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GRANT NUMBER 0415-COO (EF)

GRANT AGREEMENT  
(Externally Financed)  
(Renewable Energy Sector Project)

between

HER MAJESTY THE QUEEN  
IN RIGHT OF THE GOVERNMENT  
OF THE COOK ISLANDS

and

ASIAN DEVELOPMENT BANK

DATED 13/1/15

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COO 46453

**GRANT AGREEMENT  
(Externally Financed)**

GRANT AGREEMENT dated 13/1/2015 between HER MAJESTY THE QUEEN IN RIGHT OF THE GOVERNMENT OF THE COOK ISLANDS ("Recipient") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) by a loan agreement of even date herewith between the Recipient and ADB ("Loan Agreement"), ADB has agreed to make a loan to the Recipient from ADB's ordinary capital resources in the amount of NZ\$12,980,000 for the purposes of the project described in Schedule 1 to the Loan Agreement;

(B) the Recipient has applied to ADB for a grant, to be financed by the European Union ("EU"), for the purposes of cofinancing expenditures under the Project (as defined in Schedule 1 to this Grant Agreement);

(C) by agreement dated 26 April 2014 between ADB and the EU ("Contribution Agreement"), the EU has agreed to provide, and ADB has agreed to administer, the grant provided for herein upon the terms and conditions set out in the Contribution Agreement; and

(D) ADB has agreed to make the proceeds of the grant from the EU available to the Recipient upon the terms and conditions set forth herein;

NOW THEREFORE the parties agree as follows:

**ARTICLE I**

**Grant Regulations; Definitions**

Section 1.01. All provisions of the Externally Financed Grant Regulations of ADB, dated 8 April 2009 ("Grant Regulations"), are hereby made applicable to this Grant Agreement with the same force and effect as if they were fully set forth herein.

Section 1.02. Wherever used in this Grant Agreement, the several terms defined in the Grant Regulations and the Loan Agreement have the respective meanings therein set forth unless modified herein or the context otherwise requires. For the purposes of this Grant Agreement, references, in terms defined in the Loan Agreement, to: (a) "the Borrower" shall be read as "the Recipient", (b) "the Loan" shall be read as "the Grant", and (c) "the Project" shall be read as "the Project" as defined in this Grant Agreement. Additional terms used in this Grant Agreement have the following meanings:

(a) “Goods” means equipment and materials to be financed out of the proceeds of the Grant, including related services such as transportation, insurance, installation, commissioning, training, and initial maintenance;

(b) “Implementing Agency” means the Renewable Energy Development Division, Office of the Prime Minister;

(c) “Project Executing Agency” for the purposes of, and within the meaning of, the Grant Regulations means the Recipient’s Ministry of Finance and Economic Management, or any successor thereto acceptable to ADB which is responsible for the carrying out of the Project; and

(d) “Works” means construction or civil works to be financed out of the proceeds of the Grant, including services such as drilling or mapping, and project related services that are provided as part of a single responsibility or turnkey contract.

## **ARTICLE II**

### **The Grant**

Section 2.01. (a) ADB agrees to make available to the Recipient a grant from the EU in the amount of seven million two hundred sixty thousand Dollars (\$7,260,000), as such amount may be adjusted from time to time in accordance with subsection (b) hereinafter.

(b) The amount of the Grant shall be adjusted from time to time to account for currency fluctuations, such that the amount of the Grant, denominated in Dollars, shall be equivalent to five million three hundred thousand Euros (€5,300,000) at the time that ADB converted the resources made available to ADB by the EU for the purposes of the Grant.

## **ARTICLE III**

### **Use of Proceeds of the Grant**

Section 3.01. (a) The Recipient shall cause the proceeds of the Grant to be applied to the financing of expenditures on the Project in accordance with the provisions of this Grant Agreement.

(b) The Recipient agrees that the proceeds of the Grant may be used to pay ADB’s administration fees and other charges pursuant to the Contribution Agreement.

Section 3.02. The proceeds of the Grant shall be allocated and withdrawn in accordance with the provisions of Schedule 2 to this Grant Agreement, as such Schedule may be amended from time to time by agreement between the Recipient and ADB.

Section 3.03. Except as ADB may otherwise agree, the Recipient shall procure, or cause to be procured, the items of expenditure to be financed out of the proceeds of the Grant in accordance with the provisions of Schedule 3 to this Grant Agreement.

