



Government of Independent State of Samoa

Office of the Clerk of the Legislative Assembly

CONTRACT FOR CONSULTANCY SERVICES
Contract No.:

Between

THE GOVERNMENT OF THE INDEPENDENT STATE OF SAMOA

("the Client")

and

[INSERT NAME OF CONSULTANT]

("the Consultant")

INSERT DATE

THIS CONTRACT is entered into on this _____ day of _____ 2019

BETWEEN: **THE GOVERNMENT OF THE INDEPENDENT STATE OF SAMOA** acting by and through the **INSERT TITLE, INSERT NAME, OF THE OFFICE OF THE CLERK OF THE LEGISLATIVE ASSEMBLY,** having its principal place of business in **SOGI** (*“the Client”*);

AND: **INSERT NAME OF CONSULTANT**, a sole trader/duly incorporated company etc having its registered office located at **INSERT OFFICE LOCATION** (*“the Consultant”*).

(collectively referred to as *“the Parties”*)

WHEREAS:

- A The Client has requested the Consultant to provide certain consulting services as defined in this Contract and specified in Annex A (hereinafter called *“the Services”*); and
- B The Consultant, having represented to the Client that it has the required professional skills, expertise and technical resources, has agreed to provide the Services on the terms and conditions set forth in this Contract.

NOW THEREFORE THE PARTIES hereby agree as follows:

1. **Services**
 - (i) The Consultant shall perform the services specified in **Annex A, “Terms of Reference and Scope of Services,”** which is made an integral part of this Contract (*“the Services”*);
 - (ii) The Consultant shall provide the personnel listed in **Annex B, “Consultant’s Personnel,”** to perform the Services; and
 - (iii) The Consultant shall submit to the Client the reports in the form and within the time periods specified in **Annex C, “Consultant’s Reporting Obligations.”**
2. **Term**

The Consultant shall perform the Services during the period commencing **INSERT DATE** (*“Commencement Date”*) and continuing through to **INSERT DATE** (*“Completion Date”*) or any other period as may be subsequently agreed by the parties in writing.
3. **Payment**
 - 3.1 **Ceiling**

For Services rendered pursuant to **Annex A**, the Client shall pay the Consultant an amount not to exceed **INSERT CEILING PRICE AMOUNT** *inclusive of VAGST and subject to Withholding Tax*. This amount has been established based on the understanding that it includes all of the Consultant's costs and profits as well as any tax obligation that may be imposed on the Consultant. Despite that any applicable tax that is not included in the ceiling price, are payable by the Consultant where required by the laws of the Independent State of Samoa (and confirmed by the Ministry for Revenue).

Schedule of Payments

The schedule of payments is specified below¹:

Activity	Estimated Dates	Payment Condition

3.3 Payment Conditions

- a) Payment shall be made in Samoa Tala (SAT\$) in accordance with Annex A and Payment Schedule in Clause 3.2, no later than **fifteen (15) days** following submission by the Consultant of invoices in duplicate to the Coordinator/Delegate designated in Clause 4.
- b) An invoice is correctly rendered if:
 - (i) the amount claimed and specified in the invoice is due for payment and is correctly calculated in accordance with the Contract;
 - (ii) it correctly identifies the Services provided and for which payment is claimed; and
 - (iii) it is correctly addressed to the Client.
- c) Payments shall be made to the Consultant's bank account:

[INSERT CONSULTANT'S BANK ACCOUNT DETAILS]

4. Project Administration

4.1 Coordinator/ Delegate

The Client designates **Elsa Fruean, Facilities Manager**, as the Client's Coordinator/Delegate. The Coordinator/ Delegate will be responsible for the coordination of activities under this Contract, for acceptance and approval of the reports and of other deliverables by the Client and for receiving and approving invoices for the payment. The Coordinator/ Delegate has the responsibility for the general liaison with the Consultant and may issue written notifications under the Contract.

