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Contract for Goods and Services

[Insert Reference Number]

The Parties

The Secretariat of the Pacific Regional Environment Programme (SPREP) (Buyer)

PO Box 240, Apia, Samoa

and

[Insert Name of Supplier] (Supplier)

[Insert Address and Postal Address of Supplier]

The Contract

Agreement

The Supplier agrees to sell and the Buyer agrees to buy the Goods and provide the incidental Services described in this Contract. This Contract sets out the Parties' rights and obligations.

The documents forming this Contract are:

1. **Pages 1 and 2**
2. Contract Details and Description of Goods and Services **Schedule 1**
3. Standard Terms and Conditions **Schedule 2**
4. Form of bank guarantee **Schedule 3**
5. Any other attachments described at Schedule 1.

How to read this Contract

6. Together the above documents form the whole Contract.
7. Any Supplier terms and conditions do not apply or have been included in this Contract.
8. Clause numbers refer to clauses in Schedule 2.
9. Words starting with capital letters have a special meaning. The special meaning is stated in the Definitions section at clause 18 (Schedule 2).
10. This Agreement shall be governed by the laws of Samoa.
11. This Contract may be executed in any number of counterparts (including by facsimile or electronic copies) each of which, when taken together, will constitute one and the same document.

Acceptance

In signing this Contract each Party acknowledges that it has read and agrees to be bound by it.

For and on behalf of the **Buyer**:		For and on behalf of the **Supplier**:	
(signature)		(signature)	
Name:	Sefanaia Nawadra	**Name:**	

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Position:	Director General SPREP	**Position:**	
Date:		**Date:**	

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Schedule 1

Contract Details and Description of Goods and Services

Start Date	As soon as both parties sign the agreement.	Reference Schedule 2 clause 1
End Date		Reference Schedule 2 clause 1
Type of contract	Goods and Related Services	

Contract Managers Reference Schedule 2 clause 6		**Buyer's Contract Manager**	**Supplier's Contract Manager**
	Name:		
	Title / position:		
	Address:	Avele Road Vailima, Samoa	
	Phone:	+685 21929 ext 275	
	Fax:	+685 20231	
	Email:		

Addresses for Notices Reference Schedule 2 clause 14		**Buyer's address**	**Supplier's address**
	For the attention of:		
	c.c.		
	Delivery address:	Avele Road, Vailima, Samoa	
	Postal address:	P.O. Box 240, Apia, SAMOA	
	Email:		

Supplier's Approved Personnel Reference Schedule 2 clause 2.5(d)		
	Name:	
	Position:	
	Name:	
	Position:	
	Name:	
	Position:	

Delivery timeframe Reference Schedule 2 clause 2.6	The Goods must be delivered by [insert date of delivery] (refer Schedule 3).

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Delivery Address 1 Reference Schedule 2 clause 2.6	Attention: SPREP Vailima, Samoa
Delivery note	The Supplier will provide a delivery note along with the Goods when delivered to the Delivery Address.
Final Destination **Reference Schedule 1 clause 2.4(a)**	Attention: .

Description of Goods

1. **Description of Goods**

QUANTITY	DESCRIPTION

The Supplier will also maintain spare parts in accordance with clause 2.11 of Schedule 2.

The supplier must supply the goods and services to the extent applicable, in compliance with SPREP's Values and Code of Conduct https://library.sprep.org/sites/default/files/sprep-organisational-values-code-of-conduct.pdf Including SPREP's policy on Child Protection, Environmental Social Safe-guards, Fraud Prevention & Whistle-blower Protection and Gender and Social Inclusion.

Description of Services

The Supplier is responsible for providing the Services set out below and as further detailed in Schedule 3

(a) Specify Services 1

(b) Specify Services 2

(c) Specify Services 3

Deliverables/Milestones

Refer to Schedule 3 for the Deliverables/Milestones

Delivery of the Goods, Services and Deliverables is dependent upon:

[Example set out below, amend accordingly]

- No shipping delays resulting from unavailability of shipping at time of dispatch due to incompatible shipping schedules.
- The Buyer obtaining timely customs clearances for the Goods prior to delivery.
- The Buyer arranging for the equipment to be transported to their Final Destination and obtaining all permissions for the Pilot Stations to be located there.

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- The Buyer arranging appropriate in-country travel for Supplier's staff to the Final Destinations
- The weather conditions and other site conditions being suitable for the Supplier to install the equipment.
- Travel restrictions or flight unavailability preventing the training of staff on-site or preventing the travel by the Supplier's staff to locations for the installation of the equipment.

Report to:	**Description of report**	**Due date**
Contract Manager	Refer to the Deliverables section in Schedule 3	Refer to the Deliverables section in Schedule 3

CHARGES: The following section sets out the Charges. Charges are the total maximum amount payable by the Buyer to the Supplier for delivery of the Goods and provision of the Services. Charges include **Cost**, and where agreed, **Expenses**. The Charges for this Contract are set out below.

Two percent (2%) is deductible from the final fee for every 7 days of delay from the End Date, unless the Parties agree otherwise.
The Supplier agrees it is responsible for:

a) payment of applicable taxes, superannuation and the like;

b) all insurance cover such as medical, travel and professional liability.

Cost Reference Schedule 2 clause 5

If contract is for goods purchase, list the cost in the table below by items:

Qty	Description	Amount

TOTAL COST: (GST inclusive)

Payment Terms Schedule 2 clause 5

The Payment Terms are provided as follows:

Milestone/Deliverables	**% of total (maximum value)**	**Total cost $ (USD)**
Total Cost (GST inclusive) $		

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Expenses Reference Schedule 2 clause 5	**Specific items and agreed cost per item - specified Expenses –** ***Not Applicable***

Invoices Reference Schedule 2 clause 5	The Supplier must send the Buyer an invoice for the Charges at the times set out in the Payment Terms above.

