

**OFFICIAL
DOCUMENTS**

GRANT NUMBER D004-FM

Financing Agreement

(Palau-FSM Connectivity Project)

between

FEDERATED STATES OF MICRONESIA

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated *March 06*, 2015

GRANT NUMBER D004-FM

FINANCING AGREEMENT

AGREEMENT dated *March 06*, 2015, entered into between the FEDERATED STATES OF MICRONESIA (“Recipient”) and INTERNATIONAL DEVELOPMENT ASSOCIATION (“Association”).

WHEREAS, (A) the Recipient together with the Republic of Palau (“Palau”) wish to cooperate to undertake reforms and investments aimed at improving access to information and communications technologies in their respective territories, including through investments in telecommunications infrastructure;

(B) in furtherance of the foregoing, the Recipient and Palau will jointly implement the activities contemplated under Part 1(a) of the project described in Schedule 1 to this Agreement (the “Project”);

(C) by a separate financing agreement (the “Co-financing Agreement”) to be entered into between the Asian Development Bank (“ADB”) and Palau, ADB will provide financing (the “Co-financing”) to Palau in support of activities related to the implementation of Part 1(a) of the Project (“Palau Project”);

(D) the Recipient, having satisfied itself as to the feasibility and priority of the Project, has requested the Association to extend a grant as provided in Section 2.01 of this Agreement, to assist in financing the Project; and

(E) the Association has agreed, on the basis, *inter alia*, of the foregoing, to extend the grant as provided for in Section 2.01 of this Agreement, upon the terms and conditions set forth in this Agreement.

NOW THEREFORE, the Recipient and the Association hereby agree as follows:

ARTICLE I — GENERAL CONDITIONS; DEFINITIONS

- 1.01. The General Conditions (as defined in the Appendix to this Agreement) constitute an integral part of this Agreement.
- 1.02. Unless the context requires otherwise, the capitalized terms used in this Agreement have the meanings ascribed to them in the General Conditions or in the Appendix to this Agreement.

ARTICLE II — FINANCING

- 2.01. The Association agrees to extend to the Recipient, on the terms and conditions set forth or referred to in this Agreement, a grant in an amount equivalent to thirty two million one hundred thousand Special Drawing Rights (SDR 32,100,000) (“Financing”), to assist in financing the Project.
- 2.02. The Recipient may withdraw the proceeds of the Financing in accordance with Section IV of Schedule 2 to this Agreement.
- 2.03. The Maximum Commitment Charge Rate payable by the Recipient on the Unwithdrawn Financing Balance shall be one-half of one percent (1/2 of 1%) per annum.
- 2.04. The Payment Dates are January 1 and July 1 in each year.
- 2.05. The Payment Currency is Dollar.

ARTICLE III — PROJECT

- 3.01. The Recipient declares its commitment to the objective of the Project. To this end, the Recipient shall: (a) carry out Part 2(a) and (b), and Part 3 of the Project through the Department of Transportation, Communication and Infrastructure; (b) cause Part 1 of the Project to be carried out by the FSM Open Access Entity; and (c) cause Part 2(c) to be carried out by the Office of the Regulator in accordance with the provisions of Article IV of the General Conditions and the Project Agreements.
- 3.02. Without limitation upon the provisions of Section 3.01 of this Agreement, and except as the Recipient and the Association shall otherwise agree, the Recipient shall ensure that the Project is carried out in accordance with the provisions of Schedule 2 to this Agreement.

ARTICLE IV — REMEDIES OF THE ASSOCIATION

- 4.01. The Additional Events of Suspension consist of the following:
 - (a) The Telecommunications Act has been amended, suspended, abrogated, repealed or waived so as to affect materially and adversely the ability of the Recipient and/or the Project Implementing Entities (as the case may

be) to perform any of their respective obligations under this Agreement or the Project Agreements.

- (b) The Establishment Documents for the Project Implementing Entities have been amended, suspended, abrogated, repealed or waived so as to affect materially and adversely the ability of the Project Implementing Entities to perform any of their obligations under their Project Agreements.
- (c) The right of Palau to withdraw the proceeds of the financing under the Co-financing Agreement has been suspended, canceled or terminated in whole or in part, pursuant to the terms of the aforesaid agreement.

4.02. The Co-financing Deadline for the effectiveness of the Co-financing Agreement is March 31, 2016.

ARTICLE V — EFFECTIVENESS; TERMINATION

- 5.01. The Effectiveness Deadline is the date ninety (90) days after the date of this Agreement.
- 5.02. For purposes of Section 8.05 (b) of the General Conditions, the date on which the obligations of the Recipient under this Agreement (other than those providing for payment obligations) shall terminate is twenty (20) years after the date of this Agreement.

