

Standard Forms of Contract
for
Consultant Services

LUMP SUM

January 2013

STANDARD FORMS OF CONTRACT FOR CONSULTANT SERVICES

Foreword

[Section 7 of the RFP should comprise one of the two types of Standard Forms of Contract for Consultant Services, a Time-Based Contract or a Lump-Sum Contract, presented in this file. These Standard Forms of Contract are to be used for complex and/or large value assignments, and/or for contracts above the threshold in the PPR.]

Time-Based Contract. *This type of contract is appropriate when it is difficult to define or fix the scope and the duration of the services, either because they are related to activities carried out by others for which the completion period may vary, or because the input of the consultants required for attaining the objectives of the assignment is difficult to assess. In time-based contracts, the Consultant provides services on a time basis and the Consultant's remuneration is determined on the time actually spent by the Consultant in carrying out the Services, based on (i) agreed unit rates per day or month of input of the Consultant's experts multiplied by the actual time spent by them in executing the assignment, and (ii) other expenses, provisional sums and a contingency. This type of contract requires the Client to supervise the Consultant closely during execution of the assignment.*

Lump-Sum Contract. *This type of contract is used mainly for assignments in which the scope and the duration of the Consultant's services and the required outputs are clearly defined. Payments are linked to outputs (deliverables) as defined in the Terms of Reference. Lump-sum contracts operate on the principle of a fixed price for a fixed scope, and payments are due on clearly specified outputs and milestones. Quality control of the Consultant's outputs by the Client is paramount.*

The templates are designed for use in assignments with consulting firms and shall not be used for contracting of individual experts.]



Tuvalu

STANDARD FORM OF CONTRACT

FOR

CONSULTANT SERVICES

FOR

[Insert title of assignment]

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Preface

1. This Standard Form of Contract consists of eight *[seven if no advance payment]* parts: the Form of Contract to be signed by the Client and the Consultant, the General Conditions of Contract (GCC), the Special Conditions of Contract (SCC), the Terms of Reference; the Work Plan and Staffing Schedule; the Details of Contract Price; the Curricula Vitae; and a Bank Guarantee for Advance Payment. *[omit last item if no advance payment]*
2. The General Conditions of Contract shall not be modified. The Special Conditions of Contract that contain clauses specific to each Contract intend to supplement but not over-write or otherwise contradict, the General Conditions.

CONTRACT FOR CONSULTANT'S SERVICES LUMP SUM

Assignment Name _____

Contract No. _____

between

[Name of the Client]

and

[Name of the Consultant]

Dated: _____

1. FORM OF CONTRACT

LUMP SUM

[Text in italics in square brackets is to guide the Client – delete in the final text.]

This CONTRACT (hereinafter called the "Contract") is made the *[number]* day of the month of *[month]*, *[year]*, between, on the one hand, *[name of Client or Recipient or Beneficiary]* (hereinafter called the "Client") and, on the other hand, *[name of Consultant]* (hereinafter called the "Consultant").

[If the Consultant consists of a Joint Venture, the above should be partially amended to read as follows:] "...(hereinafter called the "Client") and, on the other hand, a Joint Venture (name of the JV) consisting of *[name of member]* and *[name of member]*, (hereinafter called the "Consultant"), each of which shall be jointly and severally liable to the Client for all the Consultant's obligations under this Contract."

WHEREAS

- (a) the Client has requested the Consultant to provide certain consulting services as defined in this Contract (hereinafter called the "Services");
- (b) the Consultant, having represented to the Client that it has the required professional skills, expertise and technical resources, has agreed to provide the Services on the terms and conditions set forth in this Contract;

NOW THEREFORE the parties hereto hereby agree as follows:

1. The following documents attached hereto shall be deemed to form an integral part of this Contract:
 - (2) The General Conditions of Contract
 - (3) The Special Conditions of Contract
 - (4) Terms of Reference
 - (5) Work Plan and Staffing Schedule
 - (6) Details of Contract Price
 - (7) Curricula Vitae

Appendix 1: Bank Guarantee for Advance Payment
[omit if there is no advance payment]

In the event of any inconsistency between the documents, the following order of precedence shall prevail: the Special Conditions of Contract; the General Conditions of Contract; Terms of Reference; Work Plan and Staffing Schedule; Details of Contract Price; Curricula Vitae; Appendix 1 *[omit if no advance payment]*. Any reference to this Contract shall include, where the context permits, a reference to its Appendices.

2. The mutual rights and obligations of the Client and the Consultant shall be as set forth in the Contract, in particular:
- (a) the Consultant shall carry out the Services in accordance with the provisions of the Contract; and
 - (b) the Client shall make payments to the Consultant in accordance with the provisions of the Contract.

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

For and on behalf of *[Name of Client]*

[Authorized Representative of the Client – name, title and signature]

For and on behalf of *[Name of Consultant or Name of a Joint Venture]*

[Authorized Representative of the Consultant – name and signature]

[In the case of a joint venture, either the lead member shall sign, in which case the power of attorney to sign on behalf of all members shall be attached, or all members shall sign:]

For and on behalf of each of the members of the Consultant *[insert the name of the Joint Venture]*

[Name of the lead member]

[Authorized Representative on behalf of a Joint Venture]

[Name of second member]

[Authorized Representative of second member]

2. GENERAL CONDITIONS OF CONTRACT

A. General Provisions

1. Definitions
- 1.1. Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:
- (a) **Applicable Regulations** means the Public Procurement Regulations of Tuvalu.
 - (b) **Applicable Law** means the laws and any other instruments having the force of law in Tuvalu, as they may be issued and in force from time to time.
 - (c) **Client** means the ministry or agency of the Government of Tuvalu that signs the Contract for the Services with the Selected Consultant.
 - (d) **Consultant** means a legally-established professional consulting firm or entity selected by the Client to provide the Services under the signed Contract.
 - (e) **Contract** means the legally binding written agreement signed between the Client and the Consultant and which includes all the attached documents listed in its paragraph 1 of the Form of Contract (the General Conditions (GCC), the Special Conditions (SCC), and the Appendices).
 - (f) **Day** means a working day unless indicated otherwise.
 - (g) **Effective Date** means the date on which this Contract comes into force and effect pursuant to GCC Clause 11.
 - (h) **Experts** means collectively, Key Experts, Non-Key Experts, or any other personnel of the Consultant, Sub-consultant or Joint Venture member(s) assigned by the Consultant to perform the Services or any part thereof under the Contract.
 - (i) **GCC** means the General Conditions of Contract.
 - (j) **Government** means the Government of Tuvalu.
 - (k) **Joint Venture (JV)** means an association with or without a legal personality distinct from that of its members, of more than one entity where one member has the authority to conduct all businesses for and on behalf of any and all the members of the JV, and where the members of the JV are jointly and severally liable to the Client for the performance of the Contract.

