

**Memorandum of Arrangement
between the
Government of the Republic of Nauru
and the
Government of New Zealand
Regarding an Intergenerational Trust Fund for the People of Nauru**

The Government of the Republic of Nauru and the Government of New Zealand note:

The establishment of the “Intergenerational Trust Fund for the People of the Republic of Nauru”;

The Fund is expected to contribute to the long-term budgetary self-reliance of the Republic of Nauru by providing the Government of the Republic of Nauru with an ongoing source of revenue during the Fund Period.

The Governments have respectively decided that the Government of New Zealand should, and by virtue of this Arrangement will, become an Original Partner in relation to the Fund on the basis described in this Arrangement.

**Part I
Definitions**

**Paragraph 1
Definitions of Terms**

For the purposes of this Arrangement, the following terms will have the following meanings when capitalized:

“**A Account**” has the meaning assigned to such term in Paragraph 14, subparagraph 1.

“**Accountant**” means a suitably qualified individual or firm to prepare quarterly and annual financial statements of the Fund according to recognized and relevant accounting standards and the standards and requirements of the Government of Australia.

“**Allowable Expenses**” means expenses related to meeting space rental, and incidentals thereto, but does not include salaries, honoraria, travel or per diem expenses.

“**Arrangement**” means this arrangement between the Government of the Republic of Nauru and the Government of New Zealand.

“**Auditor**” means a suitably qualified individual or firm to undertake duties identified in Paragraph 16, subparagraph 2 according to the Government of Australia audit standards.

“B Account” has the meaning assigned to such term in Paragraph 14, subparagraph 1.

“Committee” means the governing body for the Fund described in Part II, Paragraph 7.

“Current Value” means the estimated value of the Fund, including all contributions made and Income earned, at the point in time when a determination of Current Value is being made.

“Custodian Bank” means the financial institution that has custody of the resources of the Fund.

“Distribution Percentage” consists of the Estimated Gross Long Term Annual Investment Return percentage less an estimate of the investment fees and administrative expenses incurred annually as a portion of the Fund’s Principal expressed as a percentage, less a mutually determined inflation rate percentage, and less a Sustainability Gap percentage. The Distribution Percentage may be adjusted by the Committee in accordance with Paragraph 14.

“Distribution” means the transfer of funds from the Fund to the Government of the Republic of Nauru, and **“Distribute”** has a corresponding meaning.

“Distribution Policy” means the policy framework, established in accordance with Paragraph 13, subparagraph 2, to guide and inform Distribution to achieve the purposes of the Fund.

“Domestic Revenue” means the amount of revenue to the Government of the Republic of Nauru in any one Fiscal Year while this Arrangement remains in effect. Domestic Revenue does not include budget support or any other bilateral aid from development partners provided to the Government of the Republic of Nauru. Domestic Revenue will be denominated in, or converted at a market rate to, Australian dollars.

“Estimated Gross Long Term Annual Investment Return” means the estimated long-term investment return rate, expressed as a percentage, expected during the Fund Period as determined by the Committee on the advice of the Investment Adviser or other suitable third party.

“Executive Administrator” means the person appointed in accordance with Paragraph 12, subparagraph 8.

“Fiduciary Responsibility” means a duty of utmost good faith, trust, confidence, and candour owed by a fiduciary (such as a lawyer or corporate officer) to the beneficiary (such as a lawyer’s client or a shareholder); a duty to act with the highest degree of honesty and loyalty toward another person and in the best interests of the other person (such as the duty that one partner owes to another).

“Fiscal Year” means each one year period beginning July 1 and ending on the next following June 30. Each Fiscal Year will be designated by the number of the calendar year in which such Fiscal Year ends. For example, “Fiscal Year 2033” means the Fiscal Year beginning July 1 2032 and ending on June 30 2033.

“Fund” has the meaning assigned to such term in Paragraph 2, subparagraph 1.

“Fund Manager” means the individual or firm who contracts with the Fund to invest funds in a particular investment vehicle or category.

“Fund Period” means the period that begins when the Committee determines to Distribute Income.

“Government of Australia” means the national government of Australia.

“Government of New Zealand” means the government of New Zealand.

“Government of the Republic of Nauru” means the government established and organized by the Constitution of the Republic of Nauru.

“Income” means the profit or increase in market value of the Fund, including dividends and interest and other special items allocated to income.

“Independent Evaluator” means a suitably qualified individual or firm to undertake the duties identified in Paragraph 16, subparagraph 6.

“Investment Adviser” means the individual or firm responsible for: providing investment advice to the Committee; taking direction from the Committee regarding investments; and overseeing day-to-day investments by the Fund Managers.

“Investment Policy” means the policy framework, established in accordance with Paragraph 13, subparagraph 1, to guide and inform the investment strategy and other investment decisions made by the Committee from time to time to achieve the purpose of the Fund.

“Moving Average Distribution Approach” means the calculation which is to be used to determine the amount to be transferred from the A Account to the B Account during the Fund Period as set out in Paragraph 14, subparagraph 6.

