

PART 3 - Contract

Section VII. General Conditions of Contract

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General Conditions of Contract

Definitions

- 1.1 The following words and expressions shall have the meanings hereby assigned to them:
- (a) **“Contract”** means the Contract Agreement entered into between the Purchaser and the Supplier, together with the Contract Documents referred to therein, including all attachments, appendices, and all documents incorporated by reference therein.
 - (b) **“Contract Documents”** means the documents listed in the Contract Agreement, including any amendments thereto.
 - (c) **“Contract Price”** means the price payable to the Supplier as specified in the Contract Agreement, subject to such additions and adjustments to or deductions from, the Contract Price, as may be made under the Contract.
 - (d) **“Day”** means calendar day.
 - (e) **“Completion”** means the full supply of goods and the fulfillment of the Related Services by the Supplier in accordance with the terms and conditions set forth in the Contract.
 - (f) **“GCC”** means the General Conditions of Contract.
 - (g) **“Goods”** means all of the commodities, raw material, machinery and equipment, and/or other materials that the Supplier is required to supply to the Purchaser under the Contract.
 - (h) **“Purchaser’s Country”** means the Independent State of Samoa.
 - (i) **“Purchaser”** means the Government or a Government department or public body purchasing the Goods and Related Services, as specified in the **SCC**.
 - (j) **“Related Services”** means the services incidental to the supply of the goods, such as insurance, installation, training and initial maintenance and other such obligations of the Supplier under the Contract.
 - (k) **“SCC”** means the Special Conditions of Contract.
 - (l) **“Subcontractor”** means any natural person, private or government entity, or a combination of the above, to whom any part of the Goods to be supplied or execution of any part of the Related Services is subcontracted by the Supplier.

- (m) **“Supplier”** means the natural person, private or government entity, or a combination of the above, whose tender to perform the Contract has been accepted by the Purchaser and is named as such in the Contract Agreement.
- (n) **“The Project Site,”** where applicable, means the place named in the SCC.

Contract Documents 2.1 Subject to the order of precedence set forth in the Contract Agreement, all documents forming the Contract (and all parts thereof) are intended to be correlative, complementary, and mutually explanatory. The Contract Agreement shall be read as a whole.

Fraud and Corruption 3.1 If the Purchaser determines that the Supplier and/or any of its personnel, or its agents, or its Subcontractors, consultants, service providers, suppliers and/or their employees has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices, in competing for or in executing the Contract, then the Purchaser may, after giving fourteen (14) days’ notice to the Supplier, terminate the Supplier’s employment under the Contract and cancel the contract, and the provisions of Clause 35 shall apply as if such expulsion had been made under Sub-Clause 35.1.

- (a) For the purposes of this Sub-Clause:
 - (i) **“corrupt practice”** is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party¹;
 - (ii) **“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 obligation²;
 - (iii) **“collusive practice”** is an arrangement between two or more parties³ designed to achieve an improper purpose, including to influence improperly the actions of another party;
 - (iv) **“coercive practice”** is impairing or harming, or threatening to impair or harm, directly or indirectly, any

¹ “Another party” refers to a public official acting in relation to the procurement process or contract execution. In this context, “public official” includes Government of Samoa staff and employees of other organizations taking or reviewing procurement decisions.

² “Party” refers to a public official; the terms “benefit” and “obligation” relate to the procurement process or contract execution; and the “act or omission” is intended to influence the procurement process or contract execution.

³ “Parties” refers to participants in the procurement process (including public officials) attempting to establish tender prices at artificial, non competitive levels.

party or the property of the party to influence improperly the actions of a party; and

(v) **“obstructive practice”** is

(aa) 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

(bb) acts intended to materially impede the exercise of the Government’s inspection and audit rights provided for under GCC 11 [Inspections and Audits by the Government].

3.2 Should any employee of the Supplier be determined to have engaged in corrupt, fraudulent, collusive, coercive, or obstructive practice during the purchase of the Goods, then that employee shall be removed.

Interpretation

4.1 If the context so requires it, singular means plural and vice versa.

4.2 Incoterms

(a) Unless inconsistent with any provision of the Contract, the meaning of any trade term and the rights and obligations of parties under the Contract shall be as prescribed by Incoterms.

(b) The terms EXW, CIP, FCA, CFR and other similar terms, when used, shall be governed by the rules prescribed in the current edition of Incoterms specified in the **SCC** and published by the International Chamber of Commerce in Paris, France.

4.3 Entire Agreement

The Contract constitutes the entire agreement between the Purchaser and the Supplier and supersedes all communications, negotiations and agreements (whether written or oral) of the parties with respect thereto made prior to the date of Contract.

4.4 Amendment

No amendment or other variation of the Contract shall be valid unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorised representative of each party thereto.

4.5 Non-waiver

(a) Subject to GCC Sub-Clause 4.5(b) below, no relaxation, forbearance, delay, or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect, or restrict the rights of that party under the Contract, neither shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of this Contract.

(b) Any waiver of a party's rights, powers, or remedies under the Contract must be in writing, dated, and signed by an authorised representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.

4.6 Severability

If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.

Language

5.1 The Contract as well as all correspondence and documents relating to the Contract exchanged by the Supplier and the Purchaser, shall be written in the language specified in the **SCC**. Supporting documents and printed literature that are part of the Contract may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified, in which case, for purposes of interpretation of the Contract, this translation shall govern. The Purchaser may confirm authenticity of translation otherwise.

