

Section VI - General Conditions of Contract

These General Conditions of Contract (“GCC”), read together with the Special Conditions of Contract (“SCC”) and other documents listed therein, shall be a complete document expressing fairly the rights and obligations of both parties.

All references in the GCC to the “SCC” are references to the “SCC Part A – Contract Data”.

The GCC can be used for small admeasurement (measure and value) contracts and lump sum contracts.

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A. General

1. Definitions

- 1.1 In the Conditions of Contract (“these Conditions”), which include Special Conditions of Contract, Parts A and B, and these General Conditions, the following words and expressions shall have the meanings stated. Words indicating persons or parties include corporations and other legal entities, except where the context requires otherwise. Boldface type is used to identify defined terms.
- (a) The **Accepted Contract Amount** has the same meaning as **Contract Price**.
 - (b) The **Activity Schedule** is a schedule of the activities comprising the construction, installation, testing, and commissioning of the works in a lump sum contract. **It includes a lump sum price for each activity**, which is used for valuations and for assessing the effects of Variations and Compensation Events.
 - (c) The **Adjudicator** is the person appointed jointly by the Principal and the contractor to resolve disputes in the first instance as provided for in clause 23.
 - (d) **Bill of Quantities** means the priced and completed Bill of Quantities forming part of the bid.
 - (e) **Compensation Events** are those defined in clause 41 hereunder.
 - (f) The **Completion Date** is the date of completion of the works as certified by the Engineer in accordance with clause 52.1.
 - (g) The **Contract** is the Contract between the Principal and the contractor to execute, complete, and maintain the works. It consists of the documents listed in clause 2.3.
 - (h) **Contract Agreement** means the contract agreement signed between the parties.
 - (i) The **contractor** is the party whose bid to carry out the works has been accepted by the Principal.
 - (j) The **contractor’s bid** is the completed bid document submitted by the contractor to the Principal.
 - (k) The **Contract Price** is the Accepted Contract Amount stated in the Letter of Acceptance and thereafter as

adjusted in accordance with the terms and conditions of Contract.

- (l) **Days** are calendar days; months are calendar months and year means 365 days.
- (m) **Dayworks** are varied work inputs subject to payment on a time basis for the contractor's employees and equipment, in addition to payments for associated materials and plant. Amounts payable for Daywork shall not be subject to adjustment for rise and fall in costs despite that the Contract may provide for adjustment in costs. In determining the value of Daywork, the following must be considered:
 - (i) the amount of wages and allowances paid by the Contractor at the rates obtaining on the Site at the time as established by the Contractor to the satisfaction of the Engineer or at such other rates as may be approved by the Engineer;
 - (ii) the amount paid by the Contractor in accordance with any statute;
 - (iii) the amount of hire charges in respect of constructional plant approved by the Engineer for use on the work in accordance with such hiring rates and conditions as may be agreed between the Engineer and Contractor or, in the absence of agreement, in accordance with such rates and conditions as may be determined by the Engineer;
 - (iv) the amount paid for services, subcontracts and professional fees;
 - (v) the actual cost to the Contractor at the Site of all materials supplied and required for the work;
 - (vi) a charge agreed between the Engineer and Contractor to cover overheads, administrative costs, site supervision, establishment costs, attendance and profit, or in the absence of an agreement, a reasonable charge determined by the Engineer.
- (n) A **Defect** is any part of the works not completed in accordance with the Contract and identified by the Principal and notified to the contractor, either before or after end of the Contract.

- (o) The **Defects Liability Certificate** is the certificate issued by the **Engineer** upon correction of defects by the contractor.
- (p) The **Defects Liability Period** is the period **named in the SCC 33.1** and calculated from the Completion Date.
- (q) **Drawings** means the drawings of the works, as included in the Contract, and any additional and modified drawings issued by (or on behalf of) the Principal in accordance with the Contract and includes calculations and other information provided or approved by the Engineer for the execution of the Contract.
- (r) The **Engineer** is the person appointed by the Principal and **named in the SCC** (or any other competent person appointed by the Principal and notified to the contractor) who is professionally qualified and registered to assume responsibility for the engineering management, design and implementation of the works (as applicable) in accordance with the Professional Engineers (Registrations) Act 1998) and is responsible for supervising the execution of the works and administering the Contract.

The Registered Engineer is the professionally qualified engineer appointed by the contractor to assume responsibility for the engineering management, design and implementation of the works (as applicable) in accordance with the Professional Engineers (Registrations) Act 1998.
- (s) **Equipment** is the contractor's machinery and vehicles brought temporarily to the Site to construct the works.
- (t) **Force Majeure** means an exceptional event or circumstance which is beyond a Party's control; which such Party could not reasonably have provided against before entering into the Contract; which, having arisen, such Party could not reasonably have avoided or overcome; and, which is not substantially attributable to the other Party.
- (u) **In writing** or **written** means hand-written, type-written, printed or electronically made and resulting in a permanent record;

- (v) **The Initial Contract Price** is the Contract Price listed in the Principal's Letter of Acceptance.
- (w) **The Intended Completion Date** is the date on which it is intended that the contractor shall complete the works. The Intended Completion Date is **specified in the SCC**. The Intended Completion Date may be revised only by the Engineer by issuing an extension of time or an acceleration order.
- (x) **Latent condition** refer to:
 - (i) physical conditions on the Site or its surroundings, including artificial things but excluding weather conditions at the Site, which differ materially from the physical conditions which should reasonably have been anticipated by the Contractor at the time of the Contractor's bid if the Contractor had:
 - A. examined all information made available in writing by the Principal to the Contractor for the purpose of bidding; and
 - B. examined all information relevant to the risks, contingencies and other circumstances having an effect on the tender and obtainable by the making of reasonable enquiries; and
 - C. inspected the Site and its surroundings; and
 - (ii) any other conditions which the Contract specifies to be latent conditions
- (y) **Letter of Acceptance** means the formal acceptance by the Principal of the bid and denotes the formation of the Contract at the date of acceptance.
- (z) **Materials** are all supplies, including consumables used by the contractor for incorporation in the works.
- (aa) **Party** means the Principal or the contractor, as the context requires.
- (bb) **Plant** is any integral part of the works that shall have a mechanical, electrical, chemical, or biological function.
- (cc) The **Principal** is the party who contracts the contractor to carry out the works, **as specified in the SCC**.
- (dd) **SCC** means the Special Conditions of Contract
- (ee) **The Site** is the area defined as such **in the SCC**.

