

SPREP PROCUREMENT MANUAL

1 January 2022



I hereby approve the Procurement Manual for SPREP.

This Manual will strengthen SPREP's role as an Implementing Agency and/or Executing Agency in the region and guide all procurement service provided by SPREP.



Date: 21 December 2021

Kosi Latu

Director General

This table tracks all revisions and updates to this policy from time to time. It attempts to capture the date of when the policy has been reviewed and updated together with the official designation and signature of the Director General or proxy for approval. A summary of the changes that are made to this policy should be provided in a separate form and attached as an "Addendum".

Policy Reviewed and Updated			
Date	Designation	Signature	Addendum Number
01 January 2017	Director General		
21 December 2021	Director General		1

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SECTION I: OVERVIEW

SPREP Procurement

1. The Secretariat of the Pacific Regional Environment Programme (SPREP) is the Pacific region's major intergovernmental organisation. It is based in Apia, Samoa, and works on behalf of its 21 member countries and territories in the Pacific to provide assistance to protect and improve Pacific environments and to ensure sustainable development for present and future generations.

Purpose of the Manual

2. This manual was developed by the Secretariat to provide a rigorous procedure to direct the procurement process for consultants, goods, services, and works on behalf of SPREP. The Secretariat recognises that ensuring a disciplined approach to procurement is an important factor in strengthening its institutional processes and governance. All procurement activities are to be undertaken in compliance of the procurement practices and procedures set forth in this Manual as well as all related SPREP policies and procedures, including among others environment and safeguard policies, child protection policies, international fiduciary standards and procedures.

Objectives of the Manual

Principles: To establish best practice and clearly state the standards and expectations which apply to all SPREP staff and executing entities (or sub-delegatees in the context of European Commission funded projects) involved in procurement processes;

Procedures: To document a user-friendly and common sense process to be followed by SPREP staff and other executing entities/sub-delegatees when undertaking procurement on behalf of SPREP; and

Outcomes: To provide transparent, impartial, and defendable procurement practices that will ensure that SPREP always expends public and donor funds efficiently and effectively to receive best value and in accordance with best practices.

SECTION II: PROCUREMENT PRINCIPLES

3. SPREP procurement principles help ensure that value for money, quality of goods procured, transparency, impartiality, competency, clarity, and socially and environmentally responsible purchasing decisions are consistently made by the organisation.

It is prohibited to split goods or service contract values across multiple contracts or between multiple vendors to avoid a procurement threshold or competitive process. For example:

splitting a contract into different activities or smaller parts and awarding these to the same supplier to avoid seeking quotes or the open tender process.

Procurement Basics and Exceptions

4. Procurement is the acquisition of consultancy services, goods, non-consultancy services, or works from an external source.

It is prohibited to split goods or service contract values across multiple contracts to avoid a procurement threshold or competitive process. For example: splitting a contract into different activities or smaller parts and awarding these to the same supplier to avoid seeking quotes or the open tender process.

All SPREP procurement activities will be conducted in accordance with this manual, with the following exceptions¹, subject to the **pre-approval process**.

1. Individual travel purchases: Procurement will be sourced by providing at least 3 quotes for prices and itineraries for each travel from known suppliers, with evaluations submitted to the officer with delegated authority for approval.

2. Donor-directed procurements: Where SPREP has a procurement role under a contract with a donor who requires certain donor procurement procedures to be followed; SPREP will follow the donor procedures. This procurement process will require endorsement by the Director General or Deputy Director General.

3. Project funding that specifies a preferred supplier: Where SPREP is obliged by a funding contract or the donor approves to procure services from a specified supplier; no additional procurement process is required. This procurement process will require endorsement by the Director General or Deputy Director General.

4. Association Agreements²: There is a current association agreement between SPREP and another entity and where under that association agreement SPREP agrees for that other entity to carry out work, whether generally or specifically, no additional procurement process is required, provided the following conditions are met:

1. The entity is a government agency, a non-profit organisation or non-governmental organisation;
2. SPREP has a strongly collaborative relationship with that entity as evidenced by such things as reciprocity and equality of status;

¹ All exceptions to the provisions of this Manual should be well documented with careful and comprehensive notes to clearly justify the exception. The relevant agreements that led to the exceptions must be attached.

² Examples include MOU, Letter of Agreement, Collaboration Agreement, Partnership Agreement etc

3. Contracting any such entity is the more viable option without going through the procurement process. That is, no reasonable alternative or substitute exists, and that the absence of competition is not the result of an artificial narrowing down of the parameters when defining the procurement.

This procurement process will require endorsement by the Director General or Deputy Director General.

5. Retainer Agreements: Where SPREP has previously entered into a retainer agreement with a supplier using appropriate competitive procedures that have established, at the minimum, the qualifications and reputation of the supplier, price structure, general scope of services and terms of reference contemplated, and the ability and willingness of the supplier to respond to requests from SPREP, no additional procurement process is required so long as the services currently sought are consistent with the procedures and retainer agreement in place for that supplier. Authorised SPREP staff shall maintain appropriate records of the competitive process used to select a supplier from the list of suppliers with current retainer agreements in force at the time the selection is made.

6. Emergency Response: There is a genuine exigency³ for the requirement. The term 'genuine exigency' refers to situations where goods or services support emergency interventions and therefore cannot be delayed, as this may result in the imminent loss or endangerment of human lives, or excessive damage to valuable properties, or deterrence of basic human needs. This applies during times of natural disaster, epidemics, pandemics or sudden onset of unforeseen crises. Under no circumstance can 'exigency' be used to justify urgency arising from poor planning, poor oversight or delay in receipt of funding, among other possible circumstances that sound and proactive project management could have avoided. Procurement of goods or services that does not meet the 'genuine exigency' criterion will not be considered for an exception to the competitive process, even if the context is an early recovery programme or project. SPREP Finance must be consulted beforehand and will endorse this procurement process before the consideration of the Director General.

7. Other Situations: The Director General may exercise his/her discretion if strong justification is provided in line with the following:

Directly approach one or more potential suppliers with the specifications, to request quotes when:

- i. As a result of a competitive RFT market approach, no suitable proposals were received. Tender must have been advertised at least for a period of not less than four (4) weeks. In which case, the procurement is non-competitive.

³ Exigency - a sudden unforeseen crisis (usually involving danger) that requires immediate action

Potential suppliers can be directly approached to submit a proposal. Proof is required to demonstrate that at least three vendors were solicited.⁴ A technical evaluation of the proposals will still need to be carried out by a panel, and the financial proposals will be reviewed against the market rate for similar works to ascertain that best value is being achieved before direct contracting.

- ii. The vendor has been previously appointed through an open competitive process, and:
 - a. the specifications for the deliverables required is similar to the previous contract deliverables;
 - b. an initial open competitive process was carried out within one year prior to the new requirement;
 - c. the rate at which the cost of the goods or service is determined is the same as in the initial contract, and this rate is still competitive in the current market; and
 - d. the contractor's delivery under the first contract was satisfactory.
- iii. There is no competition for the particular service due to any of the following reasons:
 - a. The aim of the procurement is the creation or acquisition of a unique work of art or artistic performance and that there is no reasonable alternative or substitute that exists;
 - b. Technical reasons and that there is no reasonable alternative or substitute that exists;
 - c. The protection of exclusive rights including intellectual property rights must be ensured.
- iv. Additional services are required from the original supplier to replace parts, service equipment or provide additional consulting services, where changing supplier would lose compatibility with existing equipment or services.
- v. If the budget for the activity is above USD 10,000 and relates to one of the following services – staff shipments (relocation/repatriation), conference or meeting venue hire (room rate of the hotel selected must be in line with the SPREP Travel Policy), catering, software or annual subscription renewals, internet and mobile phone services.

⁴ Where this is not possible due to lack of any suitable vendors, proper justification needs to be provided.

In such cases these activities will follow the direct source process - obtain 3 competitive quotes, recommendation must be pre-approved through the routing process and if necessary a panel review can be convened to assess quotes.

Reference checks must be carried out prior to selection of successful candidate.

This procurement exception will require endorsement by the Director General or Deputy Director General

5. Pre-approval process

For all exceptions and any deviation to the Procurement Manual must be pre-approved through the routing process.

Requesting Officers must complete the Routing Slip: Pre-approval (Direct Appointment) **Appendix B**.

The routing slip should outline:

1. A brief overview of the services/goods that is being procured
2. The exception being applied and clear justification together with all relevant supporting documents.
3. For Exception #6 – Emergency Response, SPREP Finance must be consulted beforehand and will endorse this procurement exception before the consideration of the Director General.

Application and Accountability

6. The SPREP Executives – the Director General and Deputy Director General are accountable for all organisation procurement decisions. While the Executive may delegate their authority to staff and other delegated entities, they remain ultimately accountable for all organization procurement decisions. The Directors and other senior staff are accountable to the SPREP Director General for all procurement responsibilities delegated to them. This includes oversight and ensuring staff reporting to them are aware of SPREP's procurement manual and procedures.
7. SPREP's Procurement Officer is responsible for the overall management of the procurement process.

2.1 Value for money

8. The guiding principle of the procurement process is that SPREP must obtain '*value for money*' in a fair and transparent manner. Each procurement process must evaluate the relative costs and benefits of the available options to ensure that SPREP obtains the maximum benefit from the acquired goods and services within the time frames and resources available. **The best value for money option is not always the cheapest option** but rather is based on an integrated assessment of technical, organisational and pricing factors in light of their relative importance against the requirements (i.e. reliability, quality, experience, reputation, past performance, cost and/or fee realism and reasonableness). To achieve value for money,

SPREP requires staff involved in a procurement process to canvass potential suppliers, follow endorsed procedures, apply predefined selection criteria, and make sound and impartial judgments. This will help ensure that SPREP procured services deliver the highest quality of outputs within the available budget and time-frames.

2.2 Transparency

9. SPREP staff involved in procurement processes must fully document their procurement processes and conclude with a written contract containing all agreed terms and conditions. This will ensure transparency, ensure all potential suppliers have equal access to all relevant information, and enable SPREP's procurement decisions to stand up to internal and external scrutiny.

2.3 Impartiality

10. Procurement procedures must treat potential suppliers fairly and in a non-discriminatory manner. All candidates must have equal access to identical information, and receive impartial consideration following common rules and deadlines. SPREP staff must answer all enquiries about procurement, in a prompt and polite manner, but also in a way that ensures no potential supplier gains an unfair advantage. Answers to all procurement related enquiries will be made in writing either in email or in letter, and made publicly available to all potentially interested parties at a predetermined time identified in the call for tender documents.

11. SPREP staff involved in procurement processes must behave ethically, and are required to declare conflicts of interest at all times.

2.4 Clarity

12. To ensure certainty and to avoid confusion, the standards and duties relating to a procurement process must follow those documented in this procurement manual and include:

- **Thresholds:** the procurement value will pre-determine which procurement procedure to use;
- **Criteria:** standards for evaluating tenders and awarding contracts will be articulated and documented before tenders are published and the evaluation criteria and any weighting made available to all potential suppliers; and
- **Responsibilities:** the composition and duties of the associated evaluating committee will be clearly documented.

2.5 Social and Environmental Responsibility

13. SPREP's Environmental and Social Management Policy sets out SPREP's commitment to ensuring that the best possible environmental and social impacts of its work are achieved. When planning, approaching the market, and evaluating tenders, SPREP Officers should consider:

- Whether there are any standards (whether legislative, or industry best practice) or certifications that the product or service should meet;
- Whether there are environmentally or socially responsible options within the market that should be encouraged or could be prioritised; and
- Whether, upon procuring the goods or services, there are potential adverse social and/or environmental impacts that could result from the delivery and/or operation of that goods or services.

SECTION III: PROCUREMENT PROCESS

3.1 Selection of Appropriate Procurement Process

14. The procurement type adopted will be dependent on the estimated costs of the procurement and any other conditions related to the procurement. Estimate the maximum anticipated cost of the procurement, based on the specifications and research – including options, extensions, renewals or other mechanisms that may be executed over the life of the contract. **The options available in the SPREP procurement process are summarised in Table 1.**

3.2 Establishment of a Tender Evaluation Committee

15. Before the start of the procurement process, an Evaluation Committee is to be established for each procurement. The composition of the Evaluation Committee shall be identified by the Requesting Officer in consultation with the Procurement Officer and endorsed by their Director or the Executive according to the following: The request for Approval of the Evaluation Committee will be processed by the Procurement Officer as follows:

- Tender - in excess of USD \$300,000 - Approval by the Director General
- Tender – USD \$100,001 to USD \$300,000 - Approval by the Deputy Director General
- Tender – USD \$10,001 to USD \$100,000 - Approval by Programme/Department Director
- Tender equals/below USD \$10,000 – Approval by the Programme/Department Director or delegated authority

3.3 Appointment and Composition of the Tender Evaluation Committee

16. **Appointment:** The person making the request, or the Requesting Officer, in consultation with the Procurement Officer draws up a list of potential nominees for the evaluation committee. The Procurement Officer ensures that there is a wide representation on the committee and considers the gender and ethnicity mix. In cases where the Requesting Officer needs to be involved in the evaluation such as to ensure technical compliance, the Requesting Officer will be involved in the technical and not the financial evaluation process. Depending on the procurement, representatives from executing partners, or recipients of

the procurement, may be invited to attend the tender evaluation as observers or an evaluator.

17. Tender Committee members are appointed by SPREP management, comprising of a non-voting chairperson, and voting members (the evaluators). The evaluators must have reasonable command of the language in which the tenders are submitted. They should have the technical and administrative ability to give an informed opinion on the tenders. Their identity is confidential. All Evaluation Committee members must attend all meetings. Any absence must be recorded and explained in the evaluation report. Evaluation Committee members must control and document their contacts with potential suppliers, and recognise, identify, and address any actual or perceived conflicts of interest.
18. **Composition:** The Evaluation Committee composition varies depending on the nature, complexity, and value of the procurement activity. There should also be a non-voting member, the Committee Chairperson. It is recommended that SPREP internal auditor should play the oversight function on the works of the Evaluation Committee. The minimum composition of the evaluation team members will be as follows:

I. **An Open Tender Evaluation Committee (>\$300,000), at a minimum should include:**

1. The senior SPREP Officer responsible for the tender;
2. Programme/Department Director responsible for the tender;
3. A SPREP officer from a different programme/department;
4. An external representative(s) with knowledge of the procurement area
5. The Procurement Officer – Chairperson/ Secretary

II. **An Open Tender Evaluation Committee (\$50,001 up to \$300,000), at a minimum should include:**

1. The Senior SPREP Officer responsible for the tender;
2. The Director from the Programme/Department responsible for the tender;
3. A SPREP officer from a different programme/department;
4. An external representative with knowledge of the procurement area
5. The Procurement Officer – Chairperson/Secretary

III. **An Open Tender Evaluation Committee (<\$50,000), at a minimum should include:**

1. The senior SPREP Officer responsible for the tender;
2. Two (2) SPREP officers from a different programme/department; and
3. The Procurement Officer – Chairperson/Secretary

Role of the Evaluation Committee Members:

- The chairperson is responsible for coordinating the evaluation process in accordance with the procedures of this Procurement Manual and for ensuring its impartiality and transparency;
- The voting members of the Evaluation Committee have collective responsibility for decisions taken by the committee;
- All members of the Evaluation Committee must sign a Declaration of Impartiality and Confidentiality form prior to conducting the evaluation (opening of the bids). Any Evaluation Committee member or observer who has or might have an actual or potential conflict of interest with any tenderer or applicant must declare it and immediately withdraw from the Evaluation Committee.

Table 1. Detailed Procurement Type Specifications

Procurement Type	Procurement Value (\$US)	Recommended Procurement Period	Evaluation Process	Authorised Process
Open Tender	>\$300,000	6-8 Weeks	<ul style="list-style-type: none"> • The Senior Officer responsible for the Tender • Director of the Programme/Department responsible for the Tender • A SPREP Officer from a different programme/department • An external representative(s) with knowledge of the procurement area • The Procurement Officer 	<p>Evaluation Panel and tender approved by the Director General. For consultancy tenders, HR needs to review the tender evaluation report prior to approval.</p> <p>Approach the international market through an open request for tender:</p> <ul style="list-style-type: none"> • Suppliers respond and bid for the work by submitting a tender; • Evaluate all responses received within the deadline against stated conditions and criteria; • Tender evaluation report to be approved by the Director General • Negotiate a contract with the approved supplier.
Open Tender	\$100,001 – \$300,000	4-6 Weeks	<ul style="list-style-type: none"> • The Senior Officer responsible for the Tender • Director of the Programme/Department responsible for the Tender • A SPREP officer from a different 	<p>Evaluation Panel and tender approved by the Deputy Director General. For consultancy tenders, HR needs to review the tender evaluation report prior to approval.</p>

			<p>programme/department</p> <ul style="list-style-type: none"> • An external representative with knowledge of the procurement area • The Procurement Officer 	<p>Approach the international market through an open request for tender:</p> <ul style="list-style-type: none"> • Suppliers respond and bid for the work by submitting a tender; • Evaluate all responses received within the deadline against stated conditions and criteria; • Tender evaluation report to be approved by the Deputy Director General • Negotiate a contract with the approved supplier.
Open Tender	\$50,001 - \$100,000	4-6 Weeks	<ul style="list-style-type: none"> • Senior Officer responsible for the Tender • An Adviser from the relevant programme/department • A SPREP officer from a different programme/department; • An external representative with knowledge of the procurement area • The Procurement Officer 	<p>Evaluation Panel and tender approved by the Programme/Department Director. For consultancy tenders, HR needs to review the tender evaluation report prior to approval.</p> <p>Approach the international market through an open request for tender:</p> <ul style="list-style-type: none"> • Suppliers respond and bid for the work by submitting a tender; • Evaluate all responses received within the deadline against stated conditions and criteria; • Tender evaluation report to be approved by the Programme/Department Director

				<ul style="list-style-type: none"> • Negotiate a contract with the approved supplier.
Open Tender	\$10,001 - \$50,000	2 - 4 Weeks	<ul style="list-style-type: none"> • Senior Officer responsible for the Tender • Two (2) SPREP officers from different programmes/departments; • The Procurement Officer 	<p>Evaluation Panel and tender approved by the Programme / Department Director. For consultancy tenders, HR needs to review the tender evaluation report prior to approval.</p> <p>Approach the international market through an open request for tender:</p> <ul style="list-style-type: none"> • Suppliers respond and bid for the work by submitting a tender; • Evaluate all responses received within the deadline against stated conditions and criteria; • Tender evaluation report to be approved by the Programme / Department Director • Negotiate a contract with the approved supplier
Direct Source	\$1,001-\$10,000	1-2 Weeks	<ul style="list-style-type: none"> • Three competitive quotes for prices from known suppliers or a tender placed on the website for wider circulation; • Individual officer's evaluation submitted to the officer with delegated financial authority; • In case of individual consultants, compare at least three CVs against the consultancy Terms of Reference (TOR) and select the one most qualified. 	<p>For consultancy tenders, HR needs to review the tender evaluation report prior to approval.</p> <p>The tender evaluation report should be approved by the delegated authority.</p> <p>Directly approach three potential suppliers with the specifications, to request quotes when the procurement value is below a predetermined threshold; or</p>

				<p>Directly approach one or more potential supplier with the specifications, to request quotes when:</p> <ul style="list-style-type: none"> i. No suitable submissions were received in response to an open tender process; ii. There is no competition for the particular service due to technical reasons; iii. It is a case of extreme urgency beyond SPREP's control; iv. It is an unsolicited and highly advantageous short-term value for money opportunity; v. Additional services are required from the original supplier to replace parts or service equipment, or where changing supplier would lose compatibility with existing equipment or services. <p>This procurement method does not involve the procedural rules of open tendering, but it may include a competitive process, for example obtaining multiple quotes and multiple CVs for individual consultants.</p> <p>Reference checks must be carried out prior to selection of successful candidate.</p>
Over-the-counter purchase	≤\$1,000	1 Week	No quotes required (unless there's likely to be a disparity between suppliers)	Direct purchase of goods or services from a supplier, where the procurement value is below a threshold requiring a competitive process.

3.4 Honorarium / Sitting Fees⁵

19. External Evaluation Committee members (excluding a representative of a member country) who have been selected for their technical expertise and knowledge will be eligible for sitting fees. This is currently set at a ceiling of SAT \$500 per procurement. The Requesting Officer must obtain the approval from their Programme/Department Director prior to negotiating the fees. The approval process is as follows:

- 1) Approval from Programme/Department Director - to ensure that there is a need;
- 2) Approval from the Director, Finance and Administration - to ensure that funds are available and are within the guidelines; and
- 3) Establishment of an LOA with the external party.

SECTION IV: PREPARING THE DRAFT REQUEST FOR TENDER

4.1 Planning

20. Careful planning is essential to ensure that a given procurement process is successful. Before SPREP approaches potential suppliers, the specifications of goods or services or service outcomes must be clearly identified.

- **Specifications:** Specify in advance the performance, technical, and/or functional requirements of the required goods or services. The specifications should only refer to a particular trademark, producer, or supplier when there is no other way to describe it precisely, and then the specification should state that it, 'or an equivalent,' is required.
- **Conditions:** Identify in advance any conditions that potential suppliers must meet to participate in a procurement process. The potential supplier may have to demonstrate minimum legal, technical, or financial capacities, for example relevant experience in the technical field.

4.2 Types of Tenders

21. To help meet the objectives of a project or to satisfy SPREP's operational needs, SPREP may request tender through procurement procedures for consultancy services, goods, non-consultancy services and works, depending on the nature of the requirement.

Consultancy services: Consultants generally offer advice or propose solutions to problems, but they do not directly, carry out, or implement solutions.

⁵ Refer to the SPREP Financial Procedures Manual, Section 17.

Non-consultancy services: A contractor may in addition to providing advice, be involved in implementing the solutions with the contracting authority.

Goods: Goods are supplies, equipment, or machineries that are essential as input to the project to achieve project objectives.

Works: Works tender would involve infrastructure activities, such as building of roads, and all other activities related to civil or engineering works.

4.3 Terms and Conditions of Tender

22. For clarity and consistency, SPREP should prepare a standard set of terms and conditions for the most common types of procurement process: for example, consultancy services, goods, non-consultancy services, and works, through the preparation of a clear and concise terms of reference for the work required through the tender process. As circumstances may require, the Procurement Officer with support from the SPREP Legal Counsel should be available to address questions about the terms and conditions to the potential applicants or tenderers, in particular, prior to signing any agreement.

4.4 Request for Tender

23. The tender processes as described below are applicable to all types of tenders referred to in section 4.2 above, and the procedures will depend on the size of the tender amount as described in Table 1 above. For tenders relating to core areas within SPREP (for example: Communications, IT, Financial audits etc) the Requesting Officer must discuss with the relevant Department prior to finalisation of the specifications or Terms of Reference. When the specifications or Terms of Reference have been finalised, a draft Request for Tender (RFT) is prepared by the Requesting Officer using the template in **Appendix C**. The Procurement Officer is responsible for ensuring the information provided by the Requesting Officer complies with the underlying principles of SPREP procurement process and that it is clear, unambiguous and generic, and ensures fair competition among the suppliers. The Procurement Officer plays a support role to the Requesting Officer in the following areas:

- Provides information on previous, current, and upcoming procurement activities for similar products or services;
- Reviews the request for completeness and ensures that the specifications or descriptions are not restrictive or biased towards a specific supplier;
- Assists in market studies to identify sources of supplies, pricing, availability of information, and extent of competition;
- Provides advice on the best method to obtain goods and services in a timely manner, at the best possible price; and
- Is responsible for production of all tender assessment reporting related to the Tender Evaluation Committee.

The “Requesting Officer” is the officer requesting for goods or services/works through the tender procurement process.

