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LOAN NUMBER 3632-COO

LOAN AGREEMENT  
(Ordinary Operations)

(Improving Internet Connectivity for the South Pacific Project)

between

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

and

ASIAN DEVELOPMENT BANK

DATED 31 Oct 2018

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COO 50110

**LOAN AGREEMENT  
(Ordinary Operations)**

LOAN AGREEMENT dated 31 Oct 2018 between HER MAJESTY THE QUEEN IN RIGHT OF THE GOVERNMENT OF THE COOKS ISLANDS ("Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) the Borrower has applied to ADB for a loan for the purposes of the Project described in Schedule 1 to this Loan Agreement;

(B) the Borrower has also applied to the Government of New Zealand for a grant of fifteen million New Zealand dollars (NZ\$15,000,000) ("NZ Grant") to assist in financing a portion of the Project;

(C) the Project will be carried out by Avaroa Cables Limited ("ACL"), and for this purpose the Borrower will make available to ACL the proceeds of the loan provided for herein upon terms and conditions satisfactory to ADB; and

(D) ADB has agreed to make a loan to the Borrower from ADB's ordinary capital resources upon the terms and conditions set forth herein and in the Project Agreement of even date herewith between ADB and ACL;

NOW THEREFORE the parties hereto agree as follows:

**ARTICLE I**

**Loan Regulations; Definitions**

Section 1.01. All the provisions of ADB's Ordinary Operations Loan Regulations, dated 1 January 2017 ("Loan Regulations"); are hereby made applicable to this Loan Agreement with the same force and effect as if they were fully set forth herein, subject, however, to the following modifications:

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

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

(b) The term "Project Executing Agency" appearing in Sections 7.01(a)(i), 9.01(d), 9.01(f), 9.01(k), 10.01(c) and 10.02(c) of the Loan Regulations shall be substituted by the term "ACL".

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

- (a) "ACL" means the Avaroa Cable Limited established under the laws and regulations of the Borrower with registered address at Cook Islands Investment Corporation, Avaroa, P.O. Box 51, Rarotonga, Cook Islands;
- (b) "C&MA" means the Construction and Maintenance Agreement for the Manatua Cable System Contract to be entered into between ACL, NT, OPT and SSCC;
- (c) "Cable Landing Station Contract" means the Works contract for the cable landing stations in Rarotonga and Aitutaki;
- (d) "Consulting Guidelines" means the Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers (2013, as amended from time to time);
- (e) "Consulting Services" means the services to be financed out of the proceeds of the Loan as described in paragraph 2(b) of Schedule 1 to this Loan Agreement;
- (f) "EMP" means the environmental management plan (also known as the environmental and social management plan) for the Project, including any update thereto, incorporated in the IEE;
- (g) "Environmental Safeguards" means the principles and requirements set forth in Chapter V, Appendix 1, and Appendix 4 (as applicable) of the SPS;
- (h) "IEE" means the initial environmental examination (also known as the environmental assessment document) for the Project, including any update thereto, prepared and submitted by the Borrower and cleared by ADB;
- (i) "IPP" means the indigenous peoples plan for the Project (if any), including any update thereto, prepared and submitted by the Borrower and cleared by ADB;
- (j) "Loan Disbursement Handbook" means ADB's Loan Disbursement Handbook (2017, as amended from time to time);
- (k) "Manatua Cable System" means the regional submarine cable system that connects Samoa and French Polynesia;
- (l) "Manatua Cable System Contract" means the Works contract for the design and construction of the Manatua Cable System;