Addresses for invoices **Reference Schedule 2 clause 5**	**Buyer's address**	
	For the attention of:	
	Physical address:	SPREP Vailima, Samoa
	Postal address:	P.O. Box 240, Apia, SAMOA
	Email:	
	Fax:	+685 20231

Supplier's Bank Information.

Reference Schedule 2 clause 5

The Supplier shall provide the Buyer with the required bank information for payments to be made:

Account Name:	
Account Number:	
Name of Bank:	
Name of Branch:	
Country Address:	
Swift Code:	

Insurance

Reference Schedule 2 Clause 9.1

INSURANCE: (clause 9.1 Schedule 2)

From the Start Date and for the periods specified in clause 9.1:

1. to the extent required by Law, workers' compensation insurance in respect of the Supplier's liability for any loss or claim by a person employed or otherwise engaged, or deemed to be employed or otherwise engaged, by the Supplier in connection with the Services;
2. public liability insurance covering legal liability (including liability assumed under contract) for loss or damage to property or injury or death to persons arising out of or in connection with carrying out the Services for an insured amount of 3 times the total contract amount.
3. either professional indemnity or errors and omissions insurance for an insured amount of 3 times the total contract amount.

Changes to Schedule 2 and additional clause/s	

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Attachments Reference 'Contract documents' described at Page 1	**Annex 1 – Terms of Reference** **SPREP, Child Protection Policy, 2016** **SPREP, Environmental and Social Safeguards** **SPREP, Gender and Social Inclusion Policy** **SPREP, Fraud Prevention & Whistleblower Protection** Copies of these policies are found on the SPREP website, or these can be accessed through this link. During the term of this Contract, the policies may be modified. Absent any objection from Service Provider, all such subsequent modifications are deemed accepted by the Service Provider.

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Annex 1 – Terms of Reference

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Schedule 2

Standard Terms and Conditions – Goods and Services

1. Length of Contract

1.1 This Contract starts on the Start Date and applies to any Services or Goods provided before the Start Date.

1.2 This Contract ends on the End Date, unless terminated earlier.

2. Supply of Goods and Services

Both Parties' obligations

2.1 Both Parties agree to:

a) Act in good faith and demonstrate honesty, integrity, openness, and accountability in their dealings with each other

b) Discuss matters affecting this Contract or the supply of the Goods and Services, whenever necessary

c) Notify each other immediately of any actual or anticipated issues that could:
i) significantly impact the Goods or Services or the Charges; ii). Receive media attention;

d) Comply with all applicable laws and regulations, including relating to health and safety; and

e) When carrying out their obligations under this Contract have due regard to the health and safety of all workers involved in this Contract, including:

a. Consulting, cooperating and coordinating with each other in respect of health and safety matters

b. notifying the other Party of any hazards and risks relating to the provision of the Goods and Services that the other Party is not otherwise aware of

c. complying with any reasonable directions of the other Party in relation to health and safety

d. reporting to each other any injury, illness, incident or event, or any notice issued under any health and safety laws and regulations that relates to or affects this Contract.

Purchase Order

2.2 Once the Contract is signed by both Parties an official Purchase Order will be issued by the Buyer.

2.3 The Goods and Services are supplied under the terms of this Contract. Any Supplier terms and conditions stated in its sales order form, delivery receipt, e-procurement system or elsewhere do not apply.

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Buyer's obligations

2.4 The Buyer must:

a) provide the Supplier with any information or access to Buyer Personnel the Supplier has reasonably requested to enable the delivery of the Goods and Services, including making available Buyer Personnel to attend the progress meetings

b) make decisions and give approvals reasonably required by the Supplier to enable delivery of the Goods and Services, within reasonable timeframes

c) if the Buyer's Personnel are at the Supplier's premises, ensure they observe the Supplier's policies and procedures applicable to the premises, including those relating to health and safety, and security requirements, as provided to the Buyer

d) pay the Supplier the Charges for the Goods and Services as long as the Supplier has delivered the Goods and Services and invoiced the Buyer, all in accordance with this Contract.

Supplier's obligations

2.5 The Supplier must:

a) supply Goods, Services and Deliverables which meet the Description of Goods and Services in Schedule 1, the performance criteria in Schedule 3 and the requirements of this Contract on time (including meeting all Milestones on time), except where delay is caused by the Buyer, a Dependency or an Extraordinary Event. The Buyer acknowledges that the Supplier's ability to provide the Services and deliver the Deliverables is dependent on the Dependencies. If the occurrence or non-occurrence of a Dependency affects the Supplier's ability to provide the Services or Goods or deliver the Deliverables, then the Supplier shall notify the Buyer promptly and the Parties shall consult in good faith to agree an extension of time, variation to the Goods and/or Services and/or variation to the remuneration payable accordingly and if the Parties cannot agree either Party may terminate this Contract by giving the other Party a Notice of termination.

b) deliver the Services with due care, skill and diligence, and in accordance with good industry practice as would be expected from a leading supplier in the relevant industry and comply with any relevant code of conduct or policy of the Buyer listed in Schedule 1.

c) where Approved Personnel have been agreed in Schedule 1, use those Approved Personnel in delivering the Services and obtain the Buyer's prior written approval if it wishes to change any Approved Personnel (such approval not to be unreasonably withheld or delayed).

d) if the Supplier's Personnel are at the Buyer's premises, ensure they observe the Buyer's policies and procedures applicable to the premises, including those relating to health and safety, and security requirements, as provided to the Supplier.