- (l) **Key Expert** means an individual professional whose skills, qualifications, knowledge and experience are critical to the performance of the Services under the Contract and whose Curriculum Vitae (CV) was taken into account in the technical evaluation of the Consultant's proposal.
- (m) **Non-Key Expert** means an individual professional provided by the Consultant or its Sub-consultant to perform the Services or any part thereof under the Contract.
- (n) **Party** means the Client or the Consultant, as the case may be, and "Parties" means both of them.
- (o) **SCC** means the Special Conditions of Contract by which the GCC may be amended or supplemented but not over-written.
- (p) **Services** means the work to be performed by the Consultant pursuant to this Contract, as described in Appendix A hereto.
- (q) **Sub-consultant** means an entity to which the Consultant subcontracts any part of the Services while remaining solely liable for the execution of the Contract.
- (r) **Third Party** means any person or entity other than the Government, the Client, the Consultant or a Sub-consultant.
2. Relationship between the Parties
- 2.1. Nothing contained herein shall be construed as establishing a relationship of master and servant or of principal and agent as between the Client and the Consultant. The Consultant, subject to this Contract, has complete charge of the Experts and Sub-consultants, if any, performing the Services and shall be fully responsible for the Services performed by them or on their behalf hereunder.
3. Law Governing Contract
- 3.1. This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the Applicable Law.
4. Language
- 4.1. This Contract has been executed in the language specified in the **SCC**, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.
5. Headings
- 5.1. The headings shall not limit, alter or affect the meaning of this Contract.
6. Communications
- 6.1. Any communication required or permitted to be given

or made pursuant to this Contract shall be in writing in the language specified in GCC Clause 4. Any such notice, request or consent shall be deemed to have been given or made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent to such Party at the address specified in the **SCC**.

6.2. A Party may change its address for notice hereunder by giving the other Party any communication of such change to the address specified in the **SCC**.

- | | |
|----------------------------------|---|
| 7. Location | 7.1. The Services shall be performed at such locations as are specified in Section 4 hereof and, where the location of a particular task is not so specified, at such locations, whether in Tuvalu or elsewhere, as the Client may approve. |
| 8. Authority of Member in Charge | 8.1. In case the Consultant is a Joint Venture, the members hereby authorize the member specified in the SCC to act on their behalf in exercising all the Consultant's rights and obligations towards the Client under this Contract, including without limitation the receiving of instructions and payments from the Client. |
| 9. Authorized Representatives | 9.1. Any action required or permitted to be taken, and any document required or permitted to be executed under this Contract by the Client or the Consultant may be taken or executed by the officials specified in the SCC . |
| 10. Commissions and Fees | 10.1. The Client requires the Consultant to disclose any commissions, gratuities or fees that may have been paid or are to be paid to agents or any other party with respect to the selection process or execution of the Contract. The information disclosed must include at least the name and address of the agent or the other party, the amount and currency, and the purpose of the commission, gratuity or fee. Failure to disclose such commissions and gratuities may result in termination of the Contract. |

B. Commencement, Completion, Modification and Termination of Contract

- | | |
|---|--|
| 11. Effectiveness of Contract | 11.1. This Contract shall come into force and effect on the date (the "Effective Date") of the Client's notice to the Consultant instructing the Consultant to begin carrying out the Services. This notice shall confirm that the effectiveness conditions, if any, listed in the SCC have been met. |
| 12. Termination of Contract for Failure to Become Effective | 12.1. If this Contract has not become effective within such time period after the date of Contract signature as specified in the SCC , either Party may, by giving not less than twenty two (22) days written notice to the other Party, declare this Contract to be null and void, and in the event |

of such a declaration by either Party, neither Party shall have any claim against the other Party with respect hereto.

13. Commencement of Services 13.1. The Consultant shall confirm availability of Key Experts and begin carrying out the Services not later than the number of days after the Effective Date specified in the **SCC**.
14. Expiration of Contract 14.1. Unless terminated earlier pursuant to Clause GCC 19 hereof, this Contract shall expire at the end of such time period after the Effective Date as specified in the **SCC**.
15. Entire Agreement 15.1. This Contract contains all covenants, stipulations and provisions agreed by the Parties. No agent or representative of either Party has authority to make, and the Parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein.
16. Modifications or Variations 16.1. Any modification or variation of the terms and conditions of this Contract, including any modification or variation of the scope of the Services, may only be made by written agreement between the Parties. However, each Party shall give due consideration to any proposals for modification or variation made by the other Party.
17. Force Majeure
- a. Definition 17.1. For the purposes of this Contract, "Force Majeure" means an event which is beyond the reasonable control of a Party, is not foreseeable, is unavoidable, and makes a Party's performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible under the circumstances, and subject to those requirements, includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action confiscation or any other action by Government agencies.
- 17.2. Force Majeure shall not include (i) any event which is caused by the negligence or intentional action of a Party or such Party's Experts, Sub-consultants or agents or employees, nor (ii) any event which a diligent Party could reasonably have been expected to both take into account at the time of the conclusion of this Contract, and avoid or overcome in the carrying out of its obligations hereunder.
- 17.3. Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.
- b. No Breach of Contract 17.4. The failure of a Party to fulfill any of its obligations hereunder shall not be considered to be a breach of, or

default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Contract.

c. Measures to
be Taken

17.5. A Party affected by an event of Force Majeure shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall take all reasonable measures to minimize the consequences of any event of Force Majeure.