4.5 Request for Tender Documentation

24. The Request for Tender must provide all relevant information about SPREP’s requirements that is necessary to enable a potential supplier to prepare responsive, tailored submissions. **Use the template in Appendix C for consultancy services, goods and works.** Generally this should include:

- I. Terms and Conditions of Tender;
- II. Description: the nature, scope and quantity of the goods, services or works to be procured, including any technical specifications or other instructions;
- III. Standard Conditions for participation: business license, financial statements, references, evidence of eligibility to live and work in Samoa or project site, any financial guarantees, information or documents that potential suppliers must submit;
- IV. Submission guidelines: any minimum content and format requirements;
- V. Standard Evaluation criteria: qualifications, experience, competencies, and resourcing;
- VI. Include a description of organisational values, i.e. environmental leadership, service delivery, valuing people and integrity;
- VII. Offer Summary Table: for supplier comparison purposes. The tender document package should be completed by attaching the appropriate series of forms that allow the suppliers to submit offers in a consistent fashion, and confirm their acceptance of the type of contractual arrangements proposed;
- VIII. Tender Deadlines: Gives potential suppliers sufficient time to prepare and lodge a submission. Suggested minimum response periods are presented in Table 1; and
- IX. Tenderer is deemed ineligible due to association⁶ with exclusion criteria, including bankruptcy, insolvency or winding up procedures, breach of obligations relating to the payment of taxes or social security contributions, fraudulent or negligent practice, violation of intellectual property rights, under a judgment by the court, grave professional misconduct including misrepresentation, corruption, participation in a criminal organisation, money laundering or terrorist financing, child labor, and other trafficking in human beings, deficiency in capability in complying main obligations, creating a shell company, and being a shell company

⁶ Association being either the tenderer or a person having powers of representation, decision making or control over them or a member of their administrative, management or supervisory body have been the subject of a final judgement or of a final administrative decision relating to any of the exclusion criteria

- X. Tenderer must sign a declaration of honour form⁷ together with their application, certifying that they do not fall into any of the exclusion situations cited under (IX) above and where applicable, that they have taken adequate measures to remedy the situation.
- XI. Tenderer to provide at least three references relevant to the tender submission, including the most recent work completed to enable SPREP to carry out reference checks for consultants hired.
- XII. The tenderer will need to supply the services to the extent applicable, in compliance with SPREP's Values and Code of Conduct <https://www.sprep.org/attachments/Publications/Corporate Documents/spreporganisational-values-code-of-conduct.pdf>

25. Requests for additional information

- a. The only point of contact for all matters relating to the RFT and the RFT process is the Procurement Officer.
- b. All clarification questions must be conducted in writing to the Procurement Officer via email and should be sent within the clarification period as outlined in the Request for Tender.
- c. SPREP will determine what, if any, response should be given to a Tenderer question. SPREP will circulate Tenderer questions and SPREP's response to those questions to all other Tenderers using the SPREP Tenders page (<https://www.sprep.org/tenders>) without disclosing the source of the questions or revealing any confidential information of a Tenderer.
- d. Tenderers should identify in their question what, if any, information in the question the Tenderer considers is confidential.
- e. If a Tenderer believes they have found a discrepancy, error, ambiguity, inconsistency or omission in this RFT or any other information given or made available by SPREP, the Tenderer should promptly notify the Procurement Officer setting out the error in sufficient detail so that SPREP may take the corrective action, if any, it considers appropriate.

26. Variation of the RFT

- a. SPREP may amend, suspend or terminate the RFT process at any time.
- b. In the event that SPREP amends the RFT or the conditions of tender, it will inform potential Tenderers using the SPREP Tenders page (<https://www.sprep.org/tenders>).

⁷ Declaration of Honour form – Appendix E

- c. Tenderers are responsible to regularly check the SPREP website Tenders page for any updates and downloading the relevant RFT documentation and addendum for the RFT if it is interested in providing a Tender Response.

27. Termination of the RFT

- a. If SPREP determines that none of the Tenders submitted represents value for money or that it is otherwise in the public interest to do so, SPREP may terminate this RFT process at any time and:
 - i. not proceed with the procurement ie, cancel the tender; issue a cancellation notice and inform unsuccessful bidders
 - ii. readvertise the tender with or without a revised scope for a minimum of two weeks.
 - iii. directly approach one or more potential suppliers with the specifications, to request quotes provided the tender was advertised for a period no less than four (4) weeks and no suitable submissions were received.
 - iv. Apply a procurement exception (refer Section II) provided the tender was advertised for a period no less than four (4) weeks and no suitable submissions were received.
- b. The above process must be documented in the tender evaluation report and endorsed by the authorised delegates (including HR if it is a consultancy tender) prior to any action being taken

4.6 Request for Tender Approval

28. The Procurement Officer in consultation with the Requesting Officer prepares the "Request for Tender" for approval by the following process:

- Endorsement by Programme/Department Director that the need exists and sign off on the draft 'Request for Tender';
- Endorsement by the Director, Finance & Administration that funds are available;
- For consultancy services, the routing slip should include the Director, Human Resources endorsement; and
- Approval by the Executive that the organisation will be obligated to the terms of the tender

SECTION V: APPROACHING THE MARKET

5.1 Distribution of Request for Tender Documents

29. The tender documents are posted by the Records and Archive Officer (RAO) on SPREP's website. The RAO should also distribute the tender documents to all identified potential suppliers, either by e-mail, or by fax. Where feasible and appropriate, given the locations addressed in the Tender, postings in local newspapers or on the websites of CROP agencies may promote broader solicitation of tenders. Tender documents that need distribution through newspaper should be accompanied by a Purchase Order (PO). The Procurement Officer should ensure all tender documents are widely circulated.

5.2 Receipt and Opening of Tenders

30. Tendering parties or applicants must sign a declaration together with their applications, certifying that they do not fall into any of the exclusion situations cited under sections 5.7 (b) below and, where applicable, that each has taken adequate measures to remedy the identified situation.

31. Submitted tenders are received, registered, handled, opened and stored only by authorized SPREP staff members. The purpose of this formal process is to ensure that tenders are received, handled and opened according to good practice and that transparency and confidentiality are maintained as specified in the relevant regulations, rules, and procedures of the organisation. This process is usually handled by the Records and Archive Officer (RAO) and the HR Assistant (HRA) who normally are not directly involved in the procurement function. As specified in the request for tender (RFT) documents, offers should be received:

- At the correct place, date and time;
- In writing;
- Via mail, courier service, hand delivery, or e-mail; and
- For tenders received by e-mail, this must be on the 'secure' email address tenders@sprep.org dedicated for the purpose of receipt of tenders.

32. The email address must be safely secured, i.e. password protected, and should only be accessible by the RAO responsible for the receipt of tenders by email. The tenders should be sealed, except in the case of quotations.

33. Tenders submitted to an email address other than tenders@sprep.org will not be considered by SPREP. If SPREP is made aware of the error in submission prior to the deadline, the applicant will be advised to resubmit their application to the correct portal. However, if SPREP is not made aware of the error in submission until after the deadline, then the application is considered late and will be returned unopened to the sender.

5.3 Registration of Tenders

34. Upon receipt, the RAO should properly record the date and time of delivery and issue a receipt or acknowledgement to the tendering party. The tenders received by hand delivery should be recorded by the HR Assistant (HRA), in the Tender Log Book before placing in the tender box at the receptionist area.

5.4 Storage of Tenders

35. Tenders received by fax should be sealed in individual envelopes and kept in the locked tender box with the other sealed tenders. The locked tender box should be accessible only by the Procurement Officer who is responsible for the procurement functions, until the date and time specified for the tender opening. Tenders received by email must be on the secured email address and will not be accessible to anyone (other than the RAO and the Procurement Officer) until the Opening of the Tenders meeting.

5.5 Opening of Tenders

36. Tender opening is a formal process of opening, reading, and recording in writing all tenders received in response to the request for tenders (RFT), at the date, time and place stipulated in the tender documents. It is recommended that the tender opening takes place as soon as feasible after the deadline for receipt of tenders. Apart from being efficient, it will reduce any risk of manipulating tenders received or accepting late bids.

37. The tender opening process is conducted by the authorised Tender Evaluation Committee. Members of the Tender Evaluation Committee should be present at the opening of the tenders; however in the event that not all members are available, a minimum of 3 members is required for the opening of tenders including the chair of the Tender Evaluation Committee. Tender envelopes and tender proposals sent by email are opened one by one, and the opening official/panel should check that the tenders meet the procedural requirements of the tender documents. For example, that there is one original tender, the right number of copies, that there is a tender form properly signed by the supplier and any other documentation as requested. During the tender opening the following information is usually read out loud:

- Supplier's name and place of business;
- Price and any discounts, including currency of the tender;
- Delivery time;
- Delivery terms; and
- Offer validity

38. The chair of the Tender Evaluation Committee should certify the opening process by signing the tender register.

39. In tenders where specific bidders are requested to submit a financial bid separately from the technical bid; the process of opening technical bids first is to be followed. In the event that the bidder failed the technical aspect of the tender (70% or more is required to pass the criteria), their financial bids will not be considered.

5.6 Receipt of Tabulation of Valid Tenders

40. If applicable, tabulation/abstract of the tender is used to record prices, as well as delivery terms, etc. in order to facilitate the evaluation process. This tabulation/abstract is done as soon as possible after the opening of the tender or as part of the opening record/report. The tenders after they have been opened, dated, and signed by the opening official/panel, together with the opening record/report and a tabulation/abstract of the offers, if applicable, are then maintained by the Procurement Officer.

5.7 Invalidation of Tenders

41. Only tenders that are deemed valid are submitted to the tender evaluation committee for assessment. Criteria that render a tender to be invalid include the following:⁸

- a) Tenders received after closing date;
- b) Tenderer is deemed ineligible due to association⁹ with exclusion criteria, including bankruptcy, insolvency or winding up procedures, breach of obligations relating to the payment of taxes or social security contributions, fraudulent or negligent practice, violation of intellectual property rights, under a judgment by the court, grave professional misconduct including misrepresentation, corruption, participation in a criminal organisation, money laundering or terrorist financing, child labour and other trafficking in human beings, deficiency in capability in complying main obligations, creating a shell company and being a shell company;
- c) Tenderer has misrepresented information required by the contracting authority as a condition for participating in the procedure or has failed to supply that information; and
- d) Tenderer was previously involved in the preparation of procurement documents¹⁰ where this entails a distortion of competition that cannot be remedied otherwise.

⁸ Adopted from *Practical Guide to Contract Procedures for EU External Actions*, http://ec.europa.eu/europeaid/funding/about-funding-and-procedures/sources-funding_en, Section 2.3.3.1

⁹ Association being either the tenderer or a person having powers of representation, decision making or control over them or a member of their administrative, management or supervisory body have been the subject of a final judgement or of a final administrative decision relating to any of the exclusion criteria

¹⁰ Procurement documents refer to the tender document and project related documents.

42. Any exemption to the above invalidation criteria based on justified grounds, (For example: overriding reasons of public interest such as public health or environment protection) must be clearly documented and submitted to the Director General for endorsement.

43. Any decision of the Procurement Officer or, where applicable, recommendation of the evaluation committee to invalidate a tender, shall be made in compliance with the principle of proportionality, in particular taking into account:

- (a) the seriousness of the situation, including the impact on the financial interests and image of the Secretariat;
- (b) the time which has elapsed since the relevant conduct;
- (c) the duration of the conduct and its recurrence;
- (d) whether the conduct was intentional or the degree of negligence shown;
- (e) in the cases referred to in point (b), whether a limited amount is at stake;
- (f) any other mitigating circumstances, such as:
 - (i) the degree of collaboration of the person or entity concerned with the relevant competent authority and the contribution of that person or entity to the investigation as recognised by the authorising officer responsible; or
 - (ii) the disclosure of the exclusion situation by means of a declaration

44. In the cases of non-exclusion, the Procurement Officer shall specify the reasons for not excluding the person or entity and inform the evaluation committee of those reasons.

The remedial measures shall include, in particular:

- (a) measures to identify the origin of the situations giving rise to exclusion and concrete technical, organisational and personnel measures within the relevant business or activity area of the person or entity, appropriate to correct the conduct and prevent its further occurrence;
- (b) proof that the person or entity has undertaken measures to compensate or redress the damage or harm caused to the financial interests of the Secretariat by the underlying facts giving rise to the exclusion situation;
- (c) proof that the person or entity has paid or secured the payment of any fine imposed by the competent authority or of any taxes or social security contributions.

SECTION VI: TENDER EVALUATION

6.1 Evaluation Process

45. SPREP's Financial Regulations require staff involved in an evaluation process to receive, open and treat all quotes and tenders in a way that guarantees fairness and impartiality, and that protects the confidentiality of the information provided by potential suppliers. The evaluation process will determine which proposal would best meet SPREP's needs, and achieve value for money.

46. All tenders or quotes received within the requested deadline need to be evaluated against the conditions and weighted criteria indicated in the information that was available to potential suppliers. Some criteria are typically general, while others should be developed specifically for the particular procurement. Only those potential suppliers that satisfy the conditions set as prerequisites for participation qualify for further assessment – any that fail to do so must be eliminated. All tenders or quotes satisfying stipulated conditions are then evaluated on the basis of their relative value for money. The value-for-money evaluation should consider:

- a) Costs – direct and indirect benefits and costs considered over the whole procurement cycle;
- b) Quality and fitness for purpose;
- c) Environmental considerations;
- d) Convenience and timeliness;
- e) The relative risks, including the performance history of the prospective suppliers;
- f) The flexibility to adapt to possible change over the lifecycle of the goods or service;
- g) Attributes of proposed contract terms. For example, contract extension;
- h) Previous experience in a similar field and with the same type of requirement;
- i) Experience from the region;
- j) Available capacity and or equipment to undertake the assignment; and
- k) Qualification and experience of proposed personnel including reference checks.

47. Financial evaluation - The financial proposal from a bid will only be evaluated if the technical proposal is responsive and qualified (i.e. it achieves the required threshold 70% or more during the technical evaluation).

The financial evaluation process compares bids to the financial criteria defined in the RFT documents. The Procurement Officer will rank the financial proposals. The maximum number of points is allocated to the lowest-priced proposal. All other financial proposals receive proportional scores based on how they compare with the lowest-priced proposal. These scores are calculated according to the formula below:

Total financial component %] x [Lowest price]/ [Price under consideration] = Score for financial proposal

Cumulative evaluation - The proposal with the overall highest score after adding the score of the technical proposal and the score from the financial proposal may offer the best value for money when considering 46 (a) – (k) above.

6.2 Code of Ethics

48. All staff, including external representation on the tender evaluation committee, should at all times exercise care and avoid situations in which private interest conflicts or might reasonably be thought to conflict with carrying out their duties. Particular situations in which officials should exercise care include those where gifts, travel, and accommodation, or conflicts of interest could give rise to a perception of bias.

6.3 Confidentiality

49. All members involved in evaluating offers should be careful to observe confidentiality of the offers and ascertain that information about the content of the submissions or the evaluation process is not revealed outside the group involved in the procurement process.

50. The Procurement Officer ensures the confidentiality of the process. In order to ensure confidentiality of the process, the Procurement Officer will be the only person that can communicate with the bidders during the period between the closure date and the Opening of the Tenders. All clarifying questions by the suppliers or service providers during this time must be channeled through the Procurement Officer. The Procurement Officer will refer the queries to the Requesting Officer for the tender and copy all members of the evaluation committee, and responses by SPREP to the suppliers should be channeled through the Procurement Officer.

51. During the period of evaluation, the Procurement Officer will be the only person who can communicate with the bidders. All clarifying questions intended for the suppliers or service providers during this time must be channeled through the Procurement Officer.

SPREP may:

- (i) seek clarification or additional information from any Tenderer for the purposes of Tender evaluation;
- (ii) shortlist one or more Tenderers and seek further information from them;
- (iii) seek best and final offers from one or more Tenderers; or enter into negotiations or discussions with one or more Tenderers

6.4 Gifts and Hospitality

52. Staff and external representation on the Evaluation Committee must not improperly use their position to gain a benefit, gift, or hospitality. Hospitality can include presentations, demonstrations, briefings and discussions, accompanied by meals, unless such presentations are expressly invited in the tender solicitation from all tendering parties, and do not include meals, alcohol, or gifts. Social contact with potential and known tendering parties should be avoided when an approach to market is underway and before contractual arrangements are finalised. Offers of hospitality and entertainment must not be accepted by SPREP staff during these times and must be disclosed in accordance with relevant financial guidelines.

6.5 Conflicts of Interest

53. For the purposes of the procurement manual, conflict of interest (COI) refers to:

- a. A conflict between the official duties of staff/external representatives on Evaluation Committee and their private interests or personal relationships, where the private interests or personal relationship could improperly influence the way a staff member carries out their official duties. Staff/external representatives on the Evaluation Committee should ensure that all interactions with businesses are able to withstand public scrutiny;
- b. A situation where there is an actual or perceived conflict with a SPREP staff member (not involved in the evaluation process) and their private interests;
- c. A situation where there is grave professional misconduct either on the part of those in the evaluation committee or even the bidders where there are attempts to influence the decision-making during a procurement procedure; or where bidders enter into agreement with other bidders in order to distort competition; or where a bidder tries to obtain confidential information that may give it undue advantages in the procedure;
- d. A situation where a bidder has a professional conflicting interest that negatively affects its capacity to perform a contract (e.g. where a firm could be awarded a contract to evaluate a project in which it had participated in implementation or to audit accounts that it had previously certified).

54. Whether a potential conflict of interest can be avoided or not, the Evaluation Committee members must declare it immediately in writing by filling in the "Conflict of Interest Form" (**Appendix A**), and arrangements must be put in place to avoid or remove the conflict. This may include excluding the official from any further participation in a procurement process.

55. Irrespective of potential conflicts of interest, all members of an Evaluation Committee must sign the Declaration of Impartiality, Confidentiality and Conflict of Interest form during the Opening of the tenders (**See Appendix A**). Likewise, all bidders should declare any areas that may constitute conflict of interest related to this bid whether, at the time of lodging their Tender, a conflict of interest concerning itself or a related entity exists, or might arise during the term of the Agreement, or otherwise in relation to the Tender (**Appendix C Sec. 3.2 and Appendix D**).

56. If a conflict of interest arises, SPREP may:

- a. exclude the Tender from further consideration;
- b. enter into discussions to seek to resolve or manage the conflict of interest; or
- c. take any other action it considers appropriate.

57. In hiring any consultants or selecting a company, it is critical that SPREP avoid or manage any potential conflicts of interest.

SPREP will not engage a consultant or select a company:

- a. with a family or business relationship with an SPREP officer who is directly or indirectly involved in any part of the selection process, unless the conflict has been resolved or managed in line with the requirements of this policy (refer Contracting of close relations); or
- b. who may have conflicting obligations to their previous or current clients, or obligations that may place them in a position of being unable to carry out the assignment in the best interests of SPREP.

58. Stand down period - Former SPREP staff

SPREP will not hire a former or retired SPREP staff member as a consultant within 12 months of their departure from SPREP. The Director General may approve otherwise in exceptional circumstances in line with Section II,

59. All tenderers must sign a Conflict of Interest Form, **Appendix D** as part of the application process.

6.6. Selection of the Preferred Bidder

60. SPREP reserves the right to enter into negotiation with respect to one or more proposals prior to the award of a contract, split an award/awards and to consider localised award/awards between any proposers in any combination, as it may deem appropriate without prior written acceptance of the proposers.
61. The individual or the evaluation committee responsible for assessing the quotes or tenders needs to submit, to the designated staff member with the delegated financial authority its recommendation on the preferred supplier. Use the template in **Appendix F** to summarise the panel conclusions. The panel report should justify its reasons for concluding that the bidder:
 - a) Satisfies the conditions for participation;
 - b) Is fully capable of undertaking the contract;
 - c) Has submitted a proposal that will provide the best value for money, in accordance with the specific criteria in the request document and the general value for money criteria; and
 - d) Received positive references.

The report should also propose a 2nd option in the event the preferred supplier does not take up the offer.

The designated staff member with the delegated financial authority needs to approve the recommendation of the selection panel for it to take effect.

62. In the event the evaluation committee are unable to identify a suitable supplier that meets the conditions and evaluation criteria of the tender the first time they must:
 - a. Document the reasons why
 - b. Propose alternative options which may include readvertisement, cancellation of the tender, rescope the Terms of Reference which would then be re-tendered.
 - c. The selected approach must be approved by the delegated authority in accordance with the financial delegation.

6.7. Approval of Evaluation Report

63. The Tender Evaluation report must be written by the Chair of the Tender Evaluation Committee and reviewed by the tender Evaluation Committee before sending for approval by the appropriate authority.
64. To ensure that the tender evaluation report reflects the selection agreed by the tender evaluation committee, the Procurement Officer will need to sign off on the tender evaluation report prior to the report being approved.
65. For all consultancy tenders, the evaluation report needs to be reviewed by HR prior to submission of approval to the delegated authority.

66. Approval of the tender evaluation report is a delegated authority that will only approve the report upon endorsement from the Procurement Officer and HR.
67. Any firm found to have a conflict of interest shall be ineligible for award of a contract.

SECTION VII: AWARDING A CONTRACT

68. In consultation with the Legal Counsel and the Director, Finance & Administration, a contract will be drawn up and negotiated with the preferred supplier:
 - The draft contract is to be drawn up by the Legal Officer in consultation with the Procurement Officer and the Requesting Officer for the tender;
 - The Procurement Officer will ensure that the issues raised in the evaluation report are covered in the draft contract; and sends the draft contract with routing slip to the Programme/ Department Director for endorsement;
 - The draft contract and routing slip with the approved tender evaluation report is next sent to the Finance and Administration Team who will be responsible for ensuring the contract is duly signed by both parties;
 - The Finance and Administration Team then circulates the contract and routing slip to the Legal Counsel, Director Finance and Administration and the Director Human Resources where applicable (DHR approval required only for consultancy services), for approval;
 - The contract is approved and signed by the Director General upon receipt of the approved routing slip with the relevant attachments.
 - A binding contract is in effect once signed by both SPREP and the successful tenderer.
 - Any contractual discussion/work carried out/goods supplied prior to a contract being signed does not constitute a binding contract.
 - All documentation related to the tenders is to be centrally filed with the Finance and Administration Team.
69. Once the contract is awarded, the Procurement Officer must:
 - i. Inform all potential suppliers whose submissions were evaluated of the decision;
 - ii. On request, provide an unsuccessful tender with the reasons it was unsuccessful;
 - iii. In the case of select or open tenders, the results should be published on the SPREP website, having due regard for the requirements of confidentiality and security, in particular the protection of personal data:
 - a) A description of the goods or services procured;
 - b) The name and address of the successful supplier;
 - c) The value of the successful tender; and
 - d) The date the contract was awarded.

- iv. Without prejudice to any rules and procedures on data protection, may consider exemptions to publishing of results for justified grounds (for example confidentiality and security; sensitive information that may threaten the reputation of the tenderer etc)
- v. All other cases which were not part of an open tender (e.g. non procurement purchases, tenders below USD \$10,000, Direct Appointments etc) are excluded from publication.

SECTION VIII: CONTRACT MANAGEMENT AND AMENDMENTS

70. Good contract management ensures both parties to a contract fully meet their respective obligations as efficiently and effectively as possible.

Contract managers are responsible to manage the contract deliverables and monitor key dates. Contract managers must ensure all reports and contract deliverables are filed with Registry and/or uploaded in PIMS.

Upon completion of the contract, the contract manager is required to complete a contractor review form, **Appendix K**.

71. If there is a need to change any aspect of an existing contract, the contract must be amended to accurately reflect such changes. A contract amendment must be initiated and approved at least a month prior to the contract end date.

Contracts which have expired or lapsed, cannot be amended.

