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LOAN NUMBER 2368- SAM (SF)

GRANT NUMBER 0087-SAM (SF)

PROJECT AGREEMENT  
(Power Sector Expansion Project)

between

ASIAN DEVELOPMENT BANK

and

ELECTRIC POWER CORPORATION

DATED 11 DECEMBER 2007

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PAG:SAM 38183

## **PROJECT AGREEMENT**

PROJECT AGREEMENT dated 11 December 2007 between ASIAN DEVELOPMENT BANK (“ADB”) and ELECTRIC POWER CORPORATION (the “EPC”).

### **WHEREAS**

(A) by a Financing Agreement of even date herewith between INDEPENDENT STATE OF SAMOA (the “Beneficiary”) and ADB, ADB has agreed to make to the Beneficiary a loan in various currencies equivalent to seventeen million one hundred fifty-one thousand Special Drawing Rights (SDR 17,151,000) and a grant of fifteen million three hundred and ninety thousand dollars (\$15,390,000) on the terms and conditions set forth in the Financing Agreement, but only on condition in each case that the proceeds of the Loan and the Grant, and the JBIC Loan and the Government of Australia Grant, respectively, be made available to the EPC and that the EPC agrees to undertake certain obligations towards ADB as set forth in this Project Agreement; and

(B) the EPC, in consideration of ADB entering into the Financing Agreement with the Beneficiary, has agreed to undertake the obligations set forth in this Project Agreement;

NOW THEREFORE the parties agree as follows:

## **ARTICLE I**

### **Definitions**

Section 1.01. Wherever used in this Project Agreement, unless the context otherwise requires, the terms defined in the Financing Agreement, the Loan Regulations (as so defined) and the Grant Regulations (as so defined) have the respective meanings therein set forth.

## **ARTICLE II**

### **Particular Covenants**

Section 2.01. (a) The EPC shall carry out the Project with due diligence and efficiency, and in conformity with sound administrative, financial, engineering, environmental and public utilities practices.

(b) In the carrying out of the Project and operation of the Project facilities, the EPC shall perform all obligations set forth in the Financing Agreement to the extent that they are applicable to the EPC.

Section 2.02. The EPC shall make available, promptly as needed, the funds, facilities, services, equipment, and other resources which are required, in addition to the proceeds of the Loan and the Grant, and the JBIC Loan and the Government of Australia Grant, for the carrying out of the Project.

Section 2.03. (a) In the carrying out of the Project, the EPC shall employ competent and qualified consultants and contractors, acceptable to ADB, to an extent and upon terms and conditions satisfactory to ADB.

(b) Except as ADB may otherwise agree, all goods and services and other items of expenditures to be financed out of the proceeds of the Loan and the Grant, and the JBIC Loan and the Government of Australia Grant, shall be procured in accordance with the provisions of Schedule 4 to the Financing Agreement. ADB may refuse to finance a contract where goods and services and other items of expenditures have not been procured under procedures substantially in accordance with those agreed between the Beneficiary and ADB or where the terms and conditions of the contract are not satisfactory to ADB.

Section 2.04. The EPC shall carry out the Project in accordance with plans, design standards, specifications, work schedules and construction methods acceptable to ADB. The EPC shall furnish, or cause to be furnished, to ADB, promptly after their preparation, such plans, design standards, specifications and work schedules, and any material modifications subsequently made therein, in such detail as ADB shall reasonably request.

Section 2.05. (a) The EPC shall take out and maintain with responsible insurers, or make other arrangements satisfactory to ADB for, insurance of the Project facilities to such extent and against such risks and in such amounts as shall be consistent with sound practice.

(b) Without limiting the generality of the foregoing, the EPC undertakes to insure, or cause to be insured, the goods to be imported for the Project and to be financed out of the proceeds of the Loan or the Grant against hazards incident to the acquisition, transportation and delivery thereof 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.

Section 2.06. The EPC shall maintain, or cause to be maintained, records and accounts adequate to identify the goods and services and other items of expenditures financed out of the proceeds of the Loan and the Grant, to disclose the use thereof in the Project, to record the progress of the Project and to reflect, in accordance with consistently maintained sound accounting principles, its operations and financial condition.