“Original Partners” means, collectively: the Government of the Republic of Nauru; the Original Partners in relation to the Fund under separate memoranda of understandings with the Government of the Republic of Nauru entered into before, and in effect at, the date of this Arrangement; the Government of New Zealand; and any other entity that enters into a separate arrangement with the Government of the Republic of Nauru to become an

Original Partner in accordance with Paragraph 3. Any Original Partner that subsequently withdraws from participation in the Fund ceases to be an Original Partner from the date of the withdrawal.

“Present Market Value” means, as of any time, the value of the Fund assets if those assets were liquidated or sold at such time.

“Principal” means a collection of bonds, stocks or other holdings that form the Fund, including all accumulated Income that has been reinvested and is not available for Distribution.

“Proxy” means a person appointed by a Committee Member to temporarily attend a Committee meeting.

“Qualified Instruments” means stocks, bonds, and other securities issued or recognized in any major stock exchange agreed to by the Committee, or other instruments approved by the Committee, in accordance with the Investment Policy.

“Subsequent Contributors” means both Subsequent Government Contributors and Subsequent Non-government Contributors.

“Subsequent Government Contributor” means any government, other than a government who is an Original Partner, who grants, not lends, funds into the Fund.

“Subsequent Non-government Contributor” means any international organization, financial institution, or other non-government entity or person, other than an Original Partner, who grants, not lends, funds into the Fund.

“Sustainability Gap” means a percentage, determined by the Committee based on technical advice and modelling, that allows the Fund to continue to maintain value or grow so the Fund is sustainable in the long-term.

Part II The Fund

Paragraph 2

An Intergenerational Trust Fund for the People of the Republic of Nauru

1. A fund (the “Fund”) known as the “Intergenerational Trust Fund for the People of the Republic of Nauru” was established by the Government of the Republic of Nauru in consultation with certain Original Partners and non-government contributors on or about 6 November 2015.
2. As between the Government of the Republic of Nauru and the Government of New Zealand the Fund will be governed by the provisions of this Arrangement.
3. The Original Partners will contribute to the Fund in accordance with

Paragraph 9.

Paragraph 3 Additional Original Partners

The Government of the Republic of Nauru may enter into written arrangements with another entity to become an Original Partner in relation to the Fund provided that:

- (a) the written arrangement confers no greater benefit on the participants in that arrangement than is conferred on the Government of New Zealand in this Arrangement;
- (b) nothing in the written arrangement is contrary to, or would prevent the operation of this Arrangement in accordance with its terms;
- (c) the written arrangement does not alter the way in which the Fund is established or operates in accordance with this Arrangement; and
- (d) the written arrangement takes effect before 31 December 2019.

Paragraph 4 Subsequent Contributors

Subsequent Government Contributors and Subsequent Non-government Contributors to the Fund will be approved by the Committee and will contribute to the Fund in accordance with arrangements between the Fund and each of them.

Paragraph 5 Purpose of the Fund

1. The purpose of the Fund is to provide a source of revenue to the Republic of Nauru post- Fiscal Year 2033, or at a time sooner as determined by the Committee, for investments in education, health, environment and infrastructure. The Fund will help to smooth out windfall income streams in the medium term and replace all or part of, or supplement, questionable future revenue.
2. The Fund will begin Distributions when the Committee determines that the Fund has reached a Current Value that the Committee considers sufficient to provide the Government of the Republic of Nauru with a sustainable source of revenue to replace or mitigate revenue reductions of any naturally based resource stream¹.

¹ Based on estimates calculated at the time of the Fund's design, the Current Value required for this purpose is about \$400 million. The Committee may adjust this amount from time to time, based on the Fund's investment performance, contributions and the Government of the Republic of Nauru's fiscal situation.

Paragraph 6
Powers of the Fund

The Fund will have all powers necessary, consistent with this Arrangement, to fulfill its purpose.

Paragraph 7
Management and Responsibility

1. *[Deliberately left blank.]*
2. The Fund established a Committee as, and to be, the governing body of the Fund on or about 18 February 2016. The Committee will comprise one member representing each of the Original Partners. The members will elect a Chair.
3. Decisions of the Committee will be made by consensus between the members.
4. The Original Partners will determine by consensus if a Subsequent Government Contributor participates in the Committee's decision-making processes. If the Original Partners determine that the Subsequent Government Contributor is not allowed to participate in the Committee's decision-making processes, the Subsequent Government Contributor may have observer status to attend Committee meetings.
5. The Original Partners will determine by consensus if a Subsequent Non-government Contributor participates in the Committee's decision-making processes. If the Original Partners determine that the Subsequent Non-government Contributor is not allowed to participate in the Committee's decision-making processes, the Original Partners will determine by consensus if the Subsequent Non-government Contributor will have observer status. If consensus cannot be reached, the Subsequent Non-government Contributor may not attend Committee meetings.
6. The Committee may at any time remove or request replacement of an observer.
7. If a member is temporarily unable to attend a meeting of the Committee a Proxy will be designated by the Original Partner represented by that absent member and the designated Proxy may participate in the relevant meeting of the Committee.
8. Committee members will have a Fiduciary Responsibility to the Fund. No Committee member will be responsible for any loss or depreciation in value of any assets held in the Fund, except by reason of such member's gross negligence or wilful default. Every decision made by a member of the Committee will be determined to have been made with reasonable care and diligence unless the contrary is proved by affirmative evidence.