- (ff) **Site Investigation Reports** are those that were included in the Bidding Documents and are factual and interpretative reports about the surface and subsurface conditions at the Site.
- (gg) **Specification** means the specification of the works included in the Contract and any modification or addition made or approved by the Engineer.
- (hh) The **Start Date** is **given in the SCC**. It is the latest date when the contractor shall commence execution of the works. It does not necessarily coincide with any of the Site Possession Dates.
- (ii) A **Subcontractor** is a person or corporate body who has a Contract with the contractor to carry out a part of the works in the Contract which includes work on the Site.
- (jj) **Temporary works** are works designed, constructed, installed, and removed by the contractor that are needed for construction or installation of the works and the remedying of any defects.
- (kk) A **Variation** is an instruction given by the Engineer at the direction of, or with the Principal's approval which varies the works and may also be a result of a Compensation Event or latent conditions.
- (ll) The **works** are what the Contract requires the contractor to construct, install, and turn over to the Principal **as defined in the SCC**.

2. Interpretation

- 2.1 In interpreting these GCC, words indicating one gender include all genders. Words indicating the singular also include the plural and words indicating the plural also include the singular. Headings have no significance. Words have their normal meaning under the language of the Contract unless specifically defined. The Engineer shall provide instructions clarifying queries about these GCC.
- 2.2 If sectional completion is **specified in the SCC**, references in the GCC to the works, the Completion Date, and the Intended Completion Date apply to any Section of the works (other than references to the Completion Date and Intended Completion Date for the whole of the works).
- 2.3 The documents forming the Contract shall be interpreted in the following order of priority:

- (a) Contract Agreement,
 - (b) Letter of Acceptance,
 - (c) Special Conditions of Contract (“GCC”),
 - (d) General Conditions of Contract (“SCC”),
 - (e) Contractor’s Bid,
 - (f) Specifications,
 - (g) Drawings,
 - (h) Bill of Quantities,¹ and
 - (i) any other document **listed in the SCC** as forming part of the Contract.
- 3. Language and Law** 3.1 The language of the Contract is English and the law governing the Contract are the laws of the Independent State of Samoa.
- 4. Engineer’s Decisions** 4.1 Except where otherwise specifically stated, the Engineer shall in consultation with the Principal decide contractual matters between the Principal and the contractor in the role of representing the Principal and to ensure that, the works is carried out and completed in accordance with the Contract.
- 5. Delegation** 5.1 Otherwise **specified in the SCC**, the Engineer may delegate any of his/her duties and responsibilities to other people, except to the Adjudicator after notifying the contractor, and may revoke any delegation after notifying the contractor.
- 6. Communications** 6.1 Communications between parties that are referred to in the Conditions shall be effective only when in writing. A notice shall be effective only when it is delivered.
- 7. Subcontracting** 7.1 The contractor may subcontract with the approval of the Engineer in writing up to a maximum of 20% of the Contract Price. The contractor may not assign the Contract without the approval of the Engineer in writing. Subcontracting shall not alter the contractor’s obligations.
- 7.2 The contractor shall be responsible for the acts, defaults and neglects of any approved sub-contractors.
- 8. Other Contractors** 8.1 The contractor shall cooperate and share the Site with other contractors, public authorities, utilities, and the Principal between the dates given in the Schedule of Other Contractors, as

¹ In lump sum contracts, delete “Bill of Quantities” and replace with “Activity Schedule”.

referred to in the SCC. The contractor shall also provide facilities and services for them as described in the Schedule. The Principal may modify the Schedule of Other Contractors and shall notify the contractor of any such modification.

9. Personnel and Equipment

- 9.1 The contractor shall employ the key personnel and use the equipment identified in its bid, to carry out the works or other personnel and equipment approved by the Engineer. The Engineer shall approve any proposed replacement of key personnel and equipment only if their relevant qualifications or characteristics are substantially equal to or better than those listed in the bid and at no additional cost to the Principal.
- 9.2 The contractor shall appoint an Engineer for the duration of the works. The registered Engineer shall be a fully qualified corporate member of the Institute of Professional Engineers Samoa (IPES) or be in possession of an alternative professional qualification recognized by IPES as qualifying for corporate membership of IPES and who shall register as a member of IPES within twenty eight (28) days of the Commencement Date.
- 9.3 If the Engineer asks the contractor to remove a person who is a member of the contractor's staff or work force, stating the reasons, the contractor shall ensure that the person leaves the Site within seven (7) days and has no further connection with the work in the Contract.

10. Principal's and contractor's risks

- 10.1 The Principal carries the risks which this Contract states are Principal's risks, and the contractor carries the risks which this Contract states are contractor's risks.

11. Principal's risks

- 11.1 From the Start Date until the Defects Liability Certificate has been issued or until all defects have been rectified to the satisfaction of the Principal (whichever period is longer), the following are the Principal's risks:
- (a) The risk of personal injury, death, or loss of or damage to property (excluding the works, Plant, Materials, and Equipment), which are due to –
 - (i) use or occupation of the Site by the works or for the purpose of the works, which is the unavoidable result of the works; or
 - (ii) negligence, breach of statutory duty, or interference with any legal right by the Principal or by any

person employed by or contracted to him except the contractor.

- (b) The risk of damage to the works, Plant, Materials, and Equipment to the extent that it is due to a fault of the Principal or in the Principal's design, or due to war or radioactive contamination directly affecting where the works are to be executed.
- (c) The risk of the Principal pursuant to sub-clause (a) above does not extend to include losses of that nature brought about by the contractor's employees or subcontractors.