Section 2.07. (a) ADB and the EPC shall cooperate fully to ensure that the purposes of the Loan and the Grant, and the JBIC Loan and the Government of Australia Grant, will be accomplished.

(b) The EPC shall promptly inform 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, the Financing Agreement or the Subsidiary Financing Agreement, or the accomplishment of the purposes of the Loan and the Grant, or the JBIC Loan and the Government of Australia Grant.

(c) ADB and the EPC 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, the EPC and the Loan and the Grant, the JBIC Loan and the Government of Australia Grant.

Section 2.08. (a) The EPC shall furnish to ADB all such reports and information as ADB shall reasonably request concerning: (i) the Loan and the Grant, and the JBIC Loan and the Government of Australia Grant, and the expenditure of the proceeds thereof; (ii) the goods and services and other items of expenditures financed out of such proceeds; (iii) the Project; (iv) the administration, operations and financial condition of the EPC; and (v) any other matters relating to the purposes of the Loan and the Grant, and the JBIC Loan and the Government of Australia Grant.

(b) Without limiting the generality of the foregoing, the EPC shall furnish to ADB quarterly reports on the implementation of the Project and on the operation and management of the Project facilities, as set forth in the Financing Agreement.

(c) Promptly after physical completion of the Project, but in any event not later than three (3) months thereafter or such later date as ADB may agree for this purpose, the EPC shall prepare and furnish to ADB a report, in such form and in such detail as ADB shall reasonably request, on the execution and initial operation of the Project, including its cost, the performance by the EPC of its obligations under this Project Agreement and the accomplishment of the purposes of the Loan and the Grant, and the JBIC Loan and the Government of Australia Grant.

Section 2.09. (a) The EPC shall: (i) maintain separate accounts for the Project, including separate accounts for the Loan and the Grant, and the JBIC Loan and the Government of Australia Grant; (ii) have such accounts and related financial statements (balance sheet, statement of income and expenses, and related statements) audited annually, in accordance with appropriate auditing standards consistently applied, by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB; and (iii) furnish to ADB, promptly after their preparation but in any event not later than six (6) months after the close of the Fiscal Year to which they relate, certified copies of such audited accounts and financial statements and the report of the auditors relating thereto (including the auditors' opinion on the use of the Loan and the Grant proceeds and compliance with the financial covenants of the Financing Agreement. The EPC shall furnish to ADB such further information concerning such accounts and financial statements and the audit thereof as ADB shall from time to time reasonably request.

(b) The EPC shall enable ADB, upon ADB's request, to discuss the EPC's financial statements and its financial affairs from time to time with the auditors appointed by the EPC pursuant to Section 2.09(a) hereabove, and shall authorize and require any representative of such auditors to participate in any such discussions requested by ADB, provided that any such discussion shall be conducted only in the presence of an authorized officer of the EPC unless the EPC shall otherwise agree.

Section 2.10. The EPC shall enable ADB's representatives to inspect the Project, the goods financed out of the proceeds of the Loan or the Grant, and the JBIC Loan and the Government of Australia Grant, and any relevant records and documents.

Section 2.11. (a) The EPC 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) The EPC shall at all times conduct its business in accordance with sound administrative, financial, environmental and public utilities practices, and under the supervision of competent and experienced management and personnel.

(c) The EPC 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 administrative, financial, engineering, environmental, public utilities, and maintenance and operational practices.

Section 2.12. Except as ADB may otherwise agree, the EPC 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 2.13. Except as ADB may otherwise agree, the EPC shall apply the proceeds of the Loan and the Grant, and the JBIC Loan and the Government of Australia Grant, to the financing of expenditures on the Project in accordance with the provisions of the Financing Agreement and this Project Agreement, and shall ensure that all goods and services and other items of expenditures financed out of such proceeds are used exclusively in the carrying out of the Project.

Section 2.14. Except as ADB may otherwise agree, the EPC shall duly perform all its obligations 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.

### **ARTICLE III**

#### **Effective Date; Termination**

Section 3.01. This Project Agreement shall come into force and effect on the date on which the Financing Agreement shall come into force and effect. ADB shall promptly notify the EPC of such date.

Section 3.02. This Project Agreement and all obligations of the parties hereunder shall terminate on the date on which the Financing Agreement shall terminate in accordance with its terms.

