

LOW VALUE ASSIGNMENTS – TIME-BASED PAYMENTS

CONTRACT AGREEMENT

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LOW VALUE ASSIGNMENTS TIME-BASED PAYMENTS

Contract No. MPPC 001/2022

THIS CONTRACT (“Contract”) is entered into this insert starting date of assignment, by and between the Ministry of Police, Prisons and Corrections (“the procuring entity”) having its principal place of business at Main Headquarters, Tauese, Apia, Samoa, and insert consultant’s name (“the consultant”) having its principal office located at insert consultant’s address¹ for the provision of medical assistance and services for the Prisons and Corrections Service.

WHEREAS, the procuring entity wishes to engage the consultant to carry out the duties as set out in Annex A – Terms of Reference & Scope of Services (“the Services”) and;

WHEREAS, the consultant is willing to perform these services;

NOW THEREFORE the Procuring entity and the Consultant (“the Parties”) hereby agree as follows:

- 1. Services**
 - (i) The consultant shall perform the services specified in Annex A, “Terms of Reference and Scope of Services,” which is made an integral part of this Contract (“the Services”).
 - (ii) The consultant shall submit to the procuring entity the reports in the form and number listed in Annex B, “consultant's Reporting Obligations,” within the time periods listed in such Annex, and
 - (iii) The consultant shall provide the personnel listed in Annex C, “Cost Estimate of Services, List of Personnel and Schedule of Rates” to perform the Services.
- 2. Term**

The consultant shall perform the Services during the period commencing *insert start date* at *location* and continuing through to *insert completion date* or any other period as may be subsequently agreed by the parties in writing.
- 3. Payment**
 - A. Ceiling

For Services rendered pursuant to Annex A, the procuring entity shall pay the consultant an amount not to exceed a ceiling of *insert ceiling amount*. This amount has been established based on the understanding that it includes all

¹ Avoid use of “P.O. Box” address

of the consultant's costs and profits as well as any tax obligation that may be imposed on the consultant. The payments made under the Contract consist of the consultant's remuneration as defined in sub-paragraph B below and of the reimbursable expenditures as defined in sub-paragraph C below.

The consultant, Sub-consultants and their Personnel shall pay all applicable taxes, duties, fees and other impositions levied under the law of the Independent State of Samoa as specified in the Ceiling, the amount of which is deemed to have been included in the Contract Price.

B. Remuneration

The procuring entity shall pay the consultant for Services rendered at the rate(s) per man/month spent / per day spent / per hour spent, subject to a maximum of eight hours per day in accordance with the rates agreed and specified in Annex C, "Cost Estimate of Services, List of Personnel and Schedule of Rates." Remuneration shall be subject to applicable taxes as confirmed by the relevant authority, prior signing of the Contract.

C. Reimbursable

The procuring entity shall pay the consultant for reimbursable expenses in accordance with the rates agreed and specified in Annex C, which shall consist of and be limited to:

- (i) normal and customary expenditures for official travel, accommodation, printing, and telephone charges; official travel will be reimbursed at the cost of less than first class travel and will need to be authorized by the procuring entity's coordinator;
- (ii) such other expenses as approved in advance by the procuring entity's coordinator.

D. Payment Conditions

As soon as practicable and not later than fifteen (15) days after the end of each calendar month during the period of the Services, the consultant shall submit to the procuring entity, in duplicate, itemised statements, accompanied by copies of invoices, vouchers and other appropriate supporting materials, of the amounts payable pursuant to

Clauses 3A, 3B and 3C for that month. Each statement shall distinguish that portion of the total eligible costs which pertains to remuneration from that portion which pertains to reimbursable expenses.

Payment shall be made in Samoan Tala not later than 30 days following submission of invoices in duplicate to the Coordinator designated in paragraph 4.

An invoice is correctly rendered if:

- (a) the amount claimed and specified in the invoice is due for payment and is correctly calculated in accordance with the Contract;
- (b) it correctly identifies the Services provided and for which payment is claimed; and
- (c) it is correctly addressed to the procuring entity.