17.6. A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any case not later than fourteen (14) calendar days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give written notice of the restoration of normal conditions as soon as possible.

17.7. Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

17.8. During the period of their inability to perform the Services as a result of an event of Force Majeure, the Consultant, upon instructions by the Client, shall either:

- (a) demobilize, in which case the Consultant shall be reimbursed for additional costs they reasonably and necessarily incurred, and, if required by the Client, in reactivating the Services; or
- (b) continue with the Services to the extent reasonably possible, in which case the Consultant shall continue to be paid under the terms of this Contract and be reimbursed for additional costs reasonably and necessarily incurred.

17.9. In the case of disagreement between the Parties as to the existence or extent of Force Majeure, the matter shall be settled according to GCC Clauses 48 & 49.

18. Suspension

18.1. The Client may, by written notice of suspension to the Consultant, suspend all payments to the Consultant hereunder if the Consultant fails to perform any of its obligations under this Contract, including the carrying out of the Services, provided that such notice of suspension (i) shall specify the nature of the failure, and (ii) shall request the Consultant to remedy such failure within a period not

exceeding thirty (30) calendar days after receipt by the Consultant of such notice of suspension.

19. Termination

19. 1 This Contract may be terminated by either Party as per provisions set up below:

a. By the Client

19.1.1 The Client may terminate this Contract in case of the occurrence of any of the events specified in paragraphs (a) through (f) of this Clause. In such an occurrence the Client shall give at least thirty (30) calendar days' written notice of termination to the Consultant in case of the events referred to in (a) through (d); at least sixty (60) calendar days' written notice in case of the event referred to in (e); and at least five (5) calendar days' written notice in case of the event referred to in (f):

- (a) If the Consultant fails to remedy a failure in the performance of its obligations hereunder, as specified in a notice of suspension pursuant to GCC Clause 18;
- (b) If the Consultant becomes (or, if the Consultant consists of more than one entity, if any of its members becomes) insolvent or bankrupt or enter into any agreements with their creditors for relief of debt or take advantage of any law for the benefit of debtors or go into liquidation or receivership whether compulsory or voluntary;
- (c) If the Consultant fails to comply with any final decision reached as a result of arbitration proceedings pursuant to GCC Clause 49.1;
- (d) If, as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) calendar days;
- (e) If the Client, in its sole discretion and for any reason whatsoever, decides to terminate this Contract;
- (f) If the Consultant fails to confirm availability of Key Experts as required in GCC Clause 13.

19.1.2 Furthermore, if the Client determines that the Consultant has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices, in competing for or in executing the Contract, then the Client may, after giving fourteen (14) calendar days written notice to the Consultant, terminate the Consultant's employment under the Contract.

- b. By the Consultant
- 19.1.3 The Consultant may terminate this Contract, by not less than thirty (30) calendar days' written notice to the Client, in case of the occurrence of any of the events specified in paragraphs (a) through (d) of this Clause.
- (a) If the Client fails to pay any money due to the Consultant pursuant to this Contract and not subject to dispute pursuant to Clauses GCC 49.1 within forty-five (45) calendar days after receiving written notice from the Consultant that such payment is overdue.
 - (b) If, as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) calendar days.
 - (c) If the Client fails to comply with any final decision reached as a result of arbitration pursuant to Clause GCC 49.1.
 - (d) If the Client is in material breach of its obligations pursuant to this Contract and has not remedied the same within forty-five (45) days (or such longer period as the Consultant may have subsequently approved in writing) following the receipt by the Client of the Consultant's notice specifying such breach.
- c. Cessation of Rights and Obligations
- 19.1.4 Upon termination of this Contract pursuant to GCC Clauses 12 or 19 hereof, or upon expiration of this Contract pursuant to GCC Clause 14, all rights and obligations of the Parties hereunder shall cease, except (i) such rights and obligations as may have accrued on the date of termination or expiration, (ii) the obligation of confidentiality set forth in GCC Clause 22, (iii) the Consultant's obligation to permit inspection, copying and auditing of their accounts and records set forth in GCC Clause 25, and (iv) any right which a Party may have under the Applicable Law.
- d. Cessation of Services
- 19.1.5 Upon termination of this Contract by notice of either Party to the other pursuant to GCC Clauses 19a or 19b, the Consultant shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to documents prepared by the Consultant and equipment and materials furnished by the Client, the Consultant shall proceed as provided, respectively,

by Clauses GCC 27 or GCC 28.

e. Payment upon Termination

19.1.6 Upon termination of this Contract, the Client shall make the following payments to the Consultant:

- (a) remuneration for Services satisfactorily performed prior to the effective date of termination; and
- (b) in the case of termination pursuant to paragraphs (d) and (e) of GCC Clause 19.1.1, reimbursement of any reasonable cost incidental to the prompt and orderly termination of this Contract, including the cost of the return travel of the Experts.

C. Obligations of the Consultant

20. General

a. Standard of Performance

20.1 The Consultant shall perform the Services and carry out the Services with all due diligence, efficiency and economy, in accordance with generally accepted professional standards and practices, and shall observe sound management practices, and employ appropriate technology and safe and effective equipment, machinery, materials and methods. The Consultant shall always act, in respect of any matter relating to this Contract or to the Services, as a faithful adviser to the Client, and shall at all times support and safeguard the Client's legitimate interests in any dealings with the third parties.

20.2 The Consultant shall employ and provide such qualified and experienced Experts and Sub-consultants as are required to carry out the Services.

20.3 The Consultant may subcontract part of the Services to an extent and with such Key Experts and Sub-consultants as may be approved in advance by the Client. Notwithstanding such approval, the Consultant shall retain full responsibility for the Services.

b. Law Applicable to Services

20.4 The Consultant shall perform the Services in accordance with the Contract and the Applicable Law and shall take all practicable steps to ensure that any of its Experts and Sub-consultants, comply with the Applicable Law.