11.2 From the Completion Date until the Defects Liability Certificate has been issued, the risk of loss of or damage to the works, Plant, Materials and Equipment is the Principal's risk except loss or damage due to:

- (a) a Defect which existed on the Completion Date,
- (b) an event occurring before the Completion Date, which was not itself a Principal's risk, or
- (c) the activities of the contractor on the Site after the Completion Date.

12. Contractor's risks and warranties

12.1 From the Starting Date until the Defects Liability Certificate has been issued, the risks of personal injury, death, and loss of or damage to property (including, without limitation, the works, Plant, Materials, and Equipment) which are not Principal's risks are contractor's risks.

12.2 The Contractor warrants to do the following and in the event of anything to the contrary, the Principal shall have the right to take appropriate actions against the Contractor:

- (a) to provide goods and materials of a merchantable quality and of appropriate, reasonably fit for their intended purpose, and suitability of materials;
- (b) compliance with legal requirements;
- (c) to ensure quality workmanship;
- (d) adherence to plans; and
- (e) to ensure that the intended structure for which the works are carried out, is suitability for occupation upon completion of the works; and

- (f) to carry out the works in question in a proper and workmanlike manner; and
- (g) where services are provided, that the services concerned be provided with reasonable care and skill.

13. Insurance

13.1 The contractor shall provide, in the joint names of the Principal and the contractor, insurance cover from the Start Date to the end of the Defects Liability Period or an open insurance cover to extend after the Defects Liability Period until all defects have been rectified to the satisfaction of the Principal (whichever period is longer), in the amounts and deductibles **stated in the SCC** for the following events which are due to the contractor's risks:

- (a) loss of or damage to the works, Plant, and Materials;
- (b) loss of or damage to Equipment;
- (c) loss of or damage to property (except the works, Plant, Materials, and Equipment) in connection with the Contract; and
- (d) personal injury or death.

13.2 Policies and certificates for insurance shall be delivered by the contractor to the Principal for the Principal's approval before the Start Date or within 30 days from the date of signing of the Contract. All such insurance shall provide for compensation to be payable in the types and proportions of currencies required to rectify the loss or damage incurred.

13.3 Alterations to the terms of an insurance policy shall not be made without the approval of the Engineer in consultation with the Principal.

13.4 Both parties shall comply with any conditions of the insurance policies.

14. Site Data

14.1 The contractor shall be deemed to have examined any Site Data **referred to in the SCC**, supplemented by any information available to the contractor.

15. Contractor to construct the works

15.1 The contractor shall construct and install the works in accordance with the Specifications and Drawings which forms part of this Contract.

15.2 The contractor shall, in consideration for the Contract Price, execute and complete the works with due care, skill and diligence and in a sound, proper and workman like manner in

accordance with the terms and conditions of this Contract and in conformity with all directions and requirements of the Engineer.

15.3 In performing the works, the contractor shall use high quality materials which are suitable for the works. If the Engineer is of the opinion that any materials or work are unsatisfactory and do not comply with the quality requirements of this Contract, the Engineer may direct the contractor, at no extra cost to the Principal, to remove the materials, demolish or reconstruct the works, replace or correct the material or works as the case may be.

15.4 The contractor shall be responsible for the connection of all water, drainage, sewerage, and electricity services necessary for the completion of the Works and shall apply for all the relevant permits and pay all associated fees and charges that are levied by the appropriate authorities from the Contract Price.

16. The works to Be Completed by the Intended Completion Date

16.1 The contractor may commence execution of the works on the Start Date and shall carry out the works in accordance with the Program submitted by the contractor, as updated with the approval of the Engineer, and complete them by the Intended Completion Date.

17. Approval by the Engineer

17.1 The contractor shall submit Specifications and Drawings showing the proposed Temporary works to the Engineer for his approval.

17.2 The contractor shall be responsible for design of Temporary works.

17.3 The Engineer's approval shall not alter the contractor's responsibility for design of the Temporary works.

17.4 The contractor shall obtain approval of third parties to the design of the Temporary works, where required.

17.5 All Drawings prepared by the contractor for the execution of the temporary or permanent works, are subject to prior approval by the Engineer before this use.

18. Safety

18.1 The contractor shall be responsible for the safety of all activities on the Site. The contractor shall implement sound and appropriate safety measures to protect members of the public and other third parties from any harm whatsoever and in accordance with all relevant occupational health and safety legislation applicable to the Site and for the purposes of such

legislation the contractor shall be deemed to be in control of the Site at all times for the duration of the Contract.

18.2 The contractor shall ensure that the Site of the works is well secured and protected at all times from any unauthorised entry or any other harm or damage during both working and non-working hours for the duration of the works. The contractor shall pay for any damages or losses whatsoever resulting from any failure to properly secure the Site.

19. Discoveries

19.1 Anything of historical or other interest or of significant value unexpectedly discovered on the Site shall be the property of the Principal. The contractor shall notify the Engineer of such discoveries and carry out the Engineer's instructions for dealing with them.

20. Possession of the Site

20.1 The Principal shall give possession of all parts of the Site to the contractor. If possession of a part is not given by the date **stated in the SCC**, the Principal shall be deemed to have delayed the start of the relevant activities, and this shall be a Compensation Event.

21. Access to the Site

21.1 The contractor shall allow the Engineer and any person authorized by the Engineer access to the Site and to any place where work in connection with the Contract is being carried out or is intended to be carried out.

22. Instructions, Inspections and Audits

22.1 The contractor shall carry out all instructions of the Engineer which comply with the applicable laws where the Site is located.

22.2 The contractor shall permit, and shall cause its Subcontractors and sub consultants to permit the Principal and/or persons appointed by the Principal to inspect the Site and/or the accounts and records of the contractor and its sub-contractors relating to the performance of the Contract and the submission of the bid, and to have such accounts and records audited by auditors appointed by the Principal if requested by the Principal.

