

TECHNICAL ASSISTANCE FRAMEWORK AGREEMENT

between

GOVERNMENT OF NIUE

and

ASIAN DEVELOPMENT BANK

DATED 5 April 2019

TECHNICAL ASSISTANCE FRAMEWORK AGREEMENT

AGREEMENT dated 5 April 2019 between the GOVERNMENT OF NIUE (hereinafter called the Government) and the ASIAN DEVELOPMENT BANK (hereinafter called ADB).

WHEREAS

(A) the Government from time to time applies to ADB for technical assistance (hereinafter called Technical Assistance); and

(B) ADB and the Government wish to establish a framework of general terms and conditions upon which all such Technical Assistance will be provided by ADB;

NOW THEREFORE the parties hereto agree as follows:

ARTICLE I

Scope of the Agreement

Section 1.01. ADB shall provide Technical Assistance subject to Section 1.02 of this Agreement and to the General Terms and Conditions of Technical Assistance presented in the Schedule to this Agreement. Each Technical Assistance provided under this Agreement shall also be subject to the terms of a letter to be sent by ADB to the Government, including appropriate attachments (hereinafter called a TA Letter) by which ADB and the Government shall define the particulars of such Technical Assistance. Approval of the Government to the terms of the TA Letter shall be deemed given unless the Government presents an objection to ADB within a reasonable period specified in the TA Letter.

Section 1.02. Technical Assistance shall be provided by ADB under this Agreement only in response to requests submitted by the Government and approved by ADB. Such Technical Assistance shall be made available to the Government, or to such entity as the Government may designate.

ARTICLE II

Technical Assistance, Consultants

Section 2.01. (a) Each Technical Assistance to be provided by ADB shall be as described in the TA Letter concerned.

(b) The provision of Technical Assistance shall be subject to the general terms and conditions set forth in this Agreement and the Schedule to this Agreement and the particular terms of the TA Letter concerned.

(c) For the purposes of this Agreement, "Executing Agency" means the agency, if any, specified as such in this TA Letter concerned.

Section 2.02. (a) Technical Assistance shall be undertaken by consultants who shall, as far as practicable, include experts in the field specified in the TA Letter concerned.

(b) The term "Consultants" as used in this Agreement includes international and domestic consultants, as well as individual consultants or any consulting firm which provides any of the experts referred to in the TA Letter concerned.

Section 2.03. Consultants shall have the terms of reference set forth in the attachment to the TA Letter concerned. Such terms of reference may be amended by written agreement between the Government and ADB, or, by the Government, the Executing Agency and ADB, as the case may be.

Section 2.04. ADB may provide Technical Assistance under this Agreement consisting of any of the following, all of which shall be conducted, carried out or procured in a manner satisfactory to ADB and acceptable in international practice:

- (a) the services of experts referred to in Section 2.02 of this Agreement;
- (b) equipment and materials, which shall be procured in accordance with arrangements satisfactory to ADB;
- (c) training, seminars, workshops or conferences, and similar activities;
- (d) the cofinancing of such Technical Assistance with any other external source; and
- (e) any other form of assistance which may be agreed upon by the Government and ADB for inclusion under such Technical Assistance.

ARTICLE III

Engagement and Financing of Consultants

Section 3.01. Except as otherwise agreed to by ADB, ADB shall engage the services of the Consultants.

Section 3.02. (a) ADB shall finance such expenditures as shall be set forth in the TA Letter concerned, subject to Section 4.03 of this Agreement in respect of project preparatory Technical Assistance.

(b) No local taxes or duties shall be financed under any Technical Assistance.

ARTICLE IV

Assurances of the Government

Section 4.01. Appropriate authorities of Government or its authorized Executing Agency, or both, shall provide suitable local counterparts on a full-time basis to cooperate with and assist the Consultants in carrying out Technical Assistance.

Section 4.02. The Government or the Executing Agency shall finance such part of each Technical Assistance, and shall perform or cause to be performed such additional obligations, all as further specified in the TA Letter concerned and agreed with the Government.

Section 4.03. If ADB classifies any Technical Assistance as project preparatory Technical Assistance, and if such Technical Assistance leads to financing for a development project by an external source, the amount of ADB financing of such Technical Assistance, unless such Technical Assistance is being provided entirely as a grant, shall be reimbursed to ADB as follows:

- (a) if such financing is entirely or partly provided by ADB, ADB shall be entitled to include therein and recover therefrom, as soon as the financing agreement becomes effective, that portion of the financing of such Technical Assistance so provided by ADB which exceeds the equivalent of such amount as ADB shall have specified in the TA Letter concerning such Technical Assistance; or
- (b) if such financing is entirely provided by any other external source, the Government shall make every effort to reimburse to ADB, as soon as the financing agreement becomes effective, the full amount of such Technical Assistance provided by ADB. In the event that such financing is so provided by an external source which has been identified in the TA Letter, the Government shall ensure that the full amount of such Technical Assistance provided by ADB, plus a service fee of ten per cent (10%) of such amount, will be reimbursed to ADB by said external source, either directly or through the Government, as soon as the financing agreement becomes effective.