- (m) "NT" means the Telecom Niue Limited established under the laws and regulations of Niue with registered address at Commercial Centre, Alofi South, P.O. Box 37, Niue;
- (n) "NZ Grant Agreement" means the Grant Agreement between the Borrower and the Government of New Zealand for the Project;
- (o) "OPT" means the Office des Postes et des Télécommunications de Polynésie Française established under the laws and regulations of French Polynesia with registered address at Federal Government Office, 8 Boulevard de la Reine Pomare IV, 98714 Papeete, Tahiti, French Polynesia;
- (p) "PAM" means the project administration manual for the Project dated 31 October 2017 and agreed between the Borrower and ADB, as updated from time to time in accordance with the respective administrative procedures of the Borrower and ADB;
- (q) "Procurement Guidelines" means ADB's Procurement Guidelines (2015, as amended from time to time);
- (r) "Procurement Plan" means the procurement plan for the Project dated 31 October 2017 and agreed between the Borrower and ADB, as updated from time to time in accordance with the Procurement Guidelines, the Consulting Guidelines, and other arrangements agreed with ADB;
- (s) "RP" means the resettlement plan for the Project (if any), including any update thereto, prepared and submitted by the Borrower and cleared by ADB;
- (t) "Safeguards Monitoring Report" means each report prepared and submitted by the Borrower to ADB that describes progress with implementation of and compliance with the EMP, any RP and any IPP (as applicable), including any corrective and preventative actions; and
- (u) "SPS" means ADB's Safeguard Policy Statement (2009);
- (v) "SSCC" means the Samoa Submarine Cable Company established under the laws and regulations of Samoa with registered address at Unit No. 203A, Second Floor, Glodstar Building, Matafele, Apia, Samoa;
- (w) "Subsidiary Loan Agreement" means the agreement between the Borrower and ACL described in Section 3.01(a) of this Loan Agreement; and
- (x) "Works" means construction or civil works to be financed out of the proceeds of the Loan, including services such as drilling or mapping, and project related services that are provided as part of a single responsibility or turnkey contract, but excluding Consulting Services.

## ARTICLE II

### The Loan

Section 2.01. (a) ADB agrees to lend to the Borrower from ADB's ordinary capital resources an amount of fifteen million Dollars (\$15,000,000), as such amount may be converted from time to time through a Currency Conversion in accordance with the provisions of Section 2.06 of this Loan Agreement.

(b) The Loan has a principal repayment period of 20 years, and a grace period as defined in subsection (c) hereinafter.

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

Section 2.02. The Borrower shall pay to ADB interest on the principal amount of the Loan withdrawn and outstanding from time to time at a rate for each Interest Period equal to the sum of:

- (a) LIBOR;
- (b) 0.60% as provided by Section 3.02 of the Loan Regulations less a credit of 0.10% as provided by Section 3.03 of the Loan Regulations; and
- (c) a maturity premium of 0.10% as provided by Section 3.03 of the Loan Regulations.

Section 2.03. The Borrower shall pay a commitment charge of 0.15% per annum. Such charge shall accrue on the full amount of the Loan (less amounts withdrawn from time to time), commencing 60 days after the date of this Loan Agreement.

Section 2.04. Interest and other charges on the Loan shall be payable semiannually on 1 April and 1 October in each year.

Section 2.05. The Borrower shall repay the principal amount of the Loan withdrawn from the Loan Account in accordance with the provisions of Schedule 2 to this Loan Agreement.

Section 2.06. (a) The Borrower may at any time request any of the following Conversions of the terms of the Loan in order to facilitate prudent debt management:

- (i) a change of the Loan Currency of all or any portion of the principal amount of the Loan, whether withdrawn and outstanding or unwithdrawn, to an Approved Currency;
- (ii) a change of the interest rate basis applicable to all or any portion of the principal amount of the Loan withdrawn and outstanding from a Floating Rate to a Fixed Rate, or vice versa; and

- (iii) the setting of limits on the Floating Rate applicable to all or any portion of the principal amount of the Loan withdrawn and outstanding by the establishment of an Interest Rate Cap or Interest Rate Collar on said Floating Rate.

