material adverse effect on the financial condition of future operating results of the Borrower.

24. For the purposes of this covenant:

- (a) The term "debt" means any indebtedness of the Borrower maturing by its terms more than one year after the date on which it is originally incurred.

- (b) Debt shall be deemed to be incurred: (a) under a loan contract or agreement or other instrument providing for such debt or for the modification of its terms of payment on the date of such contract, agreement or instrument; and (b) under a guarantee agreement, on the date the agreement providing for such guarantee has been entered into.
- (c) The term "net revenues" means the difference between:
  - (i) the sum of revenues from all sources related to operations and net non-operating income, after making adequate provisions for uncollectible debts; and
  - (ii) the sum of all expenses related to operations including administration, adequate maintenance, taxes and payments in lieu of taxes, but excluding provision for depreciation, other non-cash operating charges and interest and other charges on debt. Lease payments under finance leases must also be included.
- (d) The term "net non-operating income" means the difference between:
  - (i) Revenues from all sources other than those related to operations; and
  - (ii) Expenses, including taxes and payments in lieu of taxes, incurred in the generation of revenues in (iv)(a) above.
- (e) The term "debt service requirements" means the aggregate amount of repayments (including sinking fund payments, if any) of, and interest and other charges on debt.
- (f) The term "reasonable forecast" means a forecast prepared by the Borrower not earlier than nine months prior to the incurrence of the debt in question, which both ADB and the Borrower accept as reasonable and as to which ADB has notified the Borrower of its acceptability.
- (g) Whenever for the purposes of this covenant it shall be necessary to value, in terms of the currency of the Borrower or Guarantor, debt payable in another currency, such valuation shall be made on the basis of the prevailing lawful rate of exchange at which such other currency is at the time of such valuation obtainable for the purposes of servicing such debt, or, in the absence of such rate, on the basis of a rate of exchange acceptable to ADB.

#### Operating Ratio

25. Except as ADB shall otherwise agree, the Borrower shall maintain, for each of its fiscal years starting after the Effectiveness Date, a ratio of total operating expenses to

total operating revenue not higher than 100%. Before 30 November in each of its fiscal years, the Borrower shall, on the basis of forecasts prepared by the Borrower and satisfactory to ADB, review whether it would meet the requirements set forth above in respect of such year and the next two following fiscal years, and shall furnish to ADB the results of such review upon its completion. If any such review shows that the Borrower would not meet the requirements set forth above for the Borrower's fiscal years covered by such review, the Borrower shall promptly take all necessary measures (including without limitation, adjustments of the structure or levels of its fees) in order to meet such requirements.

26. For the purposes of this ratio:

- (a) The term "total operating expenses" means all expenses related to operations, including administration, adequate maintenance, taxes and payments in lieu of taxes, and provision for depreciation on a straight line basis at the rates per annum set out in subparagraph (b) below of the current gross value of the Borrower's fixed assets in operation, or other basis acceptable to ADB, but excluding interest and other charges on debt.
- (b) The rates of depreciation to be applied under this paragraph shall be rates in compliance with IFRS and as of the date of this Agreement shall be:
  - Property (land and buildings) – 2%
  - Equipment and furniture – 10%
  - Computers and computer related equipment – 20%
  - Vehicles and vessels – 20%
- (c) The term "total operating revenues" means revenues from all sources related to operations, after making adequate provisions for uncollectible debts.
- (d) The current gross value of the Borrower's fixed assets in operation shall be calculated as valued from time to time in accordance with sound and consistently maintained methods of valuation satisfactory to ADB.

#### Project Performance Monitoring and Evaluation; Project Review

27. The PIU shall develop and establish a project performance management system, in form and substance satisfactory to ADB. The PIU shall establish, in form and substance satisfactory to ADB, baseline data for performance indicators and targets indicated in the design and monitoring framework and the GAP to be used for monitoring implementation of the Project. Baseline data for outputs, outcome, GAP, and other key indicators shall be updated regularly and reported in the PIU's quarterly progress reports, which are described in detail in the PAM. All the indicators shall be disaggregated by sex, to the extent possible. The PIU shall conduct annual evaluation surveys in accordance with the PPMS to evaluate the scope, implementation arrangements, progress, and achievement of the outcomes and outputs. Further details of performance monitoring and evaluation are described in the PAM.



28. The Borrower shall submit to ADB a project completion report within 6 months of physical completion of the Project. The report shall include a detailed evaluation of the Project, covering the design, costs, contractors' performance, social and economic impact, economic rate of return, implementation of social and environmental safeguard measures and other details relating to Project, as may be requested by ADB.

29. Project reviews shall be undertaken every 6 months, jointly by ADB staff and the Borrower's representatives. The Borrower and ADB shall jointly undertake a comprehensive midterm review in the second year of Project implementation to (i) identify potential problems with project scope, implementation arrangements, and schedules of project activities; and (ii) allow for any necessary midcourse corrections to ensure successful implementation and the achievement of the project objectives.

30. The Borrower shall provide ADB with (i) within 45 days from the close of each quarter, quarterly progress reports, which shall include a summary financial account for the Project, expenditures to date, report on performance monitoring (including status of outcome and outputs), results of monitoring of social and environmental impacts, information on progress of Works, Consulting Services, disbursements, status of loan covenants, issues encountered (including any changes to the implementation schedule and remedial actions undertaken, anticipated problems and the proposed remedial measures, and work to be undertaken in the following period); (ii) consolidated annual reports including progress achieved by outputs as measured through key performance indicators; and (iii) a project completion report within 6 months of physical completion of the Project, including a detailed evaluation of design, costs, contractors' and consultants' performance, social and economic impact, and other details relating to the Project as may be requested by ADB.

31. ADB, the Borrower and the Guarantor shall meet regularly as required to discuss the progress of the Project and any changes to implementation arrangements or remedial measures required to be undertaken towards achieving the outcome of the Project.

#### Project Website

32. No later than 2 months after the Effective Date, the Borrower shall ensure that the PIU has established a website for Project information, on which the Borrower shall announce the Project and business opportunities associated with the Project. In addition, the Borrower shall ensure that the Project Website shall disclose, at a minimum, the following information in relation to Goods and Consulting Services: (a) the list of participating bidders, (b) the name of the winning bidder, (c) the amount of the contracts awarded, and (d) the Goods and Consulting Services procured.