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**GCF  
FUNDED ACTIVITY AGREEMENT  
(GRANTS)**

**between**

**UNITED NATIONS DEVELOPMENT PROGRAMME**

**and**

**GREEN CLIMATE FUND**

**FUNDED ACTIVITY: FP015  
"Tuvalu Coastal Adaptation Project (TCAP)"**

Dated 31<sup>st</sup> May 2017

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### Funded Activity Agreement (Grants)

This FUNDED ACTIVITY AGREEMENT (the "FAA" or this "Agreement") dated 31<sup>st</sup> May 2017 between:

**UNITED NATIONS DEVELOPMENT PROGRAMME**, an international organization established by the General Assembly of the United Nations pursuant to its resolution 2029(XX) of 22 November 1965 and having its registered office at One UN Plaza, New York, New York 10017, United States of America (the "Accredited Entity" or "UNDP"); and

The **GREEN CLIMATE FUND**, designated as an operating entity of the financial mechanism under Article 11 of the United Nations Framework Convention on Climate Change and established pursuant to the Governing Instrument for the Green Climate Fund, approved by the COP at its seventeenth session, on 11 December 2011, and is annexed to Decision 3/CP.17, possessing juridical personality in order to operate effectively internationally, having such legal capacity as is necessary for the exercise of its functions and the protection of its interests and having its headquarters at Songdo, Incheon, Republic of Korea ("GCF" or the "Fund"),

each a "Party" and together the "Parties".

#### WHEREAS

- (A) The Accredited Entity and the GCF entered into an accreditation master agreement on 5 August 2016 (the "AMA"), which sets forth, amongst others, the general terms and conditions applicable between the Parties in connection with a funded activity;
- (B) In accordance with Clause 4.11 of the AMA, the Accredited Entity has submitted to the Fund a funding proposal, which is attached to this Agreement as Annex 1 (the "Funding Proposal") requesting funding for the activity described therein (the "Funded Activity" or "Project");
- (C) The NDA of the Host Country has issued the No-Objection Letter with respect to the Funding Proposal;
- (D) The Board of the Fund, by its decision B.13/23 ("Approval Decision"), approved the Funding Proposal in the amount of USD 36,010,000 (thirty-six million ten thousand US Dollars), contingent on the fulfilment of the conditions specified in Annex III: "List of Conditions and Recommendations" to the Approval Decision; and
- (E) In accordance with Clause 6.02 of the AMA, the Parties now wish to enter into this Agreement in order to set out the agreed terms for the implementation of the Funded Activity.

THE PARTIES HEREBY AGREE AS FOLLOWS:

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### Clause 1. Definitions; AMA

- 1.01 The terms of the AMA are incorporated in, and form part of, this Agreement and pursuant to Clauses 1.02 and 1.03 of the AMA, any derogations from, deviations or modifications to the AMA in relation the Funded Activity are set forth in this Agreement. In case of termination of the AMA, its terms as incorporated in this Agreement shall continue to apply.
- 1.02 In the event of a conflict between:
- (a) The terms and conditions in the Clauses of this Agreement and the terms and conditions of any of its Schedules or Annex, the terms and conditions in the Clauses of the Agreement shall prevail; and
  - (b) The terms and conditions in the Schedules to this Agreement and the terms and conditions in the Annex to this Agreement, the terms and conditions in the Schedules shall prevail.
- 1.03 Wherever used in this Agreement, terms defined in the AMA shall have the respective meanings therein set forth unless modified herein or the context otherwise requires. Additional terms used in this Agreement shall have the following meanings:
- (a) **"Accredited Entity Fee"** shall have the meaning ascribed to it in Clause 4 of this Agreement;
  - (b) **"Budget"** means the costs of the Funded Activity and the breakdown thereof, as set out in Part A of Schedule 2;
  - (c) **"Civil Works"** means all types of civil, mechanical, electrical or other engineering services (other than consulting services) as well as the supply of construction materials and equipment to be financed out of the GCF Proceeds;
  - (d) **"Closing Date"** means the date which is six (6) years after the Effective Date (or such later date as the Fund shall establish by notice to the Accredited Entity), on which the Accredited Entity's right to receive GCF Proceeds to the GCF Account in respect of the Funded Activity will have terminated;
  - (e) **"Completion Date"** means the date which is no later than one (1) year after the Closing Date (except if otherwise agreed with the Fund);
  - (f) **"Disbursement Plan"** means the disbursement plan included in Part B of Schedule 2;
  - (g) **"Effective Date"** shall have the meaning ascribed to it in Clause 6.01 of this Agreement;
  - (h) **"Eligible Expenditures"** means any reasonable costs of Goods, Services, Civil Works or scholarship funding to be financed out of the GCF Proceeds for the implementation of the Funded Activity, in accordance with this Agreement, the AMA and the Funding Proposal;
  - (i) **"Executing Entity"** means the entity specified in Clause 2.02 of this Agreement;
  - (j) **"Funded Activity"** or **"Project"** shall have the meaning ascribed thereto in Recital (B);
  - (k) **"Funding Proposal"** shall have the meaning ascribed thereto in Recital (B);
  - (l) **"Grant"** means the GCF Proceeds in the amount specified in Clause 3.01 of this Agreement, as approved by the Board, which the Fund has decided to make