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2.6 The Supplier must deliver the Goods to the Delivery Address stated in Schedule 1, or such other address agreed between the Parties, on time, and for the Charges. The Buyer shall be responsible for any local import duty or taxes in accordance with clause 2.4(d) and for obtaining customs clearances.

2.7 The Supplier must attend the progress meetings as set out in Schedule 3 and notify the Buyer immediately in writing if the Supplier becomes aware of any actual or possible delay in delivery of the Goods or Services.

2.8 If a warranty or maintenance obligation (including a warranty from a manufacturer) applies in relation to the Goods or any items incorporated into or supplied with the Goods, the Supplier must ensure that the benefit of the warranty or obligation is passed on to the Buyer or held on trust by the Supplier.

Goods must satisfy criteria

2.9 The Goods must:

a) Be of merchantable quality and free from defects in design, materials or construction for a period of 12 months from delivery of the Goods to the Delivery Address (**Warranty Period);**

b) Be fit for the purposes for which they are intended to be used;

c) Comply with the Description of Goods stated in Schedule 1;

d) Comply with any sample of the Goods provided by the Supplier, except if the Buyer has agreed otherwise in writing;

e) Be new and unused, unless the Buyer has agreed otherwise in writing, and

f) Be packaged so as to protect the contents and keep them clean, dry and in a new condition until they are first used, if appropriate.

Supplier warranties

2.10 The Supplier warrants that:

a) The Goods do not breach any law or standard;

b) Supply of the Goods in accordance with this Contract will not infringe the rights of any person;

c) When ownership is stated to pass in this Contract, full ownership of the Goods passes to the Buyer and no-one else has any rights in the Goods;

d) All Goods supplied to the Buyer comply with all of the criteria stated in clause 2.9;

e) Any documentation supplied with the Goods is reasonably adequate (in terms of both quantity and quality) to enable the Buyer to use and maintain the Goods in the manner intended by the Contract;

f) All information provided by the Supplier to the Buyer is accurate in all material respects, and

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g) The Supplier has told the Buyer about any Conflict of Interest relating to the supply of Goods or Services or this Contract.

Spare parts

2.11 If stated in Schedule 1, the Supplier must maintain for five years an adequate stock of spare parts and equipment for the Goods, for supply to the Buyer at the Buyer's cost as and when required.

3. Acceptance and rejection of Goods

Inspection and acceptance

3.1 The signing of a delivery note by any of the Buyer's Personnel does not indicate the Buyer's acceptance of the Goods.

3.2 If, following the Buyer's inspection of the Goods at the Delivery Address, any of the Goods do not meet the requirements of this Contract, then the Buyer may, within a reasonable time after completing the inspection, do any of the following at the Buyer's option, but at the Supplier's cost:

- Require the Supplier to repair the Goods at the Delivery Address (if practicable)
- Require the Supplier to replace the Goods, or
- Reject the Goods.

3.3 The Buyer must give Notice to the Supplier if it decides to exercise any of the options under clause 3.2.

Rejection

3.4 If the Supplier receives a Notice under clause 3.2 from the Buyer rejecting the Goods, it must remove any rejected Goods from the Delivery Address at its own risk and expense. If the Supplier does not remove the rejected Goods within 15 Business Days of notice of rejection, the Buyer may return the Goods and recover from the Supplier any cost and expense incurred.

3.5 If the Buyer rejects any Goods, the Supplier, at the Supplier's cost, will do whichever one of the following the Buyer elects. The Buyer must state the action required in its Notice issued under clause 3.2:

a) Provide a full refund of the charges paid for the rejected Goods, within 10 Business Days of the Buyer electing to receive a refund, or

b) Provide a credit for the charges paid for the rejected Goods, against the charges payable for other goods.

Replacement

3.6 If the Supplier receives a notice from the Buyer under clause 3.2 requiring the Buyer to replace the Goods, it must remove any Goods to be replaced from the Buyer's premises at its

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own risk and expense and promptly replace those Goods with goods that meet the requirements of this Contract. If the Supplier does not remove the Goods within 15 Business Days of Notice of replacement, the Buyer may return the Goods and recover from the Supplier any cost and expense incurred.

Repair or replacement during Warranty Period

3.7 If the Supplier receives a notice from the Buyer of any defects in the Goods under clause 2.9(a) within the Warranty Period and the Buyer returns the Goods to the Supplier (which return shall be at the Buyer's risk and expense), the Supplier must as soon as reasonably possible following receipt either at its election repair or replace the Goods in question, so that the Goods (or replacement goods) comply with clause 2.9(a) and as soon as reasonably possible return the Goods to the Buyer (which return shall be at the Supplier's risk and expense), subject to shipping delays.

3.8 If the Buyer is not reasonably satisfied with the Supplier's progress in repairing or replacing the Goods and returning them to the Buyer, the Buyer may either:

- Reject the Goods, in which case clauses 3.4 to 3.5 will apply; or
- Arrange for the Goods to be repaired by someone else at the Buyer's risk and expense, in which case the Supplier will reimburse all costs and expenses incurred by the Buyer in doing so.
- Arrange for the Goods to be shipped by someone else at the Buyer's risk and expense, in which case the Supplier will reimburse all costs and expenses incurred by the Buyer in doing so.

No limitation

3.9 The Buyer's rights under clauses 3.2 to 3.8 are in addition to, and do not limit, any other rights or remedies the Buyer may have.