ARTICLE V

Other Provisions

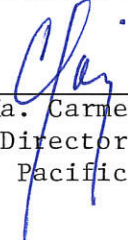
Section 5.01. This Agreement shall become effective upon its execution by the parties hereto.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be signed in their respective names and delivered at the principal office of ADB as of the day and year first above written.

GOVERNMENT OF NIUE

By  _____
Peleni Talagi
Acting Secretary

ASIAN DEVELOPMENT BANK

By  _____
Ma. Carmela Locsin
Director General
Pacific Department

SCHEDULE

General Terms and Conditions of Technical Assistance

A. Cooperation

1. The Government shall cooperate with ADB and Consultants to ensure that each Technical Assistance is carried out promptly and effectively and, for this purpose, shall issue appropriate instructions to its officials, agenda and representatives.

B. Exchange of Views; Reports

2. The Government and ADB shall, from time to time, at the request of either party, exchange views on any Technical Assistance, and consult on any reports prepared by Consultants and the implementation of any recommendations made in those reports.

3. ADB may use any reports prepared by Consultants for any purpose which ADB may consider appropriate, and those reports may be made public unless otherwise agreed between the Government and ADB.

C. Further Assistance by ADB

4. The provision of any Technical Assistance does not commit ADB to extend financial or further technical assistance to the Government with respect to the implementation of any recommendations of Consultants.

D. Suspension; Termination

5. (a) The Government may at any time request ADB in writing to terminate any Technical Assistance.

(b) ADB may at any time suspend or, after consultation with the Government, terminate any Technical Assistance if any circumstances arise which, in the opinion of ADB, interfere or threaten to interfere with the successful implementation of such Technical Assistance, the accomplishment of its purposes, or the execution of such Technical Assistance in accordance with the terms and conditions of this Agreement or the TA Letter concerned.

6. If any Technical Assistance is suspected or terminated, the Government and ADB shall consult with each other concerning any further action which may be necessary or desirable with respect to such Technical Assistance.

E. Immunities, Privileges and Exemptions of Consultants

7. Consultants shall have the status of experts performing missions for ADB and shall be entitled to the privileges, exemptions, and immunities conferred upon such experts by the provisions of the Agreement Establishing the Asian Development Bank. Without limiting the generality of those provisions,

- (i) the Consultants shall be immune from legal process with respect to all acts performed by them in their capacity as Consultants in connection with the

Technical Assistance for which they were retained, except where ADB shall otherwise agree;

- (ii) the Consultants and their families (if they are not nationals of Niue) shall be exempt from immigration restrictions, alien-registration requirements and national service obligations of Niue; and
- (iii) the Consultants may bring into Niue reasonable amounts of foreign currency for the purposes of the Technical Assistance or for their personal use and may withdraw from Niue similar amounts of foreign currency together with any amounts earned therein by the Consultants in connection with such Technical Assistance.

8. The Government shall promptly:

- (i) provide the Consultants and their families with any entry and exit visas, residence permits, foreign exchange permits and travel documents required for their stay in Niue;
- (ii) provide the Consultants with work permits and any other documents necessary to enable them to perform their work on the Technical Assistance for which they were retained; and
- (iii) clear through customs any equipment, materials or supplies required for each Technical Assistance, and any personal effects (including any automobiles if required) and household goods of the Consultants and their families.

9. (a) The Government shall exempt Consultants from, or bear the cost of, any taxes, duties, fees or other impositions levied under the laws and regulations in effect in Niue in respect of:

- (i) any payments made to the Consultants in connection with the carrying out of any Technical Assistance;
- (ii) any equipment, vehicles, materials and supplies brought into the territories of Niue for the purpose of carrying out such Technical Assistance which will be consumed therein or withdrawn therefrom or which will become the property of the Government, and
- (iii) any personal effects (including automobiles if required) of the Consultants and their families brought into Niue which will be consumed therein or withdrawn therefrom.

(b) If any of the items referred to in subparagraphs (ii) and (iii) above are, upon completion of any Technical Assistance, not to be withdrawn from Niue and not to become the property of the Government, the Government shall allow such items to be disposed of locally in accordance with any applicable Government regulations, or subject to such terms as are agreed upon between the Government and the Consultants. If any such items are financed by ADB under

any Technical Assistance, they may be transferred by ADB to the Government on terms and conditions satisfactory to the Government and ADB.

F. Indemnity by the Government

10. The Government shall be responsible for dealing with any claim arising out of, or resulting from, any Technical Assistance, which may be brought by third parties against ADB or any Consultants. The Government shall indemnify ADB and the Consultants against any costs, claims, damages or liabilities arising out of, or resulting from, any acts or omissions in connection with any Technical Assistance, except where it is agreed by the Government and ADB that such acts or omissions amount to gross negligence or willful misconduct of such Consultants.