(b) Any conversion requested pursuant to subsection (a) hereinabove that is accepted by ADB shall be considered a "Conversion", as defined in Section 2.01(f) of the Loan Regulations, and shall be effected in accordance with the provisions of Article V of the Loan Regulations and the Conversion Guidelines.

### ARTICLE III

#### Use of Proceeds of the Loan

Section 3.01. (a) The Borrower shall relend the proceeds of the Loan required for the Project to ACL under a Subsidiary Loan Agreement upon terms and conditions satisfactory to ADB.

(b) The Borrower shall cause the proceeds of the Loan to be applied exclusively to the financing of expenditures on the Project in accordance with the provisions of this Loan Agreement and the Project Agreement.

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

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

Section 3.04. The Loan Closing Date for the purposes of Section 9.02 of the Loan Regulations shall be 30 September 2020 or such other date as may from time to time be agreed between the Borrower and ADB.

### ARTICLE IV

#### Particular Covenants

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

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

Section 4.03. (a) The Borrower shall (i) maintain separate accounts and records for the Project; (ii) prepare annual financial statements for the Project in accordance with financial reporting standards acceptable to ADB; (iii) have such financial statements audited annually by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB, in accordance with auditing standards acceptable to ADB; (iv) as part of each such audit, have the auditors prepare a report, which includes the auditors' opinion(s) on the financial statements and the use of the Loan proceeds, and a management letter (which sets out the deficiencies in the internal control of the Project that were identified in the course of the audit, if any); and (v) furnish to ADB, no later than 6 months after the end of each related fiscal year, copies of such audited financial statements, audit report and management letter, all in the English language, and such other information concerning these documents and the audit thereof as ADB shall from time to time reasonably request.

(b) ADB shall disclose the annual audited financial statements for the Project and the opinion of the auditors on the financial statements within 14 days of the date of ADB's confirmation of their acceptability by posting them on ADB's website.

(c) The Borrower shall enable ADB, upon ADB's request, to discuss the financial statements for the Project and the Borrower'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 Borrower, unless the Borrower shall otherwise agree.

Section 4.04. The Borrower shall take all actions which shall be necessary on its part to enable the Project Executing Agency to perform its obligations under the Project Agreement, and shall not take or permit any action which would interfere with the performance of such obligations.

Section 4.05. (a) The Borrower shall exercise its rights under the Subsidiary Loan Agreement in such a manner as to protect the interests of the Borrower and ADB and to accomplish the purposes of the Loan.

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

## **ARTICLE V**

### **Suspension**

Section 5.01. The following is specified as an additional event for suspension of the right of the Borrower to make withdrawals from the Loan Account for the purposes of Section 9.01(m) of the Loan Regulations: the Borrower shall have failed to perform one or more of its obligations under the NZ Grant Agreement.

## ARTICLE VI

### Effectiveness

Section 6.01. The following are specified as additional conditions to the effectiveness of this Loan Agreement for the purposes of Section 10.01(f) of the Loan Regulations:

- (a) the C&MA has been signed on behalf of ACL, NT, OPT and SSCC upon terms and conditions satisfactory to ADB;
- (b) ACL, NT, OPT and SSCC have obtained approval for the financing of their respective shares of the C&MA, including cofinancing from development partners (if applicable);
- (c) the NZ Grant Agreement has been signed on behalf of the Borrower and the Government of New Zealand upon terms and conditions satisfactory to ADB; and
- (d) the execution and delivery of the Subsidiary Loan Agreement on behalf of the Borrower and ACL shall have been duly authorized or satisfied by all necessary action and all conditions precedent to effectiveness (other than a condition requiring effectiveness of this Loan Agreement) shall have been fulfilled.

Section 6.02. A date 90 days after the date of this Loan Agreement is specified for the effectiveness of this Loan Agreement for the purposes of Section 10.04 of the Loan Regulations.

## ARTICLE VII

### Miscellaneous

Section 7.01. The Minister of Finance and Economic Management of the Borrower is designated as representative of the Borrower for the purposes of Section 12.02 of the Loan Regulations.