Section 3.04. Withdrawals from the Grant Account in respect of Goods and Works shall be made only on account of expenditures relating to:

- (a) Goods which are produced in and supplied from and Works which are supplied from such member countries of ADB or the EU as shall have been specified by ADB from time to time as eligible sources for procurement; and
- (b) Goods and Works which meet such other eligibility requirements as shall have been specified by ADB from time to time.

Section 3.05. The Grant Closing Date for the purposes of Section 8.02 of the Grant Regulations shall be 31 December 2017 or such other date as may from time to time be agreed between the Recipient and ADB.

## **ARTICLE IV**

### **Particular Covenants**

Section 4.01. In the carrying out of the Project and operation of the Project facilities, the Recipient shall perform, or cause to be performed, all obligations set forth in Schedule 5 to the Loan Agreement and Schedule 4 to this Grant Agreement.

Section 4.02. (a) The Recipient shall (i) maintain separate accounts and records for the Project; (ii) prepare annual financial statements for the Project in accordance with accounting principles 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 international standards for auditing or the national equivalent acceptable to ADB; (iv) as part of each such audit, have the auditors prepare a report (which includes the auditors' opinion on the financial statements and use of the Grant 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 30 days of the date of their receipt by posting them on ADB's website.

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

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

Section 4.04. The Recipient acknowledges and agrees that this Grant Agreement is entered into by ADB, not in its individual capacity, but as grant administrator for the EU. Accordingly, the Recipient agrees that (a) it may only withdraw Grant proceeds to the extent that ADB has received proceeds for the Grant from the EU; and (b) that ADB does not assume any obligations or responsibilities of the EU in respect of the Project or the Grant other than those set out in this Grant Agreement.

## **ARTICLE V**

### **Suspension**

Section 5.01. The following are specified as additional events for suspension of the right of the Recipient to make withdrawals from the Grant Account for the purposes of Section 8.01(k) of the Grant Regulations:

- (a) the Recipient shall have failed to perform any of its obligations under the Loan Agreement; and
- (b) TAU shall have failed to perform any of its obligations under the Project Agreement.

## **ARTICLE VI**

### **Effectiveness**

Section 6.01. The following are specified as additional conditions to the effectiveness of this Grant Agreement for the purposes of Section 9.01(e) of the Grant Regulations:

- (a) the execution and delivery of the Loan Agreement on behalf of the Recipient shall have been duly authorized or ratified by all necessary governmental action; and

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

Section 6.02. The following are specified as additional matters, for the purposes of Section 9.02(c) of the Grant Regulations, to be included in the opinion or opinions to be furnished to ADB:

- (a) that the Loan Agreement has been duly authorized or ratified by, and executed and delivered on behalf of, the Recipient, and is legally binding upon the Recipient in accordance with its terms; and
- (b) that the Project Agreement has been duly authorized or ratified by, and executed and delivered on behalf of, TAU, and is legally binding on it in accordance with its terms.

Section 6.03. A date 90 days after the date of this Grant Agreement is specified for the effectiveness of this Grant Agreement for the purposes of Section 9.04 of the Grant Regulations.

## **ARTICLE VII**

### **Miscellaneous**

Section 7.01. The Minister of Finance and Economic Management of the Recipient is designated as representative of the Recipient for the purposes of Section 11.02 of the Grant Regulations.

Section 7.02. The following addresses are specified for the purposes of Section 11.01 of the Grant Regulations:

For the Recipient

Ministry of Finance and Economic Management  
P.O. Box 120  
MFEM Building, Rarotonga  
Cook Islands

Facsimile Number:

+682 23877.

For ADB

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

Facsimile Numbers:

+63 2 636-2444  
+63 2 636-2388.

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

HER MAJESTY THE QUEEN IN RIGHT  
OF THE GOVERNMENT OF THE COOK  
ISLANDS

By   
MARK BROWN  
Minister of Finance

ASIAN DEVELOPMENT BANK

By   
XIANBIN YAO  
Director General  
Pacific Department

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

1. The objective of the Project is increased access to a higher share of electricity generated by renewable energy sources.
2. The Project shall comprise development of solar photovoltaic power system for the core subprojects developed on Mangaia, Mauke, and Mitiaro islands.
3. The Project is expected to be completed by 30 June 2017.



**SCHEDULE 2****Allocation and Withdrawal of Grant 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 Grant and the allocation of the Grant 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 Grant Account

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

Disbursement Procedures

3. Except as ADB may otherwise agree, the Grant proceeds shall be disbursed in accordance with ADB's Loan Disbursement Handbook (2012).