9. The Committee may exercise all the powers of the Fund. From time to time, the Committee may obtain technical advisory services as needed and appropriate for the proper administration of the Fund.
10. The functions of the Committee will include overseeing:
 - (a) the operation, supervision, and management of the Fund;
 - (b) the investment and distribution of resources of the Fund; and
 - (c) the conclusion of further arrangements with Subsequent Contributors and other organisations.
11. Committee members and observers will serve without payment of salaries, honoraria, or expenses, including travel, from the Fund. Allowable Expenses may be paid for Committee Members from the Income, but not from the Principal, of the Fund except as provided in Paragraph 14, subparagraph 3.
12. An Original Partner may replace its representative Committee member at any time, by notifying the Committee in writing of the successor member. A Subsequent Government Contributor may request that the Committee replace the representative appointed to the Committee as an observer in accordance with subparagraph 6.
13. The Committee will meet at least twice annually. Additional meetings may be held as mutually determined by the Committee. The Committee may also decide to conduct business in a virtual forum via email, teleconference or videoconference. Reasonable notice will be given of meetings.
14. For the purposes of meetings, all members of the Committee, or their designated Proxies, will constitute a quorum.
15. The Committee will establish rules of procedure consistent with this Arrangement. Rules and procedures of the Committee and any Committee decisions will be documented in the form of serially numbered and dated decision memoranda.
16. The Committee may consult and, by consensus, change the composition and operation of the Committee.

Paragraph 8

Legal Status, Privileges and Immunities

1. To enable the Fund to carry out its purpose and subject to all necessary constitutional and legal procedures and processes, any Original Partner that is a government will accord to the Fund in its territory, the legal

status, privileges and immunities set out in this Paragraph.

2. The Fund will possess juridical personality and in particular capacity to:
 - (a) enter into contracts;
 - (b) acquire and dispose of immovable and movable property;
 - (c) institute legal proceedings; and
 - (d) take other action to protect the Fund assets.
3. The Fund will be exempt from any exchange control regulations, restriction or moratoria.
4. The Fund, its property, and its assets will be exempt from income taxation.

Part III Resources of the Fund

Paragraph 9 Resources

1. The resources of the Fund will consist of all contributions to the Fund, from whatever sources, and all Income.
2. The resources of the Fund will be administered by the Committee and used only in accordance with this Arrangement, including the Investment Policy.
3. The Government of the Republic of Nauru intends to contribute to the Fund annually in the period from the inception of the Fund to the commencement of the Fund Period. The Government of the Republic of Nauru made an initial contribution of AUD 20.4 million on or about 12 April 2016. The Government of the Republic of Nauru has subsequently made annual contributions in respect of Fiscal Years up to and including Fiscal Year 2019 amounting to a total of AUD 41.36 million in accordance with subparagraph 4 so that, as at 30 April 2019, the Government of the Republic of Nauru's contributions to the Fund amount to AUD 61.76 million.
4. Commencing in the Fiscal Year following the initial contribution under subparagraph 3, the Government of the Republic of Nauru will contribute annually to the commencement of the Fund Period. The annual contribution will be made within 90 days of the beginning of each Fiscal Year in an amount (denominated in, or converted at a market rate to, Australian dollars) based on the previous year's Domestic Revenue according to the following table:

Scenario	Domestic Revenue Range	Contribution % of Domestic Revenue
High Growth Year	\$90 million or greater	8% to 12%
Band 1	\$90-\$100 million	8%-10%
Band 2	Over 100 million	10.1%-12%
Medium Growth Year	\$50-\$89 million	4% to 7.9%
Band 1	\$50-\$69.9 million	4% to 6%
Band 2	\$70-\$89 million	6.1%- 7.9%
Low Growth Scenario	\$24-\$49 million	2%-3.9%
Band 1	\$24-\$36.5 million	2%-2.9%
Band 2	\$36.6-\$49 million	3%-3.9%
No Contribution Scenario	\$0-\$24 million	0

5. The Australian dollar amounts in subparagraph 4 will be adjusted annually per an agreed upon inflation adjustment.
6. Under rare and extenuating circumstances (such as a natural disaster, civil unrest or other acts out of the Government of the Republic of Nauru's control), the Government of the Republic of Nauru may be able to delay, reduce or forgo a contribution in any given year, as approved by the consensus of the Committee.
7. The Government of New Zealand intends to contribute to the Fund annually from the date of execution of this Arrangement to the commencement of the Fund Period. The initial contribution of up to NZD 1 million will be made within ninety (90) days after such date of execution. This contribution will be in respect of Fiscal Year 2019.
8. For each subsequent Fiscal Year the Government of New Zealand will determine the amount and timing of its annual contribution after consultation with the Government of the Republic of Nauru. Unless, in a particular case, the Government of New Zealand determines otherwise its contributions will be made in New Zealand dollars.
9. An Original Partner, other than the Government of the Republic of Nauru or the Government of New Zealand, will contribute in accordance with its written arrangement with the Government of the Republic of Nauru.
10. The contributions of the Government of the Republic of Nauru and the Government of New Zealand to the Fund will be subject to all necessary constitutional and legal procedures and processes (such as appropriation) being completed, and to the availability of funds for that purpose. If such procedures and processes are not completed or if available funds are not adequate to allow a government to make a contribution when, or in the amount and currency, contemplated by this Arrangement, the government

affected will notify the other government and the other Original Partners.