ARTICLE VI — REPRESENTATIVE; ADDRESSES

- 6.01. The Recipient's Representative is the Secretary of Finance and Administration.
- 6.02. The Recipient's Address is:

Department of Finance and Administration
P.O. Box PS158
Palikir
Pohnpei

Facsimile:

(691) 320-2380

6.03. The Association's Address is:

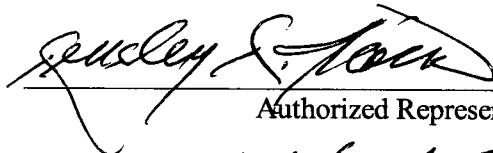
International Development Association
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Cable:	Telex:	Facsimile:
INDEVAS Washington, D.C.	248423 (MCI)	1-202-477-6391

AGREED at Pohnpei, Micronesia, as of the day and year
first above written.

FEDERATED STATES OF MICRONESIA

By


Authorized Representative

Name: KONSLEY K. IKOSIA

Title: SECRETARY, DOFA

INTERNATIONAL DEVELOPMENT ASSOCIATION

By


Authorized Representative

Name: FRANZ R. DREES-GROSS

Title: COUNTRY DIRECTOR, EACNF

SCHEDULE 1

Project Description

The objective is to reduce the cost, and increase the availability of, information and communication technology services needed to support social and economic development in the Recipient's territory.

The Project, which forms part of the second Phase of the Program, consists of the following parts:

Part 1: International Connectivity Infrastructure

- (a) Participation in a joint venture with Palau for the construction of the Palau-Yap-Guam cable system, comprising a half share in the international cable system assets of the Palau-Yap-Guam cable system and an undivided right to own and manage the onshore Federated States of Micronesia ("FSM") cable system assets in Yap, including the Yap landing station and the point of interconnection for domestic operators to interconnect with the cable system.
- (b) Financing for the construction, of a new cable system to be constructed to connect Chuuk to the global telecommunications network.
- (c) Financing of a one-time partial purchase of international bandwidth for the Recipient's state of Kosrae.

Part 2: Technical Assistance

Provision of technical assistance for:

- (a) ICT sector development, including the design of the ownership structure of existing and new connectivity infrastructure.
- (b) Reform and development of Federated States of Micronesia Telecommunications Corporation.
- (c) Strengthening regulation of the ICT sector, including regulatory capacity-development.

Part 3: Project Management Support

Project management and coordination, financial management, auditing, general Project reporting, monitoring and evaluation, and administrative costs associated with Project implementation.

SCHEDULE 2

Project Execution

Section I. Implementation Arrangements

A. **Institutional Arrangements**

1. The Recipient shall vest responsibility for overall implementation of the Project in the DTCI; and: (a) implementation of Part 1 of the Project in the FSM Open Access Entity; (b) implementation of Part 2(c) of the Project in the Office of the Regulator; and (c) implementation of Parts 2(a) and (b), and Part 3 of the Project in the DTCI.

2. Telecommunications Broadband Task Force

To ensure proper oversight of the Project, the Recipient shall maintain, throughout the period of Project implementation, a Telecommunications Broadband Task Force, comprised of representatives from, *inter alia*, DTCI, the Department of Finance and Administration, the Department of Justice, the Department of Resources and Development, the Department of Foreign Affairs, and FSMTC, to serve as an overall steering committee for the Project and provide policy oversight of the Project.

3. Project Coordinator

The Recipient shall appoint, by not later than three (3) months after the Effective Date, and thereafter maintain throughout the period of Project implementation, a Project coordinator within DTCI, with qualifications and experience and under terms of reference acceptable to the Association, to be responsible for supporting DTCI, DoFA and the Project Implementing Entities with Project implementation.

4. Department of Finance and Administration

The Recipient shall maintain, throughout the Project implementation period, DoFA, with adequate resources and staffing satisfactory to the Association, to be responsible for financial management of the Project. To this end, the Recipient shall, by not later than three months after the Effective Date, appoint or assign, and thereafter maintain, throughout the period of Project implementation, a financial management specialist within DoFA, with qualifications and experience and under terms of reference acceptable to the Association, to support DTCI with financial management and reporting for the Project.

B. Specific Implementation Covenants for Part 1 of the Project.

1. MicroPal Fiber-Optic Joint Committee

To facilitate proper and efficient coordination of Part 1(a) of the Project, the Recipient shall take all necessary measures on its part to maintain, until no less than one (1) year after completion of construction of the Palau-Yap-Guam cable and the assumption of ownership interests in the cable by FSM Open Access Entity pursuant to the Consortium Agreement with Palau Cable Company under Part 1(a) of the Project, the MicroPal Fiber-Optic Joint Committee, which shall serve as a coordination committee between the Recipient and Palau for the implementation for Part 1(a) of the Project.