Section 7.02. The following addresses are specified for the purposes of Section 12.01 of the Loan Regulations:

For the Borrower

Ministry of Finance and Economic Management  
Rarotonga  
Cook Islands



Facsimile Number:

(682) 29465

For ADB

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

Facsimile Numbers:

(632) 636-2444

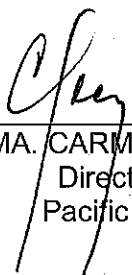
(632) 636-2388.

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

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

By   
MARK BROWN  
Minister of Finance

ASIAN DEVELOPMENT BANK

By   
MA. CARMELA D. LOCSIN  
Director General  
Pacific Department

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

1. The objective of the Project is decrease in internet cost and increase in internet service quality.
2. The Project shall comprise the Borrower's share of the Manatua Cable System, including additional spurs and branching units to connect to the islands of Rarotonga and Aitutaki of the Borrower. Specifically:
  - (a) the construction of the Manatua Cable System, including additional spurs and branching units to connect to the islands of Rarotonga and Aitutaki (partially financed under the Project);
  - (b) the construction of the landing stations in Rarotonga and Aitutaki; and
  - (c) project management support for ACL.
3. The Project is expected to be completed by 31 March 2020.

## SCHEDULE 2

### Amortization Schedule

1. The following table sets forth the Principal Payment Dates of the Loan and the percentage of the total principal amount of the Loan payable on each Principal Payment Date (Installment Share). If the proceeds of the Loan shall have been fully withdrawn as of the first Principal Payment Date, the principal amount of the Loan repayable by the Borrower on each Principal Payment Date shall be determined by ADB by multiplying (a) the total principal amount of the Loan withdrawn and outstanding as of the first Principal Payment Date; by (b) the Installment Share for each Principal Payment Date, such repayment amount to be adjusted, as necessary, to deduct any amounts referred to in paragraph 4 of this Schedule, to which a Currency Conversion applies.

<u>Payment Due</u>	<u>Installment Share</u> (Expressed as a %)
1 April 2023	2.500000
1 October 2023	2.500000
1 April 2024	2.500000
1 October 2024	2.500000
1 April 2025	2.500000
1 October 2025	2.500000
1 April 2026	2.500000
1 October 2026	2.500000
1 April 2027	2.500000
1 October 2027	2.500000
1 April 2028	2.500000
1 October 2028	2.500000
1 April 2029	2.500000
1 October 2029	2.500000
1 April 2030	2.500000
1 October 2030	2.500000
1 April 2031	2.500000
1 October 2031	2.500000
1 April 2032	2.500000
1 October 2032	2.500000
1 April 2033	2.500000
1 October 2033	2.500000
1 April 2034	2.500000
1 October 2034	2.500000
1 April 2035	2.500000
1 October 2035	2.500000
1 April 2036	2.500000
1 October 2036	2.500000
1 April 2037	2.500000
1 October 2037	2.500000
1 April 2038	2.500000
1 October 2038	2.500000

<u>Payment Due</u>	<u>Installment Share</u> (Expressed as a %)
1 April 2039	2.500000
1 October 2039	2.500000
1 April 2040	2.500000
1 October 2040	2.500000
1 April 2041	2.500000
1 October 2041	2.500000
1 April 2042	2.500000
1 October 2042	<u>2.500000</u>
<b>TOTAL</b>	<b>100.000000</b>

2. If the proceeds of the Loan shall not have been fully withdrawn as of the first Principal Payment Date, the principal amount of the Loan repayable by the Borrower on each Principal Payment Date shall be determined as follows:

- (a) to the extent that any proceeds of the Loan shall have been withdrawn as of the first Principal Payment Date, the Borrower shall repay the amount withdrawn and outstanding as of such date in accordance with paragraph 1 of this Schedule; and
- (b) any withdrawal made after the first Principal Payment Date shall be repaid on each Principal Payment Date falling after the date of such withdrawal in amounts determined by ADB by multiplying the amount of each such withdrawal by a fraction, the numerator of which shall be the original Installment Share specified in the table in paragraph 1 of this Schedule for said Principal Payment Date (the Original Installment Share) and the denominator of which shall be the sum of all remaining Original Installment Shares for Principal Payment Dates falling on or after such date, such repayment amounts to be adjusted, as necessary, to deduct any amounts referred to in paragraph 4 of this Schedule, to which a Currency Conversion applies.

3. Withdrawals made within 2 calendar months prior to any Principal Payment Date shall, for the purposes solely of calculating the principal amounts payable on any Principal Payment Date, be treated as withdrawn and outstanding on the second Principal Payment Date following the date of withdrawal and shall be repayable on each Principal Payment Date commencing with the second Principal Payment Date following the date of withdrawal.

4. Notwithstanding the provisions of paragraphs 1 and 2 of this Schedule, upon a Currency Conversion of all or any portion of the withdrawn principal amount of the Loan to an Approved Currency, the amount so converted in said Approved Currency that shall be repayable on any Principal Payment Date occurring during the Conversion Period, shall be determined by ADB by multiplying such amount in its currency of denomination immediately prior to said Conversion by either (i) the exchange rate that reflects the amounts of principal in said Approved Currency payable by ADB under the Currency Hedge Transaction relating to said Conversion; or (ii) if ADB so determines in accordance with the Conversion Guidelines, the exchange rate component of the Screen Rate.

5. If the principal amount of the Loan withdrawn and outstanding from time to time shall be denominated in more than one Loan Currency, the provisions of this Schedule shall apply separately to the amount denominated in each Loan Currency, so as to produce a separate amortization schedule for each such amount.

**SCHEDULE 3****Allocation and Withdrawal of Loan Proceeds**General

1. The table attached to this Schedule sets forth the Categories of items of expenditure to be financed out of the proceeds of the Loan and the allocation of the Loan proceeds to each such Category ("Table"). (Reference to "Category" in this Schedule is to a Category or Subcategory of the Table).

Basis for Withdrawal from the Loan Account

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

Interest and Commitment Charges

3. The amount allocated to Category "Interest and Commitment Charges" is for financing interest and commitment charges on the Loan during the implementation period of the Project. ADB shall be entitled to withdraw from the Loan Account and pay to itself, on behalf of the Borrower, the amounts required to meet payments, when due, of such interest and commitment charges.

Reallocation

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

- (a) if the amount of the Loan allocated to any Category appears to be insufficient to finance all agreed expenditures in that Category, ADB may, in consultation with the Borrower, (i) reallocate to such Category, to the extent required to meet the estimated shortfall, amounts of the Loan which have been allocated to another Category but, in the opinion of ADB, are not needed to meet other expenditures, and (ii) if such reallocation cannot fully meet the estimated shortfall, reduce the withdrawal percentage applicable to such expenditures in order that further withdrawals under such Category may continue until all expenditures thereunder shall have been made; and
- (b) if the amount of the Loan allocated to any Category appears to exceed all agreed expenditures in that Category, ADB may, in consultation with the Borrower, reallocate such excess amount to any other Category.

Disbursement Procedures

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

Condition for Withdrawals from Loan Account

6. Notwithstanding any other provision of this Loan Agreement, no withdrawals shall be made from the Loan Account for the Cable Landing Station Contract until: (a) the land lease agreement for the landing stations has been signed; and (b) unless national legislation has been passed to allow the use of land without further consent from the landowners, the easement agreement for the cable route has been signed (such agreement is subject to third party validation acceptable to ADB).

