

COVID-19 RESPONSE ASSISTANCE
AGREEMENT FOR GOVERNMENT SUBSIDY

BETWEEN

THE MINISTRY OF ECONOMY

AND

FIJI NATIONAL PROVIDENT FUND

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DETAILS

Date

Parties

Name **Ministry of Economy**, for and on behalf of the Government of the Republic of Fiji (**'Government'**)

Notice details Address:
Telephone:
Facsimile:
E-mail:
Contact Person:
Designation:

Name **Fiji National Provident Fund** a body corporate established under the Fiji National Provident Fund Act 2011 of Provident Plaza, 33 Ellery Street, Suva (**'FNPF'**)

Notice details Address:
Telephone:
Facsimile:
E-mail:
Contact Person:
Designation:

Introduction

- A Following the announcement of the COVID-19 Response Budget, the Government in collaboration with FNPF, will provide assistance to Affected Members whose employment has been impacted by the novel coronavirus COVID-19 (**'COVID-19'**).
- B Assistance will be provided to Affected Members as follows:
- (a) a lump sum assistance of \$1,000 through FNPF will be provided to Affected Members who have lost jobs or are on reduced hours in the tourism and hospitality industry. For Affected Members who have less than \$1,000 in their FNPF General Account, the Government will subsidise the remaining balance to make it \$1,000; and/or
 - (b) a lump sum assistance of \$500 through FNPF will be provided to Affected Members who are affected by the lockdown and/or travel restriction due to COVID-19. This is only available to Members who are not able to go to work or are not able to work from home (thus not paid by employers). Those Affected Members who have less than \$500 in their General Account, the balance will be subsidised by the Government,
- (**'COVID-19 Assistance Response Programme'**)
- C FNPF will facilitate payments to Affected Member through direct transfer to Affected Members' bank account, telegraphic money order through Post Fiji or M-Paisa.
- D The Parties will roll out the COVID-19 Assistance Response Programme on the terms and conditions of this agreement.



AGREED TERMS

1 DEFINED TERMS & INTERPRETATION

1.1 Defined terms

In this agreement:

Advisers means:

- (a) the financial or legal advisers of a party; and
- (b) the respective officers and employees of those financial or legal advisers.

Affected Member means a Member whose employment has been impacted by COVID-19 and is eligible for assistance under the COVID-19 Assistance Response Programme.

Business Day means a day other than a Saturday, Sunday or gazetted public holiday on which banks are open for general banking business in Suva, Fiji.

Commencement Date means 1 April 2020.

Confidential Information means information that:

- (a) is by its nature confidential, including the terms and conditions of this agreement;
- (b) is designated by the Government as confidential; or
- (c) a party knows or ought to know is confidential,

but does not include information that:

- (a) is or becomes public knowledge other than by breach of this agreement; or
- (b) has been independently developed or acquired by the FNPF.

Disbursement means the subsidised amount paid by the Government to FNPF for the purposes of COVID-19 Response to be distributed to Affected Members as part of the COVID-19 Assistance Response Programme.

Force Majeure means any event beyond the control of either party and not involving that party's fault or negligence. Such events may include but are not limited to wars, revolution, strikes, civil commotions, earthquakes, tempest, fires and floods.

Member means a member as defined under the Fiji National Provident Fund Act 2011.

M-PAiSA means mobile money transfer services.

Term means the term referred to in clause 2.1 of this agreement.

1.2 Interpretation

In this agreement, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;

- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (d) a reference to a clause is a reference to a clause in this agreement;
- (e) a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (f) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (g) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this document or any part of it;
- (h) references to dollars and "\$" are references to amounts in Fijian Dollars unless expressed otherwise; and
- (i) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions.

1.3 Headings

Headings are for ease of reference only and do not affect interpretation.

2 TERM OF THE AGREEMENT

2.1 Term

This agreement shall become effective from the Commencement Date and shall, unless otherwise terminated in accordance with the provisions hereof, continue in effect or till the period as determined by the Government.