Section 3.03. All the provisions of this Project Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the Financing Agreement.

**ARTICLE IV****Miscellaneous**

Section 4.01. 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 or by mail, telegram, cable, telex, facsimile or radiogram 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  
P.O. Box 789  
0980 Manila, Philippines

Cable Address:

ASIANBANK  
MANILA

Telex Numbers:

29066 ADB PH (RCA)  
42205 ADB PM (ITT)  
63587 ADB PN (ETPI)

Facsimile Numbers:

(632) 636-2444  
(632) 636-2445

For the EPC

Electric Power Corporation  
P.O. Box 879  
Apia, Samoa

Facsimile Numbers:

(685) 23748  
(685) 24779


Section 4.02. (a) Any action required or permitted to be taken, and any documents required or permitted to be executed, under this Project Agreement or under Section 7.01 of the Financing Agreement by or on behalf of the EPC may be taken or executed by its General Manager or by such other person or persons as he shall so designate in writing notified to ADB.

(b) The EPC shall furnish to ADB sufficient evidence of the authority of each person who will act under paragraph (a) of this Section, together with the authenticated specimen signature of each such person.

Section 4.03. 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 and to be delivered at the principal office of ADB, as of the day and year first above written.

ASIAN DEVELOPMENT BANK

By  \_\_\_\_\_  
LIQUN JIN  
Vice President (Operations 1)

ELECTRIC POWER CORPORATION

By  \_\_\_\_\_  
CEPPIE KURNIADI SUMADILAGA  
Authorized Representative

## SCHEDULE

### Implementation of Project and Operation of Project Facilities; Financial Matters

#### Project Implementation Arrangements

1. The EPC shall, as the Project Implementing Agency, establish:

(a) the PMC to provide coordination between the Project and non-Project activities within the EPC. The General Manager of EPC shall chair the PMC. Other PMC members are the managers of each of the departments of the EPC and the project manager for the Project. The PMC shall be convened on a weekly basis, commencing the Effective Date, until 31 December 2009 and thereafter on a bimonthly basis until completion of the Project;

(b) the PMU for the day-to-day management and implementation of the Project. The PMU shall be responsible for project planning, monitoring and reporting, and cost and quality control, including: (i) project management and administration; (ii) planning and implementing cost-effective and sustainable infrastructure investments to meet consumer demand; (iii) maintaining Project accounts; (iv) overseeing procurement procedures to ensure compliance with the Beneficiary's and ADB's policies and procedures; (v) liaising with ADB for quarterly Project updates and other reporting; and (vi) preparing the Project completion report of the Beneficiary; and

(c) the ESU in the PMU to be responsible for all environmental and social matters relating to the Project. This includes preparation of the IEE, the PEAR, the EIA, the EMMP, the EARF and the LARP, in each case, as required for any Subproject. The ESU shall be staffed with an environment officer and a land acquisition and resettlement officer, in each case, with qualifications and experience acceptable to ADB.

2. The EPC shall ensure that the PMU is adequately staffed and resourced throughout the Project implementation period for the timely and effective implementation of the Project, including the appointment of a project manager for the PMU for the duration of the Project.

#### Subproject Selection

3. (a) The EPC shall ensure that all candidate Subprojects are selected and approved in accordance with the eligibility criteria and procedures agreed between the Beneficiary and ADB and as set out as follows:

(i) the Subproject contributes to the objectives of the power sector development plan of the Government, is identified as a high priority project in EPC's annual business plan and is included in the EPC's investment plan;

(ii) the Subproject is technically feasible and meets the Government's technical standards and requirements;

(iii) the Subproject is justified as the most feasible Subproject to achieve the stated objectives and is shown to be least cost among feasible alternatives;

(iv) the LARP shall have been prepared for the Subproject in accordance with the LARF, if required, and EPC shall have submitted written confirmation to ADB that the landowner and/or lessee in the case of freehold and state-owned land, or in the case customary land, the matai, acting on behalf of Affected Persons under the Subproject, is agreeable to the land acquisition and resettlement plan terms and conditions;