Contracts shall not be increased or extended as a means of avoiding the competitive procurement process. They shall only be amended to reflect a development in the contractual arrangement or other material change in circumstances which must be strongly justified.¹¹

A contract may be amended without re-advertisement where:

- a) Additional works, services or supplies “have become necessary” and a change of supplier would not be practicable (for economic, technical reasons or changing supplier would lose compatibility with existing equipment or services) and would involve substantial inconvenience/duplication of costs (limited to 20% of original contract price); or
- b) The need for the change could not have been foreseen at the time of the original tender, provided these changes do not affect the nature of the contract/framework or exceed 20% of the price of the original contract.

¹¹ Examples include when the contract end date needs to be extended (no-cost time extension) or there is a modification to the goods, services or works to be delivered at an additional cost.

Contract managers must ensure an amendment or extension is processed at least one month prior to the contract End Date.

A request for amendment of contract is to be made by the Responsible Officer through the Procurement Officer.

The request for amendment must be submitted together with:

- a) copy of original contract
- b) routing slip identifying the clauses that need to be amended and strong justification for the amendment
- c) the proposed amendment - contract amendment template, **Appendix L**
- d) supplier performance assessment which should outline the revised workplan and due dates for new deliverables (work that has been completed and paid to date)

SECTION IX: COMPLAINTS

- 72. SPREP will consider, respond promptly and impartially to a complaint lodged by an unsuccessful bidder under the Procurement Policy. The complaint will be received in good faith and will be dealt with in a way that does not prejudice the complainant's ongoing or future participation in procurement or affect any rights of the complainant.
- 73. The complaint will need to be in writing and lodged with the Director General, within 10 working days of the award of the contract notice being published. The formal complaint should outline the name of the tender and the details of the complaint.
- 74. The complaint when received should be referred to the Internal Auditor who will record the complaint and acknowledge its receipt within 3 working days. The Internal Auditor will investigate the complaint and where necessary convene a Procurement Complaints Committee to preside over the complaint.

The Procurement Complaints Committee will consist of 3 persons and will be made up of the following:

- 1. Internal Auditor (Chairperson)
- 2. A Programme/Department Director previously uninvolved in the tender process
- 3. Legal Representative

- 75. All tender documents will be made available to the Complaints Committee, and the Chairperson of the Evaluation, together with the Evaluation Committee, will be interviewed.
- 76. The Complaints Committee/Internal Auditor will provide a report to the Director General on its investigation with an outcome within 20 working days of convening the investigation If more time is required, for example, upon an initial assessment of the complaint or during the

investigation, this should be immediately conveyed to the DG with reasons. The Internal Auditor (IA) will submit a response to the complainant and copy the Director General and the Complaints Committee on the outcome of the complaint.

77. The IA should keep records of all complaints, including outcomes, reasons for such outcomes, and response times. The tender evaluation committee should use the complaints' processes to identify general or recurring problems in procurement processes, and undertake corrective action.

SECTION X: PROCUREMENT RULES ON SUB-DELEGATION

78. As an implementing agency, SPREP will sub-delegate tasks and activities funded by bilateral donors or international organisations, including EU and GEF, to a vetted executing entity (or executing partner in SPREP terms, or sub-delegatee in EU terms, and executing agency in GEF terms). In the Executing Partner Agreement (EPA) signed between SPREP and the executing partner or sub-delegatee, all relevant rules and procedures of SPREP, including the procurement policies and procedures should be clearly described. The basic rule is that the executing partner or sub-delegatee should follow the appropriate policies, rules and procedures (equivalent to the procedures used by SPREP) in all material aspects for providing financing from the donor funds through procurement. Where there is observation of weaknesses or lack of capacity to follow such rules, SPREP should conduct training or workshops to bring the executing partner or sub-delegatee up the level where it can execute the project activities, including procurement, following the proper rules and procedures without problem. Under exceptional cases, SPREP may take over the procurement process with the executing entity as observer; this may be considered as another form of capacity building.
79. Throughout the project implementation period, SPREP will perform oversight functions on the activities undertaken by the executing partner and monitor its performance against compliance with relevant policies, rules, and procedures in all procurement activities. The EPA will also indicate consequence of non-compliance and remedies thereof.

APPENDIX A: CONFLICT OF INTEREST DECLARATION

Part A – Declaration of Impartiality, Confidentiality, and Conflict of Interest.

(Please read and fill in appropriate section of the Declaration form for all tender evaluation committee members. Tick appropriate boxes)

RESPONSIBLE PROGRAMME/ DEPARTMENT:

TENDER NAME:

I understand that a conflict of interest (COI) may arise where my private interests influence, or may be seen to influence, my actions as a Secretariat staff. In recommending or approving this contractor/Supplier I affirm that, except as set out below:

I, the undersigned, declare that I agree to participate in the evaluation of the above-captioned tender. By making this declaration, I confirm that I have familiarised myself

- with all relevant information concerning the tender process and evaluation. I further declare that I shall execute my responsibilities honestly and fairly.

To the best of my knowledge and belief, there are no facts or circumstances, past or present,

- or that could arise in the foreseeable future, which might constitute a conflict of interest or if such exists

I will disclose this at the outset to the chairperson of this evaluation committee/ or panel or

- as soon as I become aware of it.

I confirm that I, my family members and any organisation that I am involved with shall not

- receive any financial gain or advantage as a result of my participation.

I agree to hold in trust and confidence any information or documents disclosed to me or discovered by me or prepared by me in the course of or as a result of this evaluation and agree

- that these documents or information shall be only used for the purposes of this evaluation and shall not be disclosed except to a party entitled to know and such party should likewise agree to execute and be bound by the terms of this Declaration.

Supplier	Relationship	IS there a COI?	Describe any conflict of interest (COI)
		Yes <input type="checkbox"/> No <input type="checkbox"/>	
		Yes <input type="checkbox"/> No <input type="checkbox"/>	
		Yes <input type="checkbox"/> No <input type="checkbox"/>	

		Yes <input type="checkbox"/>	No <input type="checkbox"/>	
		Yes <input type="checkbox"/>	No <input type="checkbox"/>	
Name:				
Signed:				
Designation:				
Date:				

Part B - Record of Resolution by the Management

With respect to the above declaration, the Programme Director passed the following resolution:

_____ (name of the person making the declaration) should refrain from performing or getting involved in performing the work/duty, as described in Part A, which may give rise to a conflict.

_____ (name of the person making the declaration) may continue to handle the work/duty as described in Part A, and recommend the following action to mitigate the declared interest.

Programme/Department Director

Signature:

Signature:

(This form is to be used for procurement of goods & services through the tender process by all members in any tender evaluation committee of the Secretariat. If no conflict of interest exists as in Part A, then do not fill in Part B).

APPENDIX B: SAMPLE PRE-APPROVAL ROUTING SLIP

ROUTING SLIP – APPROVAL OF DIRECT APPOINTMENT

File:

Date:

To:

CC:

From:

Subject: *(Insert name of Tender)*

1. Clearly identify action requested :

- Approval and endorsement of the direct appointment of *(insert name of consultant)*

2. Clearly identify background to the activity requested-Brief

(e.g. Brief Background of the tender).

3. Procurement Process followed, ie, exception

- i. Identify the exception being applied with clear justification and attach all relevant supporting documents.
- ii. For Exception #6 – Emergency Response, SPREP Finance must be consulted beforehand and will endorse this procurement exception before the consideration of the Director General.

4. Clearly state the budget implication of the action requested; whether funds are with SPREP and the project number to charge costs to :

- Allocated Budget :
- Fund/Donor :
- Project :

Recommendation: *(e.g. That this proposal is approved and endorsed).*

Thanks,

(Initiating Officer)

Name	Action Date/ Approved/Comments
Director of Programme / Department:	
Legal Adviser Clark Peteru	
Director, Finance and Administration Petra Chan Tung	
Director, Human Resource Simeamativa Vaai	
Executive Management DG or DDG	

Attached: Consultant's CV; Reference checks; TOR

APPENDIX C: SAMPLE REQUEST FOR TENDERS

REQUEST FOR TENDERS

RFT:

File: Insert file no. / name

Date: xxxxx

To: Interested suppliers

From: Insert requesting officer and designation

Subject: Request for tenders (RFT): Insert title

1. Background

- 1.1. The Secretariat of the Pacific Regional Environment Programme (SPREP) is an intergovernmental organisation charged with promoting cooperation among Pacific islands countries and territories to protect and improve their environment and ensure sustainable development.
- 1.2. SPREP approaches the environmental challenges faced by the Pacific guided by four simple Values. These values guide all aspects of our work:
 - We value the Environment
 - We value our People
 - We value high quality and targeted Service Delivery
 - We value Integrity
- 1.3. For more information, see: www.sprep.org.

2. Specifications: statement of requirement

- 2.1. SPREP would like to call for tenders from qualified and experienced designers/ economists/ garden maintenance companies/ etc. who can offer their services to provide a series of training workshops/ regular maintenance services/ expert assistance to SPREP in developing a regional strategy on...etc.
- 2.2. The successful applicant will need to provide [insert the nature, scope and quantity of the goods or services] by insert date.
- 2.3. Describe any technical specifications or other instructions, e.g. list the terms of reference for a consultancy.
- 2.4. The successful consultant must supply the services to the extent applicable, in compliance with SPREP's Values and Code of Conduct. https://www.sprep.org/attachments/Publications/Corporate_Documents/sprep-organisational-values-code-of-conduct.pdf. Including SPREP's policy on Child Protection, Environmental Social Safeguards, Fraud Prevention & Whistleblower Protection and Gender and Social Inclusion.
- 2.5. SPREP Standard Contract Terms and Conditions are non-negotiable

3. Conditions: information for applicants

- 3.1. To be considered for this tender, interested suppliers must meet the following conditions: list any conditions, i.e. Financial performance/ guarantees, information or documents that potential suppliers must submit.
- 3.2. Tenderers must declare any areas that may constitute conflict of interest related to this tender and sign the conflict of interest form provided.
- 3.3. Tenderer is deemed ineligible due to association with exclusion criteria, including bankruptcy, insolvency or winding up procedures, breach of obligations relating to the payment of taxes or social security contributions, fraudulent or negligent practice, violation of intellectual property rights, under a judgment by the court, grave professional misconduct including misrepresentation, corruption, participation in a criminal organisation, money laundering or terrorist financing, child labour and other trafficking in human beings, deficiency in capability in complying main obligations, creating a shell company, and being a shell company.
- 3.4. Tenderer must sign a declaration of **honour form** together with their application, certifying that they do not fall into any of the exclusion situations cited under (IX) above and where applicable, that they have taken adequate measures to remedy the situation.

4. Submission guidelines

- 4.1. Tender documentation should demonstrate that the interested supplier satisfies the conditions stated above and is capable of meeting the specifications and timeframes. Documentation must also include supporting examples to address the evaluation criteria. **Describe any additional minimum content and format requirements.**
- 4.2. Tender documentation should be submitted in English and outline the interested supplier's complete proposal: methods, personnel (and their skill sets/curricula vitae), timeframes and costs including the following:
 - a) **SPREP Tender Application form and conflict of interest form**
 - b) **Honour form**
 - c) **Curriculum Vitae** of the proposed personnel highlighting experience relevant to the tender. Also submit details of relevant experience as a consultant, subcontractor or management consultant under contracts with similar services;
 - d) **Technical Proposal** which contains the details to achieve the tasks outlined in the Terms of Reference.
 - e) **Financial Proposal** – detailed outline of the costs involved in successfully delivering this project submitted in United States Dollars (USD) and inclusive of all associated taxes.
 - f) Any other forms applicable at the time as per SPREP conditions.
- 4.3. Provide three referees relevant to this tender submission, including the most recent work completed.
- 4.4. Tenderers/bidders shall bear all costs associated with preparing and submitting a proposal, including cost relating to contract award; SPREP will, in no case, be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.
- 4.5. The tenderer/bidder might be requested to provide additional information relating to their submitted proposal, if the Tender Evaluation Committee requests further information for the purposes of tender evaluation. SPREP may shortlist one or more Tenderers and seek further information from them.
- 4.6. The submitted tender proposal must be for the entirety of the Terms of Reference and not divided into portions which a potential tenderer/bidder can provide services for.

- 4.7 No tender proposal may be modified after the deadline for submission of proposals.
- 4.8 The Proposal must remain valid for 90 days from date of submission.
- 4.9 Tenderers/Bidders must insist on an acknowledgement of receipt of tenders/proposals/bids.

5. Tender Clarification

- 5.1.
 - a. Any clarification questions from applicants must be submitted by email to procurement@sprep.org before [insert date]. A summary of all questions received with an associated response will be posted on the SPREP website www.sprep.org/tender by [insert date].
 - b. The only point of contact for all matters relating to the RFT and the RFT process is the SPREP Procurement Officer.
 - c. SPREP will determine what, if any, response should be given to a Tenderer question. SPREP will circulate Tenderer questions and SPREP's response to those questions to all other Tenderers using the SPREP Tenders page (<https://www.sprep.org/tenders>) without disclosing the source of the questions or revealing any confidential information of a Tenderer.
 - d. Tenderers should identify in their question what, if any, information in the question the Tenderer considers is confidential.
 - e. If a Tenderer believes they have found a discrepancy, error, ambiguity, inconsistency or omission in this RFT or any other information given or made available by SPREP, the Tenderer should promptly notify the Procurement Officer setting out the error in sufficient detail so that SPREP may take the corrective action, if any, it considers appropriate.

6. Evaluation criteria

- 6.1. SPREP will select a preferred supplier on the basis of SPREP's evaluation of the extent to which the documentation demonstrates that the tenderer offers the best value for money, and that the tenderer satisfies the following criteria.
- 6.2. e.g. Expertise in ... [indicate any weighting applied to criteria]
- 6.3. e.g. Demonstrated experience in ...
- 6.4. e.g. Familiarity with / comprehensive understanding of ...
- 6.5. e.g. Detailed technical proposal/methodology
- 6.6. e.g. Detailed financial proposal
- 6.7. Describe any other factors to be considered in assessing submissions.

7. Variation or Termination of the Request for Tender

- 7.1 a. SPREP may amend, suspend or terminate the RFT process at any time.

- b. In the event that SPREP amends the RFT or the conditions of tender, it will inform potential Tenderers using the SPREP Tenders page (<https://www.sprep.org/tenders>).
- c. Tenderers are responsible to regularly check the SPREP website Tenders page for any updates and downloading the relevant RFT documentation and addendum for the RFT if it is interested in providing a Tender Response.
- d. If SPREP determines that none of the Tenders submitted represents value for money, that it is otherwise in the public interest or SPREP's interest to do so, SPREP may terminate this RFT process at any time. In such cases SPREP will cancel the tender, issue a cancellation notice and inform unsuccessful bidders accordingly.

8. Deadline

- 8.1. **The due date for submission of the tender is: Refer to the Procurement Manual for the recommended procurement period.**
- 8.2. Late submissions will be returned unopened to the sender.
- 8.3 Please send all tenders clearly marked 'TENDER: Title of Tender' to one of the following methods:

Mail: SPREP
 Attention: Procurement Officer
 PO Box 240
 Apia, SAMOA
 Email: tenders@sprep.org (MOST PREFERRED OPTION)
 Fax: 685 20231
 Person: Submit by hand in the tenders box at SPREP reception,
 Vailima, Samoa.

Note: Submissions made to the incorrect portal will not be considered by SPREP. If SPREP is made aware of the error in submission prior to the deadline, the applicant will be advised to resubmit their application to the correct portal. However, if SPREP is not made aware of the error in submission until after the deadline, then the application is considered late and will be returned unopened to the sender.

SPREP reserves the right to reject any or all tenders and the lowest or any tender will not necessarily be accepted, thereby incurring no liability to the affected tenderer/bidder, nor any obligation to inform the affected tenderers/bidders of the grounds for SPREP's action.

SPREP reserves the right to enter into negotiation with respect to one or more proposals prior to the award of a contract, split an award/awards and to consider localised award/awards between any proposers in any combination, as it may deem appropriate without prior written acceptance of the proposers.

A binding contract is in effect once signed by both SPREP and the successful tenderer. Any contractual discussion/work carried out/goods supplied prior to a contract being signed does not constitute a binding contract.

For any complaints regarding the Secretariat's tenders please refer to the Complaints section on the SPREP website <http://www.sprep.org/accountability/complaints>

APPENDIX D: APPLICATION FORM & CONFLICT OF INTEREST FORM

SECRETARIAT OF THE PACIFIC REGIONAL ENVIRONMENT PROGRAMME



TENDER APPLICATION FORM

RFT: 2022/XXX

File: AP_XXX

THIS APPLICATION IS FOR THE FOLLOWING TENDER:

Please note you are required to complete in full all areas requested in the Form, particularly the Statements to demonstrate you meet the selection criteria – DO NOT refer us to your CV. Failure to do this will mean your application will not be considered. For the Technical and Financial proposals you may attach these separately.

1. DETAILS		
NAME OF FIRM <i>(if applicable)</i>		
NAME OF PRINCIPAL CONSULTANT		
LIST OTHER PROPOSED PERSONNEL <i>(if applicable)</i>		
NATIONALITY		
POSTAL ADDRESS		E-MAIL ADDRESS
TELEPHONE WORK		MOBILE NUMBER
TELEPHONE HOME		FAX NUMBER

2. ACADEMIC BACKGROUND (PRINCIPAL APPLICANT & PROPOSED PERSONNEL)			
Dates	Institution/Country	Qualification Attained	
3. WORK EXPERIENCE			
Dates	Employer	Position (briefly list core functions)	
4. PROFESSIONAL AFFILIATIONS/AWARDS			
Dates	Organisation	Member/Award Status	
5. PROFESSIONAL REFEREES (List at least 3 including the most recent relevant to this job)			
Name		Position	Organisation & Contact Details

6.	STATE HOW YOU MEET EACH SELECTION CRITERIA	
	CRITERIA 1	
CRITERIA 2		
CRITERIA 3		
CRITERIA 4		
CRITERIA 5		
7.	GENERAL INFORMATION	

Declaration of close relations to any individual who is currently employed at SPREP. Please list name/s and nature of relationship.	
Declaration Tenderer has no association with exclusion criteria, including bankruptcy, fraudulent or negligent practice, violation of intellectual property rights, under a judgment by the court, misrepresentation, corruption, participation in a criminal organization, money laundering or terrorist financing, child labour, and deficiency in capability in complying main obligations.	
Declaration Tenderer (and other proposed personnel) have not been charged with any child related offences	
Discipline Record (list past employment disciplinary cases or criminal convictions, if any)	

8. ANY OTHER ADDITIONAL INFORMATION APPLICANT WISHES TO SUBMIT

9. HOW DID YOU LEARN ABOUT THIS TENDER?

10. CERTIFICATION & AUTHORISATION:	<p>All information submitted herewith is true and correct. SPREP has the authority to seek verification of any information provided.</p> <p>By signing this application form you are indicating your agreement to SPREP's Standard Terms and Conditions outlined in the Contract for Services (attached).</p>	
Signature	Date	

The following documents must be attached to this Tender application form:

- Curriculum Vitae – Principal Consultant & Proposed Personnel
- Detailed workplan and schedule of activities
- Detailed Financial Proposal
- Business Licence
- Any other relevant information to support this tender application.

CONFLICT OF INTEREST FORM

Request for Tender (RFT) – XXX

1. I confirm that I, my family members, and the organisation or company that I am involved with are independent from SPREP. To the best of my knowledge, there are no facts or circumstances, past or present, or that could arise in the foreseeable future, which might call into question my independence.

2. If it becomes apparent during the procurement process that I may be perceived to have a conflict of interest, I will immediately declare that conflict and will cease to participate in the procurement process, unless or until it is determined that I may continue.

OR

1. I declare that there is a potential conflict of interest in the submission of my bid [please provide an explanation with your bid]

Name, Signature

Date

Title _____

APPENDIX E: HONOUR FORM

Declaration on honour on exclusion criteria and selection criteria

The undersigned [*insert name of the signatory of this form*], representing:

(<i>only for natural persons</i>) himself or herself	(<i>only for legal persons</i>) the following legal person:
ID or passport number: (‘the person’)	Full official name: Official legal form: Statutory registration number: Full official address: VAT registration number: (‘the person’)

The person is not required to submit the declaration on exclusion criteria if the same declaration has already been submitted for the purposes of another award procedure of the same contracting authority, provided the situation has not changed, and that the time that has elapsed since the issuing date of the declaration does not exceed one year.

In this case, the signatory declares that the person has already provided the same declaration on exclusion criteria for a previous procedure and confirms that there has been no change in its situation:

Date of the declaration	Full reference to previous procedure

I – Situations of exclusion concerning the person

(1) declares that the above-mentioned person is in one of the following situations:	YES	NO
(a) it is bankrupt, subject to insolvency or winding-up procedures, its assets are being administered by a liquidator or by a court, it is in an arrangement with creditors, its business activities are suspended or it is in any analogous situation	<input type="checkbox"/>	<input type="checkbox"/>

arising from a similar procedure provided for under Union or national legislation or regulations;		
(b) it has been established by a final judgement or a final administrative decision that the person is in breach of its obligations relating to the payment of taxes or social security contributions in accordance with the applicable law;	<input type="checkbox"/>	<input type="checkbox"/>
(c) it has been established by a final judgement or a final administrative decision that the person is guilty of grave professional misconduct by having violated applicable laws or regulations or ethical standards of the profession to which the person belongs, or by having engaged in any wrongful conduct which has an impact on its professional credibility where such conduct denotes wrongful intent or gross negligence, including, in particular, any of the following:		
(i) fraudulently or negligently misrepresenting information required for the verification of the absence of grounds for exclusion or the fulfilment of eligibility or selection criteria or in the performance of a contract or an agreement;	<input type="checkbox"/>	<input type="checkbox"/>
(ii) entering into agreement with other persons with the aim of distorting competition;	<input type="checkbox"/>	<input type="checkbox"/>
(iii) violating intellectual property rights;	<input type="checkbox"/>	<input type="checkbox"/>
(iv) attempting to influence the decision-making process of the contracting authority during the award procedure;	<input type="checkbox"/>	<input type="checkbox"/>
(v) attempting to obtain confidential information that may confer upon it undue advantages in the award procedure;	<input type="checkbox"/>	<input type="checkbox"/>
(d) it has been established by a final judgement that the person is guilty of any of the following:		
(i) fraud;	<input type="checkbox"/>	<input type="checkbox"/>
(ii) corruption;	<input type="checkbox"/>	<input type="checkbox"/>
(iii) conduct related to a criminal organisation;	<input type="checkbox"/>	<input type="checkbox"/>
(iv) money laundering or terrorist financing;	<input type="checkbox"/>	<input type="checkbox"/>
(v) terrorist offences or offences linked to terrorist activities, or inciting, aiding, abetting or attempting to commit such offences;	<input type="checkbox"/>	<input type="checkbox"/>
(vi) child labour or other offences concerning trafficking in human beings;	<input type="checkbox"/>	<input type="checkbox"/>

(e) it has shown significant deficiencies in complying with the main obligations in the performance of a contract or an agreement financed by SPREP, which has led to its early termination or to the application of liquidated damages or other contractual penalties, or which has been discovered following checks, audits or investigations by SPREP;	<input type="checkbox"/>	<input type="checkbox"/>
(f) it has been established by a final judgment or final administrative decision that the person has committed an irregularity;	<input type="checkbox"/>	<input type="checkbox"/>
(g) it has been established by a final judgment or final administrative decision that the person has created an entity under a different jurisdiction with the intent to circumvent fiscal, social or any other legal obligations in the jurisdiction of its registered office, central administration or principal place of business.	<input type="checkbox"/>	<input type="checkbox"/>
(h) (only for legal persons) it has been established by a final judgment or final administrative decision that the person has been created with the intent provided for in point (g).	<input type="checkbox"/>	<input type="checkbox"/>
(i) for the situations referred to in points (c) to (h) above the person is subject to: <ul style="list-style-type: none"> i.facts established in the context of audits or investigations carried out by a Court or the internal auditor, or any other check, audit or control performed under the responsibility of SPREP; ii.non-final judgments or non-final administrative decisions which may include disciplinary measures taken by the competent supervisory body responsible for the verification of the application of standards of professional ethics; iii. facts referred to in decisions of entities or persons being entrusted with any of SPREP's donor budget implementation tasks; iv.information transmitted by Member States of SPREP; or v.decisions of exclusion by an authorising officer of SPREP donor partners. 	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>

II – Situations of exclusion concerning natural or legal persons with power of representation, decision-making or control over the legal person and beneficial owners

Not applicable to natural persons, Member States and local authorities

(2) declares that a natural or legal person who is a member of the administrative, management or supervisory body of the above-mentioned legal person, or who has powers of representation, decision or control with regard to the above-mentioned legal person (this covers e.g. company directors, members of management or supervisory bodies, and cases where one natural or legal	YES	NO	N/A
--	-----	----	-----

person holds a majority of shares), or a beneficial owner of the person is in one of the following situations:			
Situation (c) above (grave professional misconduct)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Situation (d) above (fraud, corruption or other criminal offence)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Situation (e) above (significant deficiencies in performance of a contract)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Situation (f) above (irregularity)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Situation (g) above (creation of an entity with the intent to circumvent legal obligations)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Situation (h) above (person created with the intent to circumvent legal obligations)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Situation (i) above	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

III – Situations of exclusion concerning natural or legal persons assuming unlimited liability for the debts of the legal person

(3) declares that a natural or legal person that assumes unlimited liability for the debts of the above-mentioned legal person is in one of the following situations [<i>If yes, please indicate in annex to this declaration which situation and the name(s) of the concerned person(s) with a brief explanation</i>]:	YES	NO	N/A
Situation (a) above (bankruptcy)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Situation (b) above (breach in payment of taxes or social security contributions)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

IV – Grounds for rejection from this procedure

(4) declares that the above-mentioned person:	YES	NO
Was previously involved in the preparation of the procurement documents used in this award procedure, where this entailed a breach of the principle of equality of treatment including distortion of competition that cannot be remedied otherwise.	<input type="checkbox"/>	<input type="checkbox"/>

V – Remedial measures

If the person declares one of the situations of exclusion listed above, it must indicate measures it has taken to remedy the exclusion situation, thus demonstrating its reliability. This may include e.g. technical,

organisational and personnel measures to prevent further occurrence, compensation of damage or payment of fines or of any taxes or social security contributions. The relevant documentary evidence which illustrates the remedial measures taken must be provided in annex to this declaration. This does not apply for situations referred in point (d) of this declaration.