5.2 The Supplier shall bear all costs of translation to the governing language and all risks of the accuracy of such translation, for documents provided by the Supplier.

Joint Venture, Consortium or Association

6.1 If the Supplier is a joint venture, consortium, or association, all of the parties shall be jointly and severally liable to the Purchaser for the fulfillment of the provisions of the Contract and shall designate one party to act as a leader with authority to bind the joint venture,

consortium, or association. The composition or the constitution of the joint venture, consortium, or association shall not be altered without the prior consent of the Purchaser.

- Eligibility**
- 7.1 The Supplier and its Subcontractors shall have the nationality of an eligible country. A Supplier or Subcontractor shall be deemed to have the nationality of a country if it is a citizen or constituted, incorporated, or registered, and operates in conformity with the provisions of the laws of that country.
- 7.2 All Goods and Related Services to be supplied under the Contract and financed by the Government shall have their origin in Eligible Countries. For the purpose of this Clause, origin means the country where the goods have been produced, manufactured, or processed; or through manufacture, processing, or assembly, another commercially recognised article results that differs substantially in its basic characteristics from its components.
- Notices**
- 8.1 Any notice given by one party to the other pursuant to the Contract shall be in writing to the address specified in the **SCC**. The term “in writing” means communicated in written form with proof of receipt.
- 8.2 A notice shall be effective when delivered or on the notice’s effective date, whichever is later.
- Governing Law**
- 9.1 The Contract shall be governed by and interpreted in accordance with the laws of the Independent State of Samoa, unless otherwise specified in the **SCC**.
- Settlement of Disputes**
- 10.1 The Purchaser and the Supplier shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the Contract.
- 10.2 If, after twenty-eight (28) days, the Parties have failed to resolve their dispute or difference by such mutual consultation, then either the Purchaser or the Supplier may give notice to the other party of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given. Any dispute or difference in respect of which a notice of intention to commence arbitration has been given in accordance with this Clause shall be finally settled by arbitration. Arbitration may be commenced prior to or after delivery of the Goods under the Contract. Arbitration proceedings shall be conducted in accordance with the rules of procedure specified in the **SCC**.
- 10.3 Notwithstanding any reference to arbitration herein,
(a) the Parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and

- (b) the Purchaser shall pay the Supplier any monies due the Supplier.

Inspections and Audit by the Government	11.1 The Supplier shall permit, and shall cause its Subcontractors and consultants to permit, the Government and/or persons appointed by the Government to inspect the Supplier's offices and all accounts and records relating to the performance of the Contract and the submission of the tender, and to have such accounts and records audited by auditors appointed by the Government if requested by the Government. The Supplier's and its Subcontractors and consultants' attention is drawn to Clause 3 [Fraud and Corruption], which provides, <i>inter alia</i> , that acts intended to materially impede the exercise of the Government's inspection and audit rights provided for under this Sub-Clause 11.1 constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility pursuant to the Government's prevailing sanctions procedures).
Scope of Supply	12.1 The Goods and Related Services to be supplied shall be as specified in the Schedule of Requirements in accordance with Section VI .
Delivery and Documents	13.1 Subject to GCC Sub-Clause 33.1, the Delivery of the Goods and Completion of the Related Services shall be in accordance with the Delivery and Completion Schedule specified in the Schedule of Requirements at Section VI of the Tender Documents. The details of shipping and other documents to be furnished by the Supplier are specified in the SCC .
Supplier's Responsibilities	14.1 The Supplier shall supply all the Goods and Related Services included in the Scope of Supply in accordance with GCC Clause 12, and the Delivery and Completion Schedule, as per GCC Clause 13.
Contract Price	15.1 Prices charged by the Supplier for the Goods supplied and the Related Services performed under the Contract shall not vary from the prices quoted by the Supplier in its Tender, with the exception of any price adjustments authorised in the SCC .
Terms of Payment	16.1 The Contract Price, including any Advance Payments, if applicable, shall be paid as specified in the SCC . 16.2 The Supplier's request for payment shall be made to the Purchaser in writing, accompanied by invoices describing, as appropriate, the Goods delivered and Related Services performed, and by the documents submitted pursuant to GCC Clause 13 and upon fulfillment of all other obligations stipulated in the Contract. 16.3 Payments shall be made promptly by the Purchaser, but in no case

later than sixty (60) days after submission of an invoice or request for payment by the Supplier, and after the Purchaser has accepted it.

16.4 The currencies in which payments shall be made to the Supplier under this Contract shall be those in which the tender price is expressed.

16.5 In the event that the Purchaser fails to pay the Supplier any payment by its due date or within the period set forth in the **SCC**, the Purchaser shall pay to the Supplier interest on the amount of such delayed payment at the rate shown in the **SCC**, for the period of delay until payment has been made in full, whether before or after judgment or arbitration award.

Taxes and Duties

17.1 For goods manufactured outside the Purchaser's Country, the Supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the Purchaser's Country.

17.2 For goods manufactured within the Purchaser's country, the Supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted Goods to the Purchaser.

17.3 If any tax exemptions, reductions, allowances or privileges may be available to the Supplier in accordance with the laws of the Independent State of Samoa, the Purchaser shall use its best efforts to enable the Supplier to benefit from any such tax savings to the maximum allowable extent.