11. Subsequent Contributors will enter into separate arrangements with the Fund that will govern their contributions to the Fund.
12. If the Government of the Republic of Nauru does not make an annual contribution in accordance with subparagraph 4 for a Fiscal Year after Fiscal Year 2019, the Government of New Zealand may determine not to make an annual contribution in respect of that Fiscal Year.
13. The Government of the Republic of Nauru and the Government of New Zealand may contribute other amounts to the Fund in addition to the amounts set out in this Paragraph 9 or in other Fiscal Years than those named in this Paragraph 9.
14. The Committee may refuse a contribution if it considers that accepting a contribution would not be in the interests of the Fund or the Government of the Republic of Nauru or the Government of New Zealand.

Paragraph 10 **Conditions Governing Contributions**

1. The Fund will not issue negotiable or transferable instruments evidencing indebtedness for any contributions received. Further, the Principal will not be encumbered in any way.
2. No contributions to the Fund will be refunded except in accordance with Paragraphs 18 and 19 below.

Part IV **Custodian Bank, Investment Adviser(s), Fund Manager(s), Accountant and Executive Administrator**

Paragraph 11 **The Custodian Bank**

1. The resources of the Fund must always be in the custody of the Custodian Bank. The Committee will ensure that there is always a Custodian Bank in office and acting which:
 - (a) is an entity of the kind described in subparagraph 2; and
 - (b) has, and will, have custody of the resources of the Fund in accordance with the terms of this Arrangement and a contract of the kind described in subparagraph 3.
2. Unless otherwise determined by a decision of the Committee, the entity selected by the Committee to perform the role and function of Custodian Bank must:

- (a) be an existing financial institution in Australia;
 - (b) have a net worth in excess of AUD 100 million;
 - (c) have had at least ten (10) years' experience as a custodian of financial assets; and
 - (d) have had experience in managing funds of at least AUD 300 million.
3. The Committee will, in the name of the Fund, contract with the Custodian Bank. The Fund's contract with the Custodian Bank must include:
- (a) the power of the Committee to remove the Custodian Bank by giving thirty (30) days written notice to the Custodian Bank and the power to appoint a successor;
 - (b) the ability for the Custodian Bank to resign by notice in writing. No such resignation will take effect until sixty (60) days from the date the notice is filed with the Committee unless prior thereto a successor Custodian Bank has been appointed by the Committee;
 - (c) a requirement for the outgoing Custodian Bank to transfer and deliver the Fund Account and assets and any records pertaining thereto to the successor Custodian Bank identified by the Committee, after reserving such reasonable amount from the Income to provide for the outgoing Custodian Bank's expenses in the settlement of the Fund account and the amount of any fees due. Any such amounts so reserved by, and eventually paid to, the outgoing Custodian Bank will be subject to the written approval of the Committee in accordance with subparagraph 4;
 - (d) a requirement for the Custodian Bank to follow the written directions of the Committee with respect to the retention, purchase, sale or encumbrance of any Fund property and the investment and reinvestment of the Principal and Income at the sole authority and discretion of the Committee (provided, however, that the Committee may not direct the Custodian Bank to purchase any asset in breach of New Zealand law, or the provisions of this Arrangement);
 - (e) provision that the Custodian Bank will not be accountable for any loss or depreciation in value sustained by the Fund by reason of action taken pursuant to the directions of the Committee;
 - (f) a requirement that the Custodian Bank will use reasonable and prudent care and reasonable and prudent diligence in the exercise of its powers and the performance of its duties as the

custodian of the Fund;

- (g) a requirement for the Custodian Bank to exercise the following duties and powers, in addition to and not limited to the powers granted or conferred by law, all of which should be exercised with a Fiduciary Responsibility:
 - (i) to collect and receive any and all money and property of whatever kind or nature due or owing or belonging to the Fund and to give full discharge and acquittance therefore, and to extend for a reasonable period of time the time of any payment of any obligation at any time owing to the Fund;
 - (ii) to disburse the Income or Principal pursuant to the conditions set forth in Paragraphs 14, 18 (including as described in Paragraph 22, subparagraph 2), and 19.
 - (h) a requirement for the Custodian Bank to make all payments of liabilities and administration expenses for the Fund and to only distribute Principal and Income in accordance with the instructions of the Committee;
 - (i) a requirement for the Custodian Bank to maintain full and accurate books of account and records of all financial transactions of the Fund, which will be available at all reasonable times for inspection by the Committee or its representatives;
 - (j) a requirement for the Custodian Bank to make monthly reports to the Committee regarding the accounting and activity of the Fund; and
 - (k) provision for the Custodian Bank to be paid reasonable fees and expenses from the Fund, in an amount approved by the Committee.
4. The Committee will pay the Custodian Bank reasonable fees and expenses from the Fund for the provision of the services as Custodian Bank. Such fees and expenses will be determined and approved by the Committee in writing and will be paid from the Income or, when necessary, from the Principal of the Fund, pursuant to the terms of Paragraph 14, subparagraph 3.