22.3 The contractor's and its Subcontractors' and sub consultants' attention is drawn to GCC 57.1 which provides, inter alia, that acts intended to materially impede the exercise of the Principal's inspection and audit rights provided for under GCC 22.2 constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility pursuant to the Principal's prevailing sanctions procedures).

23. Appointment of the Adjudicator

23.1 The Adjudicator shall be appointed jointly by the Principal and the contractor, at the time of the p Principal's issuance of the Letter of Acceptance. If, in the Letter of Acceptance, the Principal does not agree on the appointment of the Adjudicator, the Principal will request the Appointing Authority **designated in the SCC**, to appoint the Adjudicator within fourteen (14) days of receipt of such request.

23.2 Should the Adjudicator resign or die, or should the Principal and the contractor agree that the Adjudicator is not functioning in accordance with the provisions of the Contract, a new Adjudicator shall be jointly appointed by the Principal and the contractor. In case of disagreement between the Principal and the contractor, within thirty (30) days, the Adjudicator shall be designated by the Appointing Authority **designated in the SCC** at the request of either party, within fourteen (14) days of receipt of such request.

24. Procedure for Disputes

24.1 If the contractor believes that a decision taken by the Engineer was either outside the authority given to the Engineer by the Contract or that the decision was wrongly taken, the contractor shall notify the Principal and thereafter first enter into good faith negotiations to resolve the dispute in a fair and equitable manner without the need for adjudication or arbitration. If the good faith negotiations do not result in an acceptable resolution contractor within 14 days of the contractor notifying the Principal of a disagreement with the Engineer's decision, the decision shall immediately be referred to the Adjudicator within fourteen (14) days of the notification of the Engineer's decision.

24.2 The Adjudicator shall give a decision in writing within twenty-eight (28) days of receipt of a notification of a dispute.

24.3 The Adjudicator shall be paid by the hour at the **rate specified in the SCC**, together with reimbursable expenses of the types **specified in the SCC**, and the cost shall be divided equally between the Principal and the contractor, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within twenty-eight 28 days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above twenty-eight 28 days, the Adjudicator's decision shall be final and binding.

24.4 The arbitration shall be conducted in accordance with the arbitration procedures published by the institution named and in the place specified **in the SCC**.

B. Time Control

25. Program

25.1 Within the time **stated in the SCC**, after the date of the Letter of Acceptance, the contractor shall submit to the Engineer for approval a Program showing the general methods, arrangements, order, and timing for all the activities in the works. In the case of a lump sum contract, the activities in the Program shall be consistent with those in the Activity Schedule.

25.2 An update of the Program shall be a program showing the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining work, including any changes to the sequence of the activities.

25.3 The contractor shall submit to the Engineer for approval an updated Program at intervals no longer than the period **stated in the SCC**. If the contractor does not submit an updated Program within this period, the Engineer may withhold the amount **stated in the SCC** from the next payment certificate and continue to withhold this amount until the next payment after the date on which the overdue Program has been submitted. In the case of a lump sum contract, the contractor shall provide an updated Activity Schedule within fourteen (14) days of being instructed to by the Engineer.

25.4 The Engineer's approval of the Program shall not alter the contractor's obligations. The contractor may revise the Program and submit it to the Engineer again at any time. A revised Program shall show the effect of Variations and Compensation Events.

26. Extension of the Intended Completion Date

26.1 The Engineer shall extend the Intended Completion Date if:

- (a) a Compensation Event occurs; or
- (b) a Variation is issued which makes it impossible for Completion to be achieved by the Intended Completion Date without the contractor taking steps to accelerate the remaining work, which would cause the contractor to incur additional cost; or
- (c) any other event occurring on or before the Intended Completion Date which is beyond the reasonable control

of the Contractor including but not limited to industrial conditions or inclement weather; or

- (d) any of the following events whether occurring before, on or after the Intended Completion Date:
 - (i) delays caused by the Principal, Engineer or Principal's employees, consultants, contractors or other agents;
 - (ii) actual quantities of work being greater than the quantities in the Bill of Quantities;
 - (iii) latent conditions;
 - (iv) repudiation or abandonment by a nominated subcontractor;
 - (v) changes in the law;
 - (vi) delays by a public or statutory authority not caused by the Contractor;
 - (vii) any breach of the Contract by the Principal; or
 - (viii) any other cause which is expressly stated in the Contract to be a cause for extension of time to ensure completion of the works.

26.2 The Engineer shall decide whether and by how much to extend the Intended Completion Date within twenty-one (21) days of the contractor asking the Engineer for a decision upon the effect of a Compensation Event or Variation and submitting full supporting information. If the contractor has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay by this failure shall not be considered in assessing the new Intended Completion Date.

26.3 Where more than one event causes concurrent delays and the cause of at least one of those events is not a cause referred to in clause 26.1, then to the extent that the delays are concurrent, the Contract shall not be entitled to an extension of time.

27. Acceleration

27.1 When the Principal wants the contractor to finish before the Intended Completion Date, the Engineer shall obtain priced proposals for achieving the necessary acceleration from the contractor. If the Principal accepts these proposals, the Intended Completion Date shall be adjusted accordingly and confirmed in writing by both the Principal and the contractor.

27.2 If the contractor's priced proposals for an acceleration are accepted by the Principal, they are incorporated into the Contract Price and treated as a Variation.

- 28. Delays Ordered by the Engineer** 28.1 The Engineer may instruct the contractor to delay the start or progress of any activity within the works at the direction of the Principal.
- 29. Management Meetings** 29.1 Either the Engineer or the contractor may require the other to attend a management meeting. The business of a management meeting shall be to review the plans for remaining work and to deal with matters raised in accordance with the early warning procedure.
- 29.2 The Engineer shall record the business of management meetings and provide copies of the record to those attending the meeting and to the Principal. The responsibility of the parties for actions to be taken shall be decided by the Engineer either at the management meeting or after the management meeting and stated in writing to all who attended the meeting.
- 30. Early Warning** 30.1 The contractor shall warn the Engineer at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the work, increase the Contract Price, or delay the execution of the works. The Engineer may require the contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Completion Date. The estimate shall be provided by the contractor as soon as reasonably possible.
- 30.2 The contractor shall cooperate with the Engineer in making and considering proposals for how the effect of such an event or circumstance can be avoided or reduced by anyone involved in the work and in carrying out any resulting instruction of the Engineer.