Performance Security

18.1 The Supplier shall, within twenty-eight (28) days of the notification of contract award, provide a performance security for the performance of the Contract in the amount specified in the **SCC**.

18.2 The proceeds of the Performance Security shall be payable to the Purchaser as compensation for any loss resulting from the Supplier's failure to complete its obligations under the Contract.

18.3 As specified in the **SCC**, the Performance Security, if required, shall be denominated in the currency(ies) of the Contract, or in a freely convertible currency acceptable to the Purchaser; and shall be in one of the format stipulated by the Purchaser in the **SCC**, or in another format acceptable to the Purchaser.

18.4 The Performance Security shall be discharged by the Purchaser and returned to the Supplier not later than twenty-eight (28) days following the date of Completion of the Supplier's performance obligations under the Contract, including any warranty obligations, unless specified otherwise in the **SCC**.

Copyright

19.1 The copyright in all drawings, documents, and other materials containing data and information furnished to the Purchaser by the Supplier herein shall remain vested in the Supplier, or, if they are furnished to the Purchaser directly or through the Supplier by any third party, including suppliers of materials, the copyright in such materials shall remain vested in such third party. Future use of any drawings, documents or other materials, is subject to prior approval of the party having copyright ownership of the same.

Confidential Information

20.1 The Purchaser and the Supplier shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data, or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following completion or termination of the Contract. Notwithstanding the above, the Supplier may furnish to its Subcontractor such documents, data, and other information it receives from the Purchaser to the extent required for the Subcontractor to perform its work under the Contract, in which event the Supplier shall obtain from such Subcontractor an undertaking of confidentiality similar to that imposed on the Supplier under GCC Clause 20.

20.2 The Purchaser shall not use such documents, data, and other information received from the Supplier for any purposes unrelated to the contract. Similarly, the Supplier shall not use such documents, data, and other information received from the Purchaser for any purpose other than the performance of the Contract.

20.3 The obligation of a party under GCC Sub-Clauses 20.1 and 20.2 above, however, shall not apply to information that:

- (a) the Purchaser or Supplier need to share with the Bank or other institutions participating in the financing of the Contract;
- (b) now or hereafter enters the public domain through no fault of that party;

- (c) can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party; or
- (d) otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.

20.4 The above provisions of GCC Clause 20 shall not in any way modify any undertaking of confidentiality given by either of the Parties hereto prior to the date of the Contract in respect of the supply or any part thereof.

20.5 The provisions of GCC Clause 20 shall survive completion or termination, for whatever reason, of the Contract.

Subcontracting

21.1 The Supplier shall notify the Purchaser in writing of all subcontracts awarded under the Contract if not already specified in the tender. Such notification, in the original tender or later shall not relieve the Supplier from any of its obligations, duties, responsibilities, or liability under the Contract.

21.2 Subcontracts shall comply with the provisions of GCC Clauses 3 and 7.

Specifications and Standards

22.1 Technical Specifications and Drawings

- (a) The Goods and Related Services supplied under this Contract shall conform to the technical specifications and standards mentioned in **Section VI - Schedule of Requirements** and, when no applicable standard is mentioned, the standard shall be equivalent or superior to the official standards whose application is appropriate to the Goods' country of origin.
- (b) The Supplier shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designed by or on behalf of the Purchaser, by giving a notice of such disclaimer to the Purchaser.
- (c) Wherever references are made in the Contract to codes and standards in accordance with which it shall be executed, the edition or the revised version of such codes and standards shall be those specified in the Schedule of Requirements. During Contract execution, any changes in any such codes and standards shall be applied only after approval by the Purchaser and shall be treated in accordance with GCC Clause 33.

- Packing and Documents**
- 23.1 The Supplier shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract. During transit, the packing shall be sufficient to withstand, without limitation, rough handling and exposure to extreme temperatures, salt and precipitation, and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.
- 23.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract, including additional requirements, if any, specified in the **SCC**, and in any other instructions ordered by the Purchaser.
- Insurance**
- 24.1 Unless otherwise specified in the **SCC**, the Goods supplied under the Contract shall be fully insured—in a freely convertible currency from an eligible country—against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery, in accordance with the applicable Incoterms or in the manner specified in the **SCC**.
- Transportation**
- 25.1 Unless otherwise specified in the **SCC**, responsibility for arranging transportation of the Goods shall be in accordance with the specified Incoterms.
- Inspections and Tests**
- 26.1 The Supplier shall at its own expense and at no cost to the Purchaser carry out all such tests and/or inspections of the Goods and Related Services as are specified in the **SCC**.
- 26.2 The inspections and tests may be conducted on the premises of the Supplier or its Subcontractor, at point of delivery, and/or at the Goods' final destination, or in another place in the Purchaser's Country as specified in the **SCC**. Subject to GCC Sub-Clause 26.3, if conducted on the premises of the Supplier or its Subcontractor, all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Purchaser.
- 26.3 The Purchaser or its designated representative shall be entitled to attend the tests and/or inspections referred to in GCC Sub-Clause 26.2, provided that the Purchaser bear all of its own costs and expenses incurred in connection with such attendance including,

but not limited to, all traveling and board and lodging expenses.

26.4 Whenever the Supplier is ready to carry out any such test and inspection, it shall give a reasonable advance notice, including the place and time, to the Purchaser. The Supplier shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable the Purchaser or its designated representative to attend the test and/or inspection.