20.5 Throughout the execution of the Contract, the Consultant shall comply with the import of goods and services prohibitions in Tuvalu when

- (a) as a matter of law or official regulations, Tuvalu prohibits commercial relations with that country; or

- (b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Borrower's Country prohibits any import of goods from that country or any payments to any country, person, or entity in that country.

20.6 The Client shall notify the Consultant in writing of relevant local customs, and the Consultant shall, after such notification, respect such customs.

21. Conflict of Interests

21.1 The Consultant shall hold the Client's interests paramount, without any consideration for future work, and strictly avoid conflict with other assignments or its own corporate interests.

a. Consultant Not to Benefit from Commissions and Discounts

21.1.1 The payment of the Consultant pursuant to GCC Section F (Clauses 41 through 46) shall constitute the Consultant's only payment in connection with this Contract and, subject to GCC Clause 21.1.3, the Consultant shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract or in the discharge of its obligations hereunder, and the Consultant shall use its best efforts to ensure that any Sub-consultants, as well as the Experts and agents of either of them, similarly shall not receive any such additional payment.

21.1.2 Furthermore, if the Consultant, as part of the Services, has the responsibility of advising the Client on the procurement of goods, works or services, the Consultant shall comply with the Procurement Law and Regulations of the Government of Tuvalu and shall at all times exercise such responsibility in the best interest of the Client. Any discounts or commissions obtained by the Consultant in the exercise of such procurement responsibility shall be for the account of the Client.

b. Consultant and Affiliates Not to Engage in Certain Activities

21.1.3 The Consultant agrees that, during the term of this Contract and after its termination, the Consultant and any entity affiliated with the Consultant, as well as any Sub-consultants and any entity affiliated with such Sub-consultants, shall be disqualified from providing goods, works or non-consulting services resulting from or directly related to the Consultant's Services for the preparation or implementation of the project, unless otherwise indicated in the **SCC**.

c. Prohibition of Conflicting Activities

21.1.4 The Consultant shall not engage, and shall cause its Experts as well as its Sub-consultants not to engage, either directly or indirectly, in any business or

professional activities that would conflict with the activities assigned to them under this Contract.

d. Strict Duty to Disclose Conflicting Activities

21.1.5 The Consultant has an obligation and shall ensure that its Experts and Sub-consultants shall have an obligation to disclose any situation of actual or potential conflict that impacts their capacity to serve the best interest of their Client, or that may reasonably be perceived as having this effect. Failure to disclose said situations may lead to the disqualification of the Consultant or the termination of its Contract.

22. Confidentiality

22.1 Except with the prior written consent of the Client, the Consultant and the Experts shall not at any time communicate to any person or entity any confidential information acquired in the course of the Services, nor shall the Consultant and the Experts make public the recommendations formulated in the course of, or as a result of, the Services.

23. Liability of the Consultant

23.1 Subject to additional provisions, if any, set forth in the **SCC**, the Consultant's liability under this Contract shall be as determined under the Applicable Law.

24. Insurance to be Taken out by the Consultant

24.1 The Consultant (i) shall take out and maintain, and shall cause any Sub-consultants to take out and maintain, at its (or the Sub-consultants', as the case may be) own cost but on terms and conditions approved by the Client, insurance against the risks, and for the coverage specified in the **SCC**, and (ii) at the Client's request, shall provide evidence to the Client showing that such insurance has been taken out and maintained and that the current premiums therefore have been paid. The Consultant shall ensure that such insurance is in place prior to commencing the Services as stated in GCC Clause 13.

25. Accounting, Inspection and Auditing

25.1 The Consultant shall keep, and shall make all reasonable efforts to cause its Sub-consultants to keep, accurate and systematic accounts and records in respect of the Services and in such form and detail as will clearly identify relevant time changes and costs.

25.2. The Consultant shall permit and shall cause its Sub-consultants to permit the Government of Tuvalu to inspect the Site and/or all accounts and records relating to the performance of the Contract and the submission of the Proposal to provide the Services and, if requested by the Government of Tuvalu to have such accounts and records audited by auditors appointed by the Government of Tuvalu.

26. Reporting

26.1 The Consultant shall submit to the Client the reports

- Obligations and documents specified in **Section 4**, in the form, in the numbers and within the time periods set forth therein.
27. Proprietary Rights of the Client in Reports and Records
- 27.1 All reports and relevant data and information such as maps, diagrams, plans, databases, other documents and software, supporting records or material compiled or prepared by the Consultant for the Client in the course of the Services shall be confidential and become and remain the absolute property of the Client. The Consultant shall, not later than upon termination or expiration of this Contract, deliver all such documents to the Client, together with a detailed inventory thereof. The Consultant may retain a copy of such documents, data and/or software but shall not use the same for purposes unrelated to this Contract without prior written approval of the Client.
- 27.2 If license agreements are necessary or appropriate between the Consultant and third parties for purposes of development of the plans, drawings, specifications, designs, databases, other documents and software, the Consultant shall obtain the Client's prior written approval to such agreements, and the Client shall be entitled at its discretion to require recovering the expenses related to the development of the program(s) concerned. Other restrictions on the future use of these documents and software, if any, shall be specified in the **SCC**.
28. Equipment, Vehicles and Materials
- 28.1 Equipment, vehicles and materials made available to the Consultant by the Client, or purchased by the Consultant wholly or partly with funds provided by the Client, shall be the property of the Client and shall be marked accordingly. Upon termination or expiration of this Contract, the Consultant shall make available to the Client an inventory of such equipment, vehicles and materials and shall dispose of such equipment, vehicles and materials in accordance with the Client's instructions. While in possession of such equipment, vehicles and materials, the Consultant, unless otherwise instructed by the Client in writing, shall insure them at the expense of the Client in an amount equal to their full replacement value.
- 28.2 Any equipment or materials brought by the Consultant or its Experts into Tuvalu for the use either for the project or personal use shall remain the property of the Consultant or the Experts concerned, as applicable.