Payments shall be made to the consultant's bank account
insert banking details

The final payment under this Clause shall be made only after the final report and a final statement, identified as such, shall have been submitted by the consultant and approved as satisfactory by the procuring entity.

With the exception of the final payment above, payments do not constitute acceptance of the Services nor relieve the consultant of any obligations hereunder.

E. Commissions and Fees

The procuring entity will require the successful consultants to disclose any commissions or fees that may have been paid or are to be paid to agents, representatives, or commission agents 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, representative, or commission agent, the amount and currency, and the purpose of the commission or fee

4. Project Administration

A. Coordinator / Delegate

The procuring entity designates Mr. /Ms. *insert name and job title* as procuring entity's Coordinator/ Delegate; the Coordinator/ Delegate shall be responsible for the coordination of activities under the Contract, for receiving and approving invoices for payment, and for acceptance

of the deliverables by the procuring entity. The Coordinator/ Delegate has the responsibility for the general liaison with the consultant and may issue written notifications under the Contract.

B. Timesheets

During the course of their work under this Contract, including field work, the consultant's employees providing services under this Contract may be required to complete timesheets or any other document used to identify time spent, as well as expenses incurred, as instructed by the Project Coordinator.

C. Records and Accounts

The consultant shall keep, and shall cause its Sub-consultants to keep, accurate and systematic records and accounts in respect of the Services, which will clearly identify all charges and expenses. The procuring entity reserves the right to audit, or to nominate a reputable accounting firm to audit, the consultant's records relating to amounts claimed under this Contract during its term and any extension, and for a period of three months thereafter.

5. Performance Standard

The consultant undertakes to perform the Services with the highest standards of professional and ethical competence and integrity. The consultant shall promptly replace any employees assigned under this Contract that the procuring entity considers unsatisfactory.

6. Inspections and Auditing

The consultant shall permit, and shall cause its Sub-consultants to permit, the Government and/or persons or auditors appointed by the Government to inspect and/or audit its accounts and records and other documents relating to the submission of the Proposal to provide the Services and performance of the Contract. Any failure to comply with this obligation may constitute a prohibited practice subject to contract termination and/or the imposition of sanctions by the Government (including without limitation a determination of ineligibility) in accordance with prevailing Government's sanctions procedures.

7. Confidentiality

Except with the prior written consent of the procuring entity, the consultant and the Personnel 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 Personnel

make public the recommendations formulated in the course of, or as a result of, the Services.

The procuring entity may at any time require the consultants to give, and to arrange for their officers, employees, agents and subcontractors engaged in the performance of the Consultancy Services to give, prompt undertakings in writing in a form required by the procuring entity, relating to the non-disclosure of Confidential Information.

The obligations on the consultants under Clause 7 will not be taken to have been breached where the information referred to is legally required to be disclosed.

The obligations under Clause 7 shall survive the expiration or termination of this Contract.

8. Ownership of Material

Any studies, reports or other material, graphic, software or otherwise, prepared by the consultant for the procuring entity under the Contract shall belong to and remain the property of the procuring entity. The consultant may retain a copy of such documents and software.³

Upon the expiration or termination of this Contract, the consultant will deliver to the procuring entity all studies reports or other material, graphic, software or otherwise prepared by the consultant for the procuring entity, and all copies of it, and if necessary, transfer or have transferred any intellectual property rights to the procuring entity. Any future use of any documents or software prepared or used by the consultant under this Contract requires prior written approval of the procuring entity.

9. Consultant not to be engaged in Certain Activities

The consultant agrees that, during the term of this Contract and after its termination, the consultants and any entity affiliated with the consultant, shall be disqualified from providing goods, works or services (other than consulting services that would not give rise to a conflict of interest) resulting from or closely related to the Consulting Services for the preparation or implementation of the Project. The consultant warrants that, to the best of its knowledge after making diligent inquiry, at the date of commencement of the Consultancy Services that no conflict with the interests of the procuring entity exists or is likely to arise in the performance of the Consultancy Services.