26.5 The Purchaser may require the Supplier to carry out any test and/or inspection not required by the Contract but deemed necessary to verify that the characteristics and performance of the Goods comply with the technical specifications codes and standards under the Contract, provided that the Supplier's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impedes the progress of manufacturing and/or the Supplier's performance of its other obligations under the Contract, due allowance will be made in respect of the Delivery Dates and Completion Dates and the other obligations so affected.

26.6 The Supplier shall provide the Purchaser with a report of the results of any such test and/or inspection.

26.7 The Purchaser may reject any Goods or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications. The Supplier shall either rectify or replace such rejected Goods or parts thereof or make alterations necessary to meet the specifications at no cost to the Purchaser, and shall repeat the test and/or inspection, at no cost to the Purchaser, upon giving a notice pursuant to GCC Sub-Clause 26.4.

26.8 The Supplier agrees that neither the execution of a test and/or inspection of the Goods or any part thereof, nor the attendance by the Purchaser or its representative, nor the issue of any report pursuant to GCC Sub-Clause 26.6, shall release the Supplier from any warranties or other obligations under the Contract.

Liquidated Damages

27.1 Except as provided under GCC Clause 32, if the Supplier fails to deliver any or all of the Goods by the Date(s) of delivery or perform the Related Services within the period specified in the Contract, the Purchaser may without prejudice to all its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage specified in the **SCC** of the

delivered price of the delayed Goods or unperformed Services for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of the percentage specified in those **SCC**. Once the maximum is reached, the Purchaser may terminate the Contract pursuant to GCC Clause 35.

Warranty

- 28.1 The Supplier warrants that all the Goods are new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials, unless provided otherwise in the Contract.
- 28.2 Subject to GCC Sub-Clause 22.1(b), the Supplier further warrants that the Goods shall be free from defects arising from any act or omission of the Supplier or arising from design, materials, and workmanship, under normal use in the conditions prevailing in the country of final destination.
- 28.3 Unless otherwise specified in the **SCC**, the warranty shall remain valid for twelve (12) months after the Goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the **SCC**, or for eighteen (18) months after the date of shipment from the port or place of loading in the country of origin, whichever period concludes earlier.
- 28.4 The Purchaser shall give notice to the Supplier stating the nature of any such defects together with all available evidence thereof, promptly following the discovery thereof. The Purchaser shall afford all reasonable opportunity for the Supplier to inspect such defects.
- 28.5 Upon receipt of such notice, the Supplier shall, within the period specified in the **SCC**, expeditiously repair or replace the defective Goods or parts thereof, at no cost to the Purchaser.
- 28.6 If having been notified, the Supplier fails to remedy the defect within the period specified in the **SCC**, the Purchaser may proceed to take within a reasonable period such remedial action as may be necessary, at the Supplier's risk and expense and without prejudice to any other rights which the Purchaser may have against the Supplier under the Contract.

Patent Indemnity

- 29.1 The Supplier shall, subject to the Purchaser's compliance with GCC Sub-Clause 29.2, indemnify and hold harmless the Purchaser and its employees and officers from and against any and all suits, actions or

administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Purchaser may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract by reason of:

- (a) the installation of the Goods by the Supplier or the use of the Goods in the country where the Site is located; and
- (b) the sale in any country of the products produced by the Goods.

Such indemnity shall not cover any use of the Goods or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract, neither any infringement resulting from the use of the Goods or any part thereof, or any products produced thereby in association or combination with any other equipment, plant, or materials not supplied by the Supplier, pursuant to the Contract.

- 29.2 If any proceedings are brought or any claim is made against the Purchaser arising out of the matters referred to in GCC Sub-Clause 29.1, the Purchaser shall promptly give the Supplier a notice thereof, and the Supplier may at its own expense and in the Purchaser's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.
- 29.3 If the Supplier fails to notify the Purchaser within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Purchaser shall be free to conduct the same on its own behalf.
- 29.4 The Purchaser shall, at the Supplier's request, afford all available assistance to the Supplier in conducting such proceedings or claim, and shall be reimbursed by the Supplier for all reasonable expenses incurred in so doing.
- 29.5 The Purchaser shall indemnify and hold harmless the Supplier and its employees, officers, and Subcontractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Supplier may suffer as a result of any infringement or alleged infringement of any

patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of the Purchaser.

- Limitation of Liability** 30.1 Except in cases of negligence or willful misconduct:
- (a) the Supplier shall not be liable to the Purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Supplier to pay liquidated damages to the Purchaser; and
 - (b) the aggregate liability of the Supplier to the Purchaser, whether under the Contract, in tort or otherwise, shall not exceed the amount specified in the SCC, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the supplier to indemnify the purchaser with respect to patent infringement.
- Change in Laws and Regulations** 31.1 Unless otherwise specified in the Contract, if after the date of 28 days prior to date of Tender submission, any law, regulation, ordinance, order or bylaw having the force of law is enacted, promulgated, abrogated, or changed in the place of the Purchaser's country where the Site is located (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the Delivery Date and/or the Contract Price, then such Delivery Date and/or Contract Price shall be correspondingly increased or decreased, to the extent that the Supplier has thereby been affected in the performance of any of its obligations under the Contract. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with GCC Clause 15.
- Force Majeure** 32.1 The Supplier shall not be liable for forfeiture of its Performance Security, liquidated damages, or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.