Exclusion

3.10 The Supplier shall not be liable for any failure or defect, or any resulting loss or damage arising from:

a) the Buyer's or a third party's installation of any of the Goods;

b) use of the Goods in an application for which they were not designed or intended;

c) any misuse, modification or alteration or repair of the Goods by the Buyer or a third party;

d) any damage to the Goods caused by the Buyer or a third party;

e) fair wear and tear of the Goods; or

f) abnormal or extreme weather or environmental conditions.

Except as expressly provided in this Contract, all conditions, guarantees, warranties, descriptions, or representations, whether expressed or implied by statute, common law, equity, trade,

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custom or otherwise, are expressly excluded to the fullest extent permitted by law. Without limiting the generality of the foregoing, the 1980 United Nations Convention on Contracts for the International Sale of Goods is expressly excluded with respect to the Goods.

4. Ownership and risk

Ownership of Goods

4.1 Ownership of the Goods (including any replacement goods) passes to the Buyer on the date the Buyer has paid the Charges for those Goods and has the Goods. The Buyer agrees that until ownership passes to the Buyer, all Goods supplied and any proceeds from sale of the Goods are held (as bailee or otherwise) by the Buyer for, and on behalf of the Supplier and the Buyer shall store the Goods and equipment in such a way that they are identifiable as the property of the Supplier. The Buyer consents to the Supplier securing or registering the Supplier's interest in the Goods until such time as the Buyer has paid for the Goods in full and if required by the Supplier to do so, the Buyer shall take any such steps as the Supplier may deem necessary to assist with this.

4.2 Risk in the Goods passes to the Buyer on the date those Goods have been delivered to the Delivery Address. The Supplier shall however continue to insure the Goods for the period until delivery to the Final Destination and the Buyer shall be entitled to the benefit of such insurance except where the Goods are damaged due to a lack of care by the Buyer or its agents in the delivery of the Goods to the Final Destination.

4.3 Ownership and risk in any Goods rejected by the Buyer under clauses 3.4 to 3.5 will pass back to the Supplier as follows:

a) If the Buyer has paid the Charges for those rejected Goods, once the Supplier has provided a refund, credit or replacement in accordance with clause 3.5, and

b) In all other cases, when the Goods are collected from the Delivery Address.

4.4 Ownership of any Goods to be replaced by the Supplier under clauses 3.6 and 3.7 will pass back to the Supplier once the Supplier has delivered the replacement goods.

5. Charges and payment

Charges & invoices

5.1 The Charges are the total maximum amount payable by the Buyer to the Supplier for the delivery of the Goods and provision of the Services. Charges include the cost, and where agreed, expenses.

5.2 Unless otherwise stated in Schedule 1 the Charges for the Goods include all of the following:

a) Costs of shipping, carriage, freight and insurance to the Delivery Address

b) Insurance charges for the period during transportation to the Final Destination

c) Other costs incurred by the Supplier in delivering the Goods to the Buyer.

but do not include:

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d) sales, use, excise, customs, export, import, commodity or any other charges, taxes, duties or tariffs incidental to the sale and purchase of the Goods, which charges, taxes, duties and other tariffs are payable by the Buyer under clause 2.4(e).

Invoices

5.3 The Supplier must provide valid tax invoices for all Charges on the dates or at the times specified in Schedule 1. The Buyer has no obligation to pay the Charges set out on an invoice, which is not a valid tax invoice. To be valid a tax invoice must:

a) Clearly show all GST due

b) Be in the currency stated in Schedule 1

c) Be clearly marked 'Tax invoice'

d) Contain the Supplier's name, address and GST number, if the Supplier is registered for GST

e) Contain the Buyer's name and address and be marked for the attention of the Buyer's Contract Manager, or such other person stated in Schedule 1

f) State the date the invoice was issued

g) Name this Contract and provide a description of the Goods delivered and Services provided

h) Contain the Buyer's contract reference or purchase order number if there is one

i) State the Charges due, calculated correctly, and

j) Be supported by GST receipts if expenses are claimed and any other verifying documentation reasonably requested by the Buyer.

Payment

5.4 Once the Buyer receives a valid tax invoice, the Supplier can expect payment within 15 Business Days. The Buyer's obligation to pay is subject to clauses 5.3, 5.5 and 12.10.

5.5 If the Buyer disputes a tax invoice, or any part of a tax invoice, that complies with clause 5.3, the Buyer must notify the Supplier within 10 Business Days of the date of receipt of the tax invoice. The Buyer must pay the portion of the tax invoice that is not in dispute. The Buyer may withhold payment of the disputed portion until the dispute is resolved.

Supplier’s Bank Information

5.6 Unless otherwise agreed with the Supplier, the Buyer shall remit payment of the Contract Price by electronic transfer. The Supplier shall provide the Buyer with the Supplier’s bank details such as, but not limited to account name, account number, bank name, bank branch, country address, and swift code on its invoices or request for payment.

6. Contract management

Contract Manager

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6.1 The persons named in Schedule 1 as the Contract Managers are responsible for managing the Contract, including:

a) Managing the relationship between the Parties

b) Overseeing the effective implementation of this Contract, and

c) Acting as a first point of contact for any issues that arise.

Changing the Contract Manager

6.2 If a Party changes its Contract Manager it must tell the other Party, in writing, the name and contact details of the replacement within 5 Business Days of the change.

7. Information management

Information and Records

7.1 The Supplier must:

a) Keep and maintain Records in accordance with prudent business practice and all applicable laws

b) Make sure the Records clearly identify all relevant time and expenses incurred in providing the Goods and Services

c) Make sure the Records are easy to access, and

d) Keep the Records safe.

7.2 Give information to the Buyer relating to the Goods and Services that the Buyer reasonably requests.

7.3 The Supplier must co-operate with the Buyer to provide information promptly if the information is required by the Buyer to comply with an enquiry or its statutory, parliamentary or other reporting obligations.