2. FSM Open Access Entity

- (a) The Recipient shall establish and operationalize the FSM Open Access Entity which shall be responsible for implementation of Part 1 of the Project. To this end, the Recipient shall take all measures required on its part to: (i) appoint a board of directors, chief executive officer, managerial and technical personnel necessary for operational requirements; (ii) adopt by-laws, governance arrangements, a business and marketing plan, and organizational plan; and (iii) put in place financing arrangements that would ensure adequate capitalization and operational financing including to address contingencies for the FSM Open Access Entity, all in a manner acceptable to the Association.
- (b) The Recipient shall take all measures required on its part to ensure that the FSM Open Access Entity is maintained throughout the Project implementation period with adequate resources, all in a manner acceptable to the Association.

3. FSM Open Access Entity Subsidiary Agreement

- (a) To facilitate the carrying out of Part 1 of the Project, the Recipient shall, after the FSM Open Access Entity has entered into the FSM Project Agreement with the Association, make part of the proceeds of the Financing, allocated from time to time to Category (1) of the table set forth in Section IV.A.2 of this Schedule available to the FSM Open Access Entity under a subsidiary agreement (“FSM Open Access Entity Agreement”) between the Recipient and the FSM Open Access Entity, under terms and conditions approved by the Association, which shall include:
 - (i) The obligation of the Recipient to: (A) transfer the proceeds of the Financing, required for the implementation of Part 1 of the Project, to FSM

Open Access Entity, on a non-reimbursable grant basis, and otherwise to take all action necessary to permit the Project Implementing Entity to carry out the Project and ensure the achievement of the objectives thereof; and (B) transfer, in a manner satisfactory to the Association, all responsibilities, rights and obligations associated with the implementation of Part 1 of the Project from DTICI to the FSM Open Access Entity.

(ii) The obligation of the FSM Open Access Entity to: (A) manage, operate, monitor, transfer and reconcile the proceeds of the Financing made available to it in accordance with arrangements and procedures satisfactory to the Association; (B) take all required actions, including provision of timely consents and approvals as may be necessary, to facilitate the utilization of said proceeds of the Financing and the implementation of Part 1 of the Project, and to comply with its undertakings under the Project Agreement; (C) enter into the Consortium Agreements, in form and substance satisfactory to the Association, with the Palau Cable Company, and thereafter maintain the Consortium Agreement throughout the Project implementation period; (D) secure, jointly or severally, adequate capacity for the cables serving Yap and Chuuk to connect to the global telecommunications network; (E) enter into, or otherwise hold rights under, one or more Landing Party Agreements, with any other necessary party thereto, in form and substance satisfactory to the Association, and setting forth the arrangements for landing rights for the landing of the submarine fiber optic cables to be constructed under Part 1(a) and Part 1(b) of the Project; (F) obtain all licenses, permits, and approvals required for the operation and supply of international and domestic wholesale communication services; (G); enter into arrangements with a suitably-qualified supplier, in form and substance satisfactory to the Association, for the provision of satellite services for Kosrae; (H) maintain all relevant records and documents related to the Financing and the Project and provide promptly such documents and records, including all other information, as may be requested by the Recipient or the Association from time to time; (I) promptly inform the Recipient and the Association of any condition which interferes or threatens to interfere with the implementation of Part 1 of the Project and the achievement of the objectives thereof; (J) at the request of the Recipient, exchange views with the Recipient and the Association with regard to the progress Part 1 of the Project and the achievement of the objectives thereof and; (K) carry out Part 1 of the Project in accordance with the Anti-Corruption Guidelines and the Safeguard Documents.

- (b) The Recipient shall exercise its rights under the FSM Open Access Entity Subsidiary Agreement in such manner as to protect the interests of the Recipient and the Association and to accomplish the purposes of the Financing. Except as the Association shall otherwise agree, the Recipient

shall not assign, amend, abrogate or waive the FSM Open Access Entity Subsidiary Agreement or any of its provisions.