32.2 For purposes of this Clause, "Force Majeure" means an event or situation beyond the control of the Supplier that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the Supplier. Such events may include, but not be limited to, acts of the Purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes, and any change in Government policy or new development involving the Government.

32.3 If a Force Majeure situation arises, the Supplier shall promptly notify the Purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the Purchaser in writing, the Supplier shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

**Change Orders and
Contract
Amendments**

33.1 The Purchaser may at any time order the Supplier through notice in accordance GCC Clause 8, to make changes within the general scope of the Contract in any one or more of the following:

- (a) drawings, designs, or specifications, where Goods to be furnished under the Contract are to be specifically manufactured for the Purchaser;
- (b) the method of shipment or packing;
- (c) the place of delivery; and
- (d) the Related Services to be provided by the Supplier.

33.2 If any such change causes an increase or decrease in the cost of, or the time required for, the Supplier's performance of any provisions under the Contract, an equitable adjustment shall be made in the Contract Price or in the Delivery/Completion Schedule, or both, and the Contract shall accordingly be amended by written variation agreed to between the Parties. Any claims by the Supplier for adjustment under this Clause must be asserted within twenty-eight (28) days from the date of the Supplier's receipt of the Purchaser's change order.

33.3 Prices to be charged by the Supplier for any Related Services that might be needed but which were not included in the Contract shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the Supplier for similar services.

33.4 Subject to the above, no variation in or modification of the terms of

the Contract shall be made except by written amendment signed by the Parties.

Extensions of Time

- 34.1 If at any time during performance of the Contract, the Supplier or its subcontractors should encounter conditions impeding timely delivery of the Goods or completion of Related Services pursuant to GCC Clause 13, the Supplier shall promptly notify the Purchaser in writing of the delay, its likely duration, and its cause. As soon as practicable after receipt of the Supplier's notice, the Purchaser shall evaluate the situation and may at its discretion extend the Supplier's time for performance, in which case the extension shall be ratified by the parties by written amendment of the Contract.
- 34.2 Except in case of Force Majeure, as provided under GCC Clause 32, a delay by the Supplier in the performance of its Delivery and Completion obligations shall render the Supplier liable to the imposition of liquidated damages pursuant to GCC Clause 26, unless an extension of time is agreed upon, pursuant to GCC Sub-Clause 34.1.

Termination

- 35.1 Termination for Default
- (a) The Purchaser, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Supplier, may terminate the Contract in whole or in part:
- (i) if the Supplier fails to deliver any or all of the Goods within the period specified in the Contract, or within any extension thereof granted by the Purchaser pursuant to GCC Clause 34;
 - (ii) if the Supplier fails to perform any other obligation under the Contract; or
 - (iii) if the Supplier, in the judgment of the Purchaser has engaged in fraud and corruption, as defined in GCC Clause 3, in competing for or in executing the Contract.
- (b) In the event the Purchaser terminates the Contract in whole or in part, pursuant to GCC Clause 35.1(a), the Purchaser may procure, upon such terms and in such manner as it deems appropriate, Goods or Related Services similar to those undelivered or not performed, and the Supplier shall be liable to the Purchaser for any additional costs for such similar Goods or Related Services. However, the Supplier shall continue performance of the Contract to the extent not terminated.
- 35.2 Termination for Insolvency

- (a) The Purchaser may at any time terminate the Contract by giving notice to the Supplier if the Supplier becomes bankrupt or otherwise insolvent. In such event, termination will be without compensation to the Supplier, provided that such termination will not prejudice or affect any right of action or remedy that has accrued or will accrue thereafter to the Purchaser.

35.3 Termination for Convenience

- (a) The Purchaser, by notice sent to the Supplier, may terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for the Purchaser's convenience, the extent to which performance of the Supplier under the Contract is terminated, and the date upon which such termination becomes effective.
- (b) The Goods that are complete and ready for shipment within twenty-eight (28) days after the Supplier's receipt of notice of termination shall be accepted by the Purchaser at the Contract terms and prices. For the remaining Goods, the Purchaser may elect:
 - (i) to have any portion completed and delivered at the Contract terms and prices; and/or
 - (ii) to cancel the remainder and pay to the Supplier an agreed amount for partially completed Goods and Related Services and for materials and parts previously procured by the Supplier.

Assignment

- 36.1 Neither the Purchaser nor the Supplier shall assign, in whole or in part, their obligations under this Contract, except with prior written consent of the other party.

Export Restriction

- 38.1 Despite any obligation under the Contract to complete all export formalities, any export restrictions attributable to the Purchaser, to the country of the Purchaser, or to the use of the products/goods, systems or services to be supplied, which arise from trade regulations from a country supplying those products/goods, systems or services, and which substantially impede the Supplier from meeting its obligations under the Contract, shall release the Supplier from the obligation to provide deliveries or services, always provided, however, that the Supplier can demonstrate to the satisfaction of the Purchaser that it has completed all formalities in a timely manner, including applying for permits, authorisations and licenses necessary for the export of the

products/goods, systems or services under the terms of the Contract.

38.2 Termination of the Contract on this basis shall be for the Purchaser's convenience pursuant to Sub-Clause 35.3.

Indemnity

39.1 Subject to the provisions of the Contract, the Supplier must at all times indemnify the Purchaser, its officers, employees and agents (in this clause referred to as "those indemnified" from and against any loss (including legal costs and expenses on a Solicitor/ own client basis), or liability, reasonably incurred or suffered by any of those indemnified arising from any claim, suit, demand, action or proceeding by any person against any of those indemnified where such loss or liability was caused by any willful, unlawful or negligent act or omission of the Supplier, its Officers, employees, agents or sub-contractors in connection with this Contract.