(v) an environmental screening shall have been conducted for the Subproject and the IEE, the PEAR, and the EMMP shall have been prepared for the Subproject, in each case, in accordance with the provisions of the EARF. No category A projects shall be financed under the Project;

(vi) ADB determines that the EPC has the necessary staffing, implementation, and financial management capacity to implement the Subproject or, in the alternative, the EPC can provide specific assurances that assessed shortcomings can be rectified, such as by adding qualified staff or providing timely in-service training;

(vii) the Subproject's implementation timeframe is reasonable, and surveys and design can be prepared, reviewed, safeguard process and procedures followed, and implemented within the Project implementation period;

(viii) the financing plan clearly identifies confirmed sources of financing, including counterpart financing, and includes the provision of budgetary resources to meet counterpart funding requirements for capital expenditures during the construction phase, resettlement costs, as applicable, environmental management costs, loan repayment requirements and routine operations and maintenance costs;

(ix) the Subproject will not adversely impact on the EPC's ability to meet its financial covenants under the loan; and

(x) all required Governmental approvals shall have been obtained.

(b) The EPC shall ensure that the Subprojects selected in accordance with the criteria referred to above are approved and processed in accordance with the arrangements set out as follows:

(i) the PMU will identify candidate Subprojects meeting the criteria set forth in paragraph 4 above and will obtain approval from the EPC board to assess the feasibility of the candidate Subprojects and inform the PSC of the pending Subprojects feasibility study;

(ii) the PMU will then prepare a feasibility study for each candidate Subprojects. The candidate Subproject feasibility report will, among others, provide technical analysis and description, Subproject rationale, scope and components, cost estimates and financing plan, implementation arrangements, an environmental assessment, and a land acquisition and resettlement assessment. The feasibility report will also contain an update of the EPC's investment plan and an analysis of the candidate Subproject's impacts on the EPC's 5-year financial projections, key financial ratios, and compliance with this Financing Agreement;

(iii) each feasibility report will be submitted to ADB for review and approval and shall contain sufficient evidence of the candidate Subproject's eligibility under the agreed criteria and shall be prepared in accordance with the detail and quality required to enable ADB to assess the viability and sustainability of the candidate Subproject. The feasibility reports will include a

set of relevant benchmark and performance indicators for the Subproject which will be monitored through progress reports; and

(iv) after ADB has endorsed the feasibility study, the PMU will submit the feasibility study to the EPC board and the PSC for review and approval. Implementation of a candidate Subproject may only proceed following the endorsement of the candidate Subproject feasibility report by the PSC, the EPC board and ADB.

(c) The EPC shall ensure that all documentation relating to the Subprojects are kept for a minimum of five years from the date of the project completion report for each such Subproject and made available to ADB upon request.

#### Counterpart Financing

4. Without limiting the generality of Section 4.02 of this Financing Agreement, the EPC shall take all necessary measures to ensure that sufficient counterpart funds are made available for and provided to the Project in a timely manner to support effective Project implementation. In this regard, the EPC shall make adequate budgetary allocations for each Fiscal Year as required to: (a) implement the mitigation measures and monitoring requirements of each IEE and EMMP for the Project, in each case, in compliance with the EARF; and (b) implement each LARP for all Subprojects in compliance with the LARF, including providing requisite counterpart funds for land acquisition, resettlement and monitoring activities under any such LARP.

#### Regulatory Reform and Measures

5. The EPC shall ensure that pre-payment meters are installed on: (a) all new electricity connections by 30 June 2008; and (b) a minimum of 75% of all electricity connections by 31 December 2012. Where the Beneficiary has determined that pre-payment meters shall not be installed on certain Government agencies and Government-owned entities providing basic government services, the Beneficiary shall make a budgetary allocation in each Fiscal Year for the cost of providing power for these services and pay such cost directly to the EPC.

6. The EPC shall implement the Disconnection Policy, the Prepayment Policy and the Write-Off Policy in accordance with their terms.

#### Financial Ratios, Audits and Financial Projections

7. (a) The EPC shall produce: (i) for each of its fiscal years from Fiscal Year 2008 to Fiscal Year 2015, cash from internal sources equivalent to not less than 12% of the annual average of the EPC's capital expenditures incurred, or expected to be incurred, for that Fiscal Year, the previous Fiscal Year and the next following Fiscal Year; and (ii) for each Fiscal Year after Fiscal Year 2015, cash from internal sources equivalent to not less than 20% of the annual average of the EPC's capital expenditures incurred, or expected to be incurred, for that Fiscal Year, the previous Fiscal Year, and the next following Fiscal Year.