3 OBLIGATIONS

3.1 General obligations

FNPF must:

- (a) assess and verify the eligibility of a Member for the COVID-19 Assistance Response Programme;
- (b) properly advise its officers, employees and agents regarding the requirements of the COVID-19 Assistance Response Programme and ensure that these requirements are followed;
- (c) communicate regularly with the Government regarding the COVID-19 Assistance Response Programme;
- (d) exercise all reasonable care and skill in the performance of its obligations under this agreement and comply with all relevant laws and regulations in the conduct of its business;



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- (e) use its best endeavours to maintain and enhance the reputation and prestige of the Government;
- (f) notify the Government immediately of any malfunction or discrepancy in the COVID-19 Assistance Response Programme;
- (g) execute any directions and authorities the Government requires to give effect to any of FNPF's obligations under this agreement;
- (h) protect access to Affected Members' information, by password and restrict use of the password to FNPF's staff authorised to use the password only; and
- (i) be responsible for security of the data and information transmitted by FNPF.

3.2 Disbursements

- (a) Subject to the terms and conditions of this agreement, the Government agrees to make Disbursements to FNPF for the COVID-19 Assistance Response Programme to assist eligible Affected Members, as and when requested by FNPF.
- (b) FNPF shall facilitate payments to Affected Member through direct transfer to Affected Members' bank account, telegraphic money order through Post Fiji or M-Paisa.
- (c) FNPF must submit to the Government requests for Disbursement. Such requests must be signed by the person(s) authorised by FNPF to do so.
- (d) FNPF must submit acquittal reports to the Government before the next Disbursement to FNPF.
- (e) FNPF must submit to the Government any pending acquittal reports from previous Disbursement before the Government makes any Disbursement to FNPF.
- (f) FNPF must only utilise the Disbursement for the COVID-19 Assistance Response Programme and, if applicable, must strictly adhere to the implementation plan, requirements and time schedule set out by the Government, unless variations have been agreed in writing with the Government.
- (g) The Government may state conditions precedent for the Disbursement, in excess of a specified amount or after a certain time and unless the Government and FNPF agree otherwise in writing.

3.3 Refunds

Notwithstanding the availability or exercise of any other remedies under this agreement, the Government may require FNPF, as soon as practicable, to immediately refund to the Government any Disbursement in the currency in which it was disbursed, but allowing for time to honour commitments, in any of the following circumstances:

- (a) this agreement has been terminated or suspended;
- (b) there has been a breach by FNPF of any term or condition of this agreement;



- (c) an event of default occurs;
- (d) the Government has disbursed an amount to FNPF in error;
- (e) FNPF has made a material misrepresentation with respect to any matter related to this agreement;
- (f) there remains any unutilised funds by FNPF; and
- (g) the Disbursements are used for a purpose other than the COVID-19 Assistance Response Programme.

3.4 Directions

- (a) FNPF must follow the Government's directives for COVID-19 Assistance Response Programme.
- (b) If requested by the Government, FNPF must attend, and must ensure that its officers, employees, agents and contractors attend any briefing in relation to COVID-19 Assistance Response Programme.

3.5 Cooperation

FNPF must cooperate with the Government and other stakeholders.

3.6 Service delivery

- (a) FNPF acknowledges that excellent customer service is a key objective of the Fijian Government.
- (b) FNPF must treat all Affected Members in a professional, courteous and respectful manner.

4 OTHER OBLIGATIONS OF FNPF

- (a) FNPF must:
 - (i) liaise with, and comply with any reasonable requests made by, the Government's representative; and
 - (ii) comply with all laws.
- (b) FNPF is responsible for the conduct of its officers, employees and agents in connection with COVID-19 Assistance Response Programme and the provision of services under this agreement, for any loss or damage whether direct, indirect, special or consequential, (including without limitation, loss of profits or goodwill) arising in any way out of or in connection with the services.

5 RECORDS

FNPF must provide a record to the Government in relation to each Affected Member and any information requested by the Government in relation to the Disbursements.