4. Other Implementation Covenants

Notwithstanding the foregoing paragraph 2 of this Section I.B, the Recipient shall, all in form and substance satisfactory to the Association:

- (a) pursuant to the Subsidiary Agreement, transfer, all responsibilities, rights and obligations associated with the implementation of Part 1 of the Project from DTCI to the FSM Open Access Entity.
- (b) cause the FSM Open Access Entity to enter into the Consortium Agreements with the Palau Cable Company, and thereafter maintain the Consortium Agreement throughout the Project implementation period.
- (c) cause (or take all measures on its part to cause) the FSM Open Access Entity to enter, or otherwise hold rights under, one or more Landing Party Agreements, with any other necessary party thereto, and setting forth the arrangements for landing rights for the landing of the submarine fiber optic cables to be constructed under Part 1(a) and (b) of the Project.
- (d) cause, or take all measures on its part to cause, FSM Open Access Entity to obtain all licenses, permits, and approvals required for the operation and supply of international and domestic wholesale communication services by the Project Implementing Entity in the Project areas.
- (e) cause (or take all measures on its part to cause) FSM Open Access Entity to secure, jointly or severally, adequate capacity for the cables serving Yap and Chuuk to connect to the global telecommunications network.
- (f) enter into arrangements with a suitably-qualified supplier, for the provision of satellite services for Kosrae.
- (g) take all measures on its part to ensure that satellite and submarine fiber optic cable(s) infrastructure used in the supply of ICT services and under the ownership or control of government, whether by FSMTC or the FSM Open Access Entity or otherwise, is used in an economically efficient manner.
- (h) take all measures on its part to put in place, and maintain throughout Project implementation period, arrangements sufficient to ensure that its FSM Open Access Entity and FSMTC shall not compete against each other in the supply of connectivity services utilizing satellite or submarine

fiber optic cable(s); and where FSMTC owns or controls capacity rights on HANTRU1 Cable System between Pohnpei and Guam, it shall supply such services to the FSM Open Access Entity free of charge, including system access, on terms as may be demanded by the FSM Open Access Entity in order to link Chuuk to Pohnpei and Chuuk to Guam.

C. Specific Implementation Covenants for Part 2(c) of the Project

1. Office of the Regulator

- (a) The Recipient shall establish and operationalize the Office of the Regulator (in accordance with the Telecommunications Act), which shall be responsible for implementation of Part 2(c) of the Project. To this end, the Recipient shall take all measures required on its part to: (i) appoint a chief executive and such other members as required by the Telecommunications Act, technical and managerial personnel for the Office of the Regulator; and (ii) put in place all arrangements that would ensure operational functioning of the Office of the Regulator, all in a manner acceptable to the Association.
- (b) The Recipient shall take all measures required on its part to ensure that the Office of the Regulator is maintained throughout the Project implementation period with adequate resources.

2. Office of the Regulator Subsidiary Agreement

- (a) To facilitate the carrying out of Part 2(c) of the Project, the Recipient shall, after the Office of the Regulator has entered into the FSM Project Agreement with the Association, make part of the proceeds of the Financing, allocated from time to time to Category (3) of the table set forth in Section IV.A.2 of this Schedule available to the Office of the Regulator under a subsidiary agreement (“Office of the Regulator Subsidiary Agreement”) between the Recipient and the Office of the Regulator, under terms and conditions approved by the Association.
- (b) The Recipient shall exercise its rights under the Office of the Regulator Subsidiary Agreement in such manner as to protect the interests of the Recipient and the Association and to accomplish the purposes of the Financing. Except as the Association shall otherwise agree, the Recipient shall not assign, amend, abrogate or waive the Office of the Regulator Subsidiary Agreement or any of its provisions.

D. Regulatory Framework

The Recipient shall, throughout the Project implementing period, take all necessary measures on its part to ensure implementation of Telecommunications Act, including those aspects which support a competitive ICT sector, such as: licensing, wholesale access, guarantees with respect to open access to international communications infrastructure, and the creation and operationalization of an independent regulatory authority to oversee market activities, in a manner satisfactory to the Association.

E. Anti-Corruption

The Recipient shall ensure that the Project is carried out in accordance with the provisions of the Anti-Corruption Guidelines.

F. Safeguards

1. The Recipient shall, and shall cause the FSM Open Access Entity to, carry out the Project in accordance with the Safeguards Instruments.
2. The Recipient shall not amend, suspend, or waive any of the Safeguards Instruments, or any provision thereof, unless the Association has provided its prior approval thereof in writing and the Recipient has complied with the same consultation and disclosure requirements as applicable to the original adoption of the said Safeguards Instruments.
3. Without limitation on its other reporting obligations under this Agreement, the Recipient shall collect, compile, and submit to the Association, as part of the Project Reports, information on the status of compliance with the Safeguards Instruments, giving details of: (a) measures taken in furtherance of the said Safeguards Instruments; (b) conditions, if any, which interfere or threaten to interfere with the smooth implementation of the said Safeguards Instruments; and (c) remedial measures taken or required to be taken to address such conditions.
4. The Recipient shall, and shall cause the FSM Open Access Entity to afford the Association a reasonable opportunity to review the reports prepared under paragraph 3 of this Part F, and thereafter shall carry out with due diligence all remedial measures agreed with the Association so as to ensure the proper implementation of the Project in accordance with the Safeguards Instruments.
5. In the event of any conflict between the provisions of any of the Safeguards Instruments and the provisions of this Agreement, the provisions of this Agreement shall prevail.
6. The Recipient shall, and shall cause the FSM Open Access Entity to, ensure that:

- (a) all terms of reference for any technical assistance or studies carried out under the Project are consistent with the Association's environmental and social safeguard policies, as well as the Recipient's laws relating to the environment and social aspects; and
- (b) in drafting any regulations, guidelines or corporate procedures and carrying out capacity building activities under the Project, due attention is given to said policies and laws.

Section II. Project Monitoring, Reporting and Evaluation

A. Project Reports

- 1. The Recipient shall monitor and evaluate the progress of the Project and prepare Project Reports in accordance with the provisions of Section 4.08 of the General Conditions and on the basis of the indicators set forth below in the Results Framework acceptable to the Association. Each Project Report shall cover the period of one (1) calendar semester, and shall be furnished to the Association not later than forty five (45) days after the end of the period covered by such report.

2. Mid-term Review

The Recipient shall: (a) not later than June 1, 2017 (or such other date as the Association may agree), carry out a mid-term review of the Project and, prepare and furnish to the Association a mid-term report, in such detail as the Association shall reasonably request, documenting progress achieved in the carrying out of the Project during the period preceding the date of such report, taking into account the monitoring and evaluation activities performed pursuant to paragraph 1 of this Section II.A, and setting out the measures recommended to ensure the continued efficient carrying out of the Project and the achievement of its objective during the period following such date; and (b) review with the Association such mid-term report, on or about the date one month after its submission, and thereafter take all measures required to ensure the continued efficient implementation of the Project and the achievement of its objective, based on the conclusions and recommendations of the mid-term report and the Association's views on the matter.

B. Financial Management, Financial Reports and Audits

- 1. The Recipient shall maintain or cause to be maintained a financial management system in accordance with the provisions of Section 4.09 of the General Conditions.
- 2. Without limitation on the provisions of Part A of this Section, the Recipient shall prepare and furnish to the Association not later than forty five (45) days after the

end of each calendar quarter, interim unaudited financial reports for the Project covering the quarter, in form and substance satisfactory to the Association.

3. The Recipient shall have its Financial Statements audited in accordance with the provisions of Section 4.09 (b) of the General Conditions. Each audit of the Financial Statements shall cover the period of one (1) fiscal year of the Recipient. The audited Financial Statements for each such period shall be furnished to the Association not later than nine (9) months after the end of such period.

Section III. Procurement

A. General

1. **Goods, Works and Non-consulting Services.** All goods, works and non-consulting services required for the Project and to be financed out of the proceeds of the Financing shall be procured in accordance with the requirements set forth or referred to in Section I of the Procurement Guidelines, and with the provisions of this Section.
2. **Consultants' Services.** All consultants' services required for the Project and to be financed out of the proceeds of the Financing shall be procured in accordance with the requirements set forth or referred to in Sections I and IV of the Consultant Guidelines, and with the provisions of this Section.
3. **Definitions.** The capitalized terms used below in this Section to describe particular procurement methods or methods of review by the Association of particular contracts, refer to the corresponding method described in Sections II and III of the Procurement Guidelines, or Sections II, III, IV and V of the Consultant Guidelines, as the case may be.

B. Particular Methods of Procurement of Goods, Works and Non-consulting Services

1. **International Competitive Bidding.** Except as otherwise provided in paragraph 2 below, goods, works and non-consulting services shall be procured under contracts awarded on the basis of International Competitive Bidding.
2. **Other Methods of Procurement of Goods, Works and Non-consulting Services.** The following methods, other than International Competitive Bidding, may be used for procurement of goods, works and non-consulting services for those contracts specified in the Procurement Plan: (a) Shopping and (b) Direct Contracting.

C. Particular Methods of Procurement of Consultants' Services

1. **Quality- and Cost-based Selection.** Except as otherwise provided in paragraph 2 below, consultants' services shall be procured under contracts awarded on the basis of Quality- and Cost-based Selection.
2. **Other Methods of Procurement of Consultants' Services.** The following methods, other than Quality- and Cost-based Selection, may be used for procurement of consultants' services for those contracts which are specified in the Procurement Plan: (a) Quality-based Selection; (b) Least Cost Selection; (c) Selection based on Consultants' Qualifications; (d) Single-source Selection of consulting firms; (e) Procedures set forth in paragraphs 5.2 and 5.3 of the Consultant Guidelines for the Selection of Individual Consultants; and (f) Single-source procedures for the Selection of Individual Consultants.