TABLE

ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS				
Number	Item	Total Amount Allocated for ADB Financing (\$)		Basis for Withdrawal from the Loan Account
		Category	Subcategory	
1	Works	12,400,000		
1A	Manatua Cable System**		12,000,000	60% of total expenditure claimed*
1B	Cable Landing Stations***		400,000	20% of total expenditure claimed*
2	Consulting Services (Project Management)	600,000		60% of total expenditure claimed*
3	Interest and Commitment Charges	170,000		100% of amounts due
4	Unallocated	1,830,000		
	<b>TOTAL</b>	<b>15,000,000</b>		

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

\*\* The Manatua Cable System Contract is financed by ACL, NT, OFT and SSCC pursuant to the C&MA. The Project finances a portion of this contract and this cost category applies to ADB's share of the portion; the NZ Grant finances the remainder of the portion.

\*\*\* Subject to the condition for withdrawal described in paragraph 6 of this Schedule.



**SCHEDULE 4****Procurement of Works and Consulting Services**General

1. The procurement of Works and Consulting Services shall be subject to and governed by the Procurement Guidelines, and the Consulting Guidelines, respectively.
2. Except as ADB may otherwise agree, Works shall be procured and Consulting Services shall be selected and engaged only on the basis of the procurement method and the selection method set forth below. These methods are subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. The Borrower may only modify the procurement method and the selection 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 Loan Agreement have the meanings provided in the Procurement Guidelines and/or the Consulting Guidelines, as applicable.

Eligible Source of Procurement of Works and Consulting Services

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

Works

5. Works shall be procured on the basis of the following procurement method: International Competitive Bidding.

Procurement of the Manatua Cable System Contract

6. The Borrower ensure that procurement of and contract administration for the Manatua Cable System Contract is carried out by the project steering group represented by ACL, NT, OPT and SSCC in accordance with the Procurement Guidelines, this Schedule and the terms and conditions set out in the Procurement Plan.

Conditions for Award of Contract

7. The Borrower shall not award any Works contracts which involves environmental impacts until:
  - (a) the Borrower has obtained final approval of the IEE; and
  - (b) The Borrower has incorporated the relevant provisions from the EMP into the Works contract.

Consulting Services

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

Industrial or Intellectual Property Rights

9. (a) The Borrower shall ensure that all Works procured (including without limitation all computer hardware, software and systems, whether separately procured or incorporated within other goods and services procured) do not violate or infringe any industrial property or intellectual property right or claim of any third party.

(b) The Borrower shall ensure that all contracts for the procurement of Works contain appropriate representations, warranties and, if appropriate, indemnities from the contractor or supplier with respect to the matters referred to in subparagraph (a) of this paragraph.

10. The Borrower shall ensure that all ADB-financed contracts with consultants contain appropriate representations, warranties and, if appropriate, indemnities from the consultants to ensure that the Consulting Services provided do not violate or infringe any industrial property or intellectual property right or claim of any third party.

ADB's Review of Procurement Decisions

11. Contracts procured under international competitive bidding procedures and contracts for Consulting Services shall be subject to prior review by ADB, unless otherwise agreed between the Borrower and ADB and set forth in the Procurement Plan.

## SCHEDULE 5

### Execution of Project; Financial Matters

#### Implementation Arrangements

1. The Borrower and ACL shall ensure that the Project is implemented in accordance with the detailed arrangements set forth in the PAM. Any subsequent change to the PAM shall become effective only after approval of such change by the Borrower and ADB. In the event of any discrepancy between the PAM and this Loan Agreement, the NZ Grant Agreement and the Project Agreement, the provisions of this Loan Agreement, the NZ Grant and the Project Agreement shall prevail.
2. The Borrower shall ensure that all relevant ministries and agencies provide full cooperation to ensure smooth implementation of the Project. Specifically, the Borrower shall cause such relevant ministries and agencies to give full, timely and efficient cooperation in providing resources, issuing any licenses, permits or approvals in connection with the Project.
3. Within 12 months of the Effective Date, the Borrower shall have adopted executive orders and/or submitted to its Parliament draft legislation to ensure adequate protection of the Manatua Cable System in the Borrower's territorial waters, including no trawl fishing or anchoring will be permitted in the area within the Borrower's territorial waters through which the submarine cable will pass.