4.2 Reports

The reports listed in **Annex C, "Consultant's Reporting Obligations,"** shall be submitted in the course of the assignment, and shall constitute the partial basis for the payments to be made under Clause 3.

5. Performance Standards

- (a) The Consultant shall perform the Services and carry out their obligations hereunder with all due diligence, efficiency and economy, in accordance with generally accepted professional standards and practices, and shall observe sound management practices, and employ appropriate technology and safe and effective equipment, machinery,

¹ Fill in based on required outputs as described in Annex A (Terms of Reference) and Annex C (Reporting Requirements). Avoid front-loaded payments. Advance payments in contracts with firms require a bank guarantee for the same amount.

- materials and methods. The Consultant shall always act, in respect of any matter relating to this Contract or to the Services, as faithful adviser to the Client, and shall at all times support and safeguard the Client's legitimate interests in any dealings with Sub-Consultants or Third Parties.
- (b) The Consultant agrees to be fully responsible for the performance of the Services and for ensuring compliance with the requirements of this Contract, and will not be relieved of that responsibility because of any:
- (i) involvement by the Client and/or Delegate in the performance of the Services;
 - (ii) payment made to the Consultant on account of the Services;
 - (iii) subcontracting or employing of any other person/firm to perform the Services.
- (c) The Consultant shall prepare and provide the designs and drawings and all documentation to the Client in accordance with the ***Terms of Reference and Scope of Services in Annex A***. The Design materials and drawings must be provided to the Client in accordance with the time frames in ***Annex C Consultant's Reporting Obligations***.
- (d) The Consultant warrants and undertakes that the Consultant:
- (i) is experienced in the management, co-ordination and/or production of design documentation for projects similar to this Contract;
 - (ii) has examined the documents and requirements comprising the Contract; and
 - (iii) has arranged the requisite insurance policies as required under Clause GCC 10.1
- (e) The Consultant ensures that the design documentation are prepared with the degree of skill, care and diligence reasonably expected of a professional providing services similar to the design work in accordance with innovation and cost-effective design and construction solutions and in accordance with this Contract. The Consultant warrants and undertakes that:
- (i) the Consultant has the necessary experience, skills and expertise to carry out the Services;
 - (ii) the designs and design documentation are prepared in accordance with proper professional architectural or engineering practices and principles; and
 - (iii) the works and all services and features included in such works are professionally designed to be appropriate and fit for the purposes described in or inferred from this Contract.
- (f) Where the Consultant forms the opinion on reasonable grounds, at any time that an element of the design or design documentation does not comply with this Contract or contains errors or omissions, the Consultant must direct its Personnel to rectify the non-compliance (at no

additional cost to the Client) and inform the Client immediately in writing.

- (g) The Consultant where appropriate, shall use its best endeavors to impart skills and to instruct the Client's employees with whom the Consultant has contact in the performance of the Services, with a view to increasing and consolidating the skills base within the Client's *insert name of Division*.

- 6. Inspections and Auditing** 6.1 The Consultant shall permit, and shall cause its Sub-Consultants to permit, the Government and/or persons or auditors appointed by the Government to inspect and/or audit its accounts and records and other documents relating to the submission of the Proposal to provide the Services and performance of the Contract. Any failure to comply with this obligation may constitute a prohibited practice subject to contract termination and/or the imposition of sanctions by the Government (including without limitations determination of ineligibility) in accordance with prevailing Government's sanctions procedures
- 7. Confidentiality** 7.1 The Consultants shall not, during the term of this Contract and after termination or expiration of the Contract, disclose any proprietary or confidential information relating to the Services, this Contract or the Client's business or operations without the prior written consent of the Client.
- 8. Ownership of Material** 8.1 Any studies, reports or other material, graphic, software or otherwise, prepared by the Consultant for the Client under the Contract shall belong to and remain the property of the Client. The Consultant may retain a copy of such documents and software.
- 8.2 Upon the expiration or termination of this Contract, the Consultant will deliver to the Client all studies reports or other material, graphic, software or otherwise prepared by the Consultant for the Client, and all copies of it, and if necessary, transfer or have transferred any intellectual property rights to the Client. Any future use of any document, material or software requires prior approval of the Client.
- 8.3 This clause 8 shall survive termination or expiration of the Contract.
- 9. Consultant Not to be Engaged in Certain Activities** 9.1 The Consultant agrees that, during the term of this Contract and after its termination, the Consultants and any entity affiliated with the Consultant, shall be disqualified from providing goods, works or services (other than consulting services that would not give rise to a conflict of interest) resulting from or closely related to the Consulting Services for the preparation or implementation of the Project.
- 9.2 The Consultant warrants that, to the best of its knowledge after making diligent inquiry, at the date of commencement of the Consultancy Services that no conflict with the interests of the Principal exists or is likely to arise in the performance of the Consultancy Services.
- 9.3 If, during the performance of the Services, a conflict of interest arises, or appears likely to arise, the Consultant agrees to:

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

9.3 If the Consultant does not notify the Client or is unable or unwilling to resolve or deal with the conflict as required under clause 9, the Client may terminate this Contract in accordance with clause 9 or clause 13.

10. Insurance

10.1 The Consultant will be responsible for taking out any appropriate insurance coverage. The Consultant agrees for as long as any obligations remain in connection with this Contract, to maintain in effect the required insurances for all the Consultant's obligations under this Contract, including those which survive the expiration or termination of the Contract. The insurance policy must be in place by after signing this Contract.

11. Law Governing Contract and Language

11.1 The Contract shall be governed by the laws of the **Independent State of Samoa**, and the language of the Contract shall be English.

12. Dispute Resolution

12.1 Any dispute (excluding termination or variation) arising out of this Contract, which cannot be amicably settled between the parties, shall be referred to adjudication/arbitration in accordance with the laws of the Client's country:

- (a) the party claiming there is a dispute will send to the other party a notice setting out the nature of the dispute;
- (b) within seven (7) days each party may nominate a representative, preferably not having any prior involvement in the dispute;
- (c) the representatives of both parties will try to settle the dispute by direct negotiation between them;
- (d) failing settlement within fourteen (14) days, either party may refer the dispute to:
 - (i) each parties' respective heads or nominees; or
 - (ii) an independent third person as agreed by both parties to intervene and direct some form of resolution, in which case the parties shall be bound by that resolution.
- (e) failing a resolution within three (3) days after the fourteen (14) days in Clause 12.1 (d), either party may commence legal proceedings or, if agreed to by the parties to the arbitration of a single arbitrator under the **Arbitration Act 1976** of Samoa.

12.2 Where a matter becomes a dispute in accordance with clause 12, either party may, within forty-eight (48) hours' notice to the other party, suspend the performance of the Services until such time as the dispute is resolved.

12.3 Clause 12 does not apply to either party commencing legal proceedings for urgent interlocutory relief.

13. Termination

Termination by the Client

13.1 The Client may terminate this Contract with at least **ten (10) calendar days'** prior written notice to the Consultant after the occurrence of any of the events specified in sub-clause (a) to (d) of this Clause 13:

- (a) If the Consultant does not remedy a failure in the performance of its obligations under the Contract within **seven (7) working days** after being notified, or within any further period as the Client may have subsequently approved in writing;
- (b) If the Consultant becomes insolvent or bankrupt;
- (c) If the Consultant, in the judgment of the Client or the Government, has engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices (as defined in the prevailing Government's sanctions procedures) in competing for or in performing the Contract; and/or
- (d) If the Client, in its sole discretion and for any reason whatsoever, decides to terminate this Contract.