7.4 The Supplier must make the Records of this transaction available to the Buyer during the term of the Contract and for 7 years after the End Date (unless already provided to the Buyer earlier).

7.5 The Supplier must make sure that Records provided by the Buyer, or created for the Buyer, are securely managed and securely destroyed on their disposal.

Reports

7.6 The Supplier must prepare and give to the Buyer the reports stated in Schedule 1, by the due dates stated in Schedule 1.

8. The contractual relationship

Independent contractor

8.1 Nothing in this Contract constitutes a legal relationship between the Parties including partnership, joint venture, agency, or employment. The Supplier is responsible for the liability of its

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own, and its Personnel's, salary, wages, holiday or redundancy payments and any corporate, personal and withholding taxes, ACC premiums or other levies attributable to the Supplier's business or the engagement of its Personnel.

Neither Party can represent the other

8.2 Neither Party has authority to bind or represent the other Party in any way or for any purpose.

Permission to transfer rights or obligations

8.3 Neither Party may transfer any of its rights or obligations under this Contract without the other Party's prior written approval (such approval not to be unreasonably withheld).

9. Insurance

9.1 It is the Supplier's responsibility to ensure its risks of doing business are adequately covered. As stated in Schedule 1, the Supplier must have the insurance specified therein and the Supplier must:

a) Take out insurance, with a reputable insurer, and maintain that insurance cover for the term of this Contract and for a period of 3 years after the End Date, and

b) Within 10 Business Days of a request from the Buyer provide a certificate confirming the nature of the insurance cover and proving that each policy is current.

Indemnity

9.3 Subject to clauses 3.10, and 9.2 and to the extent permitted by law, the Supplier releases and indemnifies the Buyer, its Personnel, from and against all actions, claims proceedings and demands which are brought by third parties against it or them whether at common law, in equity, pursuant to statute or otherwise to the extent that such action, claim, proceeding or demand arises out of:

a) breach of the Supplier's warranties or obligations contained in this Contract
b) failure of any Personnel of the Supplier to use reasonable care in carrying out the Supplier's obligations under this Contract
c) the death of or personal injury to persons or property damage arising out of the Supplier's breach of this Contract, negligence or unlawful act or omission
d) breach of intellectual property rights of any person, arising out of reliance on the Services or the use of the Deliverables as reasonably contemplated by this Contract,

and from and against all damages, reasonable costs and expenses incurred by the Buyer in respect of any such action, claim, proceeding or demand

(together, "Loss")

except to the extent such Loss was caused by an act or omission of the Buyer, its Personnel or a third party, and provided the Buyer:

(a) promptly gives Notice to the Supplier of any action, claim, proceeding or demand for Loss;
(b) provides any reasonable assistance requested by the Supplier for defending or settling any such claim;
(c) to the extent permitted by law allow the Supplier the right to control the defence or settlement of such claim;
(d) takes reasonable steps to mitigate any Loss.

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10. Conflicts of Interest

Avoiding Conflicts of Interest

10.1 The Supplier warrants that at the Start Date, it has no Conflict of Interest in supplying the Goods or providing the Services or entering into this Contract.

10.2 The Supplier must do its best to avoid situations that may lead to a Conflict of Interest.

Obligation to tell the Buyer

10.3 The Supplier must tell the Buyer immediately, and in writing, if any Conflict of Interest arises in relation to the Goods or Services in this Contract. If a Conflict of Interest does arise the Parties must discuss, agree and record in writing whether it can be managed and, if so, how it will be managed. Each Party must pay its own costs in relation to managing a Conflict of Interest.

11. Resolving disputes

Steps to resolving disputes

11.1 The Parties agree to use their best endeavors to resolve any dispute or difference that may arise under this Contract. The following process will apply to disputes:

a) A Party must notify the other if it considers a matter is in dispute

b) The Contract Managers will attempt to resolve the dispute through direct negotiation

c) If the Contract Managers have not resolved the dispute within 10 Business Days of notification, they will refer it to the Parties' senior managers for resolution, and

d) If the senior managers have not resolved the dispute within 10 Business Days of it being referred to them, the Parties may agree to refer the dispute to mediation.

11.2 If a dispute is referred to mediation, the mediation will be conducted:

a) By a single mediator agreed by the Parties.

b) At a fee to be agreed by the Parties.

11.3 Each Party will pay its own costs of mediation under clause 11.

Obligations during a dispute

11.4 If there is a dispute, each Party will continue to perform its obligations under this Contract as far as practical given the nature of the dispute.

12. Ending this Contract

Termination by the Supplier

12.1 Notwithstanding clause 12.6, The Supplier may terminate this Contract by giving 20 Business Days' Notice to the Buyer, if the Buyer fails to pay Charges that are properly due, and are not in dispute under clause 5.5. The Charges must be overdue by 20 Business Days and the Supplier must have first brought this to the Buyer's attention in writing within this period.

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12.2 At any time during the term of this Contract the Supplier may notify the Buyer that it wishes to terminate this Contract. The Buyer will, within 20 Business Days following receipt of the Supplier's Notice, notify the Supplier whether, in its absolute discretion, it consents to the Supplier's Notice of termination. If the Buyer: a) consents, the Contract will be terminated on a date that is mutually agreed between the Parties, or b) does not consent, the Contract will continue in full force as if the Supplier's Notice of termination had not been given.

12.3 The Supplier may also terminate this Contract under clauses 12.5 and 12.9 and may terminate this Contract at any time with immediate effect if an Approved Personnel becomes unavailable and the Supplier is unable to provide a substitute under clause 2.5(c).