D. Consultant's Experts and Sub-Consultants

29. Description of Key Experts
- 29.1 The title, agreed job description, minimum qualification and time-input estimates to carry out the Services of each of the Consultant's Key Experts are described in **Section 5**.

30. Replacement of Key Experts
- 30.1 Except as the Client may otherwise agree in writing, no changes shall be made in the Key Experts.
- 30.2 Notwithstanding the above, the substitution of Key Experts during Contract execution may be considered only based on the Consultant's written request and due to circumstances outside the reasonable control of the Consultant, including but not limited to death or medical incapacity. In such case, the Consultant shall forthwith provide as a replacement, a person of equivalent or better qualifications and experience, and at the same rate of remuneration.
31. Removal of Experts or Sub-consultants
- 31.1 If the Client finds that any of the Experts or Sub-consultant has committed serious misconduct or has been charged with having committed a criminal action, or shall the Client determine that Consultant's Expert or Sub-consultant have engaged in corrupt, fraudulent, collusive, coercive or obstructive practice while performing the Services, the Consultant shall, at the Client's written request, provide a replacement.
- 31.2 In the event that any of Key Experts, Non-Key Experts or Sub-consultants is found by the Client to be incompetent or incapable in discharging assigned duties, the Client, specifying the grounds therefore, may request the Consultant to provide a replacement.
- 31.3 Any replacement of the removed Experts or Sub-consultants shall possess better qualifications and experience and shall be acceptable to the Client.

E. Obligations of the Client

32. Assistance and Exemptions
- 32.1 Unless otherwise specified in the **SCC**, the Client shall use its best efforts to:
- (a) Assist the Consultant with obtaining work permits and such other documents as shall be necessary to enable the Consultant to perform the Services.
 - (b) Assist the Consultant with promptly obtaining, for the Experts and, if appropriate, their eligible dependents, all necessary entry and exit visas, residence permits, exchange permits and any other documents required for their stay in the Client's country while carrying out the Services under the Contract.
 - (c) Facilitate prompt clearance through customs of any property required for the Services and of the personal effects of the Experts and their eligible dependents.

- (d) Issue to officials, agents and representatives of the Government all such instructions and information as may be necessary or appropriate for the prompt and effective implementation of the Services.
- (e) Assist the Consultant and the Experts and any Sub-consultants employed by the Consultant for the Services with obtaining exemption from any requirement to register or obtain any permit to practice their profession or to establish themselves either individually or as a corporate entity in the Client's country according to the applicable law in the Client's country.
- (f) Assist the Consultant, any Sub-consultants and the Experts of either of them with obtaining the privilege, pursuant to the applicable law in the Client's country, of bringing into the Client's country reasonable amounts of foreign currency for the purposes of the Services or for the personal use of the Experts and of withdrawing any such amounts as may be earned therein by the Experts in the execution of the Services.
- (g) Provide to the Consultant any such other assistance as may be specified in the **SCC**.

33. Access to
Project Site

33.1 The Client warrants that the Consultant shall have, free of charge, unimpeded access to the project site in respect of which access is required for the performance of the Services. The Client will be responsible for any damage to the project site or any property thereon resulting from such access and will indemnify the Consultant and each of the experts in respect of liability for any such damage, unless such damage is caused by the willful default or negligence of the Consultant or any Sub-consultants or the Experts of either of them.

34. Change in the
Applicable Law
Related to Taxes
and Duties

34.1 If, after the date of this Contract, there is any change in the applicable law in the Client's country with respect to taxes and duties which increases or decreases the cost incurred by the Consultant in performing the Services, then the remuneration and reimbursable expenses otherwise payable to the Consultant under this Contract shall be increased or decreased accordingly by agreement between the Parties hereto, and corresponding adjustments shall be made to the ceiling amounts specified in GCC Clause 38.1.

35. Services,
Facilities and
Property of the
Client

35.1 The Client shall make available to the Consultant and the Experts, for the purposes of the Services and free of any charge, the services, facilities and property described in the Terms of Reference (**Section 4**) at the times and in the manner specified therein.

36. Counterpart Personnel
- 36.1 The Client shall make available to the Consultant free of charge such professional and support counterpart personnel, to be nominated by the Client with the Consultant’s advice, if specified in **Section 4**.
- 36.2 Professional and support counterpart personnel, excluding Client’s liaison personnel, shall work under the exclusive direction of the Consultant. If any member of the counterpart personnel fails to perform adequately any work assigned to such member by the Consultant that is consistent with the position occupied by such member, the Consultant may request the replacement of such member, and the Client shall not unreasonably refuse to act upon such request.
37. Payment Obligation
- 37.1 In consideration of the Services performed by the Consultant under this Contract, the Client shall make such payments to the Consultant and in such manner as is provided by GCC Section F.

F. Payments to the Consultant

38. Contract Price
- 38.1 The Contract price is fixed and is set forth in the **SCC**. The Contract price breakdown is provided in **Section 6**.
- 38.2 Any change to the Contract price specified in GCC Clause 38.1 can be made only if the Parties have agreed to the revised scope of Services pursuant to GCC Clause 16 and have amended in writing the Terms of Reference in **Section 4**.
39. Taxes and Duties
- 39.1 The Consultant, Sub-consultants and Experts are responsible for meeting any and all tax liabilities arising out of the Contract unless stated otherwise in the **SCC**.
- 39.2 As an exception to the above and as stated in the **SCC**, all local identifiable indirect taxes (itemized and finalized at Contract negotiations) are reimbursed to the Consultant or are paid by the Client on behalf of the Consultant.
40. Currency of Payment
- 40.1 All payments under this Contract shall be made in Australian dollars.
41. Mode of Billing and Payment
- 41.1 The total payments under this Contract shall not exceed the Contract price set forth in Clause GCC 38.1.
- 41.2 The payments under this Contract shall be made in lump-sum installments against deliverables specified in **Section 4**. The payments will be made according to the payment schedule stated in the **SCC**.