6 CONFIDENTIAL INFORMATION AND PUBLICITY

6.1 Prohibition on disclosure

Subject to clause 6.5, FNPF must not, without the prior written consent of the Government disclose any Confidential Information to a third party.

6.2 Conditions to approval

In giving written consent to the disclosure of Confidential Information, the Government may impose such conditions as it thinks fit, and FNPF agrees to comply with those conditions.

6.3 Advisers and third parties

The Government may at any time require FNPF to arrange for:

- (a) its Advisers; or
- (b) any other third party,

to give a written undertaking relating to the use and non-disclosure of the Government's Confidential Information.

6.4 Procuring of undertaking

If FNPF receives a request under clause 6.3, it must promptly arrange for all such undertakings to be given.

6.5 Exceptions to obligations

The obligations on FNPF under clause 6.1 will not be taken to have been breached to the extent that Confidential Information of the Government:

- (a) is disclosed by FNPF to its Advisers or employees solely in order to comply with obligations, or to exercise rights, under this agreement;
- (b) is disclosed to FNPF's internal management personnel, solely to enable effective management or auditing of activities related to this agreement;
- (c) is authorised or required by law, to be disclosed; or
- (d) is in the public domain otherwise than due to a breach of this agreement.

6.6 Period of confidentiality

The obligations under this clause continue indefinitely.

6.7 Public announcements

- (a) The Government may make any announcement regarding this agreement and COVID-19 Assistance Response Programme as it deems fit and FNPF consents to any such announcement.



- (b) FNPF must not make any public statements regarding this agreement and the COVID-19 Assistance Response Programme without the prior written consent of the Government.

7 CONFLICT OF INTEREST

7.1 Warranty that there is no conflict of interest

FNPF warrants that, to the best of its knowledge after making diligent inquiry, at the date of signing this agreement no conflict of interests exists or is likely to arise in the performance of this agreement.

7.2 Notification of a conflict of interest

If, during the performance of this agreement a conflict of interest arises, or appears likely to arise, FNPF must:

- (a) notify the Government immediately in writing;
- (b) make full disclosure of all relevant information relating to the conflict; and
- (c) take such steps as the Government reasonably requires to resolve or otherwise deal with the conflict.

7.3 Anti-bribery and corruption

- (a) FNPF must comply at all times with all applicable laws including but not limited to applicable anti-corruption laws, in which FNPF conducts business.
- (b) FNPF agrees that it has not, and covenants that it will not, in connection with the performance of this agreement, directly or indirectly, promise, authorise, ratify or offer to make or make any payments or provide anything of value to the Government or anyone for the improper purpose of influencing or inducing or as a reward for any act, omission or decision to secure an improper advantage or to improperly assist itself or the Government in obtaining or retaining business to any individual (or at the request of any individual) including a Government Official.
- (c) FNPF acknowledges that the Government may be entitled to terminate this agreement on notice to FNPF if FNPF fails to comply with its obligations with respect to anti-bribery and corruption set out above.

8 BOOKS AND RECORDS

8.1 FNPF to keep books and records

FNPF must keep adequate books and records in sufficient detail to enable the amount of money utilised under this agreement to be determined.

8.2 Examination of books and records

The Government and its representatives may, at reasonable times, audit (including examine and copy) material in the possession of FNPF which is relevant to the COVID-19 Response Assistance Programme (including the FNPF's books and records).



8.3 Answering questions and providing assistance

FNPF must give full and accurate answers to any questions the Government or its representative may have concerning books or records relating to this agreement and provide all assistance reasonably requested by the Government in respect of any inquiry into this agreement. For these purposes an inquiry includes any administrative or statutory review, audit or inquiry, any request for information directed to the Government, and any inquiry conducted by Parliament or any Parliamentary committee.

8.4 Survival

This clause applies for the Term and a period of seven years from the termination or expiry of the agreement.