Supplier's**Acknowledgement**

40.1 The Supplier acknowledges that before entering into this Contract, the Supplier was given a copy of the Contract and is aware of right to seek independent legal advice on its terms if the supplier so desires, and given reasonable opportunity to take such advice.

40.2 The Supplier also warrants that the representative who will be executing this Contract on behalf of the Supplier has all the power and authority to execute this Contract.

40.3 The Supplier now signs this Contract in agreement to all terms and conditions set out in this Contract.

Counterpart

41.1 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 the Parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile is acceptable as executing and delivering this Agreement in the presence of the other Party to this Agreement. This Agreement is effective upon delivery of one executed counterpart from each Party to the other Party. This clause shall not apply if the counterpart is not required.

Section VIII. Special Conditions of Contract

The following Special Conditions of Contract (SCC) shall supplement and / or amend the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions herein shall prevail over those in the GCC.

GCC 1.1(i)	The Purchaser is: Office of the Clerk of the Legislative Assembly (OCLA)
GCC 1.1 (n)	The Project Site(s)/Final Destination(s) is/are: <i>OCLA, Mulinuu, Samoa</i>
GCC 1.1(o)	The Effectiveness Date: <i>insert date of execution or other nominated date</i>
GCC 4.2 (a)	The meaning of the trade terms shall be as prescribed by Incoterms or as prescribed by the Tenders Board if otherwise.
GCC 4.2 (b)	The version edition of Incoterms shall be INCOTERMS 2012
GCC 5.1	The language shall be: <i>English</i>
GCC 8.1	<p>For notices,</p> <p style="padding-left: 40px;">(a) the Purchaser's address shall be:</p> <p style="padding-left: 40px;"><i>Attention: The Clerk</i></p> <p style="padding-left: 40px;"><i>Address: Media Centre, Faleata</i></p> <p style="padding-left: 40px;"><i>City: APIA</i></p> <p style="padding-left: 40px;"><i>Country: SAMOA</i></p> <p style="padding-left: 40px;"><i>Telephone: 685 21811</i></p> <p style="padding-left: 40px;"><i>Facsimile number: 685 21817</i></p> <p style="padding-left: 40px;"><i>Electronic mail address: elsa.fruean@palemene.ws</i></p> <p style="padding-left: 40px;">(b) the Supplier's address shall be:</p> <p style="padding-left: 40px;">Attention:</p> <p style="padding-left: 40px;">Address:</p> <p style="padding-left: 40px;">Telephone:</p> <p style="padding-left: 40px;">Facsimile number:</p> <p style="padding-left: 40px;">Electronic mail address:</p>
GCC 9.1	The governing law shall be the laws of the Independent State of Samoa
GCC 10.2	The rules of procedure for arbitration proceedings pursuant to GCC

	<p>Clause 10.2 shall be as follows:</p> <p>Contracts with Supplier national of the Purchaser's country:</p> <p>In the case of a dispute between the Purchaser and a Supplier who is a national of the Independent State of Samoa, the dispute shall be referred to adjudication or arbitration in accordance with the Arbitration Act 1976, Independent State of Samoa. This modality may also apply to foreign Suppliers who are prepared to submit to this option</p>
<p>GCC 13.1</p>	<p>Details of Shipping and other Documents to be submitted by the Supplier are <i>[insert the required documents, such as a negotiable bill of lading, a non-negotiable sea way bill, an airway bill, a railway consignment note, a road consignment note, insurance certificate, Manufacturer's or Supplier's warranty certificate, inspection certificate issued by nominated inspection agency, Supplier's factory shipping detailsetc].</i></p> <p>The above documents shall be received by the Purchaser before arrival of the Goods and, if not received, the Supplier will be responsible for any consequent expenses.</p>
<p>GCC 15.1</p>	<p>The prices charged for the Goods supplied and the related Services performed <i>shall not</i>, be adjustable.</p>
<p>GCC 16.1</p>	<p>Sample provision only</p> <p>The method and conditions of payment to be made to the Supplier under this Contract shall be as follows:</p> <p>Payment for Goods and Services supplied from within the Samoa:</p> <p>Payment for Goods and Services supplied from within the Purchaser's Country shall be made in Samoan Tala (SAT\$), as follows:</p> <p>(i) Advance Payment: Thirty percent (30%) of the Contract Price shall be paid within thirty (30) days of signing of the Contract against a</p>