VI – Evidence upon request

Upon request and within the time limit set by SPREP the person must provide information on natural or legal persons that are members of the administrative, management or supervisory body or that have powers of representation, decision or control, including legal and natural persons within the ownership and control structure and beneficial owners.

It must also provide the following evidence concerning the person itself and the natural or legal persons on whose capacity the person intends to rely, or a subcontractor and concerning the natural or legal persons which assume unlimited liability for the debts of the person:

For situations described in (a), (c), (d), (f), (g) and (h), production of a recent extract from the judicial record is required or, failing that, an equivalent document recently issued by a judicial or administrative authority in the country of establishment of the person showing that those requirements are satisfied.

For the situation described in point (b), production of recent certificates issued by the competent authorities of the State concerned are required. These documents must provide evidence covering all taxes and social security contributions for which the person is liable, including for example, VAT, income tax (natural persons only), company tax (legal persons only) and social security contributions. Where any document described above is not issued in the country concerned, it may be replaced by a sworn statement made before a judicial authority or notary or, failing that, a solemn statement made before an administrative authority or a qualified professional body in its country of establishment.

The person is not required to submit the evidence if it has already been submitted for another award procedure of the same contracting authority. The documents must have been issued no more than one year before the date of their request by the contracting authority and must still be valid at that date.

The signatory declares that the person has already provided the documentary evidence for a previous procedure and confirms that there has been no change in its situation:

Document	Full reference to previous procedure
<i>Insert as many lines as necessary.</i>	

VII – Selection criteria

(1) declares that the above-mentioned person complies with the selection criteria applicable to it individually as provided in the tender documents:	YES	NO	N/A
--	-----	----	-----

(a) It has the legal and regulatory capacity to pursue the professional activity needed for performing the contract as required in section [insert] of the contract notice/Instructions to tenderers;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(b) It fulfills the applicable economic and financial criteria indicated in section [insert] of the contract notice/Instructions to tenderers;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(c) It fulfills the applicable technical and professional criteria indicated in section [insert] of the contract notice/Instructions to tenderers.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please adapt the table above to the criteria indicated in the tender documents (i.e. insert extra rows for each criterion or delete irrelevant rows).

(2) if the above-mentioned person is the sole tenderer or the leader in case of consortium , declares that:	YES	NO	N/A
(d) the tenderer, including all members of the group in case of consortium and including subcontractors if applicable, complies with all the selection criteria for which a consolidated assessment will be made as provided in the tender documents.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

VIII – Evidence for selection

The signatory declares that the above-mentioned person is able to provide the necessary supporting documents listed in the relevant sections of the tender documents and which are not available electronically upon request and without delay.

The person is not required to submit the evidence if it has already been submitted for another procurement procedure of the same contracting authority. The documents must have been issued no more than one year before the date of their request by the contracting authority and must still be valid at that date.

The signatory declares that the person has already provided the documentary evidence for a previous procedure and confirms that there has been no change in its situation:

Document	Full reference to previous procedure
<i>Insert as many lines as necessary.</i>	

The above-mentioned person must immediately inform SPREP of any changes in the situations as declared.

The above-mentioned person may be subject to rejection from this procedure and to administrative sanctions (exclusion or financial penalty) if any of the declarations or information provided as a condition for participating in this procedure prove to be false.

Full name

Date

Signature

APPENDIX F: Tender Evaluation and Recommendation

TENDER EVALUATION

File: **Insert file no. / name**

Date: **Insert date**

To: **Insert person with delegated financial authority (e.g. Deputy Director) and Human Resource Adviser**

From: **Chairperson**

Subject: Tender Evaluation and Recommendation: Insert title

1. Requirement / Terms of reference

- 1.1. **Briefly outline the requirement or the consultancy's terms of reference.**

2. Recommendation

- 2.1. The evaluation committee recommends that SPREP awards the contract to: **supplier X**.
- 2.2. This recommendation is on the basis that the information **supplier X** tendered demonstrated that they satisfied the conditions, are fully capable of undertaking the contract, and will provide the best value for money. Further information is provided in the committee's evaluation below.

3. Conditions and evaluation criteria

- 3.1. The conditions that were stated in SPREP's **advertisement/statement of requirement** were: **[insert any conditions]**.
- 3.2. The specific evaluation criteria were: **[insert criteria, e.g. the consultant expertise required, and give each criterion a number for reference in the table of evaluations below]**.
- 3.3. The general criteria evaluated the relative value for money represented by the proposals, i.e. **[delete any not relevant]**:
 - a) costs – direct and indirect benefits/costs over the whole procurement cycle;

- b) quality and fitness for purpose;
- c) environmental considerations;
- d) convenience and timeliness;
- e) the relative risks, including the performance history of the suppliers;
- f) the flexibility to adapt to change over the lifecycle of the goods or service;
- g) favourability of proposed contract terms (e.g. contract extension options).

4. Budget

4.1 State the budget allowed for this activity.

5. Recommendation and evaluation

5.1. The evaluation committee members were: [give names and job titles].

5.2. SPREP received proposals from [X] potential suppliers within the deadline. Of these:

- [X] met the conditions set as prerequisites for participation and were evaluated against the criteria;
- The evaluation committee scored each of these proposals out of [X] for each criterion [note if any criteria were weighted more heavily than others – e.g. 20 points for costs; 10 points for experience]. Scores against the criteria ranged from [X] to [X] out of a possible [XX];
- In summary, our evaluations were:

Prospective supplier	Value for money		Total score					TOTAL
	\$ quote (USD)	Score	(1)	(2)	(3)	(4)	(5)	

- We concluded that [X] of the proposals were competitive: [supplier X, supplier Y and supplier Z], and agreed to recommend awarding the contract to [supplier X].
- [Optional: The strengths of supplier X were: A, B, C.]
- [Optional: The strengths of supplier Y were: A, B, C.]
- [Optional: The strengths of supplier Z were: A, B, C.]

5.3. Signed by:

[Name]

Chairperson of the evaluation committee

Committee members to sign

APPENDIX G: SAMPLE CONSULTANCY AGREEMENT (CA1)

Contract for Services



[Registry file # - Consultancy name]

The Parties

SPREP

(Buyer)

PO Box 240, Apia, Samoa

and

XXXX

(Supplier)

[Address]

The Contract

Agreement

The Buyer appoints the Supplier to deliver the Services described in this Contract and the Supplier accepts that appointment. This Contract sets out the Parties' rights and obligations.

The documents forming this Contract are:

1. This page	Page 1
2. Contract Details and Description of Services	Schedule 1
3. Standard Terms and Conditions	Schedule 2
4. Any other attachments described at Schedule 1.	

How to read this Contract

5. Together the above documents form the whole Contract.
6. Any Supplier terms and conditions do not apply.
7. Clause numbers refer to clauses in Schedule 2.
8. Words starting with capital letters have a special meaning. The special meaning is stated in the Definitions section at clause 17 (Schedule 2).

Acceptance

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

For and on behalf of the Buyer :		For and on behalf of the Supplier :	
<hr/> (signature)		<hr/> (signature)	
name:	Kosi Latu	name:	
position:	Director General, SPREP	position:	
date:		date:	

Schedule 1

Contract Details and Description of Services

Start Date			Reference Schedule 2 clause 1
End Date			Reference Schedule 2 clause 1
Contract Managers		Buyer's Contract Manager	Supplier's Contract Manager
Reference Schedule 2 clause 4	Name:		
	Title / position:		
	Address:		
	Phone:		
	Fax:		
	Email:		
Buyer's address		Supplier's address	

Addresses for Notices Reference Schedule 2 clause 14	For the attention of:	
	Delivery address:	
	Postal address:	
	Fax:	
	Email:	

Description of Services

Context:

Description of Services:

Deliverables

Deliverable/Milestone	Performance Standards	Due date

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

Supplier to adhere to – SPREP, Child Protection Policy, Environmental Social Safeguards, Fraud Prevention & Whistleblower Protection and Gender and Social Inclusion.

The supplier must supply the services to the extent applicable, in compliance with SPREP's Values and Code of Conduct https://www.sprep.org/attachments/Publications/Corporate_Documents/sprep-organisational-values-code-of-conduct.pdf

Supplier's Reporting Requirements Reference Schedule 2 clause 5	Report to:	Type of report	Due date
	Contract Manager		

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

Fees Reference Schedule 2 clause 3	<p>The Supplier's Fees:</p> <p>The total Consultancy costs is</p> <p>The supplier agrees it is responsible for:</p> <ul style="list-style-type: none"> a) payment of applicable taxes, superannuation and the like; b) all insurance cover such as medical, travel and professional liability.
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Expenses Reference Schedule 2 clause 3	<p>If travel is required,</p> <ul style="list-style-type: none"> a) SPREP will provide the Consultant with a return economy airfare by the most direct and economical route available. b) A per diem allowance at current SPREP rates on the approved itinerary will be paid in advance by SPREP, or where appropriate by the agreed work commencement date. c) If there are any variations to the initially approved itinerary, a reconciliation of actual entitlement against actual advance must be submitted to SPREP at the completion of the Agreement and any refunds by either Party made at that time.
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Daily Allowance Reference Schedule 2 clause 3	Refer Expenses above.
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Invoices Reference Schedule 2 Subject to clauses 3 and 11.7	<p>The Supplier must send the Buyer an invoice for the Charges at the following times:</p> <p>On the following dates subject to completion of the relevant [Deliverables/Milestones].</p> <table border="1"> <thead> <tr> <th>Deliverable/Milestone</th><th>Due date</th><th>Amount due (exc GST)</th></tr> </thead> <tbody> <tr><td></td><td></td><td></td></tr> <tr><td></td><td></td><td></td></tr> <tr><td></td><td></td><td></td></tr> </tbody> </table>			Deliverable/Milestone	Due date	Amount due (exc GST)									
Deliverable/Milestone	Due date	Amount due (exc GST)													

<i>Total (including GST)</i>		

Address for invoices	Buyer's address
Reference Schedule 2 clause 3	For the attention of:
	Physical address:
	Postal address:
	Email:
	Fax:
Insurance Reference Schedule 2 Clause 8.1	INSURANCE: (clause 8.1 Schedule 2) It is the Supplier's responsibility to ensure its risks of doing business are adequately covered, whether by insurance or otherwise.
Changes to Schedule 2 and additional clause/s	
Attachments Reference 'Contract documents' described at Page 1	Terms of Reference SPREP, Child Protection Policy, 2016

ANNEX 1: TERMS OF REFERENCE

Schedule 2 Standard Terms and Conditions - Services

1. Length of Contract

- 1.1 This Contract starts on the Start Date. Services must not be delivered before the Start Date.
- 1.2 This Contract ends on the End Date unless terminated earlier.

2. The Services

Both Parties' obligations

- 2.1 Both Parties agree to:
 - a. act in good faith and demonstrate honesty, integrity, openness and accountability in their dealings with each other
 - b. discuss matters affecting this Contract or the delivery of the Services, whenever necessary
 - c. notify each other immediately of any actual or anticipated issues that could:
 - i. significantly impact on the Services or the Charges
 - ii. receive media attention, and
 - d. comply with all applicable laws and regulations.

Buyer's obligations

- 2.2 The Buyer must:
 - a. provide the Supplier with any information it has reasonably requested to enable the delivery of the Services
 - b. make decisions and give approvals reasonably required by the Supplier to enable delivery of the Services. All decisions and approvals must be given within reasonable timeframes, and
 - c. pay the Supplier the Charges for the Services as long as the Supplier has delivered the Services and invoiced the Buyer, all in accordance with this Contract.

Supplier's obligations and indemnity

2.3 The Supplier must deliver the Services:

- a. on time and to the required performance standards or quality set out in Schedule 1 or reasonably notified by the Buyer to the Supplier from time to time
- b. within the amounts agreed as Charges, and
- c. with due care, skill and diligence, and to the appropriate professional standard or in accordance with good industry practice as would be expected from a leading supplier in the relevant industry.

2.4 The Supplier must:

- a. ensure that its Personnel have the necessary skills, experience, training and resources to successfully deliver the Services
- b. provide all equipment and resources necessary to deliver the Services, and
- c. comply with its own Standards of Integrity and Conduct and any other relevant codes of conduct listed in Schedule 1 or notified by the Buyer to the Supplier from time to time.
- d. ensure no conflict of interest exists or is likely to arise in the performance of its obligations under this Contract;
- e. ensure the Deliverables will be of merchantable quality and fit for any purpose specified by the Buyer or for which the Buyer might reasonably be expected to use the Deliverables;
- f. ensure all information included in any document is correct, complete and not misleading in any material respect;
- g. ensure in undertaking the obligations under this Contract it will not be in breach of any obligation owed to any other person nor infringe the Intellectual Property Rights of any person;
- h. ensure that except to the extent of a party's pre-existing intellectual property being incorporated or used for the creation of the Deliverables, the Deliverables and new intellectual property arise from the original work of the Supplier and will not infringe the Intellectual Property Rights of any person and upon delivery or creation the Buyer will obtain absolute and unencumbered legal and beneficial ownership of the Deliverables and New Intellectual Property.

2.5 Where an Approved Personnel has been authorised by the Buyer in Schedule 1, the Supplier must use the Approved Personnel in delivering the Services. The Supplier must obtain the Buyer's prior written approval if it wishes to change any Approved Personnel.

2.6 If the Supplier is at the Buyer's premises or at each location where Services are supplied or Deliverables are produced or tested the Supplier must observe the Buyer's policies and procedures, including those relating to health and safety, environmental, security, privacy, quality and other policies, directions and procedures. The Buyer must tell the Supplier what the relevant policies and procedures are, and either give the Supplier a copy of them or provide an internet link.

2.7 If the nature of the Services requires it, the Supplier will deliver Services:

- a. that are culturally appropriate
- b. that respects the personal privacy and dignity of all participants and stakeholders.

2.8 The Supplier must:

- a. liaise with the Buyer's Contract Manager regarding all matters relating to the Services, Deliverables or this Contract; and
- b. comply with the directions of the Buyer's Contract Manager that are consistent with this Contract.

2.9 The Supplier must deliver the Deliverables to the Buyer at the place of delivery specified in Schedule 1. Risk in the Deliverables passes to the Buyer upon physical delivery to the Buyer. Property in the Deliverables passes to the Buyer upon the earlier of physical delivery to the Buyer or payment of the Charges for those Deliverables, unless payment is bona fide in dispute in which case property passes upon physical delivery to the Buyer.

2.11 The Supplier must obtain the Buyer's written approval before carrying out additional work, or incurring or committing to additional costs, not included in Schedule 1.

2.12 The Supplier releases and indemnifies the Buyer, its Personnel -

from and against all actions, claims, proceedings and demands (including those brought by third parties) which may be brought against it or them, whether on their own or jointly with the Supplier and whether at common law, under tort (including negligence), in equity, pursuant to statute or otherwise, in respect of any loss, death, injury, illness or damage (whether personal or property, and whether direct or consequential, including consequential financial loss) arising out of:

- a. breach of the Supplier's warranties or obligations contained in this Contract;
- b. the failure of any Personnel of the Supplier to use reasonable care in carrying out the Supplier's obligations under this Contract; or

c. the death of or personal injury to persons or property damage, or the breach of Intellectual Property rights of any person, arising out of reliance on the Services or the use or commercial exploitation of the Deliverables or New Intellectual Property,

and

from and against all damages, reasonable costs and expenses incurred in defending, satisfying or settling any such action, claim, proceeding or demand.

3. Charges and payment

Charges & invoices

3.1 The Charges are the total maximum amount payable by the Buyer to the Supplier for delivery of the Services. Charges include Fees and, where agreed, Expenses and Daily Allowances.

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

- a. clearly show all GST due
- b. be in Samoan currency or the currency stated in Schedule 1
- c. be clearly marked 'Tax invoice'
- d. contain the Supplier's name, address and GST number, if the Supplier is registered for GST
- e. contain the Buyer's name and address and be marked for the attention of the Buyer's Contract Manager or such other person stated in Schedule 1
- f. state the date the invoice was issued
- g. name this Contract and provide a description of the Services supplied, including the amount of time spent in the delivery of the Services if payment is based on an Hourly Fee Rate or Daily Fee Rate
- h. contain the Buyer's contract reference or purchase order number if there is one
- i. state the Charges due, calculated correctly, and
- j. be supported by GST receipts if Expenses are claimed and any other verifying documentation reasonably requested by the Buyer.

Payment

3.3 If the Buyer receives a valid tax invoice on or before the 3rd Business Day of the month, the Buyer must pay that tax invoice by the 20th calendar day of that month. Any valid tax invoice received after the 3rd Business Day of the month will be paid by the Buyer on the 20th calendar day of the month following the month it is received. The Buyer's obligation to pay is subject to clauses 3.2, 3.4 and 11.10.

3.4 If the Buyer disputes a tax invoice or any part of a tax invoice that complies with clause 3.2, the Buyer must notify the Supplier within 10 Business Days of the date of receipt of the tax invoice. The Buyer must pay the portion of the tax invoice that is not in dispute. The Buyer may withhold payment of the disputed portion until the dispute is resolved.

4. Contract management

Contract Manager

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

- a. managing the relationship between the Parties
- b. overseeing the effective implementation of this Contract, and
- c. acting as a first point of contact for any issues that arise.

Changing the Contract Manager

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

5. Information management

Information and Records

5.1 The Supplier must:

- a. keep and maintain Records in accordance with prudent business practice and all applicable laws
- b. make sure the Records clearly identify all relevant time and Expenses incurred in providing the Services

- c. make sure the Records are easy to access, and
- d. keep the Records safe.

5.2 The Supplier must give information to the Buyer relating to the Services that the Buyer reasonably requests. All information provided by the Supplier must be in a format that is usable by the Buyer, and delivered within a reasonable time of the request.

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

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

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

Reports

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

6. The contractual relationship

Independent Supplier

6.1 Nothing in this Contract constitutes a legal relationship between the Parties of partnership, joint venture, agency, or employment. The Supplier is responsible for the liability of its own, and its Personnel's, salary, wages, holiday or redundancy payments and any GST, corporate, personal and withholding taxes, accident compensation premiums or other levies attributable to the Supplier's business or the engagement of its Personnel.

Neither Party can represent the other

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

Permission to transfer rights or obligations

6.3 The Supplier may transfer any of its rights or obligations under this Contract only if it has the Buyer's prior written approval. The Buyer will not unreasonably withhold its approval.

7. Subcontractors

Rules about subcontracting

7.1 The Supplier must not enter into a contract with someone else to deliver any part of the Services without the Buyer's prior written approval. In selecting an appropriate Subcontractor the Supplier must be able to demonstrate value for money.

The Supplier's responsibilities

7.2 The Supplier is responsible for ensuring the suitability of any Subcontractor and the Subcontractor's capability and capacity to deliver that aspect of the Services being subcontracted.

7.3 The Supplier must ensure that:

- a. each Subcontractor is fully aware of the Supplier's obligations under this Contract, and
- b. any subcontract it enters into is on terms that are consistent with this Contract.

7.4 The Supplier continues to be responsible for delivering the Services under this Contract even if aspects of the Services are subcontracted.

8. Insurance

Where insurance is a requirement

8.1 It is the Supplier's responsibility to ensure its risks of doing business are adequately covered, whether by insurance or otherwise. If required in Schedule 1, the Supplier must have the insurance specified in Schedule 1 and the Supplier must:

- a. take out insurance, with a reputable insurer, and maintain that insurance cover for the term of this Contract and for a period of 3 years after the End Date, and
- b. within 10 Business Days of a request from the Buyer provide a certificate confirming the nature of the insurance cover and proving that each policy is current.

9. Conflicts of Interest

Avoiding Conflicts of Interest

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

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

Obligation to tell the Buyer

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

10. Resolving disputes

Steps to resolving disputes

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

- a. a Party must notify the other if it considers a matter is in dispute
- b. the Contract Managers will attempt to resolve the dispute through direct negotiation
- c. if the Contract Managers have not resolved the dispute within 10 Business Days of notification, they will refer it to the Parties' senior managers for resolution, and
- d. if the senior managers have not resolved the dispute within 10 Business Days of it being referred to them, the Parties shall refer the dispute to mediation or some other form of alternative dispute resolution.

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

- a. by a single mediator agreed by the Parties.

10.3 Each Party will pay its own costs of mediation or alternative dispute resolution under this clause 10.

Obligations during a dispute

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

Arbitration

10.5 Should the foregoing attempts at resolution fail, such dispute shall, upon request by either Party, be referred to arbitration in accordance with the UNCITRAL arbitration rules. The Parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of that dispute.

11. Ending this Contract

Termination by the Supplier

11.1 The Supplier may terminate this Contract by giving 20 Business Days Notice to the Buyer, if the Buyer fails to pay Charges that are properly due, and are not in dispute under clause 3.4. The Charges must be overdue by 20 Business Days and the Supplier must have first brought this to the Buyer's attention in writing within this period.

11.2 At any time during the term of this Contract the Supplier may notify the Buyer that it wishes to terminate this Contact by giving 20 Business Days Notice. The Buyer will, within 20 Business Days following receipt of the Supplier's Notice, notify the Supplier whether, in its absolute discretion, it consents to the Supplier's Notice of termination. If the Buyer:

- a. consents, the Contract will be terminated on a date that is mutually agreed between the Parties, or
- b. does not consent, the Contract will continue in full force as if the Supplier's Notice of termination had not been given.