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available for the Funded Activity, which shall be exclusive of the Accredited Entity Fee;

- (m) **"Host Country"** means Tuvalu;
  - (n) **"Implementation Arrangements"** mean the contractual arrangement(s) to be entered into and/or the administrative arrangement(s) to be established by the different parties involved in the implementation of the Funded Activity as set out in Schedule 3;
  - (o) **"Implementation Plan"** means the calendar for the implementation of the Funded Activity set forth in Schedule 5;
  - (p) **"Project Document"** means the document that the Accredited Entity shall enter into with the Host Country in accordance with the SBAA defining the detailed financial, procurement and implementation plans, and the respective responsibilities of the parties thereto in respect of the Project. For the avoidance of doubt, the Project Document shall serve as the Subsidiary Agreement and shall reflect the requirements of this Agreement and the AMA, as applicable;
  - (q) **"Request for Disbursement"** means the template request for disbursement in Schedule 6 to this Agreement;
  - (r) **"Social and Environmental Screening"** or **"SES"** means the social and environmental screening provided by the Accredited Entity as an annex to the Funding Proposal, as set out in Annex 2; and
  - (s) **"SBAA"** means Standard Basic Assistance Agreement between UNDP and the Government of Tuvalu dated 16 January 1979.
- 1.04 Any references in this Agreement to "Clause", "Schedule" or "Annex" shall refer to a clause of, a schedule to or an annex to, this Agreement, unless otherwise specified or context requires otherwise.

### **Clause 2. The Funded Activity**

- 2.01 The Accredited Entity shall carry out the Funded Activity, with due diligence and efficiency and in conformity with appropriate financial, economic, social, environmental and administrative practices, and shall provide, promptly as needed, the funds, facilities, services and other resources required for the Funded Activity.
- 2.02 The Accredited Entity shall act as the Executing Entity for this Funded Activity, as further described in Schedule 3.
- 2.03 Without prejudice to the provisions of Clause 2.01 above and except as the Accredited Entity and the Fund may otherwise agree, the Funded Activity shall be carried out in accordance with the Implementation Arrangements and within the timeframe set out in the Implementation Plan set forth in Schedule 5.
- ~~2.04 The implementation of all the activities of the Funded Activity shall be completed no later than the Completion Date and shall be subject to confirmation by the Fund based on the completion report to be provided in accordance with Schedule 4.~~

### **Clause 3. The Grant; Disbursements**

- 3.01 Subject to the terms and conditions of this Agreement, the Fund agrees to make available to the Accredited Entity by or before the Closing Date, as set forth in the Disbursement Plan attached hereto as Part B of Schedule 2, an amount equal to USD 36,010,000

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(thirty-six million ten thousand US Dollars), in the form of a grant for the purposes of and to assist in financing the Funded Activity.

- 3.02 The Grant shall be transferred, in accordance with the Disbursement Plan provided in Part B of Schedule 2, to the Accredited Entity upon the fulfillment by the Accredited Entity, to the satisfaction of the Fund, of the relevant conditions precedent to disbursement set forth in Clause 8 below. In accordance with this Clause 3.02, the Grant shall be transferred to the bank account to be notified by the Accredited Entity to the Fund in writing in the Request for Disbursement ("GCF Account"). For the avoidance of doubt, the GCF Account for the Funded Activity will be a ledger account.
- 3.03 The GCF Holding Currency for disbursements shall be USD.
- 3.04 The Accredited Entity shall (a) use the Grant exclusively to finance the Eligible Expenditures, in accordance with the AMA and this Agreement, as set out in the Funding Proposal, and as further specified in the Budget; and (b) accrue all the Eligible Expenditures before the Completion Date.
- 3.05 After the first disbursement by the Fund, all subsequent disbursements shall be subject to the expenditure of at least seventy per cent (70%) of the previous disbursements for the Eligible Expenditures.
- 3.06 The GCF Proceeds shall not be used to finance any costs incurred prior to the Effective Date.
- 3.07 The financial reporting and accounting currency for the Funded Activity shall be USD.

