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**GRANT NUMBER 0493-COO(EF)**  
**(Additional to Loan No. 3193-COO and Grant No. 0415-COO)**

**GRANT AGREEMENT**  
**(Global Environment Facility)**  
**(Renewable Energy Sector Project -- Additional Financing)**

between

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

and

**ASIAN DEVELOPMENT BANK**

**DATED 14 SEPTEMBER 2016**

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**COO 46453**

## **GRANT AGREEMENT**

GRANT AGREEMENT dated 14 September 2016 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 and an externally financed grant agreement each dated 13 January 2015 between the Recipient and ADB (the "ADB Loan Agreement" and the "EU Grant Agreement", respectively, and together the "Original Financing Agreements"), ADB agreed to, respectively, make a loan to the Recipient from ADB's ordinary capital resources in the amount of twelve million nine hundred eighty thousand New Zealand Dollars (NZ\$12,980,000) for the purposes of the project described in Schedule 1 to the ADB Loan Agreement, and administer a grant to the Recipient from the European Union in the amount of seven million two hundred sixty thousand Dollars (\$7,260,000), as such amount may be adjusted from time to time, for the purposes of the project described in Schedule 1 to the EU Grant Agreement;

(B) the Recipient has applied to the Global Environment Facility ("GEF") for the Grant (as hereinafter defined), to be administered by ADB, for the purposes of the Project described in Schedule 1 to this Grant Agreement;

(C) GEF has agreed to provide, and ADB has agreed to administer, the Grant upon the terms and conditions set out in the Financial Procedure Agreement dated 23 October 2008 between ADB and the International Bank for Reconstruction and Development as a trustee of the GEF;

(D) the Project will be carried out by Te Aponga Uira ("TAU"), the government-owned power authority responsible for the generation, distribution and retailing of electricity on the main island of Rarotonga, and for this purpose, the Recipient will make available to TAU the proceeds of the Grant upon terms and conditions satisfactory to ADB; and

(E) ADB has agreed to make the proceeds of the Grant available to the Recipient upon the terms and conditions set forth herein and in the Project Agreement of even date herewith between ADB and TAU;

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, subject, however, to the following modifications:

- (a) Section 2.01 (13) is deleted and the following is substituted therefor:

"Project Agreement" means the Project Agreement of even date herewith between ADB and TAU, as such agreement may be amended from time to time; and such term includes all agreements supplementary to the Project Agreement and all schedules to the Project Agreement.

- (b) The term "Project Executing Agency" appearing in Section 6.01(a)(i), 6.04 (a)(iii), 8.01(c), 8.01(e), 8.01(i), 9.01(b) and 9.02(b) of the Grant Regulations shall be substituted by the term "TAU".

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

(a) "Rarotonga Environment Authority" or "REA" means the Rarotonga Island Environmental Authority established pursuant to the Environment Act 2003, or any successor thereto acceptable to ADB;

(b) "Subsidiary Grant Agreement" means the agreement between the Recipient and TAU referred to in Section 3.01 of this Grant Agreement;

(c) "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, but excluding consulting services.

## ARTICLE II

### The Grant

Section 2.01. ADB agrees to make available to the Recipient a grant from GEF in the amount of four million two hundred sixty four thousand six hundred fifty four Dollars (\$4,264,654).

### ARTICLE III

#### Use of Proceeds of the Grant

Section 3.01. The Recipient shall make the proceeds of the Grant available to TAU under a Subsidiary Grant Agreement upon terms and conditions satisfactory to ADB and shall cause TAU to apply such proceeds to the financing of expenditures on the Project in accordance with the provisions of this Grant Agreement and the Project 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. The Grant Closing Date for the purposes of Section 8.02 of the Grant Regulations shall be 31 December 2019 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 4 to this Grant Agreement and the Project Agreement.

Section 4.02. The Recipient shall enable ADB's representatives to inspect the Project, the Goods and Works, and any relevant records and documents.

Section 4.03. The Recipient shall take all actions which shall be necessary on its part to enable TAU to perform its obligations under the Project Agreement, and will not take or permit any action which would interfere with the performance of such obligations.

Section 4.04 (a) The Recipient shall exercise its rights under the Subsidiary Grant Agreement in such a manner as to protect the interests of the Recipient and ADB and to accomplish the purposes of the Grant.

(b) No rights or obligations under the Subsidiary Grant Agreement shall be assigned, amended, abrogated or waived without the prior concurrence of ADB.

Section 4.05            The Recipient acknowledges and agrees that this Grant Agreement is entered into by ADB, not in its individual capacity, but as grant administrator for GEF. Accordingly, the Recipient agrees that (i) it may only withdraw Grant proceeds to the extent that ADB has received proceeds for the Grant from GEF, and (ii) that ADB does not assume any obligations or responsibilities of GEF 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 is specified as an additional event 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: the Recipient shall have failed to perform any of its obligations under the Original Financing Agreements.