Paragraph 12
Investment Adviser(s) and Fund Manager(s), Accountant and Executive Administrator

1. The Committee may, at any time:

- (a) select and appoint one or more Investment Adviser(s), including the Custodian Bank or any of its affiliates;
 - (b) negotiate the terms of, and execute management agreements with, such Investment Adviser(s); and
 - (c) direct the Custodian Bank to pay the fees and expenses of such Investment Adviser(s) from the assets of the Fund, in accordance with Paragraph 14, subparagraph 3.
2. The management agreement entered into by the Committee with the Investment Adviser(s) will include:
- (a) a requirement that the Investment Adviser(s) act with a Fiduciary Responsibility when exercising a power of the Committee under a delegation from the Committee;
 - (b) a requirement that Fund assets:
 - i. not include any asset the purchase or ownership of which would be in breach of New Zealand law; and
 - ii. subject to i., be invested only in Qualified Instruments that are identified from time to time by the Committee; and
 - (c) a requirement that the Investment Adviser will prepare and submit to the Committee on a quarterly basis, an investment performance report for the Fund including comparisons of the Fund as a whole, its asset categories and its individual assets to industry standard benchmarks.
3. The rights and powers herein conferred on the Committee will be exercisable only with Fiduciary Responsibility, and any Investment Adviser(s) accepting the delegation of a discretionary function of the Committee will also be considered to be acting with Fiduciary Responsibility.
4. The Committee may select and appoint one or more Fund Managers who will be responsible for investing the assets of the Fund to produce a diversified portfolio. The Committee will obtain advice and recommendations from the Investment Adviser(s) on the selection of Fund Manager(s), such advice to include data relating to any prospective Fund Manager, indicating performance and relevant comparisons with similar Fund Managers, to assist the Committee in evaluating the performance of the prospective Fund Managers.
5. The Committee will enter into a separate contractual agreement with each appointed Fund Manager setting out:
- (a) the Fund Manager's rights and obligations in relation to the

investment of the assets of the Fund; and

- (b) a requirement that Fund assets:
 - i. not include any asset the purchase or ownership of which would be in breach of New Zealand law; and
 - ii. subject to i., be invested only in Qualified Instruments that are identified from time to time by the Committee.

6. The Committee may at any time direct brokerage instructions through the Investment Adviser(s) for any security transactions executed with respect to the Fund. The Committee may:

- (a) enter into such contracts, agreements or other arrangements as the Committee determines to be appropriate with such Investment Adviser(s) and Fund Manager(s); and
- (b) direct the Custodian Bank, in writing, to pay any fees and expenses of the Investment Adviser(s) and Fund Manager(s) as approved by the Committee, from the Fund assets, in accordance with Paragraph 14, subparagraph 3.

7. The Committee may, at any time:

- (a) select an Accountant to prepare quarterly and annual financial statements of the Fund in accordance with relevant Australian accounting standards and the standards and requirements of the Government of Australia;
- (b) negotiate the terms of, and execute a contract with, such an Accountant; and
- (c) direct the Custodian Bank to pay the fees and expenses of the nominated Accountant from the assets of the Fund, in accordance with Paragraph 14, subparagraph 3.

8. The Committee may, at any time:

- (a) select and appoint an Executive Administrator to support the governance, administration and operations of the Committee to include the following functions:
 - i. maintain all official Committee documents and records;
 - ii. report to the Committee on activities of the Fund;
 - iii. assist in the hiring and supervision of the Custodian Bank, Investment Adviser(s), Fund Manager(s), Accountant, Independent Evaluator and Auditor;

- iv. draft written instructions on behalf of the Committee to the Custodian Bank to pay bills, purchase and liquidate investments, meet capital calls and wire funds for these purposes as authorised by the Committee;
 - v. draft, coordinate and send official correspondence of the Committee, to include inquiries from the public, governments, potential Subsequent Contributors and international agencies regarding the Fund;
 - vi. draft and coordinate resolutions, unanimous written consents and other official documents of the Fund, and monitor their implementation;
 - vii. provide records and other support to the Auditor, draft narrative portions of the audit reports and review the draft audit reports;
 - viii. provide records and other support to the Independent Evaluator;
 - ix. plan Committee meetings and reviews of investments, obtain meeting space, invite participants, record meetings and report on actions;
 - x. draft an annual report and disseminate to the members of the Committee for approval;
 - xi. provide periodic updates of investments, performance and actions by the Investment Adviser, Custodian Bank, Fund Managers, Auditors and others; and
 - xii. such other duties and responsibilities as the Committee may assign, including efforts to identify other sources of contributions to the Fund.
- (b) negotiate the terms of, and execute management agreements with any Executive Administrator; and
 - (c) advise the Custodian Bank (on the directions of the Committee) to pay the fees and expenses of such an Executive Administrator from the assets of the Fund, in accordance with Paragraph 14, subparagraph 3;
9. Six months prior to making the first Distribution from the Fund, the Original Partners will consult to determine if an independent economic advisory committee is required to conduct an economic and fiscal assessment of the Fund to assist the Committee to determine the sector allocation (to the education, health, environment, infrastructure sectors) of

the annual distribution of Fund assets during the Fund Period. The Committee will appoint the members of any economic advisory committee.