- (a) Advance payment. Unless otherwise indicated in the **SCC**, an advance payment shall be made against an advance payment bank guarantee acceptable to the Client in an amount (or amounts) and in a currency (or currencies) specified in the **SCC**. Such guarantee (i) is to remain effective until the advance payment has been fully set off, and (ii) is to be in the form set forth in **Section 6**, or in such other form as the Client shall have approved in writing. The advance payments will be set off by the Client in equal portions against the lump-sum installments specified in the **SCC** until said advance payments have been fully set off.
- (b) Lump Sum Installment Payments. The Client shall pay the Consultant within sixty (60) days after the receipt by the Client of the deliverable(s) and the cover invoice for the related lump-sum installment payment. The payment can be withheld if the Client does not approve the submitted deliverable(s) as satisfactory in which case the Client shall provide comments to the Consultant within the same sixty (60) days period. The Consultant shall thereupon promptly make any necessary corrections, and thereafter the foregoing process shall be repeated.
- (c) The Final Payment. The final payment under this Clause shall be made only after the final report I have been submitted by the Consultant and approved as satisfactory by the Client. The Services shall then be deemed completed and finally accepted by the Client. The last lump-sum installment shall be deemed approved for payment by the Client within ninety (90) calendar days after receipt of the final report by the Client unless the Client, within such ninety (90) calendar day period, gives written notice to the Consultant specifying in detail deficiencies in the Services, the final report. The Consultant shall thereupon promptly make any necessary corrections, and thereafter the foregoing process shall be repeated.
- (d) All payments under this Contract shall be made to the accounts of the Consultant specified in the **SCC**.
- (e) With the exception of the final payment under (c) above, payments do not constitute acceptance of the Services nor relieve the Consultant of any obligations hereunder.

42. Interest on
Delayed
Payments

42.1 If the Client had delayed payments beyond fifteen (15) days after the due date stated in GCC Clause 41.2 (b), interest shall be paid to the Consultant on any amount due by, not paid on, such due date for each day of delay at the

annual rate stated in the **SCC**.

H. Settlement of Disputes

43. Good Faith 43.1 The Parties undertake to act in fairness and good faith with respect to each other's rights under this Contract and to adopt all reasonable measures to ensure the realization of the objectives of this Contract.
44. Amicable Settlement 44.1 The Parties shall seek to resolve any dispute amicably by mutual consultation.
- 44.2 If either Party objects to any action or inaction of the other Party, the objecting Party may file a written Notice of Dispute to the other Party providing in detail the basis of the dispute. The Party receiving the Notice of Dispute will consider it and respond in writing within fourteen (14) days after receipt. If that Party fails to respond within fourteen (14) days, or the dispute cannot be amicably settled within fourteen (14) days following the response of that Party, GCC Clause 45.1 shall apply.
45. Dispute Resolution 45.1 Any dispute between the Parties arising under or related to this Contract that cannot be settled amicably may be referred to by either Party to the adjudication/arbitration in accordance with the provisions specified in the **SCC**.

I. Corrupt and Fraudulent Practices

46. Fraud and Corruption 46.1 A Consultant found to the satisfaction of the Government of Tuvalu to have been involved in any corrupt, fraudulent, collusive, coercive or obstructive practice at any time during the implementation of this contract shall have its contract terminated and be debarred from submitting proposals for future assignments for a period to be determined by the Government of Tuvalu. For the purpose of this clause, the following definitions apply:
- (1) "Corrupt Practice" mean the offering, giving, receiving, or soliciting directly or indirectly of anything of value to influence improperly the actions of another party.
 - (2) "Fraudulent Practice" is any act or omission including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation.
 - (3) "Collusive Practice" is an arrangement between two or more parties, designed to achieve an improper purpose, including influencing improperly the actions of another party.

- (4) "Coercive Practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party, or the property of the party to influence improperly the actions of a party.
- (5) "Obstructive Practice" is deliberately destroying, falsifying, altering, or concealing of evidence material to an investigation, or making false statements to investigators in order to materially impede an 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.

3. SPECIAL CONDITIONS OF CONTRACT

GCC Clause	Additional Data
1.1(b) and 3.1	The Contract shall be construed in accordance with the law of Tuvalu .
4.1	The language is English .
6.1 and 6.2	<p>The addresses are: <i>[insert as below]</i></p> <p>Client : _____ _____ Attention : _____ Facsimile : _____ E-mail: _____</p> <p>Consultant : _____ _____ Attention : _____ Facsimile : _____ E-mail: _____</p>
8.1	<p><i>[Either: If the Consultant consists of only one entity, state "N/A";</i></p> <p><i>Or: If the Consultant is a Joint Venture:</i></p> <p>The Lead Member of the JV is: <i>[insert name of the member]</i></p>
9.1	<p>The Authorized Representatives are:</p> <p>For the Client: <i>[insert name and title]</i></p> <p>For the Consultant: <i>[insert name and title]</i></p>
11.1	The effectiveness conditions are: <i>[insert list of conditions or state "None"]</i>
12.1	The time period for termination of the Contract for failure to become effective is: <i>[insert time period]</i>
13.1	<p>The number of days for commencement of services after the Effective Date shall be: <i>[insert number of days]</i></p> <p>Confirmation of Key Experts' availability to start the Assignment shall be submitted to the Client in writing and countersigned by each Key Expert.</p>
14.1	The Contract shall expire at the end of <i>[insert period in days or</i>