D. Review by the Association of Procurement Decisions

The Procurement Plan shall set forth those contracts which shall be subject to the Association's Prior Review. All other contracts shall be subject to Post Review by the Association.

Section IV. Withdrawal of the Proceeds of the Financing

A. General

1. The Recipient may withdraw the proceeds of the Financing in accordance with the provisions of Article II of the General Conditions, this Section, and such additional instructions as the Association shall specify by notice to the Recipient (including the "World Bank Disbursement Guidelines for Projects" dated May 2006, as revised from time to time by the Association and as made applicable to this Agreement pursuant to such instructions), to finance Eligible Expenditures as set forth in the table in paragraph 2 below.
2. The following table specifies the categories of Eligible Expenditures that may be financed out of the proceeds of the Financing ("Category"), the allocations of the amounts of the Financing to each Category, and the percentage of expenditures to be financed for Eligible Expenditures in each Category:

Category	Amount of the Financing Allocated (expressed in SDR)	Percentage of Expenditures to be Financed (inclusive of Taxes)
(1)(a) Goods, works, non-consulting services, and consultants' services for Parts 1(a) and (b) of the Project	27,700,000	100%
(1)(b) Goods, works non-consulting services, and consultants' services for Part 1(c) of the Project	2,400,000	100%
(2) Consultants' services and Training for Part 2(a) and (b) of the Project	700,000	100%
(3) Goods, Consultants Services and Training for Part 2(c) of the Project	800,000	100%
(4) Consultants' services, goods and Operating Costs for Part 3 of the Project	500,000	100%
TOTAL AMOUNT	32,100,000	

B. Withdrawal Conditions; Withdrawal Period

1. Notwithstanding the provisions of Part A of this Section, no withdrawal shall be made:
 - (a) for payments made prior to the date of this Agreement;
 - (b) under Category (1)(a), until the Recipient has provided evidence satisfactory to the Association that:

- (i) the FSM Open Access Entity has been established and made operational, in accordance with the provisions of Section I.B.2(a) of Schedule 2 to this Agreement;
- (ii) (A) the FSM Open Access Entity Project Agreement has been entered into, and (B) the Association has received a legal opinion or opinions satisfactory to it of counsel acceptable to the Association, or if the Association so requests, a certificate or certificates satisfactory to the Association of a competent official or officials, attesting that the FSM Open Access Entity Project Agreement has been duly executed and delivered on behalf of FSM Open Access Entity, ratified by all necessary governmental or corporate action, and is legally binding upon the FSM Open Access Entity in accordance with the terms thereof ;
- (iii) (A) the FSM Open Access Entity Subsidiary Agreement has been entered into in accordance with the provisions of Section I.B.3 of Schedule 2 to this Agreement, and (B) the Association has received a legal opinion or opinions satisfactory to it of counsel acceptable to the Association, or if the Association so requests, a certificate or certificates satisfactory to the Association of a competent official or officials, attesting that the Subsidiary Agreement has been duly executed and delivered on behalf of the parties thereto, ratified by all necessary governmental or corporate action, and is legally binding upon the parties thereto in accordance with the terms thereof;
- (iv) the Co-Financing Agreement has been executed and all conditions precedent to its effectiveness or the right of Palau to make withdrawals under it have been fulfilled;
- (v) (A) the Consortium Agreements have been entered into in accordance with the provisions of Section I.B.4(b) of Schedule 2 to this Agreement, and (B) the Association has received a legal opinion or opinions satisfactory to it of counsel acceptable to the Association, or if the Association so requests, a certificate or certificates satisfactory to the Association of a competent official or officials, attesting that the Consortium Agreements have been duly executed and delivered on behalf of the parties thereto, ratified by all necessary governmental or corporate action, and is legally binding upon the parties thereto in accordance with the terms thereof;
- (vi) the FSM Open Access Entity has obtained all licenses, permits, and approvals required for the operation and supply of

international and domestic wholesale communication services in the Project areas;