C. Quality Control

- 31. Identifying Defects** 31.1 The Engineer shall check the contractor's work and notify the contractor of any Defects that are found. Such checking shall not affect the contractor's responsibilities. The Engineer may instruct the contractor to search for a Defect and to uncover and test any work that the Engineer considers may have a Defect. Notification of defects may either be before or after end of the Contract and such defects must be rectified within the Defects Liability Period or until such time that the Principal is satisfied with rectification completed (whichever is the longer period).
- 32. Tests** 32.1 If the Engineer instructs the contractor to carry out a test not specified in the Specification to check whether any work has a Defect and the test shows that it does, the contractor shall pay for

the test and any samples. If there is no Defect, the test shall be a Compensation Event.

33. Correction of Defects

- 33.1 The Engineer shall give notice to the contractor of any Defects before the end of the Defects Liability Period, which begins at Completion, and is **defined in the SCC**. The Defects Liability Period shall be extended for as long as Defects remain to be corrected and to the satisfaction of the Principal.
- 33.2 Every time notice of a Defect is given, the contractor shall correct the notified Defect within the length of time specified by the Engineer's notice.
- 33.3 If any work needing rectification during the Defects Liability Period is not commenced or completed by the date required by the Principal, the Principal shall require the rectification to be carried out at the Contractor's expense, but without prejudice to any other rights that the Principal may have against the Contractor with respect to such omission or defect and the cost of the work of rectification incurred by the Principal shall be a debt due from the Contractor.
- 33.4 If it is necessary for the Contractor to carry out work of rectification, the Contractor shall do so at times and in a manner which causes as little inconvenience to the occupants or users of the works as is reasonably possible.

34. Uncorrected Defects

- 34.1 If the contractor has not corrected a Defect within the time specified in the Engineer's notice, the Engineer shall assess the cost of having the Defect corrected, and the contractor shall pay this amount.

D. Cost Control

35. Bill of Quantities or Activity Schedule

- 35.1 In the case of an admeasurement contract (measure and value), the Bill of Quantities shall contain priced items for the works to be performed by the contractor.
- 35.2 The Bill of Quantities is used to calculate the Contract Price. The contractor will be paid for the quantity of the work accomplished at the rate in the Bill of Quantities for each item.
- 35.3 In the case of a lump sum contract, the Activity Schedule shall contain the priced activities for the works to be performed by the contractor. The Activity Schedule is used to monitor and control the performance of activities on which basis the contractor will be paid. If payment for Materials on Site shall be made separately, the

contractor shall show delivery of Materials to the Site separately on the Activity Schedule.

36. Changes in the Contract Price

- 36.1 In the case of an admeasurement (measure and value) contract:
- (a) If the final quantity of the work done differs from the quantity in the Bill of Quantities for the particular item by more than twenty-five percent (25%), provided the change exceeds one percent (1%) percent of the Initial Contract Price, the Engineer shall adjust the rate to allow for the change.
 - (b) The Engineer shall not adjust rates from changes in quantities if thereby the Initial Contract Price is exceeded by more than fifteen percent (15%), except with the prior approval of the Principal.
 - (c) If requested by the Engineer, the contractor shall provide the Engineer with a detailed cost breakdown of any rate in the Bill of Quantities.
- 36.2 In the case of a lump sum contract, the Activity Schedule shall be amended by the contractor to accommodate changes of Program or method of working made at the contractor's own discretion. Prices in the Activity Schedule shall not be altered when the contractor makes such changes to the Activity Schedule.

37. Variations

- 37.1 No variation of this Contract is binding unless it is agreed to in writing between the Parties.
- 37.2 All Variations shall be included in updated Programs and in the case of a lump sum contract, also in the Activity Schedule produced by the contractor and shall form part of this Contract.
- 37.3 The contractor shall provide the Engineer with a quotation for carrying out the Variation when requested to do so by the Engineer. The Engineer shall assess the quotation, which shall be given within seven (7) days of the request or within any longer period stated by the Engineer and before the Variation is ordered.
- 37.4 If the contractor's quotation is unreasonable, the Engineer may order the Variation and make a change to the Contract Price, which shall be based on the Engineer's own forecast of the effects of the Variation on the contractor's costs.
- 37.5 If the Engineer decides that the urgency of varying the work would prevent a quotation being given and considered without delaying the work, no quotation shall be given and the Variation shall be treated as a Compensation Event.

- 37.6 The contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning.
- 37.7 In the case of an admeasurement (measure and value) contract, if the work in the Variation corresponds to an item description in the Bill of Quantities and if, in the opinion of the Engineer, the quantity of work above the limit stated in GCC 38.1 or the timing of its execution do not cause the cost per unit of quantity to change, the rate in the Bill of Quantities shall be used to calculate the value of the Variation. If the cost per unit of quantity changes, or if the nature or timing of the work in the Variation does not correspond with items in the Bill of Quantities, the quotation by the contractor shall be in the form of new rates for the relevant items of work.
- 37.8 The Engineer or Principal is not obliged to approve a variation for the convenience of the Contractor.

**38. Cash Flow
Forecasts**

- 38.1 When the Program, or, in the case of a lump sum contract, the Activity Schedule, is updated, the contractor shall provide the Engineer with an updated cash flow forecast. The cash flow forecast shall include different currencies, as defined in the Contract, converted as necessary using the Contract exchange rates.