## **ARTICLE VI**

### **Effectiveness**

Section 6.01.            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**

### **Termination**

Section 7.01.            This Grant Agreement and all obligations of the parties hereunder shall terminate on a date 20 years after the date of this Agreement.

## **ARTICLE VIII**

### **Miscellaneous**

Section 8.01.            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 8.02. 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  
Rarotonga  
Cook Islands

Facsimile Number:

+682 23877

For ADB

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

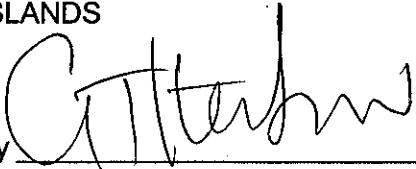
Facsimile Numbers:

(632) 636-2444

(632) 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 

GARTH T. HENDERSON  
Financial Secretary  
Ministry of Finance and  
Economic Management

ASIAN DEVELOPMENT BANK

By 

XIANBIN YAO  
Director General  
Pacific Department

## **SCHEDULE 1**

### **Description of the Project**

1. The objective of the Project is to increase access to a higher share of electricity generated from renewable energy sources.
2. The Project shall comprise installation of a battery energy storage system with a preliminary capacity of 1.0 MW and 4.0 MWh at the existing solar photovoltaic facility at the Rarotonga airport.
3. The Project is expected to be completed by 30 June 2019.



## 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.

#### Reallocation

3. Notwithstanding the allocation of Grant proceeds and the withdrawal percentages set forth in the Table,

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

#### Disbursement Procedures

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

#### Condition for Withdrawals from Grant Account

5. Notwithstanding any other provision of this Grant Agreement, no withdrawals shall be made from the Grant Account until the Subsidiary Grant Agreement shall have been executed on behalf of the Borrower and TAU and declared effective.

TABLE

<b>ALLOCATION AND WITHDRAWAL OF GRANT PROCEEDS (Renewable Energy Sector Project – Additional Financing)</b>			
<b>Number</b>	<b>Item</b>	<b>Total Amount Allocated for GEF Financing (\$) Category</b>	<b>Basis for Withdrawal from the Grant Account</b>
1	Turnkey Contract – Battery Energy Storage System	4,127,668	100% of total expenditure claimed*
2	Unallocated**	136,986	
	<b>Total</b>	<b>4,264,654</b>	

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

\*\* Includes 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 GEF.

**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.
2. Except as ADB may otherwise agree, Goods and Works shall be procured only on the basis of the procurement method set forth below. This method is subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. The Recipient may only modify the procurement method or threshold values with the prior agreement of ADB, and modifications must be set out in updates to the Procurement Plan.
3. All terms used in this Schedule and not otherwise defined in this Grant Agreement have the meanings provided in the Procurement Guidelines.

Eligible Source of Procurement of Goods and Works

4. Goods and Works may also be procured under the Project from non-member countries of ADB.

Goods and Works

5. Goods and Works shall only be procured on the basis of International Competitive Bidding and Shopping.

Conditions for Award of Contract

6. TAU shall not award any Works contract which involves environmental impacts until:
  - (a) the REA has granted the final approval of the IEE; and
  - (b) TAU has incorporated the relevant provisions from the EMP into the Works contract.

Industrial or Intellectual Property Rights

7.
  - (a) The Recipient shall ensure that all 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 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

#### Implementation Arrangements

1. The Recipient and TAU 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 Recipient and ADB. In the event of any discrepancy between the PAM and this Grant Agreement, the provisions of this Grant Agreement shall prevail.

#### Environment

2. The Recipient and TAU 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 Recipient 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

3. The Recipient shall ensure that the Project has no involuntary resettlement impacts within the meaning of the SPS. If any impact is anticipated, the Recipient shall take all steps required to ensure that the Project complies with the applicable laws of the Borrower and the Involuntary Resettlement Safeguards.

#### Indigenous Peoples

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

#### Labor Standards, Health and Safety

5. The Recipient and TAU shall ensure that the core labor standards and the Recipient's applicable laws and regulations are complied with during Project implementation. The Recipient and TAU 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 Recipient'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 diseases, including HIV/AIDS, to the employees of contractors engaged under the Project and to members of the local communities surrounding

the Project area, particularly women. The Recipient and TAU shall strictly monitor compliance with the requirements set forth above and provide ADB with regular reports.