- (vii) (A) a Landing Party Agreement has been entered into in accordance with the provisions of Section I.B.4(c) of Schedule 2 to this Agreement, and (B) the Association has received a legal opinion or opinions satisfactory to it of counsel acceptable to the Association, or if the Association so requests, a certificate or certificates satisfactory to the Association of a competent official or officials, attesting that the Landing Party Agreement has duly executed and delivered on behalf of the parties thereto, ratified by all necessary governmental or corporate action, and is legally binding upon the parties thereto in accordance with the terms thereof;
 - (viii) The Association and the Co-financier have entered into a memorandum of understanding setting forth the joint arrangements for implementation of Part 1(a) and (b) of the Project, in form and substance satisfactory to the Association; and
 - (ix) the FSM Open Access Entity has secured, jointly or severally, adequate capacity for the cables serving Yap and Chuuk to connect to the global telecommunications network in accordance with the provisions of Section I.B.4(e) of Schedule 2 to this Agreement.
- (c) under Category (1)(b), until the conditions listed in sub-paragraphs (b)(i), (ii) (iii) and (vii) in the foregoing paragraph (b) have been met, and Recipient has provided evidence satisfactory to the Association that the FSM Open Access Entity has entered into arrangements with communication service providers, in form and substance satisfactory to the Association, for the provision of satellite services for Kosrae.
- (d) Under Category (3) until: (i) the Office of the Regulator has been established and operationalized in accordance with Section I.C.1(a) of Schedule 2 to this Agreement; (ii) the Association has entered into the Office of the Regulator Project Agreement with the Office of the Regulator; and the Association has received a legal opinion or opinions satisfactory to it of counsel acceptable to the Association, or if the Association so requests, a certificate or certificates satisfactory to the Association of a competent official or officials, attesting that the Office of the Regulator Project Agreement has been duly executed and delivered on behalf of Office of the Regulator, ratified by all necessary governmental or corporate action, and is legally binding upon the Office of the Regulator in accordance with the terms thereof; and (iii) the Recipient and the Office

of the Regulator has entered into the Office of the Regulator Subsidiary Agreement in form and substance satisfactory to the Association, and in accordance with the provisions of Section 1.C.2 of Schedule 2 to this Agreement, and (B) the Association has received a legal opinion or opinions satisfactory to it of counsel acceptable to the Association, or if the Association so requests, a certificate or certificates satisfactory to the Association of a competent official or officials, attesting that the Subsidiary Agreement has been duly executed and delivered on behalf of the parties thereto, ratified by all necessary governmental or corporate action, and is legally binding upon the parties thereto in accordance with the terms thereof.

2. The Closing Date is January 31, 2020.

APPENDIX

Section I. Definitions

1. “Anti-Corruption Guidelines” means the “Guidelines on Preventing and Combating Fraud and Corruption in Projects Financed by IBRD Loans and IDA Credits and Grants”, dated October 15, 2006 and revised in January 2011.
2. “Category” means a category set forth in the table in Section IV of Schedule 2 to this Agreement.
3. “Co-financier” means the Asian Development Bank.
4. “Co-financing” means, for purposes of paragraph 11 of the Appendix to the General Conditions, the financing to be provided by the Co-financier to Palau to assist in financing of Part 1(a) of the Project.
5. “Co-financing Agreement” means the agreement to be entered into Palau and the Co-financier providing for the Co-financing.
6. “Consortium Agreements” means a joint venture agreement, construction and maintenance agreement, and/or such other agreement as may be necessary, to be entered into between the FSM Open Access Entity and Palau Cable Company for purposes of implementing Part 1(a) of the Project.
7. “Consortium Partners” means the FSM Open Access Entity and Palau Cable Company.
8. “Consultant Guidelines” means the “Guidelines: Selection and Employment of Consultants under IBRD Loans and IDA Credits and Grants by World Bank Borrowers” dated January 2011 (revised July 2014).
9. “Department of Finance and Administration” or “DOFA” means the Recipient’s department responsible for finance, or any successor thereto.
10. “Department of Foreign Affairs” means the Recipient’s department responsible for foreign affairs, or any successor thereto.
11. “Department of Justice” means the Recipient’s department responsible for justice, or any successor thereto.
12. “Department of Resources and Development” means the Recipient’s department responsible for resources and development, or any successor thereto.