Termination by the Consultant

13.2 The Consultant may terminate this Contract, by not less than **seven (7) working days'** written notice to the Client, in case of the occurrence of any of the events specified in (a) and (b) of this sub-clause:

- (a) If the Client fails to pay any money due to the Consultant pursuant to this Contract and not subject to dispute, within **seven (7) calendar days** after receiving written notice from the Consultant that such payment is overdue; and/or
- (b) If the Client is in material breach of its obligations pursuant to this Contract and has not remedied the same within **fourteen (14) days** (or such longer period as the Consultant may have subsequently agreed in writing) following the receipt by the Client of the Consultant's notice specifying such breach.

Termination by default

13.3 Where a party fails to satisfy any of its obligations under this Contract, other than those referred to in Clauses 13.1 and 13.2 above, the other party may give notice requiring that the failure be remedied within a period of **insert period working days** and if not remedied within that time, may terminate this Contract immediately.

Effect of Termination

13.4 Upon receipt of a notice of termination from the Client, the Consultant agrees to:

- (a) stop work as specified in the notice;
- (b) take all available steps to minimize loss resulting from that termination and to protect the Client's material referred to under Clause 8 and Client property; and
- (c) continue to work on any part of the Service not affected by the notice.

13.5 Where there has been a termination under Clause 13, the Client will be

liable only for:

- (a) payments and assistance for Services rendered before the effective date of termination; and
- (b) reasonable costs incurred by the Consultant and directly attributable to the termination.

13.6 Where there has been a reduction in the scope of the Services, the Client's ability to meet costs or provide facilities and assistance under the Contract, unless there is notice in writing to the contrary, shall abate in accordance with the reduction in the Services.

13.7 The Client will not be liable to pay compensation under Clause 13.5(b) in an amount which would, in addition to any amount paid or due or becoming due, to the Consultant under this Contract, together exceed the costs set out in Clause 3 of this Contract.

13.8 The Consultant will not be entitled to compensation for loss of prospective profits.

14. Force Majeure

14.1 "Force Majeure" refers to any event, including, but not limited to, wars, strikes, epidemics, civil disturbances, natural disasters or inclement weather, that is unforeseeable and beyond the reasonable control of either Party, the occurrence and effect of which is unavoidable and insurmountable.

14.2 Should a Party, due to the occurrence of Force Majeure, fail to perform this Contract in full or in part, such Party shall, in light of the effect of the Force Majeure, be exempted from all or some of its responsibilities hereunder.

14.3 Should a Party fail to perform on time its duties under this Contract and subsequently Force Majeure were to occur, such Party shall not be exempted from any of its liabilities hereunder as a result of its failure to perform said duties.

14.4 Should a Party be unable to perform this Contract as a result of Force Majeure, it shall inform the other Party, as soon and as quickly as possible following the occurrence of such Force Majeure, of the situation and the reason(s) for the non-performance, so as to minimize any losses incurred by the other Party as a consequence thereof.

14.5 The Party affected by Force Majeure may suspend the performance of its obligations under this Contract until any disruption resulting from the Force Majeure has been resolved. However, such Party shall make every effort to eliminate any obstacles resulting from the Force Majeure, thereby minimizing to the greatest extent possible its adverse effects, as well as any resulting losses.

14.6 If the performance of the Contract is substantially prevented, hindered or delayed for a single period of more than fifteen **15 days** or an aggregate period of more than **thirty (30) days** on account of one (1) or more events of Force Majeure during the term of the Contract, the parties will attempt to develop a mutually satisfactory solution, failing which, either Party may terminate the Contract by giving notice to the other.

15. Negation of Employment, Partnership and Agency

- 15.1 The relationship of the Consultant to the Client is that of independent contractor and nothing contained herein shall be construed as creating any other relationship. The Consultant agrees not to represent himself, and to use his best endeavours to ensure that his officers, employees, agents and subcontractors do not represent themselves, as being an officer, employee, partner or agent of the Client, or as otherwise able to bind or represent the Client.
- 15.2 The Consultant is not by virtue of this Contract an officer, employee, partner or agent of the Client, nor does the Consultant have any power or authority to bind or represent the Client.