#### **Clause 4. Accredited Entity Fee**

- 4.01 The Accredited Entity's fee in relation to the Funded Activity shall be an amount equal to nine per cent (9%) of the aggregate amount of the GCF Proceeds used to finance Eligible Expenditures (the "**Accredited Entity Fee**").
- 4.02 **Disbursement of the Accredited Entity Fee.** The Accredited Entity Fee shall be paid in instalments at the time of each Grant disbursement. The amount of each instalment shall be equal to nine per cent (9%) of the related Grant disbursement. All such disbursements of the Accredited Entity Fee shall be paid together with the Grant disbursements and deposited into the bank account referred to in Clause 3.02 above.
- 4.03 The final instalment of the Accredited Entity Fee shall be an amount equal to the Accredited Entity Fee less all previous instalments of the Accredited Entity Fee paid to the Accredited Entity under this Clause 4.
- 4.04 If, after the Completion Date, the aggregate amount of the GCF Proceeds used to finance Eligible Expenditures is less than the amount referred to in Clause 3.01, the Accredited Entity shall, on thirty (30) days' written notice from the Fund, refund to the Fund the amount by which the total amount disbursed to the Accredited Entity under Clause 4.02 exceeds the Accredited Entity Fee, unless otherwise agreed by the Fund.
- 4.05 If the Fund decides to suspend Grant disbursements, in accordance with Clause 15.03 of the AMA, the Fund may also, at its own discretion, suspend the payment of Accredited Entity Fee.

#### **Clause 5. Administration of Grant by the Accredited Entity**

- 5.01 **Permitted Reallocation.** Any reallocation among the Funded Activity's outputs described in Part A of Schedule 2 resulting in a variation of more than ten per cent (10%) of the

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previously agreed budget for the output to which budget is reallocated must be approved in writing by the Fund in advance.

- 5.02 **Taxation.** The tax exemptions accorded under the SBAA shall apply to Goods, Services and scholarships procured with the GCF Proceeds.

#### **Clause 6. Effectiveness**

- 6.01 This Agreement shall enter into effect on the date upon which the Fund dispatches to the Accredited Entity a notice of its acceptance of the evidence specified below ("**Effective Date**"):
- (a) A duly authorized and executed copy of this Agreement by the Accredited Entity;
  - (b) A certificate issued by the Accredited Entity's most senior legal officer, in a form that is satisfactory to the Fund, certifying that this Agreement entered into by the Accredited Entity has been duly authorized or ratified by all necessary corporate actions, duly executed and delivered on behalf of the Accredited Entity, and is legally binding and enforceable upon the Accredited Entity in accordance with its terms; and
  - (c) An indicative disbursement schedule by the Accredited Entity indicating month and year for the disbursement of the GCF Proceeds by the Fund to the GCF Account for the implementation of the Funded Activity.
- 6.02 If, before the Effective Date, any event has occurred, which would entitle the Fund to suspend the right of the Accredited Entity to request disbursement under this Agreement if this Agreement had been effective, the Fund may postpone the dispatch of the notice referred to in this Clause 6 until such event (or events) has (or have) ceased to exist.
- 6.03 **Termination for Failure to Become Effective.** This Agreement and all obligations of the Parties under it shall terminate if it has not entered into effect by the date which falls ninety (90) days after the date of this Agreement, unless the Fund, after consideration of the reasons for the delay and following consultations with the Accredited Entity, establishes a later date for the purpose of this Clause 6. The Fund shall promptly notify the Accredited Entity of such later date.

#### **Clause 7. Reporting, Monitoring and Evaluation Schedule**

- 7.01 The reporting, monitoring and evaluation of the Funded Activity shall be done in accordance with Schedule 4.