TABLE

<b>ALLOCATION AND WITHDRAWAL OF GRANT PROCEEDS (Renewable Energy Sector Project)</b>			
<b>Number</b>	<b>Item</b>	<b>Total Amount Allocated for EU Financing (\$) Category</b>	<b>Basis for Withdrawal from the Grant Account</b>
1	Turnkey Contract – Solar PV System Development (core)	7,010,000	100% of total expenditure claimed*
2	Unallocated**	250,000	
	Total	7,260,000	

\* Exclusive of taxes and duties imposed within the territory of the Recipient.

\*\* Comprises the ADB's administrative fee, audit costs and bank charges, to the extent that these items are not covered by the interest and investment income earned on the grant, or any additional grant from the EU.

### **SCHEDULE 3**

#### **Procurement of Goods and Works**

##### General

1. The procurement of Goods and Works shall be subject to and governed by the Procurement Guidelines, except that non-member countries of ADB may also tender for the procurement of Goods and Works as agreed in the Contribution Agreement.
2. All terms used in this Schedule and not otherwise defined in this Grant Agreement have the meanings provided in the Procurement Guidelines.

##### Goods and Works

3. Except as ADB may otherwise agree, Goods and Works shall only be procured on the basis of International Competitive Bidding.
4. The method of procurement is subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. The Recipient shall only modify the method of procurement or threshold values with the prior agreement of ADB, and modifications must be set out in updates to the Procurement Plan.

##### Domestic Preference

5. The Recipient may grant a margin of preference in the evaluation of bids under international competitive bidding in accordance with paragraphs 2.55 and 2.56 of the Procurement Guidelines for domestically manufactured Goods and Works and domestic contractors, provided that for the margin of preference for Works, the Recipient's gross national product falls below the threshold as defined annually by ADB.

##### Conditions for Award of Contract

6. The Recipient shall not award any Works contracts until all land and related rights for the construction of the Project facilities, to be handed over to the contractor before construction commences, have been acquired or rights to access and use the land for the purposes of constructing and operating the Project facilities on an ongoing basis have been secured by the Recipient.

##### Industrial or Intellectual Property Rights

7. (a) The Recipient 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 Recipient 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.

8. The Recipient 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

9. Contracts procured under international competitive bidding procedures shall be subject to prior review by ADB, unless otherwise agreed between the Recipient and ADB and set forth in the Procurement Plan.

## SCHEDULE 4

### Execution of Project; Financial Matters

#### Grant Refund

1. If ADB determines that an amount of the Grant has been used in a manner inconsistent with the provisions of this Grant Agreement, the Recipient shall, upon notice by ADB to the Recipient, promptly refund such amount to ADB. Except as ADB may otherwise determine, ADB shall cancel all amounts refunded pursuant to this provision.

#### Donor-specific covenants

2. The Recipient shall, and shall cause contractors to, take appropriate measures to prevent irregularities, fraud, corruption or any other illegal activity in the management of the Project. All suspected and actual cases of irregularity, fraud and corruption related to this Grant Agreement as well as measures related thereto taken by the Recipient and contractors shall be reported to ADB on behalf of the EU without delay. Where appropriate the Recipient shall, and shall cause contractors to, terminate contracts with partners, contractors or agents involved in fraudulent behavior or corrupt practices in connection with the Project or any other projects implemented by the Recipient and financed the EU, and shall, and shall cause contractors to, take all reasonable measures to recover funds unduly paid. The Recipient shall assume sole liability towards third parties, including liability for damage or injury of any kind sustained by them in respect of or arising out of the Project. The Recipient shall, and shall ensure that contractors shall, discharge the EU of all liability associated with any claim or action brought as a result of an infringement, by the Recipient, a contractor or their respective employees or individuals for whom those employees are responsible, of rules or regulations, or as a result of violation of a third party's rights.

3. The Recipient shall, and shall ensure that contractors shall, take all necessary precautions to avoid conflicts of interests and shall inform ADB on behalf of the EU without delay of any situation constituting or likely to lead to any such conflict. There is a conflict of interests where the impartial and objective exercise of the functions of any person implementing this Grant Agreement is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with another party such as a contractor or grant beneficiary, or the final recipients of funds.

4. Subject to the provisions of the Grant Agreement relating to accounts and technical and financial checks, the Recipient shall, and shall cause contractors to, preserve the confidentiality of any document, information or other material directly related to this Grant Agreement and duly classified as confidential, until at least 31 December 2024.