Termination by the Buyer

12.4 The Buyer may terminate this Contract at any time by giving 20 Business Days' Notice to the Supplier. The Buyer may also terminate this Contract immediately, by giving Notice if:

a) The Supplier does something, or fails to do something, that, in the Buyer's reasonable opinion, results in damage to the Buyer's reputation or business

b) The Supplier has a Conflict of Interest that in the Buyer's reasonable opinion is so material as to impact adversely on the supply of the Goods or the Services or the Buyer

c) The Supplier provides information to the Buyer that is misleading or inaccurate in any material respect.

d) The Buyer requires the supply of Goods or Services within the period of an Extraordinary Event.

Termination by a Party

12.5 Either Party may terminate this Contract immediately, by giving Notice, if:

a) The other Party becomes bankrupt or insolvent

b) The other Party has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed

c) The other Party becomes subject to any form of external administration

d) The other Party ceases for any reason to continue in business

e) Subject to clause 15, a Party is unable to comply with its obligations under this Contract for a period of 20 Business Days or more due to an Extraordinary Event

f) The other Party is in breach of any of its obligations under this Contract and the breach cannot be remedied

g) The other Party repeatedly fails to perform or comply with its obligations under this Contract, whether those obligations are minor or significant

Termination by a Party if a breach has not been remedied

12.6 If a Party fails to meet the requirements of this Contract (defaulting Party) and the other Party

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(non-defaulting Party) reasonably believes that the failure can be remedied, the non- defaulting Party must give Notice (default Notice) to the defaulting Party.

12.7 A default Notice must state:

a) The nature of the failure

b) What is required to remedy it, and

c) The time and date by which it must be remedied.

12.8 The period allowed to remedy the failure must be reasonable given the nature of the failure.

12.9 If the defaulting Party does not remedy the failure as required by the default Notice, the non-defaulting Party may terminate this Contract immediately by giving a further Notice.

12.10 If the Buyer gives a default Notice to the Supplier, the Buyer may also do one or both of the following things:

a) Withhold any payment of Charges due until the failure is remedied as required by the default Notice, and/or

b) If the failure is not remedied as required by the default Notice, deduct a reasonable amount from any cost due to reflect the reduced value of the Goods or Services to the Buyer.

Supplier's obligations on termination or expiry of this Contract

12.11 On giving or receiving a Notice of termination, the Supplier must:

a) take reasonable steps to stop supplying the Goods and Services

b) comply with any reasonable conditions contained in the Notice, and

c) immediately do everything reasonably possible to reduce its losses, costs, and expenses, arising from the termination of this Contract.

12.12 On termination or expiry of this Contract, the Supplier must, if requested by the Buyer, immediately return or securely destroy all Confidential Information and other material or property belonging to the Buyer.

Consequences of termination or expiry of this Contract

12.13 The termination or expiry of this Contract does not affect those rights of each Party which: a) accrued prior to the time of termination or End Date, or b) relate to any breach or failure to perform an obligation under this Contract that arose prior to the time of termination or End Date.

12.14 If this Contract is terminated the Buyer:

a) Will pay the Supplier for all Services performed up to the End Date and all committed costs and expenses incurred (including the cost of the Goods or any part of the Goods);

b) May recover from the Supplier, or set off against sums due to the Supplier, any

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Charges paid in advance that have not been incurred (less any committed costs and expenses under a)).

Handover

12.15 If the Buyer requests it, the Supplier will provide all reasonable assistance to support any replacement supplier to supply the Goods and Services for a period of 10 Business Days after the End Date and, at a reasonable fee to be agreed between the Parties, for a period of up to 3 months from the End Date.

13. Confidential Information and Intellectual Property

Protection of Confidential Information

13.1 Each Party confirms that it has adequate security measures to safeguard the other Party's Confidential Information from unauthorized access, or use by third parties, and that it will not use or disclose the other Party's Confidential Information to any person or organization other than:

a) To the extent that use or disclosure is necessary for the purposes of providing the Goods or Services, or in the case of the Buyer, using the Goods or Services as contemplated by this Contract

b) If the other Party gives prior written approval to the use or disclosure

c) If the use or disclosure is required by law, ministers, or parliamentary convention, or

d) In relation to disclosure, if the information has already become public, other than through a breach of the obligation of confidentiality by one of the Parties.

Obligation to inform staff

13.2 Each Party will ensure that its Personnel:

a) Are aware of the confidentiality obligations in this Contract, and

b) Do not use or disclose any of the other Party's Confidential Information except as allowed by this Contract.

Intellectual Property

13.3 All Intellectual Property in, and relating to the Goods and Services and any alterations, modifications, adaptations or developments thereto, shall remain the property of the Supplier, or of any relevant third party. The Supplier grants to the Buyer a perpetual, royalty free licence to use such Intellectual Property as the Buyer may require in order to use the Goods and Services for the purposes reasonably contemplated by this Contract.

14. Notices

Delivery of Notices

14.1 All Notices to a Party must be delivered by hand or sent by post, courier, fax or email to that Party's address for Notices stated in Schedule 1.

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14.2 Notices must be signed, or in the case of email sent, by the appropriate manager or person having authority to do so.

Receipt of Notices

14.3 A notice will be considered to be received:

a) If delivered by hand, on the date it is delivered

b) If sent by post within Samoa, on the 3rd Business Day after the date it was sent

c) If sent by post internationally, on the 7th Business Day after the date it was sent

d) If sent by courier, on the date it is delivered

e) If sent by fax, on the sender receiving a fax machine report that it has been successfully sent, or

f) If sent by email, at the time the email enters the recipient's information system as evidenced by a delivery receipt requested by the sender and it is not returned undelivered or as an error.