9 AUDIT AND ACCESS

9.1 Types of audits

Audits may be conducted of:

- (a) FNPF's practices and procedures as they relate to this agreement;
- (b) the manner in which FNPF performs its obligations under this agreement;
- (c) the compliance of FNPF's invoices and reports with its obligations under this agreement;
- (d) FNPF's compliance with all its obligations under this agreement;
- (e) FNPF's compliance with its confidentiality, privacy, security and Government policy obligations under this agreement; and
- (f) any other matters determined by the Government to be relevant to the performance of FNPF's obligations under this agreement.

9.2 No restriction

Nothing in this agreement reduces, limits or restricts in any way any function, power, right or entitlement of the Auditor-General or a delegate of the Auditor-General. The rights of the Government under this agreement are in addition to any other power, right or entitlement of the Auditor-General or a delegate of the Auditor-General.

10 WARRANTY AND INDEMNITY

10.1 Representations and warranty

FNPF represents and warrants to the Government as follows:

- (a) FNPF is a legal entity validly existing under the laws of the Republic of Fiji and has full power, authority and legal rights to comply with the terms and conditions of this agreement;
- (b) FNPF has completed all the administrative procedures required by all laws in order for this agreement to be valid and legally binding, including obtaining all the approvals, authorisations, registrations or filing requirements under the laws of the Republic of Fiji;

- (c) FNPF is in compliance at all times with all the applicable laws of the Republic of Fiji including applicable taxation and anti-corruption laws;
- (d) as from the Commencement Date, this agreement constitutes legal, valid and binding obligations on FNPF;
- (e) FNPF, to the best of its knowledge, is not receiving funding from any other source that duplicates the funding provided under this agreement;
- (f) FNPF is not in default under any law or agreement applicable to FNPF, the consequence of which default would materially and adversely affect FNPF's ability to perform its obligations under this agreement;
- (g) all information supplied to the Government by FNPF is true, correct and not misleading in all material respects; and
- (h) the representations and warranties set out in this clause will be true, accurate and not misleading for the term of this agreement with reference to the facts and circumstances subsisting from time to time.

10.2 Indemnity

FNPF indemnifies the Government against all expenses, losses, damages and costs (on a solicitor and own client basis and whether incurred by or awarded against the Government) that the Government may sustain or incur as a result, whether directly or indirectly, of:

- (a) any matter or thing being other than as represented or warranted by FNPF under clause 10.1;
- (b) any breach of this agreement by FNPF;
- (c) any breach of an existing law by FNPF; or
- (d) any negligent act or omission or wilful misconduct of FNPF or its officers, employees, agents or contractors,

except to the extent that any negligent act or omission of the Government contributed to the relevant liability.

10.3 Limit of the Government's liability

The Government is responsible only for performing the obligations specifically set out in this agreement. Except for those obligations, FNPF agrees the Government has no liability to FNPF or any other person as a result of this agreement.

11 DISPUTE RESOLUTION

Any dispute arising out of this agreement, which cannot be amicably settled between the parties, shall be referred to arbitration in accordance with the Arbitration Act 1965 and the laws of the Republic of Fiji.

12 TERMINATION

12.1 Termination by Government

The Government may at its sole discretion, at any time, by notice, terminate this agreement.

12.2 Termination for default

- (a) The Government may terminate this agreement effective immediately by giving notice to FNPF if:
- (i) FNPF fails to notify the Government of a conflict of interest under clause 7.2;
 - (ii) FNPF breaches a material provision of this agreement where that breach is not capable of remedy;
 - (iii) FNPF breaches any provision of this agreement and fails to remedy the breach within 14 days after receiving notice requiring it to do so; or
 - (iv) an event specified in clause 12.2(b) happens to FNPF.
- (b) FNPF must notify the Government immediately if:
- (i) FNPF disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business;
 - (ii) FNPF ceases to carry on business;
 - (iii) FNPF ceases to be able to pay its debts as they become due;
 - (iv) FNPF being a company enters into liquidation or has a receiver or manager or liquidator appointed;
 - (v) where FNPF is a partnership, any step is taken to dissolve that partnership.

12.3 Survival

The following clauses survive the termination of this agreement:

- (a) 6 (Confidential Information and Publicity);
- (b) 8 (Books and records);
- (c) 10.2 (Indemnity); and
- (d) 10.3 (Limit of the Government's liability).