(b) Before 28 February in each of EPC's Fiscal Years, the EPC shall, on the basis of forecasts prepared by the EPC and satisfactory to ADB: (i) review whether it will meet the requirements set forth in subparagraph (a) above in respect of such Fiscal Year and the next following Fiscal Year; and (ii) provide ADB a copy of such review upon its completion.

(c) If any such review pursuant to subparagraph (b) above shows that the EPC would not meet the requirements set forth in subparagraph (a) for those EPC's Fiscal Years covered by such review, the EPC shall promptly take all necessary measures (including without limitation, adjustments of the structure or levels of the EPC's electricity tariffs and other charges) in order to meet such requirements.

(d) The EPC shall not incur any debt unless a reasonable forecast of the revenues and expenditures of the EPC shows that the estimated free cash flows of the EPC for each Fiscal Year during the term of the debt to be incurred shall be at least 1.3 times the estimated debt service requirements of the EPC in such Fiscal Year on all debts of the EPC, including the debt to be incurred, and no event has occurred since the date of the forecast that 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 EPC.

(e) For the purposes of this paragraph:

(i) the term "capital expenditures" means all expenditures incurred on account of fixed assets, including interest charged to construction financed under any contract, but excludes (i) interest charged to construction subject to cash settlement in the Fiscal Year in which such interest is charged; and (ii) capital expenditures funded entirely by the Government under a community service obligation;

(ii) the term "cash from internal sources" means the difference between: (A) the sum of cash flows from all sources related to operations, plus cash generated from consumer deposits and consumer advances of any kind, sale of assets, cash yield of interest on investments, payments received by the EPC from the Beneficiary for the refund of all or part of the EPC's Value Added Goods and Services Tax (VAGST) expense, and net non-operating income; and (B) the sum of all expenses related to operations, including administration, adequate maintenance, selling expense, and taxes and payments in lieu of taxes (excluding provision for depreciation and other non-cash operating charges), debt service requirements, all cash dividends paid and other cash distributions of surplus, and other cash outflows other than capital expenditures;

(iii) the term "community service obligation" means an obligation under Section 9 of the Public Bodies (Performance and Accountability) Act 2001 of the Beneficiary;

(iv) the term "debt" means any indebtedness of the EPC maturing by its terms more than one year after the date on which it is originally incurred, and debt shall be deemed to be incurred: (a) under a 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;

(v) 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, excluding interest charged to construction and financed from loans;

(vi) the term “free cash flows” means the difference between: (A) the sum of cash flows from all sources related to operations, plus cash generated from consumer deposits and consumer advances of any kind, sale of assets, cash yield of interest on investments, and net non-operating income; and (B) the sum of all expenses related to operations, including administration, adequate maintenance, selling expense, and taxes and payments in lieu of taxes (excluding provision for depreciation and other non-cash operating charges), but excluding interest and other charges on debt;

(vii) The term “net non-operating income” means the difference between: (A) revenues from all sources other than those related to operations after making adequate provisions for uncollectible debts, and excluding payments made to the EPC by the Beneficiary under its community service obligation for the acquisition of fixed assets; and (B) expenses, including taxes and payments in lieu of taxes, incurred in the generation of revenues in (A) above; and

(viii) the term “reasonable forecast” means a forecast prepared by the EPC not earlier than nine months prior to the incurrence of the debt in question, which ADB, the Beneficiary and the EPC accept as reasonable, and to which ADB has notified the Borrower of its acceptability.

8. The EPC shall maintain, from the Effective Date, accounts receivables equivalent to not more than two months’ equivalent of annual billing for power generation and supply and for all other services provided by EPC.

9. The EPC shall engage independent auditors acceptable ADB to audit its annual financial statements and annual Project accounts (the EPC shall maintain separate accounts for the Project), including assessing EPC’s compliance during the previous Fiscal Year with the financial covenants set forth in paragraph 7 above. The terms of reference for the independent auditors shall be provided to ADB for review [prior to their engagement]. Annual financial statements shall be prepared, and audits shall be conducted, based on international standards. Audited financial statements of EPC and audited Project accounts shall be submitted to ADB within six months of the end of a Fiscal Year. The annual financial statements of EPC shall be consolidated for all of EPC’s operations.