#### **Clause 8. Conditions Precedent to Disbursement**

- 8.01 The obligation of the Fund to disburse GCF Proceeds in connection with the Funded Activity under this Agreement shall be subject to the following conditions having been fulfilled to the satisfaction, in form and substance, of the Fund:
- (a) Conditions precedent to first disbursement:
    - (i) Effectiveness of this Agreement.
  - (b) Conditions precedent to second disbursement:
    - (i) Delivery by the Accredited Entity of a detailed operational manual for the performance-based fiscal transfer under Output 3 (as described in Schedule 1) to the Fund specifying financial flow, financial mechanism structure and governance, and eligibility criteria.

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(c) General conditions to all disbursements:

- (i) Other than in relation to the first disbursement, submission of evidence by the Accredited Entity to the Fund that at least 70% (seventy per cent) of the funds previously disbursed have been spent for Eligible Expenditures;
- (ii) Other than in relation to the first disbursement, submission by the Accredited Entity of APRs and Financial Information in accordance with the AMA;
- (iii) Delivery of a Request for Disbursement, in accordance with the template attached hereto (Schedule 6), by the Accredited Entity, signed by the person or persons authorized to do so, within thirty (30) calendar days prior to date on which the disbursement is requested to be made, which date of disbursement shall not be later than the Closing Date; and
- (iv) Delivery by the Accredited Entity of evidence, satisfactory to the Fund, of the authority of the person or persons authorized to sign each Request for Disbursement and the authenticated specimen signature of each such person.

**Clause 9. Additional Representations, Warranties and Covenants of the Accredited Entity**

- 9.01 In addition to Clause 18.01 of the AMA, the Accredited Entity represents and warrants that:
- (a) On the date of the execution of this Agreement and the date of each disbursement made by the Fund under this Agreement, there are no circumstances of which the Accredited Entity is aware, including through its implementation of the Project as per the obligations of this FAA, the AMA and UNDP's own policies and practices that may substantially interfere with the performance of the Accredited Entity's obligations under this Agreement, the AMA or with the implementation of the Funded Activity, or otherwise jeopardize the achievements of any objectives, outcomes or outputs of the Funded Activity.
- 9.02 In addition to Clause 18.02 of the AMA, the Accredited Entity covenants that as from the Effective Date of this Agreement, it shall:
- (a) Prior to commencement of any construction activity under Output 2, as described in Schedule 1, provide site-specific assessments, as indicated in the SES, including cost analysis of the proposed technical solutions;
  - (b) Prior to commencement of any construction activity under Output 2 (as described in Schedule 1), review and submit to the Fund an updated Environmental and Social Management Plan;
  - (c) Prior to commencement of the scholarship programme under Output 1 (as described in Schedule 1), and not later than the end of the first year of implementation of the Project, sign a letter of agreement with the Ministry of Education, Youth and Sports of Tuvalu and ensure that the annual work plan for the scholarship programme to be developed by the Ministry of Education, Youth and Sports of Tuvalu is agreed;
  - (d) Obtain all land and rights in respect of land that are required to carry out the Funded Activity and shall promptly furnish to the GCF, upon its request, evidence



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- that such land and rights in respect of the land are available for the purposes of the Funded Activity;
- (e) Upon request by the GCF Secretariat, inform the Fund on the status of the co-financing funds that have been disbursed and applied to the implementation of the Project's activities;
  - (f) Undertake and/or put in place any adequate measures in order to ensure that the management of the environmental and social risks and impacts arising from the Funded Activity complies at all times with the recommendations, requirements, and procedures set forth in the environmental and social safeguards documents (including the SES), which were provided by the Accredited Entity to the Fund before the Approval Decision; and
  - (g) The Accredited Entity shall not use the GCF Proceeds for financing activities related to disaster response and relief under the Output 3 (as described in Schedule 1).
- 9.03 Pursuant to Clause 23.04 of the AMA, the Accredited Entity shall inform the Fund in the final APR which steps it intends to take in relation to the durable assets and/or equipment purchased with the GCF Proceeds to implement the Funded Activity.

#### **Clause 10. Additional Remedies to the Fund**

- 10.01 **Events of suspension.** In the event the Accredited Entity fails to comply with the additional covenants set out in Clauses 9.02 (a), (b) and (c) of this Agreement, the Fund may at its discretion suspend any subsequent disbursements to the Accredited Entity.
- 10.02 **Events of Default.** In addition to Clause 19 of the AMA, the following events shall constitute an event of default of the AMA and this Agreement:
- (a) The Accredited Entity has failed to comply, in any material respect with, or shall have failed to perform in any material respects, any of its obligations under this Agreement.
- 10.03 **Remedies/consequences of default.** If there is an event of default under this Agreement, Clause 20 of the AMA shall apply to this Agreement *mutatis mutandis*.