12.4 Termination does not affect accrued rights

Termination of this agreement does not affect any accrued rights or remedies of a party.



13 NEGATION OF EMPLOYMENT, PARTNERSHIP AND AGENCY

13.1 FNPF not to make representations

- (a) FNPF must not represent itself, and must ensure that its officers, employees, agents and subcontractors do not represent themselves, as being an officer, employee, partner or agent of the Government, or as otherwise able to bind or represent the Government.
- (b) This agreement does not create a relationship of employment, agency or partnership between the parties.

14 NOTICE

14.1 Giving of notices

- (a) A party giving notice or notifying under this agreement must do so in writing.
- (b) The parties' addresses and facsimile numbers are as specified on page 2 of this agreement.

14.2 Receipt of notice

A notice given in accordance with clause 14.1 is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, 3 days after the date of posting;
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice unless, within one Business Day after that transmission, the recipient informs the sender that it has not received the entire notice.

15 MISCELLANEOUS

15.1 Further assurances

Each party shall take all steps, execute all documents and do everything reasonably required by any other party to give effect to any of the transactions contemplated by this agreement.

15.2 Alterations

This agreement may be altered only in writing signed by each party.

15.3 Approvals and consents

Except where this agreement expressly states otherwise, a party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this agreement.

15.4 Costs

Each party must pay its own costs of negotiating, preparing and executing this agreement.

15.5 Survival

Any indemnity or any obligation of confidence under this agreement is independent and survives termination of this agreement. Any other term by its nature intended to survive termination of this agreement survives termination of this agreement.

15.6 Force Majeure

No party will be liable for any failure to perform an obligation under this agreement while a Force Majeure event subsists, if such failure is due to the occurrence of any Force Majeure event.

15.7 No merger

The rights and obligations of the parties under this agreement do not merge on completion of any transaction contemplated by this agreement.

15.8 Severability

A term or part of a term of this agreement that is illegal or unenforceable may be severed from the agreement and the remaining terms or parts of the term of the agreement continue in force.

15.9 Waiver

A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

15.10 Counterpart

This agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same document, and any party (including any duly authorised representative of a party) may enter into this agreement by executing a counterpart. Facsimile signatures shall be valid and binding to the same extent as original signatures.

15.11 Governing law and jurisdiction

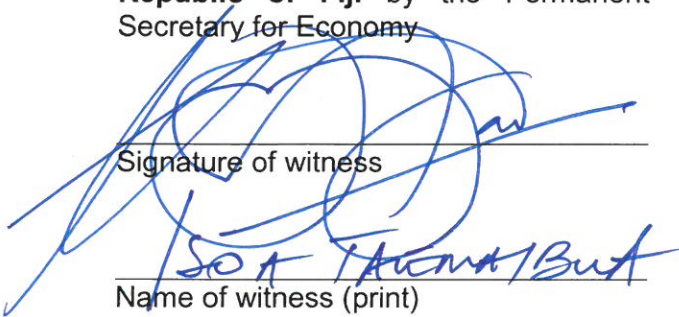
This agreement is governed by the laws of the Republic of Fiji and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the Republic of Fiji.




SIGNING PAGE


EXECUTED as an agreement

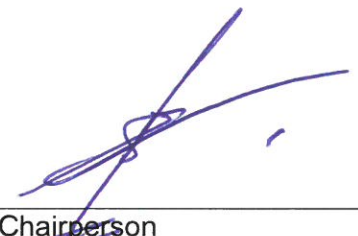
Signed by the **Ministry of Economy** for and on behalf of the **Government of the Republic of Fiji** by the Permanent Secretary for Economy


Signature of witness
SOA Karama But
Name of witness (print)


Ms Makereta Konrote
Permanent Secretary for Economy

Signed by the **Fiji National Provident Fund** by its duly authorised representative


Signature of witness
JASON KOLONI
Name of witness(print)


Signature of Chairperson
DIRECTOR
SANJAY KARAN
Name of Chairperson (print)