	<p>simple receipt and a bank guarantee for the equivalent amount and in the form provided in the tendering documents or another form acceptable to the Purchaser.</p> <p>(ii) On Delivery: Sixty percent (60%) of the Contract Price shall be paid on receipt of the Goods and upon submission of the documents specified in GCC Clause 13.</p> <p>(iii) On Acceptance: The remaining ten percent (10%) of the Contract Price shall be paid to the Supplier within thirty (30) days after the date of the acceptance certificate for the respective delivery issued by the Purchaser.</p>
GCC 16.5	<p>The payment-delay period after which the Purchaser shall pay interest to the Supplier shall be <i>twenty-eight (28) days</i> from the date of payment approval.</p> <p>The interest rate that shall be applied is <i>point zero one percent (.01%) of the contract price.</i></p>
GCC 18.1	<p><i>The amount of the Performance Security shall be: Ten percent 10% of the Contract Price.</i></p>
GCC 18.3	<p>The Performance Security shall be in the form of : <i>a Bank Guarantee</i></p> <p>The Performance security shall be denominated in <i>Samoan Tala (SAT\$)</i></p>
GCC 18.4	<p>Discharge of the Performance Security shall take place: <i>not later than twenty-eight (28) days following the expiration of the warranty period or extension thereof as follows:</i></p>
GCC 23.2	<p>The packing, marking and documentation within and outside the packages shall be to: <i>[insert in detail the type of packing required, the markings in the packing and all documentation required]</i></p>
GCC 24.1	<p>The insurance coverage shall be as specified in the Incoterms.</p>
GCC 25.1	<p>Responsibility for transportation of the Goods shall be as specified in the</p>

	<p>Incoterms.</p> <p>If not in accordance with Incoterms, responsibility for transportations shall be as follows: <i>“The Supplier is required under the Contract to transport the Goods to a specified place of final destination within the Purchaser’s Country, defined as the Project Site, transport to such place of destination in the Purchaser’s country, including insurance and storage, as shall be specified in the Contract, shall be arranged by the Supplier, and related costs shall be included in the Contract Price”</i>; or any other agreed upon trade terms</p>
GCC 26.1	The inspections and tests shall be performed: <i>[insert nature, frequency, procedures for carrying out the inspections and tests</i>
GCC 26.2	The Inspections and tests shall be conducted at:
GCC 27.1	The liquidated damage shall be: zero point five percent(0.5%) of the Contract Price per week.
GCC 27.1	The maximum amount of liquidated damages shall be: ten percent (10%) of the Contract Price.
GCC 28.3	<p>The period of validity of the Warranty shall be: <i>Twelve (12) months after the Goods have been delivered and accepted at the final destination.</i></p> <p>For purposes of the Warranty, the place(s) of final destination(s) shall be: Mulinuu</p>
GCC 28.5	The period for repair or replacement shall be: twenty- eight (28) days.
GCC 30.1(b)	The aggregate liability of the Supplier to the Purchaser shall not exceed three hundred per cent (300%) of the Contract Price.

Section IX. Contract Forms

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1. Letter of Acceptance

[On letterhead paper of the Purchaser]

[Date]

To: *[name and address of the Supplier]*

SUBJECT: Notification of Award Contract No.:

SUPPLY OF

This is to notify you that your Tender dated *[insert date]* for execution of the *[name of the Contract and identification number, as given in the Special Conditions of Contract]* for the Contract Price of the equivalent of *[insert amount in numbers and words] [insert name of currency]*, as corrected and modified in accordance with the Instructions to Tenderers is hereby accepted by our Agency.

In accordance with Instructions to Tenderers Clause 42.2 Notification of Award, this letter shall not serve as a binding contract until the final contract is prepared and executed.

Authorised Signature: _____

Name and Title of Signatory: _____

Name of Agency: _____

Attachment: Draft Contract

2. Contract Agreement

[The successful Tenderer shall fill in this form in accordance with the instructions indicated]

THIS CONTRACT AGREEMENT is made on this *[insert: number]* day of *[insert: month]*, *[insert: year]*.

BETWEEN

- (1) *THE GOVERNMENT OF THE INDEPENDENT STATE OF SAMOA acting by and through the MINISTER responsible for the OFFICE OF THE CLERK OF THE LEGISLATIVE ASSEMBLY, HONOURABLE PRIME MINISTER TUILAEPA DR. SAILELE MALIELEGAOI* (“Purchaser”), of the one part; and
- (2) *[insert name of Supplier]*, a corporation incorporated under the laws of *[insert: country of Supplier]* and having its principal place of business at *[insert: address of Supplier]* (“Supplier”) of the other part.

WHEREAS the Purchaser invited Tenders for the supply of certain Goods and Related Services, as specified in *[insert brief description of Goods and Services]* (“Goods”).

AND the Purchaser has accepted the Tender by the Supplier for the supply of the Goods and *[insert description of the]* Related Services (“Services”) in accordance with the terms and conditions as set out in this Contract.

the sum of *[and figures, expressed in the Contract currency(ies)]* (“Contract Price”).

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the General and Special Conditions of Contract referred to and they shall be deemed to form and be read and construed as part of this Contract.
2. In consideration of the payments to be made by the Purchaser to the Supplier as hereinafter mentioned, the Supplier hereby covenants with the Purchaser to provide the Goods and Services and to remedy the defects therein in conformity with the provisions of this Contract.
3. The Purchaser covenants to pay the Supplier in the amount not exceeding **[INSERT CONTRACT PRICE IN WORDS] (INSERT CONTRACT PRICE IN FIGURES)** inclusive of *[please insert]* (“Contract Price”) in consideration of the provision of the Goods and Services in full compliance and in accordance with the terms and conditions of the Contract including but not limited to remedying the defects.
4. The documents forming this Contract shall comprise the following and each shall be read and construed as an integral part of the Contract:

- (a) Contract Agreement;
- (b) Notification of Award;
- (c) General Conditions of Contract ("GCC");
- (d) Special Conditions of Contract ("SCC");
- (e) The Supplier's Tender ;
- (f) Technical Requirements (including Schedule of Requirements and Technical Specifications);
- (g) Supplier's Tender Price Schedule; and
- (h) *[Add here any other document(s) where applicable]*

IN WITNESS whereof the Parties hereto have caused this Agreement to be executed in accordance with the laws of the Independent State of Samoa on the day, month and year indicated above.