Part V Operation of the Fund

Paragraph 13 Investment and Distribution Policy

1. The Committee will establish and revise from time to time, an Investment Policy consistent with this Arrangement, upon the advice of the Investment Adviser(s). The Investment Policy will indicate the investment strategy of the Fund and will be monitored according to industry standard benchmarks. The Investment Adviser(s) will report on the investment strategy at least quarterly
2. The Committee will establish and revise, from time to time a Distribution Policy consistent with this Arrangement.
3. Both the Investment Policy and the Distribution Policy will ensure that investments of the Fund and Distributions are consistent with the following objectives:
 - (a) [*Deliberately left blank.*];
 - (b) to ensure that during the Fund Period any Distribution will be used for the purpose stated in Paragraph 5 or as determined in accordance with this Arrangement;
 - (c) to prevent and detect fraud and corruption, including bribery, in relation to the Fund;
 - (d) to ensure full implementation of UN Security Council Resolutions relating to sanctions;
 - (e) to ensure no money from the Fund is provided directly or indirectly to individuals or entities designated by the UN Security Council, its committees or the Government of New Zealand for targeted financial sanctions or otherwise used to provide support to individuals or entities associated with terrorism, terrorists or terrorist organisations;
 - (f) not to engage in any practice inconsistent with the rights set forth in the Convention of the Rights of the Child;
 - (g) to achieve transparency and accountability in the management of the Fund; and
 - (h) to appropriately recognize the support for the Fund by the Government of the Republic of Nauru and the Government of New Zealand.

Paragraph 14
Investment and Distribution to the Government of the
Republic of Nauru

1. The Fund will consist of two accounts to be referred to hereinafter as the "A Account," and the "B Account" respectively (collectively, the "Accounts"). Each Account will become effective as described in this Paragraph 14.
2. The A Account, which was established in April 2016, does and will form the Principal and consist of contributions from the Original Partners, and Subsequent Contributors. Except as otherwise provided in this Arrangement, the A Account also consists of the Income from the investments made from the Principal, and transfers from the B Account in accordance with this Paragraph 14.
3. Payment of Allowable Expenses of the Fund will be made from the A Account. During the period up to the first Distribution, the amount, if any, of Income in each Fiscal Year which remains after such payment of expenses will be reinvested into the A Account. Except as provided in this Paragraph, or under Paragraph 7, subparagraph 11, or Paragraph 11, subparagraph 4, or Paragraph 12, subparagraphs 1 (c), 6(b), 7(c) and 8(c), or Paragraph 16, subparagraphs 4 and 7, or upon withdrawal of contributions under Paragraph 18 (including as described in Paragraph 22, subparagraph 2), or upon termination of the Fund under Paragraph 19, no funds may be removed from the A Account.
4. The B Account:
 - (a) will be used for any Distributions;
 - (b) will be created prior to the time of the first Distribution as determined by the Committee according to Paragraph 5 and will remain in existence thereafter;
 - (b) will contain the amount calculated using the 3-year Moving Average Distribution Approach described in subparagraph 6 and transferred from the A Account to the B Account; and
 - (c) any monies remaining in the B Account after the annual Distribution will be returned to the A Account.
5. The A Account will not be accessed to add funds to the B Account other than the amount determined annually by the 3-year Moving Average Distribution Approach described in subparagraph 6.
6. Within 6 months of the end of each Fiscal Year during the Fund Period, the Committee may determine to make a transfer of funds from the A Account into the B Account. The Committee will determine the amount of

the transfer. If a transfer is to be made it will be no more than but may be less than the Maximum Transfer Amount calculated using the 3-year Moving Average Distribution Approach as follows:

$$\text{Maximum Transfer Amount} = \frac{\text{Distribution Percentage} \times \text{Moving Average}}$$

where:

Distribution Percentage has the meaning given in Paragraph 1; and

The Moving Average consists of the average of the Principal values at the beginning of each of the preceding 3 Fiscal Years.