#### Environment

4. The Borrower shall ensure or cause ACL to ensure that the preparation, design, construction, implementation, operation and decommissioning of the Project comply with (a) all applicable laws and regulations of the Borrower 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. Moreover, the Borrower shall ensure or cause ACL to ensure that (a) the IEE and the EMP are updated of the pre-construction phase after completion of the hydrographic survey and finalization of the precise alignment of the cable route in connection with the Manatua Cable System Contract; and (b) the cable route is in a "no anchor" zone and avoids sensitive habitats (such as corals and designated areas).

#### Indigenous Peoples and Involuntary Resettlement

5. The Borrower shall ensure or cause ACL to ensure that the Project does not have any indigenous peoples or involuntary resettlement impacts, all within the meaning of the SPS. In the event that the Project does have any such impact, the Borrower shall take all steps required to ensure that the Project complies with the applicable laws and regulations of the Borrower and with the SPS.

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

6. The Borrower shall make available or cause the ACL to make available necessary budgetary and human resources to fully implement the EMP, any RP and any IPP.

Safeguards – Related Provisions in Bidding Documents and Works Contracts

7. The Borrower shall ensure or cause ACL to ensure that all bidding documents and contracts for Works contain provisions that require contractors to:

- (a) comply with the measures relevant to the contractor set forth in the IEE, the EMP, any RP and any IPP (to the extent they concern impacts on affected people during construction), and any corrective or preventative actions set forth in a Safeguards Monitoring Report;
- (b) make available a budget for all such environmental and social measures; and
- (c) provide the Borrower with a written notice of any unanticipated environmental, resettlement or indigenous peoples risks or impacts that arise during construction, implementation or operation of the Project that were not considered in the IEE, the EMP, any RP and any IPP.

Safeguards Monitoring and Reporting

8. The Borrower shall do the following or cause ACL to do the following:

- (a) submit semi-annual Safeguards Monitoring Reports to ADB and disclose relevant information from such reports to affected persons promptly upon submission;
- (b) if any unanticipated environmental and/or social risks and impacts arise during construction, implementation or operation of the Project that were not considered in the IEE, the EMP, any RP and any IPP, 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, any RP or any IPP promptly after becoming aware of the breach.

Prohibited List of Investments

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

Labor Standards, Health and Safety

10. The Borrower shall ensure that the core labor standards and the Borrower's applicable laws and regulations are complied with during Project implementation. The Borrower shall include specific provisions in the bidding documents and contracts financed by ADB under the Project requiring that the contractors, among other things: (a) comply with the Borrower'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; and (e) 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.

11. The Borrower shall strictly monitor compliance with the requirements set forth in paragraph 10 above and provide ADB with regular reports.

#### Gender and Development

12. The Borrower shall ensure that the principles of gender equality aimed at increasing Project benefits and impact on women in the Project area are followed during implementation of the Project. These include (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

13. The Borrower shall provide any required counterpart funding for Project implementation on time to ACL. In addition to the foregoing, the Borrower shall ensure that ACL has sufficient funds to satisfy its liabilities arising from any Works and/or Consulting Services contract.

#### Change in Ownership

14. The Borrower shall ensure or cause the ACL to ensure, that throughout Project implementation (a) no material organizational changes to the ACL (whether financial, operational or structural) nor material asset transfers to or from the ACL, including a change in ownership of the Project facilities, are approved or implemented without prior approval of ADB; and (c) any such changes are carried out in a transparent manner and in accordance with applicable laws and regulations.

#### Governance and Anticorruption

15. The Borrower and the ACL 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.

16. The Borrower and the ACL 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.