11.3 The Supplier may also terminate this Contract under clause 11.9.

Termination by the Buyer

11.4 The Buyer may terminate this Contract at any time by giving 20 Business Days Notice to the Supplier.

11.5 The Buyer may terminate this Contract immediately, by giving Notice, if the Supplier:

- a. becomes bankrupt or insolvent
- b. has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed
- c. becomes subject to any form of external administration

- d. ceases for any reason to continue in business or to deliver the Services
- e. is unable to deliver the Services for a period of 20 Business Days or more due to an Extraordinary Event
- f. requires the supply of Services within the period of an Extraordinary Event
- g. is in breach of any of its obligations under this Contract and the breach cannot be remedied
- h. repeatedly fails to perform or comply with its obligations under this Contract whether those obligations are minor or significant
- i. does something or fails to do something that, in the Buyer's opinion, results in damage to the Buyer's reputation or business
- j. has a Conflict of Interest that in the Buyer's opinion is so material as to impact adversely on the delivery of the Services or the Buyer, or
- k. provides information to the Buyer that is misleading or inaccurate in any material respect.

Termination by a Party if a breach has not been remedied

11.6 If a Party fails to meet the requirements of this Contract (defaulting Party) and the other Party (non-defaulting Party) reasonably believes that the failure can be remedied, the non-defaulting Party must give a Notice (default Notice) to the defaulting Party.

11.7 A default Notice must state:

- a. the nature of the failure
- b. what is required to remedy it, and
- c. the time and date by which it must be remedied.

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

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

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

- a. withhold any payment of Fees due until the failure is remedied as required by the default Notice, and or

b. if the failure is not remedied as required by the default Notice, deduct a reasonable amount from any Fees due to reflect the reduced value of the Services to the Buyer.

Supplier's obligations on termination or expiry of this Contract

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

- a. stop providing the Services
- b. comply with any conditions contained in the Notice, and
- c. immediately do everything reasonably possible to reduce its losses, costs and expenses arising from the termination of this Contract.

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

Consequences of termination or expiry of this Contract

11.13 The termination or expiry of this Contract does not affect those rights of each Party which:

- a. accrued prior to the time of termination or End Date, or
- b. relate to any breach or failure to perform an obligation under this Contract that arose prior to the time of termination or End Date.

11.14 If this Contract is terminated the Buyer:

- a. will only be liable to pay Charges that were due for Services delivered before the effective date of termination, and
- b. may recover from the Supplier or set off against sums due to the Supplier, any Charges paid in advance that have not been incurred.

Handing over the Services on termination or expiry of this Contract

11.15 The Supplier will, within 10 Business Days of the End Date, provide all reasonable assistance and cooperation necessary to facilitate a smooth handover of the Services to the Buyer or any person appointed by the Buyer.

11.16 If the Parties agree, the Supplier will provide additional assistance to support any replacement supplier to deliver the Services. This support may be for a period of up to 3 months from the date of termination and at a reasonable fee to be agreed between the Parties, based on the Fees and Expenses stated in this Contract.

12. Intellectual Property Rights

Ownership of Intellectual Property Rights

12.1 Pre-existing Intellectual Property Rights remain the property of their current owner.

12.2 New Intellectual Property Rights in the Deliverables become the property of the Buyer when they are created.

12.3 The Supplier grants to the Buyer a perpetual, non-exclusive, worldwide and royalty-free licence to use, for any purpose, all Intellectual Property Rights in the Deliverables that are not owned by the Buyer. This licence includes the right to use, copy, modify and distribute the Deliverables.

Supplier indemnity

12.4 The Supplier warrants that it is legally entitled to do the things stated in clause 12.3 with the Intellectual Property Rights in the Deliverables.

12.5 The Supplier warrants that Pre-existing and New Intellectual Property Rights provided by the Supplier and incorporated in the Services and Deliverables do not infringe the Intellectual Property Rights of any third party.

12.6 The Supplier indemnifies the Buyer in respect of any expenses, damage or liability incurred by the Buyer in connection with any third party claim that the delivery of the Services or Deliverables to the Buyer or the Buyer's use of them, infringes a third party's rights. This indemnity is not subject to any limitation or cap on liability that may be stated elsewhere in this Contract.

13. Confidential Information

Protection of Confidential Information

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

- a. to the extent that use or disclosure is necessary for the purposes of providing the Deliverables or Services or in the case of the Buyer using the Deliverables or Services
- b. if the other Party gives prior written approval to the use or disclosure

- c. if the use or disclosure is required by law, Ministers or parliamentary convention, or
- d. in relation to disclosure, if the information has already become public, other than through a breach of the obligation of confidentiality by one of the Parties.

Obligation to inform staff

13.2 Each Party will ensure that its Personnel:

- a. are aware of the confidentiality obligations in this Contract, and
- b. do not use or disclose any of the other Party's Confidential Information except as allowed by this Contract.

14. Notices

Delivery of Notices

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

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

Receipt of Notices

14.3 A Notice will be considered to be received:

- a. if delivered by hand, on the date it is delivered
- b. if sent by post within Samoa, on the 3rd Business Day after the date it was sent
- c. if sent by post internationally, on the 7th Business Day after the date it was sent
- d. if sent by courier, on the date it is delivered
- e. if sent by fax, on the sender receiving a fax machine report that it has been successfully sent, or
- f. if sent by email, at the time the email enters the recipient's information system as evidenced by a delivery receipt requested by the sender and it is not returned undelivered or as an error.

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

15. Extraordinary Events

No fault if failure due to an Extraordinary Event

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

Obligations of the affected Party

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

- a. the nature of the circumstances giving rise to the Extraordinary Event
- b. the extent of that Party's inability to perform under this Contract
- c. the likely duration of that non-performance, and
- d. what steps are being taken to minimise the impact of the Extraordinary Event on the delivery of Services.

Alternative arrangements requiring immediate termination

15.3 If the Buyer, acting reasonably, requires the Services to be supplied during the period affected by an Extraordinary Event, then despite clause 15.4, the Buyer may terminate this Contract immediately by giving Notice.

Termination of Contract

15.4 If a Party is unable to perform any obligations under this Contract for 20 Business Days or more due to an Extraordinary Event, the other Party may terminate this Contract immediately by giving Notice.

16. General

Changes to this Contract

16.1 Any change to this Contract is called a Variation. A Variation must be agreed by both Parties and recorded:

- a. in writing and signed by both Parties, or

- b. through an exchange of emails where the authors have delegated authority to approve the Variation.

This is the entire Contract

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

Waiver

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

- a. does not mean that the Party in breach is released or excused from its obligation to perform the obligation at the time or in the future, and
- b. does not prevent the other Party from exercising its rights resulting from the breach at a later time.

Samoan law, currency and time

16.4 This Contract will be governed and interpreted in accordance with the laws of Samoa. All money is in USD dollars, unless Schedule 1 specifies a different currency. Dates and times are Samoan time.

Publication of information about this Contract

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

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

Signing the Contract

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

No poaching

16.8 During the term of this Contract and for a period of 6 months after the End Date neither Party shall, without the other's written consent, deliberately solicit for employment or hire any person who is or has been employed by the other and involved in the delivery of the Services. This does not apply where a person has responded to a legitimate advertisement.

Clauses that remain in force

16.9 The clauses that by their nature should remain in force on expiry or termination of this Contract do so, including clauses 5 (Information management), 8 (Insurance), 10 (Resolving disputes), 11 (Ending this Contract), 12 (Intellectual Property Rights), 13 (Confidential Information), 16 (General) and 17 (Definitions).

Precedence

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

- a. a Variation agreed between the Parties under clause 16.1
- b. Schedule 1
- c. any Attachment to Schedule 1
- d. Schedule 2.

Privileges and Immunities

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

17. Definitions

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

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

Approved Personnel A person who is engaged by the Supplier to deliver the Services and is named in Schedule 1. The Supplier must use this person in the delivery of the Services and cannot change them without first obtaining the Buyer's written approval.

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

Buyer The Buyer is the purchaser of the Services and is named as the Buyer on page 1 of this Contract for the purposes of this Contract.

Charges The total amount payable by the Buyer to the Supplier as stated in Schedule 1. The Supplier's Charges include Fees and any Expenses and Daily Allowances stated in Schedule 1. Charges are payable on successful delivery of the Services provided a valid tax invoice has been submitted.

Confidential Information Information that:

- a. is by its nature confidential
- b. is marked by either Party as 'confidential', 'in confidence', 'restricted' or 'commercial in confidence'
- c. is provided by either Party or a third party 'in confidence'
- d. either Party knows or ought to know is confidential, or
- e. is of a sensitive nature or commercially sensitive to either Party.

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

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

- a. actual: where the conflict currently exists
- b. potential: where the conflict is about to happen or could happen, or
- c. perceived: where other people may reasonably think that a person is compromised.

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

Contract Manager The person named in Schedule 1 as the Contract Manager. Their responsibilities are listed in clause 4.1

Daily Allowance An allowance to cover accommodation, meals and incidentals for the Supplier's Personnel if they are required, in order to deliver the Services or to travel overnight away from their normal place of business. The amount of any Daily Allowance must be agreed to in Schedule 1. A Daily Allowance is similar to a per diem.

Daily Fee Rate If the Supplier's fee rate is expressed as a Daily Fee Rate this is the fee payable for each day spent in the delivery of Services. A day is a minimum of 8 working hours.

Deliverables A tangible output resulting from the delivery of the Services as stated in Schedule 1. A deliverable may be a document, a piece of equipment, goods, information or data stored by any means including all copies and extracts of the same.

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

Expenses Any actual and reasonable out-of-pocket costs incurred by the Supplier in the delivery of the Services and agreed to in Schedule 1.

Extraordinary Event An event that is beyond the reasonable control of the Party immediately affected by the event. An Extraordinary Event does not include any risk or event that the Party claiming could have prevented or overcome by taking reasonable care. Examples include:

- a. acts of God, lightning strikes, earthquakes, tsunamis, volcanic eruptions, floods, storms, explosions, fires, pandemics and any natural disaster
- b. acts of war (whether declared or not), invasion, actions of foreign enemies, military mobilisation, requisition or embargo
- c. acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, rebellion, insurrection, revolution or military usurped power or civil war, or
- d. contamination by radioactivity from nuclear substances or germ warfare or any other such hazardous properties.

Fees The amount payable to the Supplier for the time spent in delivery of the Services calculated on the basis stated in Schedule 1, excluding any Expenses and Daily Allowances.

GST The goods and services tax payable in accordance with the relevant legislation of either the buyer or supplier as the case may be.

Hourly Fee Rate If the Supplier's fee rate is expressed as an Hourly Fee Rate this is the Fee payable for each hour spent delivering the Services.

Intellectual Property Rights All Intellectual Property Rights and interests, including copyright, trademarks, designs, patents and other proprietary rights, recognised or protected by law.

Milestone A phase or stage in the delivery of Services resulting in a measurable output. Payment of Fees is usually due on the satisfactory delivery of a Milestone.

New Intellectual Property Rights Intellectual Property Rights developed after the date of this Contract and incorporated into the Deliverables.

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

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

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

Pre-existing Intellectual Property Rights Intellectual Property Rights developed before the date of this Contract. It does not cover later modifications, adaptations or additions.

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

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

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

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

Subcontractor A person, business, company or organisation contracted by the Supplier to deliver or perform part of the Supplier's obligations under this Contract.

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

Variation A change to any aspect of this Contract that complies with clause 16.1.

APPENDIX H: SAMPLE CONSULTANCY AGREEMENT (CA2)



Services Agreement

Reference: [insert Agreement No.]

between

**the Secretariat of the Pacific Regional Environment Programme
(SPREP)**

and

[insert organisation / company name]

for the provision of

[insert title of the Services]

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Details

Parties

SPREP:

Full legal name	Secretariat of the Pacific Regional Environment Programme (SPREP)
Legal entity type (e.g. individual, incorporated association, company, partnership etc)	Regional Intergovernmental Organisation
Trading or business name	As above.
Company Number or other entity identifiers	N/A

Supplier:

Full legal name	[insert]
Legal entity type (e.g. individual, incorporated association, company, partnership etc)	[insert]
Trading or business name	[insert Trading name or 'as above']
Company Number or other entity identifiers	[insert or 'Nil']

Recitals

SPREP requires the provision of certain services.

The Supplier has fully informed itself on all aspects of the work required to be performed and has represented that it has the requisite skills and experience to perform that work.

SPREP has agreed to engage the Supplier to provide the Services on the terms and conditions contained in this Agreement.

Agreed Terms

Definitions and interpretation

Definitions

In this Agreement, except where the contrary intention is expressed, the following definitions are used:

Agreed Terms	clauses 0 to 0 of this Agreement which set out terms and conditions agreed by the parties.
Agreement	this agreement between SPREP and the Supplier, as amended from time to time in accordance with clause 0, and includes its Schedules and any attachments.
Agreement Details	the details set out in Schedule 1.
Agreement Material	any Material that is created by the Supplier for the purpose of or as a result of performing its obligations under this Agreement and includes any modifications that may be required under clause 0(b).
Agreement Period	the Initial Agreement Period plus any Option Period exercised in accordance with clause 0.
Business Day	in relation to the doing of any action in a place, any day other than a Saturday, Sunday or public holiday in that place. A Business Day starts at 8.30am and ends at 5pm.
Commencement Date	the date on which this Agreement commences, as specified in Item 5 of the Agreement Details.
Confidential Information	information that is by its nature confidential; and (a) is designated by a party as confidential; or a party knows or ought to know is confidential, but does not include: information which is or becomes public knowledge other than by breach of this Agreement or any other confidentiality obligation.
Conflict of Interest	any circumstance in which the Supplier or any of the Supplier's Personnel has an interest (whether financial or non-financial) or an affiliation that is affecting, will affect, or could be perceived to affect, the Supplier's ability to perform the Services, or its obligations under this Agreement, fairly and independently.

Deliverable	any Agreement Material or other item to be supplied by the Supplier under this Agreement.
Donor	the donor country or multilateral institution with primary funding responsibility for the project, programme or activity under which the Services are to be delivered.
End Date	the date specified in Item 6 of the Agreement Details or the conclusion of the last Option Period, as exercised (if any).
Expert	<ul style="list-style-type: none"> (a) the financial or legal experts of a party; and (b) the respective officers and employees of those financial or legal experts.
Fees	the fees payable to the Supplier in accordance with Schedule 3.
Initial Agreement Period	the period of time for which this Agreement is intended to continue, as specified in clause 0.
Intellectual Property Rights	<p>all intellectual property rights, including the following rights:</p> <ul style="list-style-type: none"> (a) copyright, patents, rights in circuit layouts, trademarks, designs, trade secrets, know how, domain names and any right to have confidential information kept confidential; (a) any application or right to apply for registration of any of the rights referred to in paragraph (a); and (b) all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist in Samoa or elsewhere, <p>whether or not such rights are registered or capable of being registered.</p>
Item	an item in a Schedule to this Agreement.
Law	any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Samoa and / or in any State or territory in which the Services are to be undertaken.
Losses	liabilities, expenses, losses, damages and costs (including but not limited to legal costs on a full indemnity basis, whether incurred by or awarded against a party).

Material	any software, firmware, documented methodology or process, documentation or other material in whatever form, including without limitation any reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions, data, metadata and the subject matter of any category of Intellectual Property Rights.
Milestone	any agreed date to be met by the Supplier in performing any of its obligations under this Agreement, as specified in the Statement of Work.
Milestone Payment	a payment of an amount set out in Item 3 of Schedule 3 in respect of a Milestone.
Modify	means to add to, enhance, reduce, change, replace, vary or improve. Derivatives such as Modification and Modified have corresponding meanings.
Moral Rights	the right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship of a work, and the right not to have authorship of a work falsely attributed.
Option Period	a period of time by which this Agreement may be extended as specified in clause 0 and Item 7 of the Agreement Details.
Performance Criteria	the requirements (if any) set out in the Statement of Work for each Service and Deliverable.
Personal Information	Personal information is any piece of information that relates to a living, identifiable human being or an opinion about an identified individual, or an individual who is reasonably identifiable: (a) Whether the information or opinion is true or not; and (b) whether the information or opinion is recorded in a material form or not.
Personnel	in relation to a party, any natural person who is an employee, officer, agent or professional expert of that party or, in the case of the Supplier, of a subcontractor.

Pre-existing Material	any Material, other than Agreement Material or Third Party Material, which is created before the Commencement Date and made available by a party for the purpose of this Agreement, on or following the Commencement Date, and includes:
	<ul style="list-style-type: none"> (a) error corrections or translations to that Material; and (b) modifications or derivatives of that Material where such modification or derivative work cannot be used without infringing the Intellectual Property Rights in the underlying Material.
Schedule	a schedule to this Agreement.
Security Incident	any incident or breach of security that may impact:
	<ul style="list-style-type: none"> (a) the Supplier's ability to deliver the Services; or (b) SPREP Material which is held by, or in transit to and / or from, the Supplier.
Services	the services to be provided by the Supplier, as specified in the Statement of Work and include the supply of the Deliverables.
Specified Acts	<ul style="list-style-type: none"> (a) failing to attribute or falsely attributing the authorship of any Agreement Material, or any content in the Agreement Material; (b) materially altering the style, format, colours, content or layout of the Agreement Material and dealing in any way with the altered Agreement Material; (c) reproducing, communicating, adapting, publishing or exhibiting any Agreement Material; and (d) adding any additional content or information to the Agreement Material.
Specified Personnel	the Supplier's Personnel specified in Item 11 of the Agreement Details.
SPREP Data	all data and information relating to SPREP, and its operations, facilities, customers, Personnel, assets and programs (including Personal Information) in whatever form that information may exist and whether entered into, stored in, generated by or processed through software or equipment by or on behalf of SPREP
SPREP Material	any Material provided to the Supplier by SPREP.

SPREP Representative	<p>the person identified in Item 2 of the Agreement Details.</p> <p>The SPREP Representative is responsible for managing the Agreement, including:</p> <ul style="list-style-type: none"> (a) Managing the relationship between the Parties (b) Overseeing the effective implementation of this Agreement (c) Act as a first point of contact for any issues that arise, (d) Promptly notify the Supplier Representative if the SPREP Representative changes, and (e) To address and resolve any issues in a prompt manner.
Statement of Work	the details of the Services to be performed under this Agreement, as set out in Schedule 2.
Supplier	the party specified in Item 3 of the Agreement Details and includes its Personnel.
Supplier Representative	<p>the person identified in Item 4 of the Agreement Details.</p> <p>The Supplier Representative is responsible for managing the Agreement, including:</p> <ul style="list-style-type: none"> (a) Managing the relationship between the Parties (b) Overseeing the effective implementation of this Agreement (c) Act as a first point of contact for any issues that arise, (d) Promptly notify the SPREP Representative if the Supplier Representative changes, and (e) To address and resolve any issues in a prompt manner.
Tax	<ul style="list-style-type: none"> (a) any tax, withholding tax, charge, rate, duty (including stamp duty and customs duty), impost, excise, tax by whatever name called and whether Samoan, foreign, state, municipal, provincial, county or local; and (b) any interest, charge, penalty, fee, fine or other amount of any kind assessed, charged or imposed on or in respect of the above.

Third Party Material	Material created by a third party that is:
	<ul style="list-style-type: none"> (a) included, embodied in or attached to the Agreement Material; or (b) used for the purpose of, or as a result of, the Supplier's performance of its obligations under this Agreement.
Warranted Materials	the Pre-existing Material and Third Party Material provided by the Supplier, the Deliverables and Agreement Material.

Interpretation

In this Agreement, except where the contrary intention is expressed:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, Schedule or annexure is to a clause or paragraph of, or Schedule or annexure to, this Agreement, and a reference to this Agreement includes any Schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time and any schedules, appendices or annexures to that document or instrument;
- (e) a reference to USD, US\$, \$US, dollar or \$ is to United States currency;
- (f) a reference to time is to the time in the place where the obligation is to be performed;
- (g) a reference to a party is to a party to this Agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assignees and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (i) if the Supplier is a trustee, the Supplier enters this Agreement personally and in its capacity as trustee and warrants that it has the power to perform its obligations under this Agreement;
- (j) a reference to a statute, ordinance, code or other Law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (k) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;

- (l) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (m) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally; and
- (n) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Agreement or any part of it.

Priority of Agreement documents

If there is inconsistency between any of the documents forming part of this Agreement, those documents will be interpreted in the following order of priority to the extent of any inconsistency:

- (a) Agreed Terms;
- (b) the Schedules in their order of appearance;
- (c) any attachments to the Schedules; and
- (d) documents incorporated by reference in this Agreement.

Duration of Agreement

Initial Agreement Period

Subject to clause 0, this Agreement begins on the Commencement Date and continues until the End Date unless terminated earlier in accordance with this Agreement (**Initial Agreement Period**).

Option to extend Initial Agreement Period

- (a) The Initial Agreement Period may be extended by SPREP for further period(s), specified in Item 7 of the Agreement Details (each an **Option Period**), on the terms and conditions then in effect, by giving written notice to the Supplier. Such notice must be given at least 30 days before the end of the then current Agreement Period.
- (b) Any extension exercised in accordance with this clause takes effect from the end of the then current Agreement Period.

General obligations of the parties

The parties will, at all times:

- (a) act reasonably in performing their obligations and exercising their rights under this Agreement;
- (b) diligently perform their respective obligations under this Agreement; and
- (c) work together in a collaborative manner.

Provision of Services

Service obligations

The Supplier must supply the Services:

- (a) so that they are fit for purpose, complete and accurate;
- (b) so that any materials that the Supplier incorporates are free from defects in design, performance and workmanship;
- (c) with due skill and care and in accordance with relevant best practice including complying with all applicable industry standards and guidelines or where none apply, relevant International Standards, best practice and guidelines, including any specified in Item 8 of the Agreement Details;
- (d) Any Information that is produced or reproduced in an electronic format, the Supplier must deliver it to SPREP in a format approved by SPREP.
- (e) where appropriate, in accordance with SPREP's policies and specific requirements (if any) specified in Item 9 of the Agreement Details;
- (f) in accordance with any reasonable directions given by SPREP from time to time, including through the submission of written reports or information on any aspects of the Agreement requested by SPREP's Representative;
- (g) so that where materials are produced or reproduced in an electronic format, they are delivered to SPREP in a format approved by SPREP;
- (h) to the extent applicable, in compliance with SPREP's Values and Code of Conduct https://www.sprep.org/attachments/Publications/Corporate_Documents/sprep-organisational-values-code-of-conduct.pdf
- (i) so as to meet the Milestones and other project plan requirements, and where no Milestones or project plan requirements are specified, promptly and without delay;
- (j) in accordance with the Performance Criteria (if any);
- (k) using the Specified Personnel (if any);
- (l) in accordance with all applicable Laws; and
- (m) otherwise in accordance with the provisions of this Agreement.

Evidence of certification

The Supplier must, on request by SPREP, provide SPREP with evidence of certifications and other records confirming compliance with all applicable standards, including any specified in Item 8 of the Order.

Supplier warranties

The Supplier represents and warrants that:

- (a) it has the right to enter into this Agreement;

- (b) it has all rights, title, licences, interests and property necessary to lawfully perform the Services;
- (c) it and its Personnel, including its Specified Personnel, have the necessary experience, skill, knowledge and competence to perform the Services and (where appropriate) will hold such licences, permits or registrations as are required under any applicable Laws to provide the Services;
- (d) the Services will be provided in accordance with the commitments made in clause 0;
- (e) no litigation, arbitration, mediation, conciliation or administrative proceedings are taking place, pending, or to the knowledge of any of its officers after due inquiry, are threatened which, if adversely decided, could have an adverse effect on the Supplier's ability to perform its obligations under this Agreement; and
- (f) all insurance policies required to be held by the Supplier under this Agreement:
 - (i) will remain in effect as provided for in this Agreement; and
 - (ii) will not be varied by the Supplier without SPREP's written consent.