EXECUTED by the **CLERK OF THE LEGISLATIVE ASSEMBLY**)
responsible for the **OFFICE OF THE CLERK OF THE LEGISLATIVE**)
ASSEMBLY, SEFUIVA CHARLENE MALELE,).....
for and on behalf of the **GOVERNMENT OF THE**)
INDEPENDENT STATE OF SAMOA)

In the presence of:

.....
(Witness Signature & Name)

.....
(Designation)

EXECUTED by [insert details] **FOR THE** [insert],)
for and on behalf of the [**INSERT SUPPLIER**])

in the presence of:)

.....
Director

.....
(Director/Secretary)

3. Performance Security

[The bank, as requested by the successful Tenderer, shall fill in this form in accordance with the instructions indicated]

Date: *[insert date (as day, month, and year)]*

CT No. and title: *[insert no. and title of tendering process]*

Bank's Branch or Office: *[insert complete name of Guarantor]*

Beneficiary:*[insert complete name of Purchaser]*

PERFORMANCE GUARANTEE No.: *[insert Performance Guarantee number]*

We have been informed that *[insert complete name of Supplier]* ("Supplier") has entered into Contract No. *[insert number]* dated *[insert day and month]*, *[insert year]* with you, for the supply of *[description of Goods and related Services]* ("Contract").

Furthermore, we understand that, according to the conditions of the Contract, a Performance Guarantee is required.

At the request of the Supplier, we hereby irrevocably undertake to pay you any sum(s) not exceeding *[insert amount(s)¹ in figures and words]* upon receipt by us of your first demand in writing declaring the Supplier to be in default under the Contract, without cavil or argument, or your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This Guarantee shall expire no later than the *[insert number]* day of *[insert month]**[insert year]*,² and any demand for payment under it must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458, except that subparagraph (ii) of Sub-article 20(a) is excluded.

.....
Authorised Signatures for Bank and Supplier

Note

Italicized text following is for guidance on how to prepare this guarantee and is to be deleted from final document

¹*The Bank shall insert the amount(s) specified in the SCC and denominated, as specified in the SCC, either in the currency(ies) of the Contract or a freely convertible currency acceptable to the Purchaser.*

²*Dates established in accordance with Clause 18.4 of the General Conditions of Contract ("GCC"), taking into account any warranty obligations of the Supplier under Clause 16.2 of the GCC intended to be secured by a partial Performance Guarantee. The Purchaser should note that in the event of an extension of the time to perform the Contract, the Purchaser would need to request an extension of this Guarantee from the Bank. Such request must be in writing and must be made prior to the expiration date established in the Guarantee. In preparing this Guarantee, the Purchaser might consider adding the following text to the Form, at the end of the penultimate paragraph: "We agree to a one-time extension of this Guarantee for*

a period not to exceed [six (6) months] [one (1) year], in response to the Purchaser's written request for such extension, such request to be presented to us before the expiry of the Guarantee."

4. Bank Guarantee for Advance Payment

[The bank, as requested by the successful Tenderer, shall fill in this form in accordance with the instructions indicated on its own Letter Head]

Date: *[insert date (as day, month, and year)]*

CT No. and title: *[insert number and title of tendering process]*

Bank's Branch or Office: *[insert complete name of Guarantor]*

Beneficiary: *[insert legal name and address of Purchaser]*

ADVANCE PAYMENT GUARANTEE No.:*[insert Advance Payment Guarantee no.]*

We, *[insert legal name and address of bank]*, have been informed that *[insert complete name and address of Supplier]*("Supplier") has entered into Contract No. *[insert number]* dated *[insert date of Agreement]*with you, for the supply of *[insert types of Goods to be delivered]*("Contract").

Furthermore, we understand that, according to the conditions of the Contract, an advance is to be made against an advance payment guarantee.

At the request of the Supplier, we irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *[insert amount(s)¹ in figures and words]* upon receipt by us of your first demand in writing declaring that the Supplier is in breach of its obligation under the Contract because the Supplier used the advance payment for purposes other than toward delivery of the Goods.

It is a condition for any claim and payment under this Guarantee to be made that the advance payment referred to above must have been received by the Supplier on its account *[insert number and domicile of the account]*

This Guarantee shall remain valid and in full effect from the date of the advance payment received by the Supplier under the Contract until *[insert date]*.

.....

Authorised Signatures for Bank and Supplier

Note

Italicised text following is for guidance on how to prepare this guarantee and is to be deleted from final document

¹*The bank shall insert the amount(s) specified in the SCC and denominated, as specified in the SCC, either in the currency(ies) of the Contract or a freely convertible currency acceptable to the Purchaser*

²*Insert the Delivery date stipulated in the Contract Delivery Schedule. The Purchaser should note that in the event of an extension of the time to perform the Contract, the Purchaser would need to request an extension of this Guarantee from the bank. Such request must be in writing and must be made prior to the expiration date established in the Guarantee. In preparing this Guarantee, the Purchaser might consider adding the following text to the Form, at the end of the penultimate paragraph: "We agree to a one-time extension of this*

Guarantee for a period not to exceed [six (6) months] [one (1) year], in response to the Purchaser's written request for such extension, such request to be presented to us before the expiry of the Guarantee."