16. Waiver

- 16.1 If a party does not exercise (or delays in exercising) any of its rights, that failure or delay does not operate as a waiver of those rights.
- 16.2 A single or partial exercise by a party of any of its rights does not prevent the further exercise of any right.
- 16.3 In Clause 16, 'rights' means rights or remedies provided by this Contract or at law.

17. Assignment and Novation

- 17.1 The Consultant cannot assign its obligations, and agrees not to assign its rights, under this Contract without, in either case, prior written approval from the Client. Any attempted assignment without such approval shall be null and void.
- 17.2 The Consultant agrees not to consult with any other person for the purposes of entering into an arrangement that would or could require novation of the Contract without first consulting with and obtaining the written approval of the Client.
- 17.3 The Consultant further agrees not to recruit or attempt to recruit staff and/or employees from amongst the Client's personnel.
- 17.4 This Contract shall inure to the benefit of and be binding on the respective successors, representatives and assigns of the Consultant.

18. Skills Transfer

- 18.1 The Consultant shall use its best endeavours to impart skills and to instruct the Government's employees with whom the Consultant has contact in the performance of the Consultancy Services, with a view to increasing and consolidating the skills base within the Client's organization.

19. Security and access

- 19.1 The Consultant shall, when using the Client's premises or facilities, comply with all rules, directions and procedures including those relating to security and to workplace health and safety in effect at the premises or in regard to the facilities notified to the Consultant by the Client.
- 19.2 The Consultant shall give the Delegate, and any other persons authorized in writing by the Client, reasonable access to premises occupied by the Consultant where the Consultancy Services are being undertaken and will permit them to inspect any Contract Material or other Material related to the Consultancy Services.

- 19.3 The Delegate and any other person authorized by the Client, when at the Consultant's premises will comply with all rules, directions and procedures including those relating to security and to workplace health and safety in effect at the premises or in regard to the facilities as notified by the Consultant to the Client.
- 20. Notices**
- 20.1 Any notice, request or other communication to be given under this Contract is to be in writing and dealt with as follows:
- (a) if given by the Consultant to the Client – marked for the attention of the Coordinator/Delegate at the following address:

[INSERT CLIENT ADDRESS]
 - (b) if given by the Client to the Consultant – signed by the Coordinator/Delegate and marked with the following address:

[INSERT CONSULTANT ADDRESS]
- 20.2 Any notice, request or other communication is to be delivered by hand or transmitted electronically, with confirming copy by hand or international courier.
- 20.3 A notice, request or other communication shall deemed to be received:
- (a) if delivered by hand, upon delivery; and
 - (b) if transmitted electronically, upon receipt by the sender of an acknowledgment that the communication has been properly transmitted to the recipient.
- 21. Variation**
- 21.1 No variation of this Contract is binding unless it is agreed in writing between the Parties.
- 22. Counterparts**
- 22.1 The parties may execute this Contract in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all of the parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile is as effective as executing and delivering this Agreement in the presence of the other parties to this Agreement. This Agreement is effective upon delivery of one executed counterpart from each party to the other parties. This clause shall not apply if counterparts not required.
- 23. Indemnity**
- 23.1 The Consultant agrees to indemnify the Client from and against any:
- (a) liability incurred by the Consultant in the performance of the Services;
 - (b) loss of or damage to the property of the Client caused by the Consultant;
 - (c) loss or expense incurred by the Client in dealing with any claim against the Consultant including legal costs and expenses resulting from any act or omission by the Consultant, his/her officers, employees, agents or subcontractors in connection with this Contract;
 - (d) any breach by the Consultant of his/her obligations under this Contract including any loss or damage attributable to any such breach; and/or

(e) any use or disclosure by the Consultant, his/her officers, employees, agents or subcontractors of Confidential Information held by him/her or them or controlled by him/her or them in connection with this Contract.

23.2 The Consultant's liability to indemnify the Client under sub-clause 23.1 will be reduced proportionately to the extent that any negligent act or omission of the Client contributed to the relevant liability, loss or damage.