Access to SPREP's premises

SPREP must cooperate with the Supplier by providing access to its premises and facilities as reasonably necessary to enable the Supplier to provide the Services.

Conduct at SPREP's premises

Without limiting clause 0, the Supplier must, if using or accessing SPREP's premises or facilities, comply with all reasonable directions and procedures relating to work health and safety and security in operation at those premises or facilities whether specifically drawn to the attention of the Supplier or as might reasonably be inferred from the circumstances.

Subcontracting

- (a) The Supplier must:
 - (i) not subcontract any aspect of the provision of the Services other than to those entities set out in Item 10 of the Agreement Details without the prior written approval of SPREP, which will not be unreasonably withheld;
 - (ii) ensure that any subcontractor approved under this Agreement complies with all applicable Laws and:
 - clause 5.7 (**Work health and safety**);
 - clause 10 (**Intellectual Property Rights**);
 - clause 13 (**Insurance**);
 - clause 14 (**Confidentiality and privacy**);
 - clause 15 (**Protection of Personal Information**);
 - clause 16 (**Conflict of Interest**);
 - clause 17 (**Security**);

- clause 18 (**Books and records**);
- clause 19 (**Audit and access**); and
- (b) The Supplier is fully responsible for the performance of the Services even if the Supplier subcontracts any aspect of the provision of the Services.
- (c) The Supplier:
 - (i) must on request by SPREP provide SPREP with the names of any of the Supplier's subcontractors;
 - (ii) agrees that SPREP may disclose publicly the names of any of the Supplier's subcontractors; and
 - (iii) must ensure that any subcontractor agrees that SPREP may disclose the subcontractor's name publicly.
- (d) If requested by SPREP, the Supplier must promptly provide to SPREP a copy of any contract relating to the Services and/or any Material relating to the engagement of the subcontractor.

Work health and safety;

Work Health and Safety refers to the legal responsibility the Supplier has to manage health and safety of employees and sub-contractors whilst engaged by SPREP.

The Supplier must in carrying out its obligations under this Agreement, comply, and use reasonable endeavours to ensure that its subcontractors comply, with the provisions of all relevant statutes, regulations, by-laws and requirements of any relevant authority including those arising under a WHS law in respect of occupational health and safety.

The Supplier must, in carrying out its obligations under this Agreement, comply, and use reasonable endeavours to ensure that its subcontractors comply, with any of SPREP's work, health and safety policies as notified, referred to, or made available, from time to time by SPREP to the Supplier in writing.

If the Supplier is required by a WHS law to report to a regulator an incident arising out of the provision of the Services:

at the same time, or as soon as is possible in the circumstances, the Supplier must give notice of such incident, and a copy of any written notice provided to a regulator, to SPREP; and

the Supplier must provide to SPREP, within such time as is specified by SPREP, a report detailing the circumstances of the incident, the results of investigations into its cause, and any recommendations or strategies for prevention in the future.

The Supplier must inform SPREP of the full details of:

any suspected contravention of a WHS law relating to the provision of the Services, within 24 hours of becoming aware of any such suspected contravention;

- any cessation or direction to cease work relating to the provision of the Services, due to unsafe work, immediately upon the Supplier being informed of any such cessation or direction;
- any workplace entry by a WHS entry permit holder, or an inspector, to any place where the Services are being performed or undertaken, within 24 hours of becoming aware of any such workplace entry; and
- any proceedings against the Supplier or its officers, or any decision or request by the Regulator given to the Supplier or its Personnel, under a WHS law, within 24 hours of becoming aware of any such proceedings, decision or request.

Co-operation with Personnel and contractors

The Supplier must in the performance of the Services under this Agreement:

- (a) fully co-operate with SPREP's Personnel and other contractors; and
- (b) use its best efforts to coordinate its activities so as to support and facilitate, in SPREP's best interests, the timely and efficient completion of all work and other activities to be performed for SPREP by any person.

Monitoring progress

Progress meetings

The parties will meet at the times set out in the Statement of Work (or otherwise as agreed in writing between the parties) to discuss any issues in relation to the provision of the Services. The Supplier must ensure that the Supplier Representative and SPREP must ensure SPREP's Representative is reasonably available to attend such meetings and answer any queries relating to the provision of the Services raised by either party.

Reporting

The Supplier must provide SPREP with reports in accordance with the Statement of Work.

Performance assessment

Assessment of Services

Without limiting any other obligation of the Supplier, each element of the Services is subject to assessment by SPREP against the relevant Performance Criteria (if any).

Where no Performance Criteria are specified in the Statement of Work, SPREP will, acting reasonably, assess the effectiveness of the Supplier's delivery of the Services against clause 0.

Notice of non-compliant Services

If SPREP considers that all or part of the Services do not meet the Performance Criteria, SPREP may provide the Supplier notice of that fact and include reasons for the Services not meeting the Performance Criteria.

Rectification of non-compliant Services

If SPREP notifies the Supplier that all or part of the Services do not meet the Performance Criteria, the Supplier must:

within five Business Days after the date of receipt of the notice or such other time as agreed between the parties in writing:

- (i) take all necessary steps to ensure that the Services are promptly corrected;
- (ii) give notice to SPREP when the Services have been corrected; and

following compliance with clause 0, allow SPREP to repeat the assessment of all or part of the Services against the Performance Criteria until it is satisfied that the Performance Criteria are met.

Other rights

Clauses 0 and 0 do not limit in any way any other right, remedy or recourse of SPREP.

Personnel

Use of Specified Personnel

The Supplier must:

- (a) provide the Services or any part of the Services to which their particular expertise relates, with the active involvement of, and using the expertise of the Specified Personnel; and
- (b) ensure that each of the Specified Personnel is aware of and complies with the Supplier's obligations in providing the Services.

If the Specified Personnel are not available

Where one or more of the Specified Personnel is or will become unable or unwilling to be involved in providing the Services, the Supplier must notify SPREP immediately.

The Supplier must:

- (i) if requested by SPREP, provide a replacement person of suitable ability and qualifications at no additional charge and at the earliest opportunity; and
- (ii) obtain SPREP's written consent prior to appointing any such replacement person. SPREP's consent will not be unreasonably withheld.

SPREP may request replacement of Personnel

SPREP may at any time request the Supplier to remove from work in respect of this Agreement any of the Specified Personnel or the Supplier's Personnel.

On receipt of a request under clause 0, the Supplier must promptly arrange for the removal of such Personnel and their replacement in accordance with the process outlined in clause 0.

SPREP Material

SPREP will provide to the Supplier SPREP Material and the Supplier must ensure that SPREP Material is used strictly in accordance with any conditions or restrictions specified in Item 12 of the Agreement Details and any direction by SPREP.

Intellectual Property Rights

Pre-existing Material of the Supplier

- (a) This clause 0 does not affect the ownership of the Intellectual Property Rights in any Pre-existing Material of the Supplier.
- (b) The Supplier grants to SPREP, a perpetual, irrevocable, world-wide, royalty free, non-exclusive licence (including the right to novate or assign the licence, and to sublicense) to use, reproduce, adapt, Modify and communicate the Pre-existing Material of the Supplier in order for SPREP to obtain the full benefit of the Services.

Third Party Material

- (a) The Supplier must provide Third Party Material necessary or appropriate to supply the Services.
- (b) Before using any Third Party Material the Supplier must procure for SPREP perpetual licences enabling SPREP to use the Third Party Material:
 - to the extent necessary to obtain the full benefit of the Services; and
 - from the expiry or termination of this Agreement, to maintain the Deliverables or engage a third party to maintain the Deliverables.
- (c) If the Supplier cannot obtain the licences as described in clause 0(b), the Supplier must:
 - (i) notify SPREP of the best alternative licence terms for that Third Party Material and not use that Third Party Material unless SPREP consents to those terms; and
 - (ii) if SPREP does not consent under clause 0(c)(i) notify SPREP of any comparable Third Party Material and comply with its obligations under this clause 0 in respect of comparable Third Party Material.

SPREP ownership of Intellectual Property Rights in Agreement Material

- (a) All Intellectual Property Rights in the Agreement Material vest in SPREP on creation.
- (b) SPREP may, at its discretion, make all Agreement Material available for use by the public under the Creative Commons Licence.

Licence of SPREP Material and Agreement Material to Supplier

- (a) To the extent that the Supplier needs to use any of SPREP Material or Agreement Material for the purpose of performing its obligations under this

Agreement, SPREP grants to the Supplier, subject to any direction given by SPREP, a royalty-free, non-exclusive, non-transferable licence to use, reproduce, adapt, Modify and communicate such Material solely for the purpose of providing the Services.

- (b) Where the Supplier wishes to use any Agreement Material otherwise than for the purpose of providing the Services, it may only do so:
 - (i) with the express written permission from SPREP; and
 - (ii) at the Supplier's own cost.

Warranty

The Supplier warrants that:

- (a) the Warranted Materials and SPREP's use of the Warranted Materials will not infringe the Intellectual Property Rights of any person;
- (b) it has the necessary rights to vest the Intellectual Property Rights and grant the licences as provided for in this clause 0; and
- (c) the rights conferred under clauses 0(b) and 0(b) above, are sufficient to allow SPREP to licence Agreement Material under the Creative Commons Licence, should it elect, at its absolute discretion, to do so.

Remedy for breach of warranty

If someone claims, or SPREP reasonably believes that someone is likely to claim, that all or part of the Warranted Materials infringe their Intellectual Property Rights, the Supplier must, in addition to the indemnity under clause 0 and to any other rights that SPREP may have against it, promptly, at the Supplier's expense:

- (a) use its best efforts to secure the rights for SPREP to continue to use the affected Warranted Materials free of any claim or liability for infringement; or
- (b) replace or modify the affected Warranted Materials so that the Warranted Materials or the use of them does not infringe the Intellectual Property Rights of any other person without any degradation of the performance or quality of the affected Warranted Materials.

Delivery of Agreement Material

On the expiry or termination of this Agreement or on such earlier date as may be specified by SPREP, the Supplier must deliver to the SPREP Representative all Agreement Material.

Payment

Obligation to pay Fees

Subject to this clause and the Services meeting the Performance Criteria, SPREP must pay to the Supplier the Fees as set out in Schedule 3.

Supplier to provide invoice

The Supplier must provide a correctly rendered invoice to SPREP for the Fees in accordance with the requirements specified in Schedule 3.

Due date for payment

SPREP must make payment of a correctly rendered invoice within 28 days after receiving the invoice. If this period ends on a day that is not a Business Day, payment is due on the next Business Day.

Incorrect invoices and under / over payment

If an invoice is found to have been rendered incorrectly after payment, any underpayment or overpayment will be recoverable by or from the Supplier, as the case may be, and, without limiting recourse to other available means, may be offset against any amount subsequently due by SPREP to the Supplier under this Agreement.

Expenses

- (a) Unless specified otherwise in Schedule 3, the Supplier must not charge SPREP for any disbursements, charges or expenses (including travel and accommodation, document reproduction, transportation and courier charges, and telecommunications charges) in addition to the Fees.
- (b) Subject to clause (a), SPREP is under no obligation to pay any amount in excess of the Fees.

Cost changes at Supplier's risk

The Supplier must not claim any payment for any additional amounts based on changes in labour, materials or other resourcing costs, exchange rate changes or any other changes to the costs incurred by the Supplier in acquiring the inputs it requires to provide the Services.

Tax

Unless expressly specified otherwise in this Agreement:

all amounts payable, consideration provided or monetary limits in this Agreement are inclusive of any Tax; and
the Supplier must not charge SPREP any additional amount in connection with any Tax.

Indemnity and release

Indemnity by the Supplier

Subject to clause 0, the Supplier indemnifies SPREP and continues to indemnify SPREP against, all:

Losses suffered or incurred by SPREP, including as the result of any claim made in relation to:
loss of or damage to third party property; or
the injury, illness or death of a third party;

loss of or damage to SPREP's property; or

Losses suffered or incurred by SPREP in dealing with any claim against SPREP, including legal costs and expenses on a solicitor / own client basis and the cost of time spent, resources used, or disbursements paid by SPREP,

arising from:

any negligent, unlawful or wilful misconduct, default or omission by the Supplier (including any of its Personnel) in connection with this Agreement;

any breach by the Supplier (including any of its Personnel) of its obligations or warranties under this Agreement;

any use or disclosure by the Supplier (including its Personnel) of Personal Information or Confidential Information (or both, as the case may be) held or controlled in connection with this Agreement; or

an allegation that any Warranted Materials (including the use of any Warranted Materials by SPREP or its subcontractors or Personnel) infringe the Intellectual Property Rights or Moral Rights of the third party.

Release

Subject to clause 0, the Supplier releases SPREP from all claims, actions, demands and proceedings which it may have, or claim to have, or but for this release might have had, against SPREP in any way connected with the Supplier's performance of this Agreement or delivery of the Services.

Proportional reduction of liability

The liability of a party (**Party A**) for any Losses incurred by another party (**Party B**) will be reduced proportionately to the extent that any negligent act or omission of Party B (or of its subcontractors or Personnel) contributed to those Losses, regardless of whether legal proceedings are brought by Party A for negligence or breach of contract.

Insurance

Obligation to take out and maintain insurance

The Supplier must have and maintain for the period specified in clause 0 or clause 0 (as the case may be):

workers' compensation insurance as required by Law; and

public liability insurance; and

professional indemnity or errors and omissions insurance;

as specified in Item 13 of the Agreement Details.

Insurance period

If the Supplier takes out a 'claims made' policy, which requires all claims and any fact situation or circumstance that might result in a claim to be notified within the period of insurance, the Supplier must maintain the policy (or a policy in like terms) during the Agreement Period and for a period of 1 year on and from the

expiry or the early termination of this Agreement – unless otherwise specified under item 13 of Schedule 1.

If the Supplier takes out an ‘occurrence’ policy, which requires the circumstances to which a claim relates to occur during the period of insurance whilst the notification of event can occur at any time subsequently, the Supplier must maintain the policy during the Agreement Period.

Subcontractors

The Supplier must ensure that any subcontract entered into by the Supplier in relation to this Agreement places on the subcontractor, in respect of the subcontractor’s activities, the same or similar obligations about insurances, as this clause 0 places on the Supplier.

Copies of insurance

The Supplier must, on request, promptly provide to SPREP any relevant insurance policies and certificates of currency for inspection.

Confidentiality and privacy

Confidential Information not to be disclosed

Subject to clause 0, a party must not, without the prior written consent of the other party, disclose any Confidential Information of the other party to a third party.

In giving written consent to the disclosure of Confidential Information, a party may impose such conditions as it thinks fit, and the other party agrees to comply with these conditions.

For the avoidance of doubt, it is not a breach of the obligations under this clause 0 to the extent that Confidential Information is shared by SPREP:

within SPREP’s organisation;

or

with Experts of SPREP,

where this serves SPREP’s legitimate interests.

Exceptions to obligations

The obligations on the parties under this clause 0 will not be taken to have been breached to the extent that Confidential Information is:

disclosed by a party to its Experts in order to comply with obligations, or to exercise rights, under this Agreement;

required by Law to be disclosed; or

in the public domain otherwise than due to a breach of this clause 0.

Obligations on disclosure

Where a party discloses Confidential Information to another person:

(a) pursuant to clauses 0 or 00, the disclosing party must:

notify the receiving person that the information is Confidential Information; and not provide the information unless the receiving person agrees to keep the information confidential.

Period of confidentiality

The obligations under this clause 17 continue, notwithstanding the expiry or termination of this Agreement:

in relation to an item of information described in Item 14 of the Agreement Details, for the period set out in Item 14 in respect of that item; and

in relation to any Additional Confidential Information for the purposes of this Agreement, for the period agreed by the parties in writing in respect of that information.

Confidential provisions

Notwithstanding any other provision of this Agreement, SPREP may disclose the provisions of this Agreement.

Protection of Personal Information

Application of the clause

This clause applies only where the Supplier deals with Personal Information when, and for the purpose of, providing the Services under this Agreement.

Obligations

The Supplier must:

Use or disclose Personal Information only for the purposes of this Agreement;

For all data collected there should be a stated purpose;

Information collected from an individual cannot be disclosed to other organisations or individuals unless specifically authorised by law or by consent of the individual;

Records kept on an individual should be accurate and up to date;

There should be mechanisms for individuals to review data about them, to ensure accuracy. This may include periodic reporting;

Data should be deleted when it is no longer needed for the stated purpose;

Transmission of personal information to locations where "equivalent" personal data protection cannot be assured is prohibited;

Acknowledge that some data is too sensitive to be collected, unless there are extreme circumstances (e.g., sexual orientation, religion) which must be approved in writing by SPREP before such data is collected;

and, where there is access to Personal Information the Supplier must:

comply with the obligations under this clause 0;

allow SPREP to undertake, and cooperate with any audit or investigation which SPREP deems necessary to verify that the Supplier is complying with these obligations.

promptly notify SPREP if it fails to comply the obligations under this clause 0 or if it becomes aware of any actual or threatened disclosure of or unauthorised access to Personal Information.

Subcontracts

The Supplier must ensure that any subcontract entered into for the purpose of fulfilling its obligations under this Agreement contains provisions to ensure that the subcontractor has the same awareness and obligations as the Supplier has under this clause 0, including the requirement in relation to subcontracts.

Indemnity

The Supplier indemnifies SPREP in respect of any Loss suffered or incurred by SPREP which arises directly or indirectly from a breach of any of the obligations of the Supplier under this clause 0, or a subcontractor under the subcontract provisions referred to in clause 0.

Conflict of Interest

Warranty that there is no Conflict of Interest

The Supplier warrants that, to the best of its knowledge after making diligent inquiry, at the date of signing this Agreement no Conflict of Interest exists or is likely to arise in the performance of its obligations under this Agreement.

Notification of a Conflict of Interest

If, during the performance of the Services a Conflict of Interest arises, or appears likely to arise, the Supplier must:

- (a) notify SPREP immediately in writing;
- (b) make full disclosure of all relevant information relating to the Conflict of Interest and setting out the steps the Supplier proposes to take to resolve or otherwise deal with the Conflict of Interest; and
- (c) take such steps as SPREP reasonably requires to resolve or otherwise deal with the Conflict of Interest.

Security

Security Incidents

- (a) The Supplier must report to SPREP any actual or suspected Security Incident within five Business Days of the actual or suspected Security Incident.

Books and records

Supplier to keep books and records

The Supplier must:

keep and require its subcontractors to keep comprehensive, accurate and adequate books and records, where appropriate in accordance with International

Accounting Standards, in sufficient detail to enable the amounts payable by SPREP under this Agreement to be determined; and
retain and require its subcontractors to retain all books and records relating to the Services for a period of seven years after termination or expiration of this Agreement.

Audit and access

Right to conduct audits

SPREP or a representative may conduct audits relevant to the performance of the Supplier's obligations under this Agreement. Audits may be conducted of:

- (a) the Supplier's operational practices and procedures as they relate to this Agreement;
- (b) the Supplier's compliance with all applicable standards, including gathering evidence of relevant certifications;
- (c) the accuracy of the Supplier's invoices and reports in relation to the provision of the Services under this Agreement;
- (d) Material (including books and records) in the possession of the Supplier relevant to the Services or this Agreement; and
- (e) any other matters determined by SPREP to be relevant to the Services or this Agreement.

Access by SPREP

- (a) SPREP may, at reasonable times and on giving reasonable notice to the Supplier:
 - require the provision by the Supplier or its Personnel of records and information in a data format and storage medium accessible by SPREP; and
 - require assistance in respect of any inquiry into or concerning the Services or this Agreement. For these purposes an inquiry includes any administrative or statutory review, audit or inquiry (whether within or external to SPREP).

No reduction in responsibility

The requirement for, and participation in, audits does not in any way reduce the Supplier's responsibility to perform its obligations in accordance with this Agreement.

Subcontractor requirements

The Supplier must ensure that any subcontract entered into for the purpose of this Agreement contains an equivalent clause granting the rights specified in this clause.

Fraud

Compliance with Fraud Control Guidelines

The Supplier must notify SPREP immediately if it knows or has reason to suspect that any fraud has occurred or is occurring or is likely to occur in relation to this Agreement (including by the Supplier or its Personnel).

Unforeseen events

Occurrence of unforeseen event

Subject to clause 0, a party (**Affected Party**) is excused from performing its obligations under this Agreement to the extent it is prevented by circumstances beyond its reasonable control (other than lack of funds for any reason or any strike, lockout and labour disputes in respect of the Supplier only), including but not limited to acts of God, pandemic, natural disasters, acts of war, riots and strikes outside that party's organisation.

Notice of unforeseen event

When the circumstances described in clause 0 arise or are reasonably perceived by the Affected Party as an imminent possibility, the Affected Party must give notice of those circumstances to the other party as soon as possible, identifying the effect they will have on its performance. An Affected Party must make all reasonable efforts to minimise the effects of such circumstances on the performance of this Agreement.

Termination

If non-performance or diminished performance by the Affected Party due to the circumstances under clause 0 continues for a period of more than 3 consecutive months, the other party may terminate this Agreement immediately by giving the Affected Party written notice.

Consequences of termination

If this Agreement is terminated under clause 0:

- (a) each party will bear its own costs and neither party will incur further liability to the other; and
- (b) where the Supplier is the Affected Party, it will be entitled to payment for Services accepted or work performed prior to the date of intervention of the circumstances described in clause 0.

Dispute resolution

No arbitration or court proceedings

If a dispute arises in relation to the conduct of this Agreement (**Dispute**), a party must comply with this clause 0 before starting arbitration or court proceedings.

Notification

A party claiming a Dispute has arisen must give the other parties to the Dispute notice setting out details of the Dispute.

Parties to resolve Dispute

During the period of 14 days after notification of a Dispute is given under clause 0 (or longer period if the parties agree in writing) the parties shall attempt to resolve the Dispute by negotiation at the officer level.

If the parties cannot resolve the Dispute at the officer level within that period, each party to the Dispute must use its reasonable efforts through a meeting of CEOs, agency heads, or equivalent level, to resolve the Dispute.

If the parties cannot resolve the Dispute within 14 days at the CEO, agency head or equivalent level, they must refer the Dispute to a mediator if one of them requests.

Appointment of mediator

If the parties to the Dispute cannot agree on a mediator within seven days after a request under clause 22.3 the matter will be referred to the President of the Samoa Law Society to appoint one.

Role of mediator and obligations of parties

The role of a mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a binding decision on a party to the Dispute except if the party agrees in writing. Unless agreed by the mediator and parties, the mediation must be held within 21 days of the request for mediation in clause 0. The parties must attend the mediation and act in good faith to genuinely attempt to resolve the Dispute.

Costs

Each party to a Dispute must pay its own costs of complying with this clause 0. The parties to the Dispute must equally pay the costs of any mediator.

Termination of process

A party to a Dispute may terminate the dispute resolution process by giving notice to each other party after it has complied with clauses 0 to 0. Breach of this clause

If a party to a Dispute breaches any of clauses 0 to 0, the other party does not have to comply with those clauses in relation to the Dispute.

Obligations continue

Despite the existence of a Dispute, the parties must continue to perform their obligations under this Agreement, unless a direction is issued in accordance with clause 0.

If directed and notified in writing by SPREP to do so, the Supplier must cease performing the obligations of the Supplier under this Agreement which are specified in SPREP's notice until SPREP issues a further written notice to the Supplier directing it to resume performance of those obligations.