13. “Department of Transportation, Communication and Infrastructure” and “DTCI” mean the Recipient’s department responsible for transportation, communications and infrastructure, or any successor thereto.
14. “Environmental Code of Practice and “ECOP” means the document that guides the FSM Open Access Entity and the contractors selected under Part 1 of the Project in delivering an environmentally and socially acceptable cable system.
15. “Environmental and Social Management Plan” and “ESMP” mean the Recipient’s plan dated October 2014, and acceptable to the Association, setting out mitigation, enhancement, monitoring, and institutional measures, including capacity building through training, to eliminate any adverse environmental and social impacts of activities under the Project, offset them, reduce them, or enhance positive impacts, as the same may be modified from time to time with the prior written agreement of the Association, and such term includes any annexes or schedules to such plan.
16. “Establishment Documents” means the Telecommunications Act, regulations, rules, instruments and certificates thereto, which shall establish, operationalize and govern the Office of the Regulator and the FSM Open Access Entity.
17. “FSM Open Access Entity” means the entity to be established by the Recipient pursuant to the Telecommunications Act, and to be operationalized and governed by respective Establishment Documents.
18. “FSM Open Access Entity Project Agreement” means the agreement to be entered into between the FSM Open Access Entity and the Association and referred to in Section IV.B.1(ii) of Schedule 2 to this Agreement.
19. “FSM Open Access Entity Subsidiary Agreement” means the agreement referred to in Section I.B.3 of Schedule 2 to this Agreement.
20. “FSMTC” or “Federated States of Micronesia Telecommunications Corporation” means the corporation established and operating pursuant to Chapter 2 of Title 21 of the Recipient’s Laws, responsible for providing telecommunications services or any successor thereto.
21. “General Conditions” means the “International Development Association General Conditions for Credits and Grants”, dated July 31, 2010.
22. “HANTRU 1 Cable System” means the submarine cable system owned by Hannon Armstrong LLC (US) and operated by Truestone LLC (US) connecting Guam with Pohnpei, FSM; Kwajalein, Marshall Islands; and Majuro, Marshall Islands.
23. “ICT” means information and communications technologies.

24. “Landing Party” means the licensed company that provides the landing facilities (beach manhole, cable stations, ducts), services (operations and maintenance services) and, as required, the regulatory approvals to land a cable system.
25. “Landing Party Agreement” means a landing party agreement or agreements to be entered into by FSM Open Access Entity, the Landing Party and any other necessary party thereto, or such agreement for the benefit of FSM Open Access Entity, in accordance with the provisions of Section I.B.3 of Schedule 2 to this Agreement.
26. “MicroPal Fiber Optic Committee” means the MicroPal Fiber Optic Committee, established and operating pursuant to the memorandum of understanding between the Recipient and Palau, dated March 19, 2014.
27. “Office of the Regulator” means the office established pursuant to Section 304 of the Telecommunications Act, and to be operationalized and governed by the respective Establishment Document, in accordance with Section I.C.1 of Schedule 2 to this Agreement.
28. “Office of the Regulator Project Agreement” means the agreement to be entered into between the Association and the Office of the Regulator, in accordance with Section VI.B1(d), of Schedule 2 to this Agreement.
29. “Office of the Regulator Subsidiary Agreement” means the agreement referred to in Section I.C.2 of Schedule 2 to this Agreement.
30. “Operating Costs” means incremental expenses incurred by the Recipient on account of the implementation, management, and monitoring and evaluation of the Project, based on annual budgets approved by the Association, including rental of office space, bank charges, communications, utilities, stationery, vehicle operation, maintenance, insurance and transportation costs, but excluding salaries, fees, honoraria, bonuses, and any other salary supplements of the Recipient’s civil servants.
31. “Palau Cable Company” means the entity to be established by Palau for purposes of jointly implementing Part 1(a) of the Project, or any successor thereto.
32. “Procurement Guidelines” means the “Guidelines: Procurement of Goods, Works and Non-consulting Services under IBRD Loans and IDA Credits and Grants by World Bank Borrowers” dated January 2011 (revised July 2014).
33. “Procurement Plan” means the Recipient’s procurement plan for the Project, dated October 31, 2014 and referred to in paragraph 1.18 of the Procurement Guidelines and paragraph 1.25 of the Consultant Guidelines, as the same shall be updated from time to time in accordance with the provisions of said paragraphs.

34. "Program" means the Pacific Regional Connectivity Program which is a series of projects approved by the Association's Board of Directors on August 2011.
35. "Project Agreements" means the FSM Open Access Entity Project Agreement and the Office of the Regulator Project Agreement.
36. "Project Implementing Entities" means FSM Open Access Entity and the Regulator.
37. "Safeguards Instruments" means the ESMP and ECOP.
38. "Subsidiary Agreement" means the FSM Subsidiary Agreement and the Office of the Regulator Subsidiary Agreement.
39. "Telecommunications Act" means the Recipient's P.L. No. 18-52 which may be cited as the Telecommunications Act, of 2014 Title 21 of the Recipient's Laws.
40. "Telecommunications Broadband Task Force" means the task force referred to in Section I.A of Schedule 2 to this Agreement.
41. "Training" means reasonable costs of training and workshop activities under the Project, based on annual work plans and budgets approved by the Association, including preparation and reproduction of training materials, rental of facilities, reasonable transportation costs, tuition fees, per diem of trainers and trainees (if applicable), and any other expenses directly related to course preparation and implementation.