14.4 A notice received after 5pm on a Business Day, or on a day that is not a Business Day, will be considered to be received on the next Business Day.

15. Extraordinary Events

No fault if failure to deliver due to an Extraordinary Event

15.1 Neither Party will be liable to the other for any failure to perform its obligations under this Contract where the failure is due to an Extraordinary Event.

Obligations of the affected Party

15.2 A Party who wishes to claim suspension of its obligations due to an Extraordinary Event must notify the other Party as soon as reasonably possible. The notice must state:

a) The nature of the circumstances giving rise to the Extraordinary Event

b) The extent of that Party's inability to perform under this Contract

c) The likely duration of that non-performance, and

d) What steps are being taken to minimize the impact of the Extraordinary Event on the delivery of the Goods and supply of the Services.

Upon receipt of a Notice under this clause, the Parties will consult with each other in good faith, and as required, to agree a revised timetable for the Services, appropriate payment terms for any Services performed or Goods procured prior to the Extraordinary Event (to the extent not adequately addressed through the Buyer's existing payment obligations), changes to the Deliverables or alternative strategies or arrangements to help overcome or better mitigate the effects of the Extraordinary Event.

Alternative arrangements requiring immediate termination

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15.3 If the Buyer, acting reasonably, requires the Goods or Services to be supplied during a period affected by an Extraordinary Event, then despite clauses 15.2 and 15.4, the Buyer may terminate this Contract immediately by giving notice.

Termination of Contract

15.4 If a Party is unable to perform any obligations under this Contract for 20 Business Days or more due to an Extraordinary Event, the subject to any agreement between the Parties under clause 15.2, either Party may terminate this Contract immediately by giving notice.

16. Performance Security

Security

16.1 The Performance Security may be held by the Buyer as security for the Supplier's obligations under this Contract and subject to clause 9.2, the proceeds of the Performance Security shall be payable to the Buyer as compensation for any loss resulting from the Supplier's failure to comply with its obligations under this Contract.

Discharge

16.2 The Performance Security shall be discharged by the Buyer and returned to the Supplier not later than 30 days following the date of the Supplier's successful completion of its obligations under this Contract, including any warranty obligations (i.e., following expiry of the Warranty Period).

17. General

Changes to this Contract

17.1 Any change to this Contract is called an Amendment. An Amendment must be agreed by both Parties and recorded:

a) in writing and signed by both Parties, or

b) through an exchange of emails where the authors have delegated authority to approve the Amendment.

This is the entire Contract

17.2 This Contract, including any Amendment, records everything agreed between the Parties relating to the supply of the Goods and provision of the Services. It replaces any previous communications, negotiations, arrangements or agreements that the Parties had with each other relating to the supply of the Goods and provision of the Services before this Contract was signed, whether they were verbal or in writing.

Waiver

17.3 If a Party breaches this Contract, and the other Party does not immediately enforce its rights resulting from the breach that:

a) does not mean that the Party in breach is released or excused from its obligation to

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perform the obligation at the time or in the future, and

b) does not prevent the other Party from exercising its rights resulting from the breach at a later time.

Publication of information about this Contract

17.4 The Supplier may disclose the existence of this Contract but must obtain the Buyer's prior written approval before making reference to the Buyer or this Contract in its publications, public statements, promotional material or promotional activities about this Contract.

17.5 Each Party agrees not to post on websites or social networking sites and not to publicly display objectionable or derogatory comments about the Goods or Services, this Contract, each other, or any Personnel and to ensure that its Personnel do not do so.

Signing the Contract

17.6 The date of execution is date this Contract is signed. This Contract is properly signed if each Party signs the same copy, or separate identical copies, of Page 1. If this Contract is signed on two separate dates or separate copies are signed, the date of execution is the later of the two dates. Where separate copies are signed the signed copy can be the original document, or a faxed or emailed copy.

Clauses that remain in force

17.7 The clauses that by their nature should remain in force on expiry or termination of this Contract do so, including clauses: 3 (Acceptance and rejection of Goods), 7 (Information management), 9 (Insurance and Liability), 11 (Resolving disputes), 12 (Ending this Contract), 13 (Confidential Information and Intellectual Property), 16 (Performance Security), 17 (General) and 18 (Definitions).

Precedence

17.8 If there is any conflict or difference between the documents forming this Contract (as stated on Page 1) then the order of precedence is:

a) an Amendment agreed between the Parties under clause 17.1

b) Schedule 1

c) Schedule 2

d) Schedule 3.

Privileges and Immunities

17.9 Nothing in or relating to this Contract shall be deemed a waiver of any privileges and immunities of SPREP.

18. Definitions

18.1 When used in this Contract the following terms have the meaning beside them:

Amendment- A change to any aspect of this Contract that complies with clause 17.1.

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Approved Personnel- A person who is engaged by the Supplier to deliver the Services and is named in Schedule 1.

Attachment- Any supplementary document named in Schedule 1 as an Attachment to this Contract.

Business Day- A day when most businesses are open for business in Samoa. It excludes Saturday, Sunday and public holidays. A Business Day starts at 8.30am and ends at 5pm.

Buyer- The Buyer is the purchaser of the Goods and Services.

Charges- The total amount payable by the Buyer to the Supplier as stated in Schedule 1.

Confidential Information- Information that:

a) is by its nature confidential

b) is marked by either Party as 'confidential', 'in confidence', 'restricted' or 'commercial in confidence'

c) is provided by either Party, or a third party 'in confidence'

d) either Party knows or ought to know is confidential, or

e) is of a sensitive nature or commercially sensitive to either Party.