5. Unless ADB on behalf of the EU requests or agrees otherwise, the Recipient shall, and shall ensure that contractors shall, take all appropriate measures to publicize the fact that the Project has received funding from the EU. Information given to the press, the beneficiaries of the Project, all related publicity material, official notices, reports and publications, shall acknowledge that the Project was carried out "with funding by the European Union" and shall display in an appropriate way the European logo (twelve yellow

stars on a blue background). Such measures shall be carried out in accordance with the *Communication and Visibility Manual for EU External Actions* laid down and published by the EU, or any other guidelines agreed between the ADB on behalf of the EU and the Recipient.

6. It is understood that the Recipient's or contractors' equipment and vehicles may routinely carry its emblem and other indications of ownership prominently displayed. In cases where equipment or vehicles and major supplies have been purchased using funds provided by the EU, the Recipient or contractors shall display appropriate acknowledgment on such vehicles, equipment and major supplies (including display of the European logo). Where such display could jeopardize the safety and security of the Recipient's staff, the Recipient or contractors shall propose appropriate alternative arrangements. The size and prominence of the acknowledgment and EU logo shall be clearly visible in a manner that does not create any confusion regarding the identification of the Project as an activity of the Recipient or contractors and the ownership of the equipment and supplies by the Recipient or contractors. All publications by the Recipient or contractors pertaining to the Project, in whatever form and whatever medium, including the internet, shall carry the following or a similar disclaimer: "This document has been reproduced with the financial assistance of the European Union. The views expressed herein can in no way be taken to reflect the official opinion of the European Union and the Asian Development Bank". If the equipment bought with an EU contribution is not transferred to local partners of the Recipient or the final recipient of the Project at the latest when submitting the final report, the visibility requirements as regards this equipment (in particular display of the European logo) shall continue to apply between submission of the final report and the end of the overall project, program or action of the Recipient, if the latter is longer. Publicity pertaining to EU contributions shall quote these contributions in Euro (€ or EUR), in parenthesis if necessary. The Recipient's publications and reports prepared in response to, and in accordance with, its legislative directives are excluded from this provision.

7. With due regard to the applicable rules on confidentiality, security and protection of personal data, the Recipient shall publish, on an annual basis, on its website, the following information on procurement contracts exceeding fifteen thousand Euros (€15,000) equivalent financed by the Grant: title of the contract, nature and purpose of the contract, name and locality of the contractor and amount of the contract. The term "locality" shall mean the address for legal persons and the Region on NUTS<sup>1</sup> 2 level, or equivalent, for natural persons. The Recipient shall provide to ADB on behalf of the EU the address of the website where this information can be found and shall authorize the publication of such address on the EU's internet site.

8. To be considered eligible as direct costs under the Grant Agreement, costs shall:

- (a) be necessary for carrying out the Project, be provided for specifically in the Grant Agreement and comply with the principles of sound financial management, in particular value for money and cost-effectiveness;
- (b) have been actually incurred during the period beginning on the effectiveness of the Contribution Agreement and ending 72 months

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<sup>1</sup>

Nomenclature of Territorial Units for Statistics, available at: <http://ec.europa.eu/Eurostat/ramon>

thereafter, whatever the time of actual disbursement by the Recipient, in particular:

- (i) costs relating to services and works properly provided shall relate to activities performed during the implementation period. Costs relating to supplies shall relate to delivery and installation of items during the implementation period. Consequently, cash transfers between the Recipient and its partners, signature of a contract, placing of an order, or entering into any commitment for future delivery of services, works or supplies undertaken before or after expiry of the implementation period do not meet this requirement;
  - (ii) costs incurred should be paid before the submission of the final reports. They may be paid afterwards, provided they are listed in the final report together with the estimated date of payment;
  - (iii) an exception is made for costs relating to final reports, including expenditure verification, audit and final evaluation of the Project, which may be incurred after the implementation period of the Project; and
  - (iv) procedures to award contracts may have been initiated and contracts may be concluded by the Recipient and its partners before the start of the implementation period of the Project.
- (c) be recorded in the Recipient's accounts, be identifiable, backed by effective supporting evidence (originals, as the case may be in electronic form), and verifiable pursuant to the provisions herein on accounts and technical and financial checks.