Termination

Termination and reduction for convenience

- (a) SPREP may, at any time, by notice, terminate this Agreement or reduce the scope of the Services.
- (b) On receipt of a notice of termination or reduction the Supplier must:
 - stop work as specified in the notice;
 - take all available steps to minimise loss resulting from that termination and to protect SPREP Material and Agreement Material; and
 - continue work on any part of the Services not affected by the notice.
- (c) If this Agreement is terminated under this clause 0, SPREP is liable only for:
 - (i) payments under clause 0 for Services rendered before the effective date of termination; and
 - reasonable costs incurred by the Supplier and directly attributable to the termination.
- (d) If the scope of the Services is reduced, SPREP's liability to pay the Fees or to provide SPREP Material abates in accordance with the reduction in the Services.
- (e) SPREP is not liable to pay compensation under clause 0(c)0 in an amount which would, in addition to any amounts paid or due, or becoming due, to the Supplier under this Agreement, exceed the total Fees payable under this Agreement.
- (f) The Supplier is not entitled to compensation for loss of prospective profits.

Termination by SPREP for default

- (a) Without limiting any other rights or remedies SPREP may have against the Supplier arising out of or in connection with this Agreement, SPREP may terminate this Agreement effective immediately by giving notice to the Supplier if:
 - the Supplier breaches a material provision of this Agreement where that breach is not capable of remedy;
 - the Supplier breaches any provision of this Agreement and fails to remedy the breach within 14 days (or such other period as specified in the notice) after receiving notice requiring it to do so;
 - in the opinion of SPREP, a Conflict of Interest exists which would prevent the Supplier from performing its obligations under this Agreement;
 - all or any part of the Services do not meet the Performance Criteria on two or more occasions in accordance with clause 0; or
 - an event specified in clause 0(b) happens to the Supplier.
- (b) The Supplier must notify SPREP immediately if:
 - (i) the Supplier ceases to be able to pay its debts as they become due;

- (ii) the Supplier being a company enters into liquidation or has a liquidator or administrator appointed; or
- (iii) the Supplier being a natural person is declared bankrupt or assigns his or her estate for the benefit of creditors.

Potential Default

- (a) For the purposes of this clause **Potential Default** means any event, thing or circumstance which does not fall within the scope of clause 0 and which likely would:
 - (i) result in delay in meeting any requirement of the performance of the Services;
 - (ii) result in the Supplier not being able to achieve a Milestone; or
 - (iii) give rise to a right of termination pursuant to clause 0 with the giving of notice or the passage of time.
- (b) The Supplier must notify SPREP immediately upon becoming aware of a Potential Default and must include the following information, substantially in the form of the template provided by SPREP (if any), in its notice:
 - (i) the nature of and reason for the Potential Default;
 - (ii) how the Supplier proposes to rectify the Potential Default;
 - (iii) the date on which the Supplier proposes that the Potential Default will be rectified; and
 - (iv) any expected impact that the Potential Default may have on the delivery of the Services.
- (c) If SPREP is not satisfied with the Supplier's proposed actions to rectify the Potential Default, SPREP acting reasonably, may by written notice to the Supplier, require the Supplier to immediately suspend the Services (in whole or in part) and / or terminate this Agreement in its entirety
- (d) No action taken by SPREP pursuant to this clause 0 will:
 - (i) relieve the Supplier from, or alter or affect, the Supplier's liabilities or responsibilities whether under this Agreement or otherwise according to Law; or
 - (ii) prejudice SPREP's rights against the Supplier whether under this Agreement or otherwise according to Law.

After termination

On termination of this Agreement the Supplier must:

- (a) stop work on the Services;
- (b) deal with Agreement Material in accordance with clause 0; and

- (c) deal with SPREP Material, SPREP Data, and SPREP's Confidential Information as reasonably directed by SPREP.

Survival

The following clauses survive the termination and expiry of this Agreement:

- clause 0 (Subcontracting);
- clause 0 (Work health and safety);
- clause 0 (Intellectual Property Rights);
- clause 0 (Indemnity and release);
- clause 0 (Insurance);
- clause 0 (Confidentiality and privacy);
- clause 0 (Protection of Personal Information);
- clause 0 (Security);
- clause 0 (Books and records);
- clause 0 (Audit and access);
- clause 0 (After termination); and

Notices and other communications

Service of notices

- (a) A party giving notice under this Agreement must do so in English and in writing or by Electronic Communication:
 - directed to the other party's contact person at the other party's address, as varied by any notice; and
 - hand delivered or sent by prepaid post, facsimile or Electronic Communication to that address.
- (b) The parties' addresses are specified in Item 15 of the Agreement Details.

Miscellaneous

Ownership of Agreement

All copyright and other Intellectual Property Rights contained in this Agreement remain the property of SPREP.

Varying this Agreement

This Agreement may be varied only in writing signed by each party.

Assignment and novation

A party may only assign its rights or novate its rights and obligations under this Agreement with the prior written consent of the other party.

Costs

Each party must pay its own costs of negotiating, preparing and executing this Agreement.

Entire agreement

This Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

Severability

A term or part of a term of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining terms or parts of the terms of this Agreement continue in force.

Waiver

Waiver of any provision of or right under this Agreement:

- (a) must be in writing signed by the party entitled to the benefit of that provision or right; and
- (b) is effective only to the extent set out in any written waiver.

Relationship

- (a) The parties must not represent themselves, and must ensure that their Personnel do not represent themselves, as being an officer, employee, partner or agent of the other party, or as otherwise able to bind or represent the other party.
- (b) This Agreement does not create a relationship of employment, agency or partnership between the parties.

Announcements

- (a) The Supplier must, before making a public announcement in connection with this Agreement or any transaction contemplated by it, obtain SPREP's agreement to the announcement, except if required by Law or a regulatory body.
- (b) For the avoidance of doubt, SPREP does not require the consent of the Supplier to the making of the announcement.

Specific Requirements of the Funding Donor

A Donor may from time to time specify that SPREP apply certain restrictive measures to the arrangements for the provision of the Services, including such measures which may restrict SPREP's ability to enter into a binding agreement with certain potential Suppliers. Where specified under Item 9 of Schedule 1, the following restrictive measures shall apply to this Agreement:

- (a) Circumstances where the European Union (EU) is Donor

Entities designated on by the EU as subject to restrictive measures in the lists provided at www.sanctionsmap.eu ("EU Restrictive Measures") are ineligible to be engaged by SPREP on European Union funded projects.

In the event that SPREP becomes aware that the Supplier falls under the scope of EU restrictive measures, SPREP shall immediately terminate the Agreement in accordance with clause 23.1(a).

Where termination of the Agreement is required under (ii) above, only the provisions of clause 23.1(b)(i) and (ii) shall remain in effect. All other provisions under clause 23.1(b)(iii) and clauses 23.1(c) through (e) will no longer apply.

If the Supplier was aware of the designation by EU restrictive measures, SPREP reserves the right to recover any monies paid to the Supplier in undertaking the scope of works.

(b) Circumstances where funding has been provided by the Green Climate Fund

(i) The Supplier will ensure compliance with:

- A. the Anti-Money Laundering and Counter the Finance of Terrorism, "know your customer" and other similar checks to ensure the Supplier meets international best fiduciary standards and practices in relation to the delivery of the Services; and
- B. the anti-bribery laws of Samoa and any other relevant laws, and they shall not, directly or indirectly, pay, offer, give, promise to pay or authorize the payment of, or solicit, receive or agree to receive, any monies or other things of value to or from anyone in order to obtain, influence, or reward any improper advantage.

Governing law and jurisdiction

This Agreement is governed by the law of the Independent State of Samoa.

Privileges and Immunities

Nothing in or relating to this Agreement shall be deemed a waiver, express or implied, of any of the privileges and immunities of SPREP.

Schedule 1 – Agreement Details

Item No.	Description	Clause reference	Details
1.	SPREP details	0	Secretariat of the Pacific Regional Environment Programme (SPREP)
2.	SPREP Representative	0	Name: [insert details] Position: [insert details] Phone: [insert details] Email: [insert details]
3.	Supplier details	0	[Insert name of Supplier]
4.	Supplier Representative	0	Name: [insert details] Position: [insert details] Phone: [insert details] Email: [insert details]
5.	Commencement Date	0 and 0	The date this Agreement is signed by the last party. [OR - change the above text to a specific date e.g., dd/mm/yy, if required]
6.	End Date	0 and 0	[Insert the End Date]
7.	Option Period	0 and 0	[if no Option period is offered, delete all text in this field and replace with 'Nil'] [Option 1] One period being [Insert number] month(s) in duration. [Option 2] One further period being [Insert number] month(s) in duration.
8.	Standards and guidelines	0(c)	[Insert details of any applicable standards and guidelines, otherwise insert 'Not applicable']

Item No.	Description	Clause reference	Details
9.	SPREP requirements	5.1(e)	<p>(a) Child Protection Policy</p> <p>i. The Supplier must comply with its obligations, if any, under the SPREP Child Protection Policy. SPREP will ensure that the Supplier has access to this policy prior to execution of the Agreement, and the Supplier may make enquiries of SPREP around the application of, or updates to, the policy at any time during the Agreement Period.</p> <p>ii. If the Supplier becomes non-compliant with this policy during the Agreement Period, the Supplier must notify SPREP.</p> <p>[Insert particular requirements and/or additional SPREP policies with which the Supplier must comply as new sub-items after '(a) Child Protection Policy' above. For example, SPREP's Environmental and Social Safeguards policy, or any restrictive measures which may be required by the Donor – see clause 26.10.]</p>
10.	Subcontractors	0	[Insert names of any subcontractors. Otherwise insert 'Not applicable']
11.	Specified Personnel	0	[Insert names and positions of Specified Personnel. Otherwise insert 'Not applicable']
12.	SPREP Material	0 and 0	[Insert specific Material to be provided to the Supplier by SPREP (if any) and any restrictions on the use of the Material. Otherwise insert 'Not applicable'.]
13.	Insurance	0	<p>From the Commencement Date and for the periods specified in clause 0:</p> <p>(a) to the extent required by Law, workers' compensation insurance in respect of the Supplier's liability for any loss or claim by a person employed or otherwise engaged, or deemed to be employed or otherwise engaged, by the Supplier in connection with the Services;</p>

Item No.	Description	Clause reference	Details
			<p>(b) public liability insurance covering legal liability (including liability assumed under contract) for loss or damage to property or injury or death to persons arising out of or in connection with carrying out the Services for an insured amount of \$10 million.</p> <p>(c) either professional indemnity or errors and omissions insurance for an insured amount of \$10 million.</p>
14.	Confidential Information	0 and 0	<p>SPREP Confidential Information:</p> <p>[<i>insert relevant items</i>]</p> <p>Supplier's Confidential Information:</p> <p>[<i>insert relevant items</i>]</p>
15.	Address for notices	0	<p>SPREP:</p> <p>Name: [<i>insert details</i>]</p> <p>Position: [<i>insert details</i>]</p> <p>Secretariat of the Pacific Regional Environment Programme</p> <p>Physical address:</p> <p>Avele Road, Apia, Samoa</p> <p>Email: [<i>Insert email address</i>]</p> <p>Supplier:</p> <p>Name: [<i>insert details</i>]</p> <p>Position: [<i>insert details</i>]</p> <p>[<i>Insert organisation name</i>]</p> <p>Postal address: [<i>Insert postal address</i>]</p> <p>Physical address: [<i>Insert physical address</i>]</p> <p>Email: [<i>Insert email address</i>]</p>

Schedule 2 – Statement of Work

1. Introduction

1.1 SPREP

- (a) The Secretariat of the Pacific Region Environment Programme (SPREP) is the regional organisation established by the Governments and Administrations of the Pacific charged with protecting and managing the environment and natural resources of the Pacific.
- (b) The head office is based in Apia, Samoa with over 100 staff. There are SPREP offices in Fiji, Republic of the Marshall Islands and Vanuatu as well as SPREP Officers stationed in Solomon Islands.
- (c) The establishment of SPREP in 1993 sent a clear signal to the global community of the deep commitment of Pacific island Governments and Administrations for better management of the environment within the context of sustainable development.
- (d) The strategic direction for SPREP is clearly set out in the 2017-2026 SPREP Strategic Plan. The Plan outlines the mandate, vision and programmes for the organisation, and places strong emphasis on effective delivery of services to SPREP Member countries and territories.

1.2 SPREP's Mandate and Regional Goals

- (a) SPREP's mandate is to promote cooperation in the Pacific region and provide assistance to Pacific island countries and territories in order to protect and improve its environment and to ensure sustainable development for present and future generations.
- (b) SPREP's Regional Goals are as follows:
 - **Regional Goal 1:** Pacific people benefit from strengthened resilience to climate change;
 - **Regional Goal 2:** Pacific people benefit from healthy and resilient island and ocean ecosystems;
 - **Regional Goal 3:** Pacific people benefit from improved waste management and pollution control;
 - **Regional Goal 4:** Pacific people and their environment benefit from commitment to and best practice of environmental governance.
- (c) SPREP approaches the environmental challenges faced by the Pacific guided by four simple Values. These values guide all aspects of our work:
 - We value the Environment
 - We value our People

- We value high quality and targeted Service Delivery
- We value Integrity

2. Project Scope

2.1 [insert the title of the head Project / Programme] Background and Objectives

- [Provide an outline of the Project supporting the action / activity for which these Services are required]
- [What are the Project's overarching goals, objectives and / or outcomes?]
- [What is the Project's schedule for the Services?]

3. Services (clauses 0 and 0)

3.1 Services to be delivered under this Agreement

- Note: this section can be structured to reflect the Project's requirements for service delivery – but must reflect the original Service requirements as outlined in the Approach to Market. DO NOT insert service delivery details proposed by the preferred Supplier in their response to the Approach to Market here];
- [insert description of Services];
- [insert description of Services]
- In providing the Services, the Supplier must:
 - [insert specific Project requirements or Service delivery expectations – e.g. minimum requirements for Supplier personnel, key tasks, Project expectations or priorities, any known obstacles / limitations and Project timeframes].
 - [insert specific Project requirements or Service delivery expectations].

4. Deliverables (clause 0)

No.	Description of Deliverable / Milestone	Contact for Delivery	Delivery Location / Email	Due Date
1.				
2.				

No.	Description of Deliverable / Milestone	Contact for Delivery	Delivery Location / Email	Due Date
3.				
4.				
5.	[<i>insert or delete rows as required</i>]			

5. Performance Criteria (clauses 0 and 0)

No.	Service/Deliverable	Performance Criteria	Assessment date
1.			
2.			
3.			
4.			
5.	[<i>insert or delete rows as required</i>]		

6. Progress meetings (clause 0)

6.1 The Supplier is required to attend meetings as follows:

Meeting Type	Representatives Required	Frequency	Teleconference / Site
[<i>insert or delete rows as required</i>]			

7. Reporting (clause 0)

7.1 During the term of this Agreement the Supplier must provide SPREP with reports as set out in the table below:

Report type and content	Description	Due Date
	<p>[Ensure you highlight here whether one of the reports in this section is also listed as a Milestone in the table above – i.e. you could state 'The submission and acceptance by SPREP of this report represents Milestone No. 2 for the Agreement']</p>	
[insert or delete rows as required]		

8. Facilities and Assistance Offered by SPREP

8.1 [if SPREP will not be providing any direct support or assistance to the Supplier, then delete this text and insert 'Nil'] SPREP will provide the following facilities and assistance to support the Supplier in their delivery of the services:

- Logistics – [e.g. assistance in gaining entry clearance, confirming accommodation, work sites and related facilities];
- Documentation - [e.g. SPREP will provide relevant Project materials for context, supporting data or previous reports];
- Facilities - [e.g. if the Supplier is likely to be working from SPREP's central or regional offices, whether a room and IT support will be provided];
- [insert any other assistance which SPREP will provide to the Supplier]

9. Unspecified

9.1 [insert new headings / sections consistent with the original Terms of Reference / requirements issued with the Approach to Market – or – delete this section].

Schedule 3 – Payment

1. Maximum Agreement Value

1.1 The maximum value of the Agreement inclusive of all taxes and charges will not exceed **USD \$[insert maximum value including all fees and expenses – if any]** as set out below.

2. Fixed Fees (including all expenses clause 0)

2.1 The Supplier will invoice SPREP for the following Fixed Fees for the Services: **[retain if the payment arrangements for the Services are to be based upon a Fixed Fee arrangement. If the payment arrangements are to be based on Daily or Hourly rates, delete this Fixed Fees section]**

Type	Charges	Units	Total
Fees (fixed)			
Other charges (if any)			
TOTAL			

3. Milestone Payments

3.1 Progress payments of the Fixed Fees (inclusive of all taxes and charges) will be made as follows: **[retain if the payment arrangements for the Services are to be based upon a Fixed Fee arrangement. If the payment arrangements are to be based on Daily or Hourly rates, delete this Milestone Payments section]**

Milestone date	Milestone/Deliverable	Milestone Payment

Milestone date	Milestone/Deliverable	Milestone Payment
TOTAL		

4. Hourly rates (clause 0)

4.1 The Supplier will invoice SPREP for the Services monthly in arrears based on the following Hourly rates: [retain if the payment arrangements for the Services are to be based upon agreed Hourly rates. If the payment arrangements are to be based on Daily rates or Fixed Fees, delete this Hourly rates section]

4.2

Personnel	Hourly rate (USD)	Units	Maximum hours or days to be worked daily	Charges
Sub total				
TOTAL				

5. Daily rates (clause 0)

5.1 The Supplier will invoice SPREP for the Services monthly in arrears based on the following Daily rates: [retain if the payment arrangements for the Services are to be based upon agreed Daily rates. If the payment arrangements are to be based on Hourly rates or Fixed Fees, delete this Daily rates section]

Personnel	Daily rate (USD)	Units	Charges
Sub total			
TOTAL			

6. Expenses (clause 0)

[Option 1 – retain or delete as required]

- (a) No allowances or expenses are payable to the Supplier.

[Option 2 – retain or delete as required]

- (a) Subject to Item 6(b) below, SPREP will not pay any travel, accommodation or other expenses unless they have been pre-approved in writing by SPREP.
- (b) The Supplier will be reimbursed for the actual cost of travel and related accommodation where they are pre-approved in writing by SPREP. The Supplier must submit an invoice for those expenses and SPREP will reimburse the Supplier in accordance with the invoicing procedures set out in this Schedule.

7. Invoicing requirements (clause 0)

- (a) Invoices must contain the following information:
 - (i) the details of the amount of time spent by each of the person including Specified Personnel on the Services for the period to which the invoice relates and a record detailing how the relevant Milestone dates have been met;
 - (ii) contract number;
 - (iii) period covered by invoice;
 - (iv) title and description of the Services;
 - (v) the amount of any allowances or expenses which are to be reimbursed in accordance with Item 6 of this Schedule 3 together with any substantiating material required; and
 - (vi) any other information reasonably requested by SPREP from time to time.
- (b) Invoices must to be sent to:
 - [Insert position and name of SPREP's representative]**
 - [Insert details of Programme / Section / Project]**

Secretariat of the Pacific Regional Environment Programme
P.O. Box 240, Apia, SAMOA

Execution page

EXECUTED as an agreement

SIGNED for and on behalf of the
Secretariat of the Pacific Regional
Environment Programme

Kosi Latu

Director General of SPREP

Date

**SIGNED for and on behalf of [Supplier
name]**

[Authorised representative's name] (print)

[position]

Date

APPENDIX I: SAMPLE GOODS CONTRACT



Contract for Goods

[Registry file # - Contract name]

The Parties

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

PO Box 240, Apia, Samoa

and

[Supplier]

[Address]

The Contract

Agreement

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

The documents forming this Contract are:

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

How to read this Contract

5. Together the above documents form the whole Contract.
6. Any Supplier terms and conditions do not apply, or have been included in this contract
7. Clause numbers refer to clauses in Schedule 2.
8. Words starting with capital letters have a special meaning. The special meaning is stated in the Definitions section at clause 17 (Schedule 2).
9. This Agreement shall be governed by the laws of Samoa
10. This Agreement may be executed in any number of counterparts (including by facsimile or electronic copies) each of which, when taken together, will constitute one and the same document.

Acceptance

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

For and on behalf of the **Buyer**:

(signature)

Name: Kosi Latu

For and on behalf of the **Supplier**:

(signature)

Name:

Position:	Director General SPREP	Position:	
Date:		Date:	

Schedule 1
Contract Details and Description of Goods

Start Date		Reference Schedule 2 clause 1
End Date		Reference Schedule 2 clause 1
Type of contract	Goods	

Contract Managers Reference Schedule 2 clause 6	Buyer's Contract Manager	Supplier's Contract Manager
	Name:	
	Title / position:	
	Address:	
	Phone:	
	Fax:	
	Email:	

Addresses for Notices Reference Schedule 2 clause 14	Buyer's address	Supplier's address
	For the attention of:	
	c.c.	
	Delivery address:	
	Postal address:	
	Fax:	
	Email:	

Delivery timeframe Reference Schedule 2 clause 2.7	The Goods must be delivered by
Delivery Address Reference Schedule 2 clause 2.7	SPREP Vailima Apia Samoa Attention:
Delivery note	The Supplier will provide a delivery note along with the Goods when delivered.

Description of Goods

1. Description of Goods

The supplier is responsible for supplying reliable, high-quality **XXXX** as described below:

QUANTITY	DESCRIPTION

Supplier to adhere to - SPREP Child Protection Policy, 2016.

The supplier must supply the goods to the extent applicable, in compliance with SPREP's Values and Code of Conduct

https://www.sprep.org/attachments/Publications/Corporate_Documents/sprep-organisational-values-code-of-conduct.pdf

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

Cost
Reference
Schedule
2 clause 5

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

Qty	Description		TOTAL

TOTAL COST (VAGST inclusive)

Payment
Terms
Schedule 2
clause 5

Milestone	Total cost \$
Total Cost SAT (VAGST inclusive) \$	

Expenses
Reference
Schedule 2
clause 5

Specific items and agreed cost per item - specified Expenses –
Not Applicable

Invoices
Reference Schedule
2 clause 5

The Supplier must send the Buyer an invoice for the Charges at the following times:
1. Xxx
2. xxxx

**Addresses for
invoices**
Reference
Schedule 2
clause 5

Buyer's address

For the attention of:	
Physical address:	
Postal address:	
Email:	

Attachments
Reference
'Contract
documents'
described at
Page 1

Annex 1 – Terms of Reference

Annex 1

TERMS OF REFERENCE

Schedule 2

Standard Terms and Conditions – Goods

1. Length of Contract

- 1.1 This Contract starts on the Start Date.
- 1.2 This Contract ends on the End Date, unless terminated earlier.

2. Supply of Goods

Both Parties' obligations

- 2.1 Both Parties agree to:
 - a) Act in good faith and demonstrate honesty, integrity, openness, and accountability in their dealings with each other
 - b) Discuss matters affecting this Contract or the supply of the goods, whenever necessary
 - c) Notify each other immediately of any actual or anticipated issues that could:
 - i) significantly impact the goods or the charges; ii). Receive media attention; and
 - d) Comply with all applicable laws and regulations.

Purchase Order

- 2.2 Once the contract is signed by both parties. An official Purchase Order will be issued by the Buyer.
- 2.3 The goods are supplied under the terms of this Contract. Any Supplier terms and conditions stated in its sales order form, delivery receipt, e-procurement system or elsewhere do not apply.

Buyer's obligations

2.4 The Buyer must pay the Supplier the charges for the goods as long as the Supplier has delivered the goods and invoiced the Buyer, all in accordance with this Contract.

Supplier's obligations

- 2.5 The Supplier must supply goods which meet the Description of Goods in Schedule 1, the requirements of this Contract, and which are supplied in accordance with orders from the Buyer.
- 2.6 The Supplier must deliver the goods to the delivery address stated in Schedule 1, or such other address the Buyer specifies, on time, and for the charges. It is essential that goods are delivered on time.
- 2.7 The Supplier must notify the Buyer immediately in writing if the Supplier becomes aware of any actual or possible delay in delivery of the goods.
- 2.8 If a warranty or maintenance obligation (including a warranty from a manufacturer) applies in relation to the goods or any items incorporated into or supplied with the goods, the Supplier must ensure that the benefit of the warranty or obligation is passed on to the Buyer.