Information cannot be marked or designated as "confidential" if it is: (i) publicly available, (ii) rightfully known by a Party before disclosure by the other, or (iii) independently created or obtained by a Party without reference or access to the other Party's Confidential Information.

Conflict of Interest- A conflict of interest arises if a Party or its Personnel's personal or business interests or obligations do or could conflict or be perceived to conflict with its obligations under this Contract. It means that its independence, objectivity or impartiality can be called into question. A conflict of interest may be:

a) actual: where the conflict currently exists

b) potential: where the conflict is about to happen, or could happen

c) perceived: where other people may reasonably think that a person is compromised.

Contract- The legal agreement between the Buyer and the Supplier that comprises Page 1 (the front sheet), Schedule 1, this Schedule 2, any other Schedule, and any Variation and attachment.

Contract Manager- The person named in Schedule 1 as the Contract Manager. Their responsibilities are listed in clause 6.

Cost- The amount payable to the Supplier for the Goods and Services calculated on the basis stated in Schedule 1 excluding any expenses.

Deliverables- An output resulting from the provision of the Services as stated in Schedule 1.

Delivery Address- The address where the Supplier must deliver the Goods as specified in Schedule 1 or such other address as specified by the Buyer.

Dependency- The factors listed as dependencies in Schedule 1.

Description of Goods and Services- The specific requirements for the Goods and Services as described in Schedule 1.

End Date- The earlier of the date this Contract is due to end as stated in Schedule 1, the date of termination as set out in a Notice of termination, or any other date agreed between the Parties as the

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date the Contract is to end.

Expenses- Any actual and reasonable out-of-pocket costs incurred by the Supplier in the delivery of the Goods or Services.

Extraordinary Event- An event that is beyond the reasonable control of the Party immediately affected by the event (including where the Buyer has failed to make due payment because of an event beyond its reasonable control). An Extraordinary Event does not include any risk or event that the Party claiming could have prevented or overcome by taking reasonable care. Examples include:

a) acts of God, lightning strikes, earthquakes, tsunamis, volcanic eruptions, floods, storms, explosions, fires, pandemics and any natural disaster

b) acts of war (whether declared or not), invasion, actions of foreign enemies, military mobilization, requisition or embargo

c) acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, rebellion, insurrection, revolution or military usurped power or civil war, or

d) contamination by radioactivity from nuclear substances or germ warfare or any other such hazardous properties.

Final Destination- The final destination for the transportation of the Goods as set out in Schedule 1.

Goods- The goods described in Schedule 1 that the Supplier must supply under this Contract.

GST- The goods and services tax payable in accordance with the GST legislation of the location where the Goods are to be delivered.

Intellectual Property- All intellectual property rights whether conferred by statute, at common law or in equity, including but not limited to copyright, trademarks, designs, patents, confidential information and trade secrets.

Milestone- A phase or stage in delivery of the Goods and Services resulting in a measurable output.

Notice- A formal or legal communication from one Party to the other that meets the requirements of clause 14.

Party- The Buyer and the Supplier are each a Party to this Contract, and together are the Parties.

Performance Security- A bank guarantee from the Supplier's bank denominated in US dollars in the form attached as Schedule 4 for an amount of 10% of the total Cost payable by the Buyer for the Goods and Services under this Contract.

Personnel- All individuals engaged by either Party in relation to this Contract, or the supply of Goods or Services. Examples include: the owner of the business, its directors, employees, subcontractors, agents, external consultants, specialists, technical support and co-opted or seconded staff.

Records- All information and data necessary for the management of this Contract, the supply of Goods and Services. Records include but are not limited to, reports, invoices, letters, emails, notes of meetings, photographs and other media recordings. Records can be printed hard copies or soft copies stored electronically.

Services- All work, tasks and Deliverables, including those stated in Schedule 1, that the Supplier must perform and deliver under this Contract.

Schedule- An attachment to this Contract with the title 'Schedule'.

Start Date- The date when this Contract starts as stated in Schedule 1.

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Supplier- The person, business, company or organisation named as the Supplier on page 1. It includes its Personnel, successors, and permitted assignees.

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Schedule 3

Form of bank guarantee

[Guarantor letterhead or SWIFT identified code]
[Total Amount of Bank Guarantee is 10% of the contract price.]

Applicant: *[insert name]*

Beneficiary: The Secretariat of the Pacific Regional Environment Programme, *[insert address and attention]*

Date: *[insert date of issue]*

Performance Guarantee No.: *[Insert guarantee reference number]*

Guarantor: [Bank Name, Address]

We have been informed that the xxx (hereinafter called the Applicant) has entered into Contract No. ***[Insert]*** dated ***[Insert]*** with the Beneficiary, for the *[insert name of services]* (hereinafter called the Contract).

Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.

At the request of the Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of **[INSERT AMOUNT IN NUMBERS] (INSERT AMOUNT IN WORDS)** such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or show grounds for your demand or the sum specified therein.

This guarantee shall expire, on the earlier of the date of the expiry of the Warranty Period (as that term is defined in the Contract) and INSERT EXPIRY DATE FOR BANK GUARANTEE, and any demand for payment under it must be received by us at our counters of INSERT NAME AND ADDRESS OF THE BANK on or before that date.

Notwithstanding the Bank at any time without being required to do so, pay the beneficiary the said sum less any amount already paid, and thereupon the liability of the bank shall immediately cease.

This guarantee is subject to [jurisdiction] law.

This guarantee is personal and is not capable of assignment or transfer.

Partial and multiple drawings are allowed.

All advising bank charges related to this guarantee are payable by the Applicant.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.

_____
[signature(s)]