9. Subject to the above, the following direct costs of the Recipient shall in particular be eligible:

- (a) the cost of staff assigned to the Project, corresponding to actual salaries plus social security charges and other remuneration-related costs (including in the form of provisions made in accordance with the Recipient's accounting rules. Identifiable personnel costs at headquarters level arising as a direct consequence of the Project may be included. Salaries and costs shall not exceed those normally borne by the Recipient or partners;
- (b) travel and subsistence costs for staff taking part in the Project, provided they do not exceed those normally borne by the Recipient or partners;
- (c) purchase costs for equipment (new or used) which are attributable to the Project;

- (d) purchase costs for goods and services (transport, storage and distributing, rent of equipment, etc.) which are directly attributable to the Project;
- (e) costs directly arising out of, or related to, accepting or distributing contributions in kind;
- (f) costs of consumables and supplies directly attributable to the Project;
- (g) expenditure on contracting directly attributable to the Project;
- (h) the proportion of field office costs that corresponds to the amount of activity directly attributable to the project or to the proportion of funding under the Grant;
- (i) costs deriving directly from the requirements of this Grant Agreement (dissemination of information, evaluation specific to the Project, specific reporting for the needs of ADB on behalf of the EU, translation, reproduction, insurance, targeted training for those involved in the Project, etc.) including financial service costs (in particular bank fees for transfers);
- (j) taxes, duties and charges, including VAT, actually paid and that the Recipient cannot reclaim (or, where applicable, its partners); and
- (k) indirect costs provided that they do not include costs assigned to another heading of the Project budget.

10. The following costs shall not be considered eligible:

- (a) debts and debts service charges;
- (b) provisions for losses or potential future liabilities;
- (c) interest owed by the Recipient to any third party;
- (d) items already financed from other sources;
- (e) purchases of land or buildings; and
- (f) currency exchange losses.

11. Any contingency reserve included in the budget of the Project, to cover any adjustment necessary in the light of changed circumstances on the ground, shall not exceed 5% of eligible direct costs and shall only be used with the prior written (by letter) authorization of the ADB on behalf of the EU, upon a duly justified request from the Recipient through an exchange of letters.



12. The Recipient shall, until at least 31 December 2024:
- (a) keep financial accounting documents concerning the activities financed by the Grant; and
  - (b) make available to the competent bodies of the EU, upon request, all relevant financial information, including statements of accounts concerning the Project.
13. The Recipient recognizes that the EU may wish to verify the Project. In that event, the Recipient and ADB on behalf of the EU shall first agree on the procedures to conduct such verification, and the Recipient and ADB on behalf of the EU shall subsequently provide the EU with all relevant information without prejudice to ADB's privileges and immunities. The cost associated with the verification shall be borne by the EU. It is understood that any such verification does not constitute an independent evaluation, compliance review, or financial or other audit in relation to the Project for the purposes of ADB's policies and procedures.
14. The total final amount to be paid by ADB on behalf of the EU to the Recipient shall not exceed the amount set out in Section 2.01, even if the overall costs incurred exceed the estimated total budget. The Recipient accepts that the contribution of ADB on behalf of the EU shall be limited to the amount required to balance income generated by the Project, donor contributions and expenditure for the Project and that it may not in any circumstances result in a surplus for the Recipient. In the event of a final surplus balance of total financing over expenditures at the financial closure of the Project, the Recipient shall specify in the final report the amount of the surplus balance in the holding currency used by the Recipient together with the estimated amount in Euro and where the exchange rate of the Recipient can be consulted. This surplus in the Recipient's accounts expressed in holding currency used by the Recipient shall be converted into Euro using the rate of exchange of the Recipient in force on the day when the EU's internal recovery order is established, which amount is later reflected in the debit not sent to the Recipient. The resulting Euro equivalent shall then be refunded to ADB on behalf of the EU. This provision shall not apply to the exchange rates used for reporting. In cases where the Project is suspended or not completed within the implementation period, the funds that remain unexpended after all liabilities incurred in this period have been satisfied shall be reimbursed to ADB on behalf of the EU, including, where applicable, interest earned.
15. Where the Project is not carried out at all, or is not carried out properly, in full or on time, the EU may, after allowing ADB to submit its observations, reduce the contribution pro rata the actual implementation of the Project on the terms laid down in the contribution agreement between the EU and ADB.
16. The Recipient shall repay to ADB within 30 days of the issuing of a letter (debit note) by which EU reclaims from ADB, any amounts paid in excess of the final amount due, inclusive of any interest and other charges. Any partial payment shall first cover the interest.
17. Representatives of the EU shall be invited to participate in the main monitoring and in the evaluation missions relating to the performance of the Project.

18. The above provision is without prejudice to any evaluation mission which the EU may wish to perform. Evaluation missions by representatives of the EU shall be planned and completed in a collaborative manner between the Recipient's and ADB's staff and the EU's representatives, keeping in mind the commitment of the Recipient, ADB, and the EU to the effective and efficient implementation of the Project. These missions shall be planned ahead and procedural matters shall be agreed upon by the EU, ADB, and the Recipient in advance.