7. The Committee will review the Distribution Percentage at least every 3 years during the Fund Period and may adjust the Distribution Percentage by consensus. The Committee may seek technical advice to determine the Distribution Percentage.
8. The Government of the Republic of Nauru will, from time to time during the Fund Period, develop and submit to the Committee a program and budget for one or more sequential Fiscal Years that describes in respect of each such Fiscal Year:
 - (a) how it intends using Distributions for the purpose stated in Paragraph 5 or as determined in accordance with this Arrangement; and
 - (b) the proposed monitoring and evaluation framework to apply to the use of Distributions.
9. The Committee may refuse to accept a program and budget that:
 - (a) proposes to use Distributions for purposes other than the purpose stated in Paragraph 5 or as determined in accordance with this Arrangement; or
 - (b) proposes a budget for a Fiscal Year that requires, or is likely to require, Distributions in excess of the actual or forecast amount of the B Account in respect of the same Fiscal Year.
10. The Committee will make Distributions to the Government of the Republic of Nauru from the B Account for each relevant Fiscal Year during the Fund Period in accordance with the program and budget accepted by the Committee in accordance with subparagraphs 8 and 9. The Committee will determine and implement the fiscal procedures, including remedies in the event of breach of the procedures, to apply to the use by the Government of the Republic of Nauru of any Distribution for the purpose stated in Paragraph 5 or as determined in accordance with this Arrangement.

11. No Distribution will be made during the Fund Period until the Committee has determined the fiscal procedures referred to in subparagraph 10. The Committee will satisfy itself, before making a Distribution, that the Distribution complies with the fiscal procedures referred to in subparagraph 8.
12. The Government of New Zealand may implement the remedies set out in Paragraph 18, subparagraph 1 in any of the following cases:
 - (a) If the remedies set out in the fiscal procedures do not correct any misuse of a Distribution by the Government of the Republic of Nauru, and the Government of the Republic of Nauru continues to use, or causes to be used, a Distribution other than for the purpose stated in Paragraph 5 or as determined in accordance with this Arrangement;
 - (b) If the Government of the Republic of Nauru grossly fails to use a Distribution for the purpose described in Paragraph 5;
 - (c) If the Government of the Republic of Nauru draws upon the Capital or Income without having, or inconsistently with, the prior unanimous approval of the Committee.
13. No Distribution from the A Account or the B Account will be made prior to the commencement of the Fund Period.

Part VI

Accounts, Audit, and Reports

Paragraph 15

Accounts

1. The Committee will require:
 - (a) the Custodian Bank and Executive Administrator to keep all proper books and records of account of the assets, property, liabilities, income, expenditure and transactions of the Fund and to produce such books and records of account promptly to facilitate the audit referred to in Paragraph 16;
 - (b) the Custodian Bank to create one sub-fund for each Original Partner to the Fund, reflecting that Original Partner's share of the Principal and Income and to keep all records for each sub-fund; and
 - (c) that all records and reports of Fund returns clearly segregate and identify gross Income, management fees, and net Income.
2. The Government of the Republic of Nauru will provide to the Committee full information and documents concerning its national budget and accounts, and any report of its public auditor.

Paragraph 16
Audit and Independent Evaluation

1. An independent auditor (the “Auditor”) will be appointed by the Committee to audit the Fund annually.
2. The Committee will require that the Auditor prepare a report on the following:
 - (a) whether the accounts have been properly prepared in accordance with the books and records of the Fund;
 - (b) whether the books and records of the Fund have been properly kept and contain information adequate for the purposes of the audit;
 - (c) whether the balance sheet and income and expenditure statement of the Fund give a true and fair view of the Fund's financial position;
 - (d) whether the financial affairs of the Fund have been properly conducted in accordance with this Arrangement and in accordance with accounting standards; and
 - (e) information on the performance of the Custodian Bank, Investment Adviser(s) and Fund Manager(s) in the investment of the Fund in accordance with the guidelines determined by the Committee with comparative references to the performance of managers of other funds of a similar size and nature.
3. Either government or its national audit institution auditors may access the books and records of the Fund at reasonable times and locations determined by the Committee to fulfill their national audit obligations.
4. The Committee will advise the Custodian Bank to pay the fees and expenses of such an Auditor from the assets of the Fund, in accordance with Paragraph 14, subparagraph 3.
5. The Fund will be evaluated at least every eight years by an Independent Evaluator appointed by the Committee (the “Independent Evaluator”).
6. The Committee will require that the Independent Evaluator undertake an evaluation of the following against international best practice benchmarks and prepare a report regarding:
 - (a) the governance of the Fund;
 - (b) the management of the Fund's operations, including the management of service providers to the Fund;

- (c) the performance of the service providers to the Fund;
 - (d) whether any changes are needed to the governance or management framework to align the Fund with current international best practice;
 - (e) the assessment of the Investment Policy to assess:
 - (i) if the asset allocation is responsive to Committee growth interest and investment risk levels;
 - (ii) the relevance of performance benchmarks; and
 - (iii) the performance of assets over an agreed timeframe and to provide comparisons to similar trusts, endowments and foundations;
 - (f) the assessment of fees and expenses of the service providers and of the Fund with fee and expense comparisons to similar trust, endowments and foundations; and
 - (g) whether the Fund is effectively meeting the purpose stated in Paragraph 5 or as determined in accordance with this Arrangement.
7. The Committee will advise the Custodian Bank to pay the fees and expenses of such an Independent Evaluator from the assets of the Fund, in accordance with Paragraph 14, subparagraph 3.
 8. The report produced by the Independent Evaluator will be made available to the Government of the Republic of Nauru, the Government of New Zealand and the public. A separate report may also be produced for the internal use of the Committee.