23.3 The obligations under Clause 23 shall survive the expiration or termination of this Contract.

24. Corrupt and Fraudulent Practice

24.1 The Consultant must observe the highest standard of ethics during the selection and execution of such contracts. The Client will:

(a) reject a proposal for award if it determines the Consultant recommended for award has engaged in corrupt or fraudulent activities in competing for the contract in question;

(b) cancel the portion of the loan/grant allocated to the Consultant's contract if it at any time determines that corrupt or fraudulent practices were engaged in by the Consultant and/or its affiliates during the selection process or the execution of that contract, without the Consultant having taken timely and appropriate action satisfactory to the Government to remedy the situation;

(c) declare a Consultant ineligible, either indefinitely or for a stated period of time, to be awarded a Government-financed contract if it at any time determines the Consultant has engaged in corrupt or fraudulent practices in competing for, or in executing a government financed contract; and

(d) have the right to require that in contracts financed by Government, a provision to be included requiring consultants to permit the Government and/or the Client to inspect their accounts and records relating to the performance of the Contract and to have them audited by auditors appointed by the Government.

24.2 For the purposes of this Clause, the terms set-forth below are defined as follows:

(a) "*corrupt practice*" is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;

(b) "*fraudulent practice*" is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;

(c) "*collusive practice*" is an arrangement between two (2) or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;

- (d) “*coercive practice*” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
- (e) “*obstructive practice*” is:
 - (i) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Government investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or
 - (ii) acts intended to materially impede the exercise of the Government’s inspection and audit rights provided for under sub-clause 24.1(d).

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be signed in their respective names as of the day and year first above written:

EXECUTED by the INSERT TITLE, INSERT NAME OF THE OFFICE OF THE CLERK OF THE LEGISLATIVE ASSEMBLY, for and on behalf of the GOVERNMENT OF THE INDEPENDENT STATE OF SAMOA ("the Client")

In the presence of:

..... (Witness Name & Signature)

..... (Witness Designation)

AFFIXED HERETO is the COMMON SEAL of INSERT CONSULTANCY FIRM ("the Consultant")



In the presence of:

..... (Director Name & Signature)

..... (Director/Company Secretary Name & Signature)

LIST OF ANNEXES

Annex A: Terms of Reference and Scope of Services

Annex B: Consultant's Personnel and corresponding unit rates

Annex C: Consultant's Reporting Obligations

ANNEX A

TERMS OF REFERENCE AND SCOPE OF SERVICES

FOR CONSULTANCY SERVICES

ANNEX B**CONSULTANT'S PERSONNEL AND CORRESPONDING UNIT RATES**(1) Remuneration of Consultant²

	Name	Rate (per day in SAT) inclusive of VAGST	Time spent (number of month/day/hour)	Total (SAT)
(a) Consultant 1				
Sub-Total (1)				
TOTAL (inclusive of VAGST and subject to withholding tax)				

CONTRACT CEILING: [INSERT AMOUNT]

² The consultancy fee of the Consultant shall be paid in SAT\$ by the Client.

ANNEX C**CONSULTANT’S REPORTING OBLIGATIONS**

The Consultant will be expected to provide the following reports to the Client:

ACTIVITY	MONTH DUE
Concept Design and Project Plan	2 nd month of contract
Detailed Design Report	6 th month of contract
Construction Tender	10 th month of contract
Construction Supervision and Contract Administration	
Monthly Construction Reports x 8 (estimated)	11-18 th month of contract
Post Construction	
Operation and Maintenance Manual	18 th month of contract
Final Statement of Account, Letter of Discharge and Completion Report	30 th month of contract

These reports are to be submitted to the Client’s Project Steering Committee (“PSC”). The PSC will hold meetings on average every two (2) months and / or at key milestones (e.g. Project Plan, DDR). The Consultant’s team leader will be expected to be available to attend all PSC meetings, either in person or via remote access. During the construction period, the Consultant’s site superintendent will provide in-person progress reports at all PSC meetings.