³ Restrictions about the future use of these documents and software, if any, shall be specified at the end of Clause 8.

If, during the performance of the Services, a conflict of interest arises, or appears likely to arise, the consultant agrees to:

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

If the consultant does not notify the procuring entity or is unable or unwilling to resolve or deal with the conflict as required under Paragraph 9, the procuring entity may terminate this Contract in accordance with Paragraph 9 or Paragraph 14.

10. Insurance

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

11. Law Governing Contract and Language

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

12. Dispute Resolution

Any dispute arising out of this Contract, which cannot be amicably settled between the parties, shall be referred to adjudication/arbitration in accordance with the laws of the procuring entity's country.

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

- (e) failing a resolution within three (3) days after the fourteen (14) days in Paragraph 14 (d), either party may commence legal proceedings or, if agreed to by both parties to the arbitration of a single arbitrator under the *Arbitration Act 1976*.

13. Termination

- 13.1 Where a matter becomes a dispute in accordance with Paragraph 12, either party may, within 48 hours' notice to the other party, suspend the performance of the Services until such time as the dispute is resolved.
- 13.2 Paragraph 13 does not apply to either party commencing legal proceedings for urgent interlocutory relief.
- 13.3 The procuring entity may terminate this Contract with at least ten (10) working days prior written notice to the consultant after the occurrence of any of the events specified in paragraphs (a) through (d) of this Clause:
 - (a) If the consultant does not remedy a failure in the performance of its obligations under the Contract within seven (7) working days after being notified, or within any further period as the procuring entity may have subsequently approved in writing;
 - (b) If the consultant becomes insolvent or bankrupt;
 - (c) If the consultant, in the judgment of the procuring entity or the Government, has engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices (as defined in the prevailing Government's sanctions procedures) in competing for or in performing the Contract.
 - (d) If the procuring entity, in its sole discretion and for any reason whatsoever, decides to terminate this Contract.

13.4 Termination by the consultant

The consultant may terminate this Contract, by not less than thirty (30) calendar days' written notice to the procuring entity, in case of the occurrence of any of the events specified in paragraphs (a) and (b) of this Clause.

- (a) If the procuring entity fails to pay any money due to the consultant pursuant to this Contract and not subject to dispute, within forty-five (45) calendar days after receiving written notice from the consultant that such payment is overdue.
- (b) If the procuring entity 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 agreed in writing) following the receipt by the procuring entity of the consultant's notice specifying such breach.

13.5 Termination by default

Where a party fails to satisfy any of its obligations under this Contract, other than those referred to in Clauses 13.1 and 13.2 above, the other party may give notice requiring that the failure be remedied within a period of thirty (30) working days and if not remedied within that time, may terminate this contract immediately.

14. Effect of Termination

14.1. Upon receipt of a notice of termination from the procuring entity the consultant agrees to:

- (a) stop work as specified in the notice;
- (b) take all available steps to minimise loss resulting from that termination and to protect the procuring entity's Material referred to under Clause 9 and procuring entity property; and
- (c) continue to work on any part of the Services not affected by the notice.

14.2 Where there has been a termination under Clause 14, the procuring entity will be liable only for:

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

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

14.4 The procuring entity will not be liable to pay compensation under Clause 14.2(b) in an amount which would, in addition to any amounts paid or due, or becoming due, to the consultant under this Contract, together exceed the costs set out in Clause 3(a) of the Contract.

14.5 The consultant will not be entitled to compensation for loss of prospective profits.

15. Force Majeure

15.1 Definition

- (a) 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 which makes a Party’s performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances, and 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 (except where such strikes, lockouts or other industrial action are within the power of the Party invoking Force Majeure to prevent), confiscation or any other action by Government agencies.
- (b) Force Majeure shall not include (i) any event which is caused by the negligence or intentional action of a Party or such Party’s Sub-consultants or agents or employees, nor (ii) any event which a diligent Party could reasonably have been expected both to take into account at the time of the conclusion of this Contract and avoid or overcome in the carrying out of its obligations hereunder.
- (c) Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.