Paragraph 17 Annual Reports

1. Within six months of the end of each Fiscal Year the Committee will publish and will submit to the Government of the Republic of Nauru and the Government of New Zealand:
 - (a) an annual report on the activities and management of the Fund, including the accounts described in Paragraph 15, investment management and decisions, expenses and on the effectiveness of the Fund to accomplish its purpose stated in Paragraph 5 or as determined in accordance with this Arrangement, which annual report may include recommendations regarding improving the effectiveness of the Fund to accomplish that purpose;

- (b) the accounts of the Fund for that year audited in accordance with Paragraph 16; and
 - (c) reports of the Auditor under Paragraph 16.
2. The Committee may issue press releases or other information on notable Fund decisions, events and activities.

Part VII

Withdrawal and Termination

Paragraph 18

Withdrawal of Contributions

1. The Government of New Zealand may withdraw the Present Market Value of its contributions to the Fund, and any undistributed Income in the event the Government of New Zealand determines, after consultation with the Government of the Republic of Nauru, that any one or more of the cases set out in Paragraph 14, subparagraph 12 applies.
2. Either government may withdraw from this Arrangement by giving the other government ninety (90) days written notification of its intent to withdraw from the Fund.
3. The Present Market Value of the remaining Principal and Income attributable to that government will be distributed to that government promptly after the expiry of the written notice referred to in subparagraph 2.
4. A government that withdraws from this Arrangement will have no rights under this Arrangement except as provided in this Paragraph and Paragraph 21, and no refund of its contributions will be made to it except as a distribution of assets as provided under this Paragraph and Paragraph 19.
5. The Committee will promptly notify the Government of New Zealand of any notice of withdrawal from the Fund by an Original Partner or Subsequent Contributor under another arrangement.
6. The Committee will ensure that no arrangement with either an Original Partner that is not a government or a Subsequent Non-government Contributor allows for the withdrawal of contributions by, or other payment from the Fund to, that Original Partner or Subsequent Non-government Contributor.

Paragraph 19
Termination and Distribution of Assets

1. The Fund's operations may be terminated by the written consent of the Original Partners.
2. Upon termination of operations under subparagraph 1, the Fund will immediately cease all activities, except those incidental to the orderly realization and conservation of its assets and the settlement of its obligations.
3. On final settlement of the obligations of the Fund and the distribution of its assets this Arrangement will terminate. Until then, the Fund will remain in existence.
4. In the event of termination of this Arrangement, no distribution of assets will be made until all liabilities have been discharged. Subsequently, the remaining assets of the Fund will be distributed as follows:
 - (a) the Present Market Value of the Principal and Income attributable to the Government of New Zealand will be reimbursed to the Government of New Zealand;
 - (b) the Present Market Value of the Principal and Income attributable to the Government of the Republic of Nauru will be reimbursed to the Government of the Republic of Nauru;
 - (c) where any other Original Partner is a government, the Present Market Value of the Principal and Income attributable to that Original Partner will be reimbursed to that Original Partner;
 - (d) the Present Market Value of the Principal and Income attributable to Subsequent Government Contributors will be reimbursed to those Subsequent Government Contributors, unless the arrangements relating to those contributions specify otherwise; and
 - (e) any other remaining money in the Fund, including the Present Market Value of the Principal and Income attributable to contributors other than those referred to in subparagraphs (a) to (d) above will be paid to the Government of the Republic of Nauru.

Part VIII
Miscellaneous Provisions

Paragraph 20
Amendments

This Arrangement may be amended at any time in writing by consent of the

Government of New Zealand and the Government of the Republic of Nauru.

Paragraph 21
Dispute Resolution

1. Differences between the Government of New Zealand and the Government of the Republic of Nauru arising under or relating to this Arrangement, whether during the life of the Fund or on termination of its operations, that cannot be resolved by the Committee, will be resolved only by consultation between the two governments.
2. Disputes involving other Original Partners or Subsequent Contributors will be handled as mutually determined by those Original Partners and Subsequent Contributors.

Paragraph 22
Entry into Effect and Duration

1. This Arrangement will enter into effect on the date of signature by both the Government of New Zealand and the Government of the Republic of Nauru.
2. This Arrangement will remain in effect for forty (40) years. This Arrangement will be automatically extended for successive five (5) year periods until one government notifies the other in writing that it does not desire this Arrangement to be extended. In that event the procedure under Paragraph 18 will apply.

Signed in duplicate at Wellington, New Zealand
on this 28th day of May, 2019, each text being
equally authentic.


FOR THE GOVERNMENT OF
THE REPUBLIC OF NAURU:

FOR THE GOVERNMENT
OF NEW ZEALAND:


signature

DAVID ADEANG
name

MINISTER FOR FINANCE
title


signature

Nicola Simmonds
name

High Commissioner
title