**39. Payment
Certificates**

- 39.1 The contractor shall submit to the Engineer monthly statements of the estimated value of the work executed less the cumulative amount certified previously.
- 39.2 The Engineer shall check the contractor's monthly statement and certify the amount to be paid to the contractor.
- 39.3 The value of work executed shall be determined by the Engineer.
- 39.4 The value of work executed shall comprise:
- (a) In the case of an admeasurement (measure and value) contract, the value of the quantities of work in the Bill of Quantities that have been completed; or
 - (b) In the case of a lump sum contract, the value of work executed shall comprise the value of completed activities in the Activity Schedule.
- 39.5 The value of work executed shall include the valuation of Variations and Compensation Events (where applicable).
- 39.6 The Engineer may exclude any item certified in a previous certificate or reduce the proportion of any item previously certified in any certificate in the light of later information.
- 39.7 The payment of monies by the Principal in accordance with a Progress Payment shall not be taken as evidence against or as an

admission by the Principal that any work specified in such progress certificate has been constructed or carried out in accordance with this Contract as to the value thereof, but will be taken to be payment on account only.

40. Payments

- 40.1 Payments shall be adjusted for deductions for advance payments and retention. The Principal shall pay the contractor the amounts certified by the Engineer within twenty-eight (28) days of the date of each certificate.
- 40.2 If an amount certified is increased in a later certificate or as a result of an award by the Adjudicator or an Arbitrator, the contractor shall be paid interest upon the delayed payment as set out in this clause. Interest shall be calculated from the date upon which the increased amount would have been certified in the absence of dispute.
- 40.3 Unless otherwise stated, all payments and deductions shall be paid or charged in the proportions of currencies comprising the Contract Price.
- 40.4 Items of the works for which no rate or price has been entered in shall not be paid for by the Principal and shall be deemed covered by other rates and prices in the Contract.

41. Compensation Events

- 41.1 The following shall be Compensation Events:
- (a) The Principal does not give access to a part of the Site by the Site Possession Date pursuant to GCC 20.1.
 - (b) The Principal modifies the Schedule of Other Contractors in a way that affects the work of the contractor under the Contract.
 - (c) The Engineer orders a delay or does not issue Drawings, Specifications, or instructions required for execution of the works on time (in which case, the Engineer shall bear the costs of such).
 - (d) The Engineer instructs the contractor to uncover or to carry out additional tests upon work, which is then found to have no Defects.
 - (e) The Engineer unreasonably (and without the Principal's knowledge) does not approve a subcontract to be let (in which case, the Engineer shall bear the costs of such).
 - (f) Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of the Letter of Acceptance from the information issued to bidders

(including the Site Investigation Reports), from information available publicly and from a visual inspection of the Site.

- (g) The Engineer gives an instruction for dealing with an unforeseen condition caused by the Principal or additional work required for safety or other reasons.
- (h) Other contractors, public authorities, utilities, or the Principal does not work within the dates and other constraints stated in the Contract, and they cause delay or extra cost to the contractor.
- (i) The advance payment is delayed.
- (j) The effects on the contractor of any of the Principal's risks.
- (k) The Engineer unreasonably delays issuing a Certificate of Completion (in which case, the Engineer shall bear the costs of such).
- (l) Other Compensation Events as may be described in the Contract or determined by the Engineer shall apply.

41.2 If a Compensation Event would cause additional cost or would prevent the work being completed before the Intended Completion Date, the Contract Price shall be increased and/or the Intended Completion Date shall be extended. The Engineer shall, in consultation with the Principal decide whether and by how much the Contract Price shall be increased and whether and by how much the Intended Completion Date shall be extended. The Engineer must seek endorsement of the Principal before any variation to the Contract Price or extension to Intended Completion Date is effected.

41.3 As soon as information demonstrating the effect of each Compensation Event upon the contractor's forecast cost has been provided by the contractor, it shall be assessed by the Engineer, and the Contract Price shall be adjusted accordingly. If the contractor's forecast is deemed unreasonable, the Engineer shall adjust the Contract Price based on the Engineer's own forecast. The Engineer shall assume that the contractor shall react competently and promptly to the event.

41.4 The contractor shall not be entitled to compensation to the extent that the Principal's interests are adversely affected by the contractor not having given early warning or not having cooperated with the Engineer.

- 42. Tax, duties and other charges** 42.1 The Engineer shall adjust the Contract Price if applicable taxes, duties, and other levies are changed between the date twenty eight (28) days before the submission of bids for the Contract and the date of the last Completion certificate, as confirmed by the relevant authority. The adjustment shall be the change in the amount of tax payable by the contractor, provided such changes are not already reflected in the Contract Price or are a result of GCC 44.
- 43. Currencies** 43.1 Where payments are made in currencies other than Samoan Tala ST\$, the exchange rates used for calculating the amounts to be paid shall be the exchange rates stated in the contractor's bid.
- 44. Price Adjustment** 44.1 Prices shall be adjusted for fluctuations in the cost of inputs only if **provided for in the SCC**. If so provided, the amounts certified in each payment certificate, before deducting for Advance Payment, shall be adjusted by applying the respective price adjustment factor to the payment amounts due in each currency. A separate formula of the type indicated below applies to each Contract currency:
- $P_c = A_c + B_c I_{mc}/I_{oc}$**
- where:
- P_c is the adjustment factor for the portion of the Contract Price payable in a specific currency "c."
- A_c and B_c are coefficients² **specified in the SCC**, representing the nonadjustable and adjustable portions, respectively, of the Contract Price payable in that specific currency "c;" and
- I_{mc} is the index prevailing at the end of the month being invoiced and I_{oc} is the index prevailing twenty-eight (28) days before Bidding opening for inputs payable; both in the specific currency "c."
- 44.2 If the value of the index is changed after it has been used in a calculation, the calculation shall be corrected and an adjustment made in the next payment certificate. The index value shall be deemed to take account of all changes in cost due to fluctuations in costs.
- 45. Retention** 45.1 The Principal shall retain from each payment due to the contractor the proportion of the Contract Price **stated in the SCC** until Completion of the whole of the works.