15.2 No Breach of Contract

The failure of a Party to fulfil 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 (a) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract; and (b) has informed the other Party as soon as possible about the occurrence of such an event.

15.3 Measures to be Taken

- (a) 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 minimise the consequences of any event of Force Majeure.
- (b) 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) 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.

- (c) 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.
- (d) 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 procuring entity, shall either:
 - (i) demobilise, in which case the consultant shall be reimbursed for additional costs they reasonably and necessarily incurred, and, if required by the procuring entity, in reactivating the Services; or
 - (ii) continue with the Services to the extent 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.
- (e) In the case of disagreement between the Parties as to the existence or extent of Force Majeure, the matter shall be settled according to Clause GCC 8.

15.4 Payments

During the period of their inability to perform the Services as a result of an event of Force Majeure, the consultant shall be entitled to continue to be paid under the terms of this Contract, as well as to be reimbursed for additional costs reasonably and necessarily incurred by them during such period for the purposes of the Services and in reactivating the Service after the end of such period.

16. Negation of Employment, Partnership and Agency

- 16.1 The relationship of the consultant to the procuring entity is that of independent contractor and nothing contained herein shall be construed as creating any other relationship. The consultant agrees not to represent himself, and to use his best endeavours to ensure that his officers, employees, agents and subcontractors do not represent themselves, as being an officer, employee, partner or agent of the

Principal, or as otherwise able to bind or represent the procuring entity.

16.2 The consultant is not by virtue of this Contract an officer, employee, partner or agent of the procuring entity, nor does the consultant have any power or authority to bind or represent the procuring entity.

17. Waiver

17.1 If a party does not exercise (or delays in exercising) any of its rights, that failure or delay does not operate as waiver of those rights. A single or partial exercise by a party of any of its rights does not prevent the further exercise of any right.

17.2 In Clause 17.1, 'rights' means rights or remedies provided by this Contract or at law.

18. Indemnity

18.1 The consultant agrees to indemnify the procuring entity from and against any:

(a) liability incurred by the consultant in the performance of the Consultancy Services;

(b) loss of or damage to property of the procuring entity caused by the consultant;

(c) loss or expense incurred by the procuring entity in dealing with any claim against it including legal costs and expenses resulting from any act or omission by the consultant, in connection with this Contract;

(e) any breach by the consultant of his obligations under this Contract, including any loss or damage attributable to any such breach; and

(f) any use or disclosure by the consultant, of Confidential Information held or controlled by him in connection with this Contract.

18.2 The consultant's liability to indemnify the procuring entity under sub-section 3.4 will be reduced proportionately to the extent that any negligent act or omission of the procuring entity contributed to the relevant liability, loss or damage.

18.3 The obligations under section 18 shall survive the expiration or termination of this Contract.

19. Corrupt and Fraudulent Practice

19.1 If the procuring entity determines that the consultant and/or its Personnel, sub-contractors, sub-consultants, services providers and suppliers has engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices, in competing

for or in executing the Contract, the procuring entity may, after giving 14 days' notice to the consultant, terminate the consultant's employment.

19.2 Should any Personnel of the consultant be determined to have engaged in corrupt, fraudulent, collusive, coercive, or obstructive practice during the execution of the Contract, that Personnel shall be removed.

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

- (i) "corrupt practice"² is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
- (ii) "fraudulent practice"³ is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
- (iii) "collusive practice"⁴ is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
- (iv) "coercive practice"⁵ 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;
- (v) "obstructive practice" is:
 - (aa) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Government investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or

² "Another party" refers to a public official acting in relation to the selection process or contract execution. In this context, "public official" includes Government staff and employees of other organisations taking or reviewing procurement decisions.

³ A "party" refers to a public official; the terms "benefit" and "obligation" relate to the selection process or contract execution; and the "act or omission" is intended to influence the selection process or contract execution.

⁴ "Parties" refers to participants in the selection process (including public officials) attempting to establish bid prices at artificial, non competitive levels.

⁵ A "party" refers to a participant in the selection process or contract execution.

- intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or
- (bb) acts intended to materially impede the exercise of the Government's inspection and audit rights provided for under Clause 6.
- 20. Assignment and Novation**
- 20.1 The consultant shall not assign its obligations, and agrees not to assign its rights, under this contract without, in either case, prior written approval from the procuring entity.
- 20.2 The consultant agrees not to consult with any other person for the purposes of entering into an agreement that would or could require novation of the contract without first consulting the procuring entity.
- 21. Skills Transfer**
- 21.1 The consultant shall use its best endeavours to impart skills and to instruct the procuring entity's employees with whom the consultant has contact in the performance of the Consultancy Services, with a view to increasing and consolidating the skills base within the procuring entity.
- 22. Security and access**
- 22.1 The consultant, when using the procuring entity's premises or facilities, shall comply with all rules, policies, directions and procedures including those relating to security and to workplace health and safety in effect at the premises or in regard to the facilities notified to the consultant by the procuring entity.
- 22.2 The consultant will give the Coordinator, and any other persons authorised in writing by the procuring entity, reasonable access to premises occupied by the consultant where the Consultancy Services are being undertaken and will permit them to inspect any Contract Material or other Material related to the Consultancy Services.
- 23. Notices**
- 23.1 Any notice, request or other communication to be given under this Contract is to be in writing and dealt with as follows:
- (a) if given by the consultant to the Principal – marked for the attention of the Delegate at the address indicated in Item I of the Schedule; or
- (b) if given by the procuring entity to the consultant – signed by the Delegate and marked with the address indicated below.

The addresses of the Parties for communication of a notice, request or consent are:

Procuring entity :

Attention :

Facsimile :

Consultant :

Attention :

Facsimile :

23.2 Any notice, request or other communication is to be delivered by hand or sent by pre-paid post or transmitted electronically, with confirming copy by hand or international courier and if it is sent or transmitted electronically a copy is to be sent to the addressee by pre-paid post. also

23.3 A notice, request or other communication shall deemed to be received:

(a) if delivered by hand, upon delivery;

(b) if sent by pre-paid post, upon the expiration of 2 working days after the date on which it was sent; and

(c) if transmitted electronically, upon receipt by the sender of an acknowledgment that the communication has been properly transmitted to the recipient.

24. Variations

24.1 No variation of this Contract is binding unless it is agreed in writing between the Parties.

25. Counterparts

25.1 The parties may execute this Contract in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all of the parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile is as effective as executing and delivering this Agreement in the presence of the other parties to this Agreement. This Agreement is effective upon delivery of one executed counterpart from each party to the other parties. This clause shall not apply if counterparts not required.

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

SIGNED by the _____, for and on behalf
of the **INDEPENDENT STATE OF SAMOA**)

In the presence of:)

.....

(Witness Name)

.....

(Witness Occupation)

.....

(Witness Address)

SIGNED by INSERT CONSULTANTS NAME)

as the consultant in the presence of)

.....

(Witness Name)

.....

(Witness Occupation)

.....

(Witness Address)

LIST OF ANNEXES

ANNEX A: Terms of Reference and Scope of Services

ANNEX B: Consultant's Reporting Obligations

ANNEX C: Cost Estimate of Services, List of Personnel and Schedule of Rates

Annex C

(1) Remuneration of Staff

	NAME	RATE (per month/day/ hour in currency)	TIME SPENT (number of month/day/hour)	TOTAL (currency)
(a) Team Leader				
(b)				
(c)				
				Sub-Total (1)

(2) Reimbursables⁶

	RATE	DAYS	TOTAL
(a) International Travel			
(b) Local Transportation			
(c) Per Diem			
			Sub-total (2)

⁶ To include expenses for international travel, local transportation, per diem, communications, reporting costs, visas, inoculations, routine medical examinations, portage fees, in-and-out expenses, airport taxes, and other such travel related expenses as may be necessary; reimbursable at cost with supporting documents/receipts; except for per diem (which is fixed and includes housing and _____ expenses).

TOTAL COST _____

CONTRACT CEILING _____