	months] after the Effective Date.
21.1.3	<p>The Client reserves the right to determine on a case-by-case basis whether the Consultant should be disqualified from providing goods, works or non-consulting services due to a conflict of a nature described in GCC Clause 21.1.3</p> <p>Yes _____ No _____ [tick one]</p>
23.1	<p>[Either:]</p> <p>No additional provisions.</p> <p>[or:]</p> <p>The following limitation of the Consultant’s Liability towards the Client can be subject to the contract negotiations:</p> <p>“Limitation of the Consultant’s Liability towards the Client:</p> <p>(a) Except in the case of gross negligence or willful misconduct on the part of the Consultant or on the part of any person or a firm acting on behalf of the Consultant in carrying out the Services, the Consultant, with respect to damage caused by the Consultant to the Client’s property, shall not be liable to the Client:</p> <p>(i) for any indirect or consequential loss or damage; and</p> <p>(ii) for any direct loss or damage that exceeds [insert a multiplier, e.g.: one, two, three] times the total value of the Contract;</p> <p>(b) This limitation of liability shall not:</p> <p>(i) affect the Consultant’s liability, if any, for damage to Third Parties caused by the Consultant or any person or firm acting on behalf of the Consultant in carrying out the Services;</p> <p>(ii) be construed as providing the Consultant with any limitation or exclusion from liability which is prohibited by the law of Tuvalu.</p>
24.1	<p>The insurance coverage against the risks shall be as follows:</p> <p>(a) Professional liability insurance, with a minimum coverage of _____ [insert amount and currency which should be not less than the total ceiling amount of the Contract];</p>

	(b) <i>[list other insurance cover required under the laws of Tuvalu. This might include: third party liability; employer's liability; workers compensation; insurance against loss of or damage to (i) equipment purchased in whole or in part with funds provided under this Contract, (ii) the Consultant's property used in the performance of the Services, and (iii) any documents prepared by the Consultant in the performance of the Services.]</i>
27.2	<p><i>[If the Parties wish to restrict the use of documents generated by the Consultant, some examples are:]</i></p> <p>The Consultant shall not use these <i>[insert names of documents or files]</i> for purposes unrelated to this Contract without the prior written approval of the Client.</p> <p><u>or</u></p> <p>The Consultant shall not use these <i>[insert names of documents or files]</i> for purposes unrelated to this Contract without the prior written approval of the Client.</p> <p><u>or</u></p> <p>Neither Party shall use these <i>[insert names of documents or files]</i> for purposes unrelated to this Contract without the prior written approval of the other Party.</p>
35.1	<i>[Either list here any changes or additions to the Client's obligations as may have been agreed at contract negotiations, or state "No changes to obligations"]</i>
41.2	The ceiling amount payable under this Contract is: AUD <i>[insert amount]</i> .
42.3	<p>Price adjustment on the remuneration rates <i>[insert "applies" or "does not apply"]</i></p> <p><i>[If the Contract duration is less than 18 months, a price adjustment does not apply. For longer contracts, a provision for price adjustment on the remuneration rates should be included here. The adjustment should be made every 12 months after the effectiveness date of the contract. A formula should be devised that takes account of increases in the cost of living in both Tuvalu and the Consultant's home country.]</i></p> <p>Payments for remuneration shall be adjusted as follows: <i>[present the formula here]</i></p>
43.1 and 43.2	<i>The position on tax exemption or reimbursement of taxes needs to be discussed.</i>

45.1(a)	<p>The following provisions shall apply to the advance payment and the advance bank payment guarantee:</p> <p>(1) An advance payment of AUD <i>[insert amount]</i> shall be made within <i>[insert number]</i> days after the Effectiveness Date. The advance payment will be set off by the Client in equal installments against the statements for the first <i>[insert number]</i> months of the Services until the advance payment has been fully set off.</p> <p>(2) The advance bank payment guarantee shall be in the amount and in the currency of the advance payment.</p>
45.1(e)	<p>The account is:</p> <p><i>[insert name and details of account]</i>.</p>
46.1	<p>The interest rate is: ___ % per annum <i>[insert rate]</i>.</p>
49.1	<p>Disputes shall be settled by arbitration in accordance with the following provisions:</p> <p>1. <u>Selection of Arbitrators.</u> Each dispute submitted by a Party to arbitration shall be heard by a sole arbitrator or an arbitration panel composed of three (3) arbitrators, in accordance with the following provisions:</p> <p>(a) Where the Parties agree that the dispute concerns a technical matter, they may agree to appoint a sole arbitrator or, failing agreement on the identity of such sole arbitrator within thirty (30) days after receipt by the other Party of the proposal of a name for such an appointment by the Party who initiated the proceedings, either Party may apply to <i>[name an appropriate international professional body, e.g., the Federation Internationale des Ingenieurs-Conseil (FIDIC) of Lausanne, Switzerland]</i> for a list of not fewer than five (5) nominees and, on receipt of such list, the Parties shall alternately strike names therefrom, and the last remaining nominee on the list shall be the sole arbitrator for the matter in dispute. If the last remaining nominee has not been determined in this manner within sixty (60) days of the date of the list, <i>[insert the name of the same professional body as above]</i> shall appoint, upon the request of either Party and from such list or otherwise, a sole arbitrator for the matter in dispute.</p> <p>(b) Where the Parties do not agree that the dispute concerns a technical matter, the Client and the</p>

	<p>Consultant shall each appoint one (1) arbitrator, and these two arbitrators shall jointly appoint a third arbitrator, who shall chair the arbitration panel. If the arbitrators named by the Parties do not succeed in appointing a third arbitrator within thirty (30) days after the latter of the two (2) arbitrators named by the Parties has been appointed, the third arbitrator shall, at the request of either Party, be appointed by <i>[name an appropriate international appointing authority, e.g., the Secretary General of the Permanent Court of Arbitration, The Hague; the Secretary General of the International Centre for Settlement of Investment Disputes, Washington, D.C.; the International Chamber of Commerce, Paris; etc.]</i>.</p> <p>(c) If, in a dispute subject to paragraph (b) above, one Party fails to appoint its arbitrator within thirty (30) days after the other Party has appointed its arbitrator, the Party which has named an arbitrator may apply to the <i>[name the same appointing authority as in said paragraph (b)]</i> to appoint a sole arbitrator for the matter in dispute, and the arbitrator appointed pursuant to such application shall be the sole arbitrator for that dispute.</p>
	<p>2. <u>Rules of Procedure.</u> Except as otherwise stated herein, arbitration proceedings shall be conducted in accordance with the rules of procedure for arbitration of the United Nations Commission on International Trade Law (UNCITRAL) as in force on the date of this Contract.</p> <p>3. <u>Substitute Arbitrators.</u> If for any reason an arbitrator is unable to perform his/her function, a substitute shall be appointed in the same manner as the original arbitrator.</p> <p>4. <u>Nationality and Qualifications of Arbitrators.</u> The sole arbitrator or the third arbitrator appointed pursuant to paragraphs 1(a) through 1(c) above shall be an internationally recognized legal or technical expert with extensive experience in relation to the matter in dispute and shall not be a national of the Consultant’s home country, or of the home country of any members or Parties of a Joint Venture, or of the Client’s country. For the purposes of this Clause, “home country” means any of:</p> <p>(a) the country of incorporation of the Consultant or of any members or Parties of a Joint Venture; or</p> <p>(b) the country in which the principal place of business of the Consultant or any members or Parties of a Joint Venture is located; or</p>