² *The sum of the two coefficients A_c and B_c should be 1 (one) in the formula for each currency. Normally, both coefficients shall be the same in the formulae for all currencies, since coefficient A, for the nonadjustable portion of the payments, is a very approximate figure (usually 0.15) to take account of fixed cost elements or other nonadjustable components. The sum of the adjustments for each currency are added to the Contract Price.*

- 45.2 Upon the issue of a Certificate of Completion of the works by the Engineer, in accordance with GCC 51.1, the total amount retained shall be repaid to the contractor when the Defects Liability Period has passed and the Engineer has certified that all Defects notified by the Engineer to the contractor before the end of this period have been corrected. The contractor may substitute retention money with an “on demand” bank guarantee.
- 45.3 If the Principal requires, a retention bond may be used instead of a cash retention, and in which case, the Contractor shall pay to the Principal a retention bond in the value of ten percent (10%) of the Contract Price in the form of a bank guarantee and the same must be valid for the duration of the Contract including the Defects Liability Period. In the case of a retention bond, the money that would have been held or retained is paid out and the retention bond is provided to secure that amount.
- 45.4 A retention ensures that the Contractor adequately and faithfully completes the performance of the works required under the Contract, and acts as a safeguard against defects in case the Contractor fails to correct a defect. Half of the retention is released on certification of Completion of the works, and the remaining half is released upon certification of rectifying any defects.

46. Liquidated Damages

- 46.1 The contractor shall pay liquidated damages to the Principal at the rate per day **stated in the SCC** for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount **defined in the SCC**. The procuring Principal may deduct liquidated damages from payments due to the contractor. Payment of liquidated damages shall not affect the contractor’s liabilities.
- 46.2 If the Intended Completion Date is extended after liquidated damages have been paid, the Engineer shall correct any overpayment of liquidated damages by the contractor by adjusting the next payment certificate. The contractor shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in GCC 40.1.

47. Bonus

- 47.1 The contractor shall not be paid a Bonus where the Completion is earlier than the Intended Completion Date. When this happens, the Engineer shall certify that the works are complete, although they may not be due to be complete.

48. Advance Payment

- 48.1 The Principal shall make advance payment to the contractor of the amounts **stated in the SCC** by the date **stated in the SCC**, against provision by the contractor of an Unconditional Bank Guarantee in

a form and by a bank acceptable to the Principal in amounts and currencies equal to the advance payment. The Guarantee shall remain effective until the advance payment has been repaid, but the amount of the Guarantee shall be progressively reduced by the amounts repaid by the contractor. Interest shall not be charged on the advance payment.

48.2 The contractor is to use the advance payment only to pay for Equipment, Plant, Materials, and mobilization expenses required specifically for execution of the Contract. The contractor shall demonstrate that advance payment has been used in this way by supplying copies of invoices or other documents to the Engineer.

48.3 The advance payment shall be repaid by deducting proportionate amounts from payments otherwise due to the contractor, following the schedule of completed percentages of the works on a payment basis. No account shall be taken of the advance payment or its repayment in assessing valuations of work done, Variations, price adjustments, Compensation Events, Bonuses, or Liquidated Damages.

49. Securities

49.1 The Performance Security shall be provided to the Principal no later than the date specified in the Letter of Acceptance and shall be issued in an amount **specified in the SCC**, by a bank or surety acceptable to the Principal, and denominated in the types and proportions of the currencies in which the Contract Price is payable. The Performance Security shall be valid until a date twenty eight (28) days from the date of issue of the Certificate of Completion in the case of a Bank Guarantee, and until one (1) year from the date of issue of the Completion Certificate in the case of a Performance Bond.

49.2 A Performance Security guarantees quality and satisfactory completion of the works and in accordance with the specifications in the Contract, and is released only upon successful completion of the Defects Liability Period.

50. Dayworks

50.1 If applicable, the Dayworks rates in the contractor's Bidding shall be used only when the Engineer has given written instructions in advance for additional work to be paid for in that way.

50.2 All work to be paid for as Dayworks shall be recorded by the contractor on forms approved by the Engineer. Each completed form shall be verified and signed by the Engineer within two (2) days of the work being done.

50.3 The contractor shall be paid for Dayworks subject to obtaining signed Dayworks forms.

51. Cost of Repairs

51.1 Loss or damage to the works or Materials to be incorporated in the works between the Start Date and the end of the Defects Correction periods shall be remedied by the contractor at the contractor's cost if the loss or damage arises from the contractor's acts or omissions.

E. Finishing the Contract

52. Completion

52.1 The contractor shall request the Engineer to issue a Certificate of Completion of the works, and the Engineer shall do so upon deciding that the whole of the works is completed.

53. Taking Over

53.1 The Principal shall take over the Site and the works within seven (7) days of the Engineer's issuing a certificate of Completion.

54. Final Account

54.1 The contractor shall supply the Engineer with a detailed account of the total amount that the contractor considers payable under the Contract before the end of the Defects Liability Period or before completion of rectification of defects to satisfaction of Principal.

54.2 The Engineer shall issue a Defects Liability Certificate and certify any final payment that is due to the contractor within fifty six (56) days of receiving the contractor's account (if it is correct and complete) provided that the Engineer has approved that all defects identified before and after end of Contract have been rectified and that the Principal is satisfied with such rectification. If it is not, the Engineer shall issue within fifty six (56) days a schedule that states the scope of the corrections or additions that are necessary. If the Final Account is still unsatisfactory after it has been resubmitted, the Engineer shall decide on the amount payable to the contractor and issue a payment certificate.

55. Operating and Maintenance Manuals

55.1 If "as built" Drawings and/or operating and maintenance manuals are required, the contractor shall supply them by the dates **stated in the SCC**.

55.2 If the contractor does not supply the Drawings and/or manuals by the dates **stated in the SCC** pursuant to GCC 55.1, or they do not receive the Engineer's approval, the Engineer shall withhold the amount **stated in the SCC** from payments due to the contractor.