#### Gender and Development

6. The Recipient and TAU shall ensure that the principles of gender equity aimed at increasing Project benefits and impacts on women in the Project area are followed during implementation of the Project, including (a) equal pay to men and women for work of equal value; (b) enabling working conditions for women workers; and (c) taking necessary actions to encourage women living in the Project area to participate in the design and implementation of Project activities.

#### Counterpart Support

7. The Recipient shall make available through budgetary allocations or other means all counterpart funds required for timely and effective implementation of the Project, including funds to mitigate unforeseen environmental and social impacts, and to meet additional costs arising from design changes, price escalation in construction or installation costs or other unforeseen circumstances. In addition to the foregoing, the Recipient shall ensure that TAU has sufficient funds to satisfy its liabilities arising from any Works contract.

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

8. The Recipient and TAU shall make available necessary budgetary and human resources to fully implement the EMP.

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

9. The Recipient and TAU 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 and the EMP 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 Recipient 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 and the EMP;
- (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

10. The Recipient 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 and the EMP 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 promptly after becoming aware of the breach.

Prohibited List of Investments

11. The Recipient shall ensure that no proceeds of the Grant are used to finance any activity included in the list of prohibited investment activities provided in Appendix 5 of the SPS.

Governance and Anticorruption

12. The Recipient and TAU 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.

13. The Recipient and TAU 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.

Combating Money Laundering and Financing of Terrorism

14. The Recipient shall ensure that (a) TAU complies with applicable laws and regulations of the Recipient on combating money laundering and financing of terrorism; and (b) Grant proceeds are not used, directly or indirectly, in money laundering or financing of terrorism.

15. ADB shall inform GEF in a timely manner if, during the implementation of this Agreement, ADB becomes aware that the Grant proceeds are being used for money laundering or financing of terrorism.

Grant Refund

16. 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

17. The Recipient and TAU shall comply with the Communication and Visibility Guidelines of GEF; and in particular, the Recipient and TAU shall include a GEF logo in all relevant Project publications and on any equipment or facility funded by GEF. For the purposes of this provision, "Communication and Visibility Guidelines of GEF" means the communication and visibility guidelines for external actions funded by the GEF included in the communication and visibility policy approved by the GEF Council in May 2011, as amended from time to time.

Applicability of ADB's Safeguard Policy

18. The Recipient shall ensure and cause TAU to ensure that the provisions of the IEE and EMP as well as any requirements under the SPS also apply to the portion of the Project to be financed by the Recipient.

Financial Management

19. The Recipient shall, and shall cause TAU to, establish and maintain sound financial management systems in accordance with ADB's *Financial Management and Analysis of Projects* (July 2005), including the establishment of separate Project accounts.

Change in Ownership

20. In the event of (a) any change in ownership of the Project facilities, or (b) any sale, transfer or assignment of shares or interest or other change of control in TAU is anticipated, the Recipient shall consult with ADB at least 6 months prior to the implementation of such change. The Recipient shall ensure that such change be carried out in a lawful and transparent matter. The Recipient shall further ensure that the new controlling management of TAU complies with (a) all Project-related agreements executed between ADB or the Recipient and TAU; and (b) the policies of ADB relevant to the Project.

Public Disclosure

21. Within 90 days following effectiveness of this Grant Agreement, the Recipient shall establish and maintain a Project website which will be regularly updated to include information on the following general matters: (a) bidding procedures, bidders and contract awards for Works and Goods; (b) physical progress of the Works and procurement of Goods; and (c) audited Project financial accounts, Project review reports (e.g. mid-term review), and quarterly progress reports, consolidated annual reports and post-completion report, in each case promptly after submission to ADB (unless, in the case of Project review reports and quarterly progress reports, ADB considers these to be exempt from disclosure under ADB's *Public Communications Policy* (2011)).



Operational Covenants

22. The Recipient shall cause TAU to:
- (a) ensure that (i) the Project facilities are installed in accordance with design specifications and construction norms; and (ii) construction supervision, quality control and contract management are performed in accordance with best international industry practices;
  - (b) install, equip, operate, maintain and manage the Project facilities in compliance with applicable standards and best international practices;
  - (c) operate and maintain, and continue to operate and maintain, the Project facilities in accordance with an O&M framework that is satisfactory to ADB;
  - (d) acquire all rights necessary to use the parcels of land constituting the Project site at least 30 days prior to the award of the turnkey contract; and
  - (e) install or otherwise secure road access sufficient for the purposes of the Project at least 30 days prior to the award of the turnkey contract.
23. The Recipient shall ensure ongoing operational financial sustainability of the Project, either through adjustment of electricity tariffs, or budgetary allocations..
24. The Recipient shall cause TAU to ensure that adequate staffing will be planned and allocated for the implementation and O&M of the Project facilities, and that relevant staff members will attend training provided under the Project in relation to O&M.