	<p>(c) the country of nationality of a majority of the shareholders of the Consultant or of any members or Parties of a Joint Venture; or</p> <p>(d) the country of nationality of the Sub-consultants concerned, where the dispute involves a subcontract.</p>
	<p>5. <u>Miscellaneous</u>. In any arbitration proceeding hereunder:</p> <p>(a) proceedings shall, unless otherwise agreed by the Parties, be held in <i>[select a country which is neither the Client's country nor the Consultant's country]</i>;</p> <p>(b) the <i>[English or name another language]</i> language shall be the official language for all purposes; and</p> <p>(c) the decision of the sole arbitrator or of a majority of the arbitrators (or of the third arbitrator if there is no such majority) shall be final and binding and shall be enforceable in any court of competent jurisdiction, and the Parties hereby waive any objections to or claims of immunity in respect of such enforcement.</p>

4. TERMS OF REFERENCE

[Insert the text based on the Section 7 (Terms of Reference) of the ITC in the RFP, including any modifications agreed at Contract Negotiations. Ensure that the following reflect agreement reached during Contract Negotiations: dates for completion of various tasks; location of performance for different tasks; detailed reporting requirements and list of deliverables against which the payments to the Consultant will be made; Client's input, including counterpart personnel (if any) assigned by the Client to work on the Consultant's team; facilities provided by the Client; and, specific tasks or actions that require prior approval by the Client.]

5. WORK PLAN AND STAFFING SCHEDULE

5.1 Work Plan

[This sub-section should comprise the narrative and time-bound bar chart showing tasks to be undertaken, as submitted by the Consultant in its proposal but incorporating modifications agreed during Contract Negotiations – see Section F of the RFP.]

5.2 Staffing Schedule

[This sub-section should contain a time-bound bar chart showing the input of each Expert in the Consultant's team, as submitted by the Consultant in its proposal but incorporating modifications agreed during Contract Negotiations – see Section G of the RFP.]

[Under the Staffing Schedule, specify: the minimum hours of work per day (normally 8) and minimum working days per month (normally 22 if a 5-day week basis or 26 if a 6-day weeks basis) for Key Experts and Non-Key Experts: travel time to/from the Client's country; entitlement, if any, to leave pay; public holidays in the Client's country that may affect Consultant's work.]

6. DETAILS OF CONTRACT PRICE

[Insert the tables showing breakdown of the Contract Price as agreed at Contract Negotiations.]

6.1 Time-based Charges

[The first table should be the finally agreed version of Table 1: Time-based Charges, as submitted by the Consultant in Part C of its Financial Proposal, incorporating the changes, if any, agreed at Contract Negotiations.]

[The second table should be the finally agreed version of Table 2: Breakdown of Time-based Charges, as submitted by the Consultant in Part C of its Financial Proposal, incorporating the changes, if any, agreed at Contract Negotiations.]

6.2 Reimbursable Expenses

[The second table should be the finally agreed version of Table 3: Reimbursable Expenses, as submitted by the Consultant in Part D of its Financial Proposal, incorporating the changes, if any, agreed at Contract Negotiations. List any provisional sums that were included in the RFP.]

7. CURRICULA VITAE

[This section should contain the Curriculum Vitae (CV) for each Key and Non-Key Expert in the Consultant's team for the assignment. Each CV should be updated for the time that has elapsed since the Consultant submitted its Proposal and must be signed by the individual to whom it refers.]

APPENDIX 1: BANK GUARANTEE FOR ADVANCE PAYMENT

[If the Contract includes the facility for an advance payment to the Consultant under GCC Clause 45.1 (a), a Bank Guarantee is required. The format of the Bank Guarantee is shown below. After execution, the original of the Bank Guarantee should be included here as an Appendix to the Contract.]

Bank Guarantee for Advance Payment

_____ *[Name and Address of Issuing Bank]*

Beneficiary: _____ *[Name and Address of Client]*

Date: _____

ADVANCE PAYMENT GUARANTEE No.: _____

We have been informed that _____ *[name of Consultant or a name of the Joint Venture, as it appears on the signed Contract]* (hereinafter called "the Consultant") has entered into Contract No. _____ *[reference number of the contract]* dated _____ with you, for the provision of _____ *[brief description of Services]* (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum of AUD _____ *[insert amount in figures followed by amount in words]* is to be made against an advance payment guarantee.

At the request of the Consultant, we _____ *[name of bank]* hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of AUD _____ *[insert amount in figures followed by amount in words]* upon receipt by us of your first demand in writing accompanied by a written statement stating that the Consultant are in breach of their obligation under the Contract because the Consultant have used the advance payment for purposes other than toward providing the Services under the Contract.

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 Consultant in their account number _____ at _____ *[name and address of Consultant's bank]*.

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Consultant as indicated in copies of certified monthly statements which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of the monthly payment certificate indicating that the Consultant has made full repayment of the amount of the advance payment, or on the ___ day of _____, 2____, *[insert date of expiration of contract]* whichever is earlier. Consequently, any demand for

payment under this guarantee 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.

[signature(s)]