56. Termination

56.1 The Principal or the contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.

56.2 Fundamental breaches of Contract shall include, but shall not be limited to, the following:

- (a) the contractor stops work for twenty eight (28) days when no stoppage of work is shown on the current Program and the stoppage has not been authorized by the Engineer;
- (b) the Engineer instructs the contractor to delay the progress of the works, and the instruction is not withdrawn within twenty eight (28) days;
- (c) the Principal or the contractor is declared bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
- (d) a payment certified by the Engineer is not paid by the Principal to the contractor within eighty four (84) days of the date of the Engineer's certificate;
- (e) the Engineer gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the contractor fails to correct it within a reasonable period of time determined by the Engineer;
- (f) the contractor does not maintain a Security, which is required;
- (g) the contractor has delayed the completion of the works by the number of days for which the maximum amount of liquidated damages can be paid, as **defined in the SCC**; or
- (h) if the contractor, in the judgment of the Principal, has engaged in corrupt or fraudulent practices in competing for or in executing the Contract, pursuant to GCC 57.1.

56.3 When either party to the Contract gives notice of a breach of Contract to the Engineer for a cause other than those listed under GCC 56.2 above, the Engineer shall decide whether the breach is fundamental or not.

56.4 Despite the above, the Principal may terminate the Contract for convenience.

56.5 If the Contract is terminated, the contractor shall stop work immediately, make the Site safe and secure, and leave the Site as soon as reasonably possible.

57. Fraud and Corruption

57.1 If the Principal determines that the contractor and/or any of its personnel, or its agents, or its Subcontractors, services providers, contractors and/or their employees has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices, in competing for or in executing the Contract, then the Principal may, after giving fourteen (14) days' notice to the contractor,

terminate the Contract and expel the contractor from the Site, and the provisions of GCC 56 shall apply as if such expulsion had been made under GCC 56.5 [Termination by the Principal].

57.2 Should any employee of the contractor be determined to have engaged in corrupt, fraudulent, collusive, coercive, or obstructive practice during the execution of the works, then that employee shall be removed in accordance with GCC 9.

57.3 For the purposes of this paragraph:

- (a) “corrupt practice” is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;³
- (b) “fraudulent practice” is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;⁴
- (c) “collusive practice” is an arrangement between two or more parties⁵ designed to achieve an improper purpose, including to influence improperly the actions of another party;
- (d) “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;⁶
- (e) “obstructive practice” is
 - (i) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Government investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or

³ “Another party” refers to a public official acting in relation to the procurement process or contract execution].

⁴ “Party” refers to a public official; the terms “benefit” and “obligation” relate to the procurement process or contract execution; and the “act or omission” is intended to influence the procurement process or contract execution.

⁵ “Parties” refers to participants in the procurement process (including public officials) attempting to establish bid prices at artificial, non competitive levels.

⁶ “Party” refers to a participant in the procurement process or contract execution.

- (ii) acts intended to materially impede the exercise of the Government's inspection and audit rights provided for under Sub-Clause 22.2.

- 58. Payment upon Termination**
- 58.1 If the Contract is terminated because of a fundamental breach of Contract by the contractor, the Engineer shall issue a certificate for the value of the work done and Materials ordered less advance payments received up to the date of the issue of the certificate and less the percentage to apply to the value of the work not completed, as **indicated in the SCC**. Additional Liquidated Damages shall not apply. If the total amount due to the Principal exceeds any payment due to the contractor, the difference shall be a debt payable to the Principal.
- 58.2 If the Contract is terminated for the Principal's convenience or because of a fundamental breach of Contract by the Principal, the Engineer shall issue a certificate for the value of the work done, Materials ordered, the reasonable cost of removal of Equipment, repatriation of the contractor's personnel employed solely on the works, and the contractor's costs of protecting and securing the works, and less advance payments received up to the date of the certificate.
- 59. Property**
- 59.1 All Materials on the Site, Plant, Equipment, Temporary works, and works shall be deemed to be the property of the Principal if the Contract is terminated because of the contractor's default.
- 60. Release from Performance**
- 60.1 If the Contract is frustrated by the outbreak of war or by any other event entirely outside the control of either the Principal or the contractor, the Engineer shall certify that the Contract has been frustrated. The contractor shall make the Site safe and stop work as quickly as possible after receiving this certificate and shall be paid for all work carried out before receiving it and for any work carried out afterwards to which a commitment was made.
- 61. Suspension of funding**
- 61.1 In the event that the Government suspends the funding to the Principal, from which part of the payments to the contractor are being made:
- (a) The Principal is obligated to notify the contractor of such suspension within seven (7) days of having received the Government's suspension notice.
 - (b) If the contractor has not received sums due it within the twenty eight (28) days for payment provided for in GCC 40.1, the contractor may immediately issue a fourteen (14)-days' termination notice.

- 62. Assignment** 62.1 The contractor shall not assign its obligations and agreed not to its rights under this contract without in either case, prior written approval from the Principal.
- 63. Confidentiality** 63.1 The contractor's and the Principal's personnel shall disclose all such confidential and other information as may be reasonably required in order to verify compliance with the Contract and allow its proper implementation. Each of them shall treat the details of the Contract as private and confidential, except to the extent necessary to carry out their respective obligations under the Contract or to comply with applicable laws.
- 63.2 Each of them shall not publish or disclose any particulars of the works prepared by the other party without the previous agreement of the other party. However, the contractor shall be permitted to disclose any publicly available information or information otherwise required to establish his qualifications to complete for other projects.
- 63.3 Confidential information means that:
- (a) is by its nature confidential;
 - (b) is designated by the Principal as confidential; or
 - (c) the contractor knows or ought to know is confidential.
- 64. Indemnity** 64.1 The contractor shall keep the Principal fully and effectively indemnified against all losses, damages or injuries, including but not limited to, legal fees and expenses suffered by the Principal, where such loss, damage or injury is the result of a wrongful action, negligence or breach of this Contract by the contractor or its agent, servants or representatives, including the use or violation of any copyright work or trademark or literary property or patented invention, article or appliance.