#### Land Acquisition and Resettlement

10. The EPC shall ensure that, prior to the commencement of any civil works for any Project facility: (a) all land acquisition, compensation, resettlement and rehabilitation activities, in each case, as specified in the relevant LARP have been completed; (b) the Subproject site is free and clear of all obstructions; and (c) ADB shall have issued its “no-objection” prior to the award of civil works contracts.

11. The EPC shall: (a) ensure that any land acquisition, compensation, relocation, resettlement and rehabilitation, as applicable, with respect to the Project is carried out in accordance with the LARP, the LARF, all applicable laws and regulations in Samoa (including the Taking of Land Act (1964)), and ADB’s *Policy on Involuntary Resettlement*; and (b) be responsible for the compensation of Affected People. In case of discrepancies between the applicable laws and regulations and ADB’s *Policy on Involuntary Resettlement*, ADB’s *Policy on Involuntary Resettlement* shall apply to the Subprojects financed by ADB, the Government of Australia and/or JBIC.

12. The EPC shall ensure that: (a) in the event there is any significant change in the design of any Subproject covered by a LARP or any substantial changes in resettlement impacts, the relevant LARP is: (i) updated based on a detailed measurement survey, (ii) disclosed to Affected People, and (iii) subsequently provided to ADB for its approval prior to commencement of related civil works; (b) there are requirements in the civil works contractors' contracts with the EPC for the contractors to comply with each LARP, as applicable; and (c) the ESU supervises and monitors closely civil works contractors to ensure compliance with the requirements of each LARP and their respective terms. Upon the completion of resettlement activities for any LARP, the EPC shall prepare and provide to ADB a resettlement completion report for each such Subproject covered by a LARP.

13. The EPC shall, through the ESU: (a) establish a register to record and monitor land acquired for the Project on both a temporary and permanent basis; and (b) keep complete records on consultations and grievances relating to land acquisition and resettlement. The EPC shall make the register and records available to ADB upon request.

### Environment

14. The EPC shall: (a) design, construct, operate, maintain and monitor the Project facilities in accordance with: (i) all applicable laws and regulations in Samoa (including the Planning and Urban Management Act (2004)), (ii) ADB's *Environment Policy* (2002); and (iii) the EARF and each EMMP; (b) minimize any adverse environmental impacts arising from the Project by implementing the mitigation measures prescribed in each IEE, PEAR and EIA, as applicable; and (c) ensure that the EMMP prepared for any Subproject is: (i) incorporated into the design of each Subproject, (ii) implemented in accordance with its terms during the construction, operation and maintenance of each Subproject, and (iii) updated at such time when the detailed engineering design becomes available. The EPC shall also make available to the public and other interested parties any IEE and/or LARP for a Subproject. In case of discrepancies between the applicable laws and regulations and ADB's *Environment Policy*, ADB's *Environment Policy* shall apply to the Subprojects financed by ADB, the Government of Australia and/or JBIC.

15. The EPC shall ensure that: (a) civil works contractors: (i) comply with all environmental impact mitigation requirements set out in each EMMP, and (ii) prepare, on a quarterly basis, mitigation progress and monitoring checklists showing the progress made on mitigation measures contained in the relevant EMMP; and (b) the ESU monitors closely civil works contractors to ensure compliance with the environmental impact mitigation requirements identified in the IEE and EMMP, as applicable.

16. The EPC shall ensure that, prior to the commencement of civil works for any Subproject facility: (a) the Planning and Urban Management Agency of the Ministry of Natural Resources and Environment shall have approved the application for development consent of the PEAR for any such Subproject facility; and (b) ADB shall have approved the IEE for any such Subproject facility.

### Employment, Gender and Health

17. The EPC shall advise the contractors to maximize their employment of local persons who meet the job requirements for the construction of the Project facilities. The contractors shall be required to give due consideration to the manner in which women in the

communities of the Project area can contribute to the construction, operation and maintenance of the Project facilities.