#### **Clause 11. Step-in Rights**

- 11.01 In the event the Fund exercises its rights under Clauses 20.01(c), 22.01 and 22.03 of the AMA, the Accredited Entity shall execute such documents and take such steps as are reasonably necessary to enable the Fund to give effect to such provisions.

#### **Clause 12. Applicable Law; Dispute Resolution**

- 12.01 Clauses 28 and 29 of the AMA apply to this Agreement *mutatis mutandis*.

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#### **Clause 13. Designated Authority; Notices**

- 13.01 Any notice, request, document, report, or other communication submitted by either the Accredited Entity or the Fund, shall unless expressly specified in this Agreement, be in English and delivered by hand or by facsimile or email to the Party to which it is required or permitted to be given or made to the following addresses:

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For the Accredited Entity:

Attn: Director, Global Environmental Finance, Bureau for Policy and Programme Support  
Address: One United Nations Plaza  
New York, NY 10017  
United States of America  
Fax: +1 212 906 6998  
Email: [adriana.dinu@undp.org](mailto:adriana.dinu@undp.org)

For the Fund:

Attn: Division of Mitigation and Adaptation  
Address: G-Tower, 175, Art Center-daero  
Yeonsu-gu, Incheon 22004  
Republic of Korea  
Fax: +82 32 458 6092  
Email: [fundingproposal@gcfund.org](mailto:fundingproposal@gcfund.org)

**Clause 14. Miscellaneous**

- 14.01 **Assignment; Novation.** The Accredited Entity will not be entitled to assign or otherwise transfer its rights and obligations under this Agreement, in full or in part, without the prior written consent of the Fund, which consent may be granted or not granted at the Fund absolute discretion.
- 14.02 **Failure to Exercise Rights.** No delay in exercising, or omission to exercise, any right, power or remedy accruing to any Party under this Agreement upon any default shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence in such default. No action of such Party in respect of any default, or any acquiescence by it in any default, shall affect or impair any right, power or remedy of such Party in respect of any other or subsequent default.
- 14.03 **Execution in Counterparts.** This Agreement may be executed in two counterparts, each of which shall be an original.
- 14.04 **Rights of Third Parties.** This Agreement is intended solely for the benefit of the Parties and is not intended to be for the benefit of, nor may any provision be enforced by, any person or entity that is not a party to this Agreement. Any other statute or law to the contrary is hereby excluded or disappplied.
- 14.05 **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the Parties with respect to its subject matter and supersedes all oral communication and prior *writings* with respect thereto, other than those writings expressly referred to or incorporated into this Agreement entered into hereunder, including the AMA.
- 14.06 **Modification or Amendment.** No modification or amendment of this Agreement shall be valid unless in writing and signed by an authorized representative of the Fund and an authorized representative of the Accredited Entity.
- 14.07 **Relationship of the Parties.** Nothing contained in this Agreement shall be deemed or construed as creating a principal-agent relationship between the Parties hereto or be construed to evidence the intention of the Parties to constitute such. Neither Party shall have any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other Party or to bind the other Party to any contract, agreement or undertaking with any third party.

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- 14.08 **Severability.** If any term of this Agreement is to any extent invalid, illegal, or incapable of being enforced, such term shall be excluded to the extent of such invalidity, illegality, or unenforceability; all other terms hereof shall remain in full force and effect.
- 14.09 **Survival:** Clause 12.01 of this Agreement shall, unless explicitly provided otherwise, survive for a period of five (5) years after the termination of this Agreement.

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

**UNITED NATIONS DEVELOPMENT PROGRAMME**

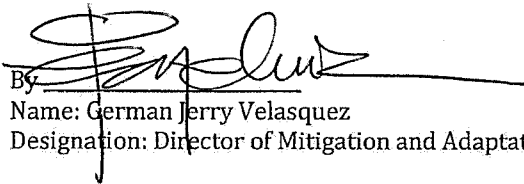
By 

Name: Adriana Dinu

Designation: Director, Global Environmental Finance, Bureau for Policy and Programme Support

Date 30<sup>th</sup> May 2017

**GREEN CLIMATE FUND**

By 

Name: German Jerry Velasquez

Designation: Director of Mitigation and Adaptation

Date 31<sup>st</sup> May 2017