18. The EPC shall ensure that: (a) there is no differential payment between men and women for work of equal value; and (b) civil works contractors do not employ child labor in Project construction activities.

19. The EPC shall ensure that the civil works contracts include mandatory provisions on health, sanitation and appropriate working conditions, including provisions on health and safety and accommodation for construction workers at campsites during the construction period. This includes ensuring that: (a) the contractors disseminate information to its employees on the risks of socially and sexually transmitted diseases, including HIV/AIDS; and (b) the appropriate entities disseminate information and education to members of the local community, particularly women, living in the areas surrounding the Project facilities during Project implementation and operation of the Project facilities.

#### Anti-Corruption

20. The EPC shall comply with ADB's *Anticorruption Policy* (1998) and agrees: (a) that ADB reserves the right to investigate, directly or through its agents, any alleged corrupt, fraudulent, collusive or coercive practices relating to the Project; and (b) to cooperate fully with any such investigation and extend all necessary assistance, including providing access to all relevant information and records, for the satisfactory completion of any such investigation. The EPC shall also: (a) conduct periodic inspections on the contractors' activities relating to fund withdrawals and settlements; and (b) ensure that all contracts financed by ADB in connection with the Project include provisions specifying the right of ADB to audit and examine the records and accounts of all contractors, suppliers, consultants and other service providers of the Project.

#### Project Review; Monitoring and Reporting

21. Within one month of the later of: (a) the Effective Date; or (b) the fielding of Project implementation consultants, the Beneficiary, the EPC and ADB shall jointly undertake a Project inception mission for the purpose of identifying potential Project-related risks and determining compliance with environmental and social requirements for the Project.

22. Within six months of the Project inception mission and for the initial three years of the Project implementation period, the Beneficiary, the EPC and ADB shall jointly undertake a semi-annual review of the Project. Each semi-annual review shall assess the Project's achievements and progress in implementing the Project in order to identify any difficulties or constraints encountered in implementing the Project and to make adjustments, if necessary, for the remaining Project implementation period. Specifically, the semi-annual reviews shall: (a) evaluate the Project scope and costs, implementation arrangements, resettlement matters, and status of achieving scheduled targets; (b) identify additional Project-related risks; and (c) review progress in implementing the EMMP of core Subprojects and the EARF. The Beneficiary, the EPC and ADB shall also discuss the EPC's progress in achieving operational efficiencies as well as EPC's financial performance. Within four years of the Effective Date, the Beneficiary, EPC and ADB shall jointly undertake a mid-term review for reviewing the Project implementation progress.

23. Within six months of the Effective Date, the EPC shall establish a PPMS, acceptable to ADB. The PPMS shall include for the Project and as applicable for each Subproject indicators as set forth in the design and monitoring framework for the Project and other indicators as required for monitoring compliance with each of the EARF (including each EMMP), the LARF, and the operational efficiency, financial position and financial projections of the EPC. The EPC shall monitor the PPMS indicators on a quarterly basis to determine the efficiency and effectiveness of the Project and its impacts.

24. The EPC shall provide to ADB quarterly reports, which shall indicate, among other things, progress made and problems encountered during the quarter under review, steps taken or proposed to be taken to remedy these problems, and proposed program of activities and expected progress during the following quarter. The quarterly reports shall also provide: (a) on individual Subprojects, in form and substance satisfactory to ADB, a detailed description of: (i) the progress of the Subproject, (ii) any difficulties encountered and/or anticipated, together with proposed corrective actions, (iii) the progress in implementing the LARP, if applicable, and the EMMP for the core Subproject and the EARF, and (iv) a summary of financial accounts, including Subproject expenditures during the previous quarter, year to date, and total Subproject expenditures to date; (b) the key indicators set forth in the PPMS; (c) updates to the Procurement Plan, as appropriate; and (d) the amounts of the interest on the proceeds of the Grant to be transferred to the Clean Energy Fund (and of which the Clean Development Mechanism Sub-Fund is part of the Clean Energy Fund). Within three months of completing any Subproject, EPC shall submit to ADB a Subproject completion report, together with an assessment of the execution and operation of the Subproject, status of compliance with loan covenants and the results of project outcomes and performance.