Goods must satisfy criteria

- 2.9 The goods must:
 - a) Be of merchantable quality and free from defects in design, materials or construction
 - b) Be fit for the purposes for which they are intended to be used
 - c) Comply with the Description of Goods stated in Schedule 1
 - d) Comply with any sample of the goods provided by the Supplier, except if the Buyer has agreed otherwise in writing
 - e) Be new and unused, unless the Buyer has agreed otherwise in writing, and
 - f) Be packaged so as to protect the contents and keep them clean, dry and in a new condition until they are first used, if appropriate.

Supplier warranties

- 2.10 The Supplier warrants that:
 - a) the goods do not breach any law or standard
 - b) Supply of the goods in accordance with this Contract will not infringe the rights of any person
 - c) When ownership is stated to pass in this Contract, full ownership of the goods passes to the Buyer and no-one else has any rights in the goods
 - d) All Goods supplied to the Buyer comply with all of the criteria stated in clause 2.9

- e) Any documentation supplied with the goods is adequate (in terms of both quantity and quality) to enable the Buyer to use and maintain the goods in the manner intended by the Buyer
- f) All information provided by the Supplier to the Buyer is accurate, and
- g) The Supplier has told the Buyer about any conflict of Interest relating to the supply of goods or this Contract.

Spare parts

2.11 If stated in Schedule 1 the Supplier must maintain an adequate stock of spare parts and equipment for the goods, for supply to the Buyer as and when required.

3. Acceptance and rejection of goods

Inspection and acceptance

- 3.1 The signing of a delivery note by any of the Buyer's Personnel does not indicate the Buyer's acceptance of the goods.
- 3.2 If, following the Buyer's inspection of the goods, any of the goods do not meet the requirements of this Contract, then the Buyer may, within a reasonable time after completing the inspection, do any of the following at the Buyer's option, but at the Supplier's cost:
 - Require the Supplier to repair the goods
 - Require the Supplier to replace the goods, or
 - Reject the goods.
- 3.3 The Buyer must give Notice to the Supplier if it decides to exercise any of the options under clause 3.2.

Repair or replacement

- 3.4 If the Supplier receives a notice from the Buyer to repair or replace the goods, the Supplier must promptly repair or replace the goods in question, so that the goods (or replacement goods) comply with the warranties in clause 2.10.
- 3.5 If the Buyer is not satisfied with the Supplier's progress in repairing or replacing the goods, the Buyer may either:
 - Reject the goods, in which case clauses 3.6 to 3.7 will apply; or
 - Arrange for the goods to be repaired by someone else, in which case the Supplier will reimburse all costs and expenses incurred by the Buyer in doing so.

Rejection

- 3.6 If the Supplier receives a Notice from the Buyer rejecting the goods, it must remove any rejected goods from the Buyer's premises at its own risk and expense. If the Supplier does not remove the rejected goods within 15 business days of notice of rejection, the Buyer may

return the goods and recover from the Supplier any cost and expense incurred.

3.7 If the Buyer rejects any goods, the Supplier, at the Supplier's cost, will do whichever one of the following the Buyer elects. The Buyer must state the action required in its Notice issued under clause 3.3:

- Provide a full refund of the charges paid for the rejected goods, within 10 business days of the Buyer electing to receive a refund, or
- Provide a credit for the charges paid for the rejected goods, against the charges payable for other goods, or
- Promptly replace the rejected goods with goods that meet the requirements of this Contract.

No limitation

3.8 The Buyer's rights under clauses 3.2 to 3.7 are in addition to, and do not limit, any other rights or remedies the Buyer may have.

4. Ownership and risk

Ownership of Goods

- Ownership of the goods passes to the Buyer on the earlier of:
 - The date the Buyer has paid the charges for those goods, or
 - The date those goods have been delivered.
- Risk in the goods passes to the Buyer on the date those goods have been delivered.
- Ownership and risk in any goods rejected by the Buyer under clauses 3.6 to 3.7 will pass back to the Supplier as follows:
 - If the Buyer has paid the charges for those rejected goods, once the Supplier has provided a refund, credit or replacement in accordance with clause 3.7, and
 - In all other cases, when the Goods are collected from the place to which they were delivered.
- Ownership of any replaced goods by the Supplier under clauses 3.2 to 3.5 will pass back to the Supplier once the Supplier has delivered the replacement goods.

5. Charges and payment

Charges & invoices

- The charges are the total maximum amount payable by the Buyer to the Supplier for the delivery of the goods. Charges include the cost, and where agreed, expenses
- Unless otherwise stated in Schedule 1 the charges for the goods include all of the following:

- a) Costs of shipping, carriage and freight
- b) Insurance charges
- c) Customs duties and clearance charges, and
- d) Other costs incurred by the Supplier in delivering the goods to the Buyer.

Invoices

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

- a) Clearly show all GST due
- b) Be in the currency stated in Schedule 1
- c) Be clearly marked 'Tax invoice'
- d) Contain the Supplier's name, address and GST number, if the Supplier is registered for GST
- e) Contain the Buyer's name and address and be marked for the attention of the Buyer's Contract Manager, or such other person stated in Schedule 1
- f) State the date the invoice was issued
- g) Name this Contract and provide a description of the goods delivered
- h) Contain the Buyer's contract reference or purchase order number if there is one
- i) State the charges due, calculated correctly, and
- j) Be supported by GST receipts if expenses are claimed and any other verifying documentation reasonably requested by the Buyer.

Payment

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

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

6. Contract management

Contract Manager

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

- a) Managing the relationship between the Parties
- b) Overseeing the effective implementation of this Contract, and
- c) Acting as a first point of contact for any issues that arise.

Changing the Contract Manager

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

7. Information management

Information and Records

7.1 The Supplier must:

- Keep and maintain records in accordance with prudent business practice and all applicable laws
- Make sure the Records clearly identify all relevant time and expenses incurred in providing the goods and/or construction performance
- Make sure the records are easy to access, and
- Keep the records safe.

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

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

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

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

Reports

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

8. The contractual relationship

Independent contractor

8.1 Nothing in this Contract constitutes a legal relationship between the Parties including partnership, joint venture, agency, or employment. The Supplier is responsible for the liability of its own, and its personnel's, salary, wages, holiday or redundancy payments and any GST, corporate, personal and withholding taxes, ACC premiums or other levies attributable to the Supplier's business or the engagement of its Personnel.

Neither Party can represent the other

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

Permission to transfer rights or obligations

8.3 The Supplier may transfer any of its rights or obligations under this Contract only if it has the Buyer's prior written approval. The Buyer will not unreasonably withhold its approval.

9. Insurance

Where insurance is a requirement

9.1 It is the Supplier's responsibility to ensure its risks of doing business are adequately covered, whether by insurance or otherwise. If required in Schedule 1, the Supplier must have the insurance specified in Schedule 1 and the Supplier must:

- a) Take out insurance, with a reputable insurer, and maintain that insurance cover for the term of this Contract and for a period of 3 years after the End Date, and
- b) Within 10 business days of a request from the Buyer provide a certificate confirming the nature of the insurance cover and proving that each policy is current.

10. Conflicts of Interest

Avoiding Conflicts of Interest

10.1 The Supplier warrants that at the start date, it has no conflict of Interest in supplying the goods or entering into this Contract.

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

Obligation to tell the Buyer

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

11. Resolving disputes

Steps to resolving disputes

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

- a) A Party must notify the other if it considers a matter is in dispute
- b) The Contract Managers will attempt to resolve the dispute through direct negotiation
- c) If the Contract Managers have not resolved the dispute within 10 business days of notification, they will refer it to the Parties' senior managers for resolution, and
- d) If the senior managers have not resolved the dispute within 10 business days of it being referred to them, the Parties shall refer the dispute to mediation or some other form of alternative dispute resolution.

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

- By a single mediator agreed by the Parties, or if they cannot agree, refer to the courts.
- At a fee to be agreed by the Parties.

11.3 Each Party will pay its own costs of mediation or alternative dispute resolution under clause 11.

Obligations during a dispute

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

Taking court action

11.5 Each Party agrees not to start any court action in relation to a dispute until it has complied with the process described in clause 11.1, unless court action is necessary to preserve a Party's rights.

12. Ending this Contract

Termination by the Supplier

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

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

12.3 The Supplier may also terminate this Contract under clause 12.9.

Termination by the Buyer

12.4 The Buyer may terminate this Contract at any time by giving 20 business days' notice to the Supplier.

12.5 The Buyer may terminate this Contract immediately, by giving notice, if the Supplier:

- Becomes bankrupt or insolvent
- Has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed

- c) Becomes subject to any form of external administration
- d) Ceases for any reason to continue in business or to supply the goods
- e) Is unable to supply the goods for a period of 20 business days or more due to an extraordinary event
- f) Requires the supply of goods within the period of an extraordinary event
- g) Is in breach of any of its obligations under this Contract and the breach cannot be remedied
- h) Repeatedly fails to perform or comply with its obligations under this Contract, whether those obligations are minor or significant
- i) Does something, or fails to do something, that, in the Buyer's opinion, results in damage to the Buyer's reputation or business
- j) Has a conflict of interest that in the Buyer's opinion is so material as to impact adversely on the supply of the goods or the Buyer, or
- k) Provides information to the Buyer that is misleading or inaccurate in any material respect.

Termination by a Party if a breach has not been remedied

- 12.6 If a Party fails to meet the requirements of this Contract (defaulting Party) and the other Party (non-defaulting Party) reasonably believes that the failure can be remedied, the non-defaulting Party must give notice (default notice) to the defaulting Party.
- 12.7 A default notice must state:
 - a) The nature of the failure
 - b) What is required to remedy it, and
 - c) The time and date by which it must be remedied.
- 12.8 The period allowed to remedy the failure must be reasonable given the nature of the failure.
- 12.9 If the defaulting Party does not remedy the failure as required by the default notice, the non-defaulting Party may terminate this Contract immediately by giving a further notice.
- 12.10 If the Buyer gives a default notice to the Supplier, the Buyer may also do one or both of the following things:
 - a) Withhold any payment of cost due until the failure is remedied as required by the default notice, and/or

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

Supplier's obligations on termination or expiry of this Contract

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

- 12.12 a) stop supplying the Goods
- b) comply with any conditions contained in the Notice, and
- c) immediately do everything reasonably possible to reduce its losses, costs, and expenses, arising from the termination of this Contract.

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

Consequences of termination or expiry of this Contract

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

12.14 If this Contract is terminated the Buyer:

- a) Will only be liable to pay charges that were due for goods delivered before the effective date of termination;
- b) May recover from the Supplier, or set off against sums due to the Supplier, any charges paid in advance that have not been incurred.

Handover

12.15 If the Buyer requests it, the Supplier will provide all reasonable assistance to support any replacement supplier to supply the goods.

13. Confidential Information

Protection of Confidential Information

- 13.1 Each Party confirms that it has adequate security measures to safeguard the other Party's Confidential Information from unauthorized access, or use by third parties, and that it will not use or disclose the other Party's Confidential Information to any person or organization other than:
 - a) To the extent that use or disclosure is necessary for the purposes of providing the goods, or in the case of the Buyer, using the goods
 - b) If the other Party gives prior written approval to the use or disclosure

- c) If the use or disclosure is required by law, ministers, or parliamentary convention, or
- d) In relation to disclosure, if the information has already become public, other than through a breach of the obligation of confidentiality by one of the Parties.

Obligation to inform staff

13.2 Each Party will ensure that its personnel:

- a) Are aware of the confidentiality obligations in this Contract, and
- b) Do not use or disclose any of the other Party's Confidential Information except as allowed by this Contract.

14. Notices

Delivery of Notices

- 14.1 All Notices to a Party must be delivered by hand or sent by post, courier, fax or email to that Party's address for Notices stated in Schedule 1.
- 14.2 Notices must be signed, or in the case of email sent, by the appropriate manager or person having authority to do so.

Receipt of Notices

- 14.3 A notice will be considered to be received:
 - a) If delivered by hand, on the date it is delivered
 - b) If sent by post within Samoa, on the 3rd Business Day after the date it was sent
 - c) If sent by post internationally, on the 7th Business Day after the date it was sent
 - d) If sent by courier, on the date it is delivered
 - e) If sent by fax, on the sender receiving a fax machine report that it has been successfully sent, or
 - f) If sent by email, at the time the email enters the recipient's information system as evidenced by a delivery receipt requested by the sender and it is not returned undelivered or as an error.
- 14.4 A notice received after 5pm on a business day, or on a day that is not a business day, will be considered to be received on the next business day.

15. Extraordinary Events

No fault if failure to deliver due to an Extraordinary Event

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

Obligations of the affected Party

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

- a) The nature of the circumstances giving rise to the extraordinary event
- b) The extent of that Party's inability to perform under this Contract
- c) The likely duration of that non-performance, and
- d) What steps are being taken to minimize the impact of the extraordinary event on the delivery of the goods.

Alternative arrangements requiring immediate termination

15.3 If the Buyer, acting reasonably, requires the goods to be supplied during a period affected by an extraordinary event, then despite clause 15.4, the Buyer may terminate this Contract immediately by giving notice.

Termination of Contract

15.4 If a Party is unable to perform any obligations under this Contract for 20 business days or more due to an extraordinary event, the other Party may terminate this Contract immediately by giving notice.

16. General

Changes to this Contract

16.1 Any change to this Contract is called a variation. A variation must be agreed by both Parties and recorded:

- a) in writing and signed by both Parties, or
- b) through an exchange of emails where the authors have delegated authority to approve the variation.

This is the entire Contract

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

Waiver

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

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

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

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

Publication of information about this Contract

- 16.4 The Supplier may disclose the existence of this Contract but must obtain the Buyer's prior written approval before making reference to the Buyer or this Contract in its publications, public statements, promotional material or promotional activities about this Contract.
- 16.5 Each Party agrees not to post on websites or social networking sites and not to publicly display objectionable or derogatory comments about the goods, this Contract, each other, or any personnel and to ensure that its personnel do not do so.

Signing the Contract

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

Clauses that remain in force

- 16.7 The clauses that by their nature should remain in force on expiry or termination of this Contract do so, including clauses: 7 (Information management), 9 (Insurance), 11 (Resolving disputes), 12 (Ending this Contract), 13 (Confidential Information), 16 (General) and 17 (Definitions).

Precedence

- 16.8 If there is any conflict or difference between the documents forming this Contract (as stated on Page 1) then the order of precedence is:
 - a) a variation agreed between the Parties under clause 16.1
 - b) Schedule 1
 - c) any attachment to Schedule 1
 - d) Schedule 2.

17. Definitions

- 17.1 When used in this Contract the following terms have the meaning beside them: **Attachment**- Any supplementary document named in Schedule 1 as an Attachment to this Contract.

Business Day- A day when most businesses are open for business in Samoa. It excludes Saturday,

Sunday and public holidays. A business day starts at 8.30am and ends at 5pm.

Buyer- The Buyer is the purchaser of the goods.

Charges- The total amount payable by the Buyer to the Supplier as stated in Schedule 1. The Supplier's charges include costs and any expenses stated in Schedule 1, in case of goods contract. Charges are payable on successful delivery of goods provided a valid tax invoice has been submitted.

Confidential Information- Information that:

- a) is by its nature confidential
- b) is marked by either Party as 'confidential', 'in confidence', 'restricted' or 'commercial in confidence'
- c) is provided by either Party, or a third party 'in confidence'
- d) either Party knows or ought to know is confidential, or
- e) is of a sensitive nature or commercially sensitive to either Party.

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

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

- a) actual: where the conflict currently exists
- b) potential: where the conflict is about to happen, or could happen
- c) perceived: where other people may reasonably think that a person is compromised.

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

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

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

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

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

End Date- The earlier of the date this Contract is due to end as stated in Schedule 1, the date of

termination as set out in a notice of termination, or any other date agreed between the Parties as the date the Contract is to end.

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

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

- a) acts of God, lightning strikes, earthquakes, tsunamis, volcanic eruptions, floods, storms, explosions, fires, pandemics and any natural disaster
- b) acts of war (whether declared or not), invasion, actions of foreign enemies, military mobilization, requisition or embargo
- c) acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, rebellion, insurrection, revolution or military usurped power or civil war, or
- d) contamination by radioactivity from nuclear substances or germ warfare or any other such hazardous properties.

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

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

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

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

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

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

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

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

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

Variation- A change to any aspect of this Contract that complies with clause 16.

APPENDIX J: SAMPLE SMALL SERVICE AGREEMENT (ADMINISTRATION SERVICES)

SERVICES AGREEMENT

[Registry file #]

Date

Contractor details

Contractor address

Services Agreement for the supply and installation of a power controller for SPREP's backup generator

between

The Secretariat of the Pacific Regional Environment Programme (SPREP)

and

XXXXX

(together, "the Parties")

Dear XXX,

I am pleased to offer you this Services Agreement ("the Agreement") with the Secretariat of the Pacific Regional Environment Programme (SPREP) in accordance with the following terms and conditions.

Interpretation

"Dependency" means any factor that the Consultant is dependent upon occurring or not occurring in order to provide the Services.

"Director General" means the Director General of SPREP and includes "Officer-in-charge" and "Acting Director General".

"Extraordinary Event" An event that is beyond the reasonable control of the Party immediately affected by the event. An Extraordinary Event does not include any risk or event that the Party claiming could have prevented or overcome by taking reasonable care. Examples include:

- a. acts of God such as lightning strikes, earthquakes, tsunamis, volcanic eruptions, floods, storms, explosions, fires, pandemics and any natural disaster;
- b. acts of war (whether declared or not), invasion, actions of foreign enemies, military mobilisation, requisition or embargo;
- c. acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, rebellion, insurrection, revolution or military usurped power or civil war,
- d. nationalisation, government sanctions, travel bans, embargoes, labour disputes, strikes or lockouts
- e. pandemics, including but not limited to COVID-19;

f. contamination by radioactivity from nuclear substances or germ warfare or any other such hazardous events.

"Services" means the work to be done under the Terms of Reference.

1. Terms of Reference for Services

The Terms of Reference are set out in the Attachment which forms part of this Agreement.

2. Duration

The Services will start **XXX**.

The agreement will end **XXXX**.

3. Remuneration

- a) The Contractor will receive a total sum of **SAT** for services rendered.
 - a. **SAT** to be paid upon completion of **xxxx**
 - b. **SAT** to be paid within 30 days following the successful completion and acceptance by SPREP of the works as specified in the TOR
- b) SPREP reserves the right to withhold remuneration if in the option of the Director General (acting reasonably) the Services under this Agreement are unsatisfactory, incompetently, or incompletely performed or money is owed to SPREP by the Contractor.
- c) The Contractor must provide an invoice for each payment instalment.

4. Status of Contractor

- a) The Contractor shall be considered as having the legal status of an independent contractor and not the status of an official or staff member of SPREP. Agents, employees or representatives of the Contractor shall not be considered as being officials or staff of SPREP.
- b) The Contractor is entitled only to those benefits stated in this Agreement.

5. Delay

The Consultant must notify SPREP's Contract Manager in writing as soon as reasonably practicable after the Consultant becomes aware of circumstances (including any Dependency or an Extraordinary Event) which may give rise to delay together with an estimate of further time required for the completion of the Services and the Parties will consult in good faith as to how to proceed.

In event of any Dependency affecting the Consultant's ability to provide the Services and notified under this clause, then the Parties will, as appropriate, also consult in good faith to agree an extension of time, variation to the Services and/or variation to the Consultancy Fee accordingly.

Neither Party will be liable for a breach of its obligations under this Agreement to the extent that the performance of such obligations is prevented by an Extraordinary Event. If an Extraordinary Event affects a Party's ability to perform its obligations under this Agreement for a period of sixty (60) consecutive Business Days, then either Party may (subject to the cessation of the Extraordinary Event) terminate this Agreement upon ten (10) Business Days' written notice to the other Party.

The Parties agree that the following are Dependencies under this Agreement:

- Timely provision of all information, approvals and assistance by SPREP that the Consultant reasonably requires to provide the Services.

6. Financial responsibility

The Contractor agrees it is responsible for:

- c) payment of applicable taxes, superannuation and the like
- d) all insurance cover including for liability

7. Liability

- a) The Contractor shall perform the Services with due professional care and skill.
- b) The Contractor agrees to provide remedial work for a further 6 months from the date of final payment if shortcomings are subsequently discovered in the Services provided.
- c) The Contractor shall have full regard to SPREP's interests and not knowingly take any action that might adversely affect SPREP.
- d) The Consultant agrees to indemnify and hold harmless SPREP of and from any and all claims, demands, losses, causes of action, damage, lawsuits, judgments, including lawyer's fees and costs, arising from
 - (i) any act or omission by the Consultant (including any of its personnel) in connection with this Agreement;
 - (ii) any breach by the Consultant (including any of its personnel) of its obligations under this Agreement;
 - (iii) any use or disclosure by the Consultant (including its personnel) of Confidential Information held or controlled in connection with this Agreement.
 - (iv) Intellectual property breaches.

8. Termination

- a) If the Contractor acts in a manner which in the reasonable opinion of the Director General has a serious negative impact upon SPREP, the Director General may immediately terminate this Agreement.
- b) Other than termination in accordance with sub-clause (a), either Party may terminate this Agreement at any time by giving the other ten days' notice in writing of its intention to do so.
- c) Upon receipt of a notice to terminate:
 - (i) the Parties will take all action necessary to cancel outstanding commitments relating to the Services under this Agreement and will use their best efforts to honour their respective prior commitments.
 - (ii) SPREP will make payment for work satisfactorily completed up to the time of termination, up to the stated maximum.
- d) The Contractor will return all unexpended funds.
- e) Termination or expiry of this Agreement will not prejudice any rights or obligations of the Parties which exist, whether under this Agreement, at law or otherwise, prior to termination or expiry.
- f) Clauses 6, 7 and 8 and any other relevant provisions, will survive the termination or expiry of this Agreement.

9. Applicable Law

This Agreement shall be governed by the laws of Samoa.

10. Dispute resolution

The Parties shall cooperate to carry out their obligations in good faith and shall endeavour to resolve any disagreement in an amicable manner, including through use of mediation and conciliation processes.

11. Variation of Agreement

This Agreement may be varied by written agreement of the Parties.

12. Contract Manager

a) Lawrence Warner of Finance and Administration and XXXX as the Contract Managers are responsible for managing the Contract, including:

- i) Managing the relationship between the Parties
- ii) Overseeing the effective implementation of this Contract
- iii) Act as a first point of contact for any issues that arise and,
- iv) Address and resolve any issues in a prompt manner.

b) Changing the Contract Manager

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

13. Counterparts

This Agreement may be executed in any number of counterparts (including by facsimile or electronic copies) each of which, when taken together, will constitute one and the same document.

Should these terms and conditions be acceptable to you, please sign below, also initial each page of the Agreement and its attachment, and return one copy of each to me.

Yours sincerely,

Mr. Kosi Latu
Director General
SPREP

Date:

XXXXX
XXXXX

Date:

ATTACHMENT

TERMS OF REFERENCE FOR SERVICES

Scope of works:

Service Obligations

The contractor must adhere to – SPREP, Child Protection Policy, 2016

The contractor must supply the services to the extent applicable, in compliance with SPREP's Values and Code of Conduct

https://www.sprep.org/attachments/Publications/Corporate_Documents/sprep-organisational-values-code-of-conduct.pdf

APPENDIX K: SAMPLE CONTRACTOR REVIEW FORM

SAMPLE: Consultant/Supplier Assessment Form		
Contract Name & Number		
Duration of Contract (Start & End Date)		
Contract Manager		
Consultant/Supplier Information	Company Name	
	Lead Consultant (identify role & responsibility)	
	Other Members of the Team (identify each members role & responsibility)	
i. Communication Feedback (Lead Consultant/ Organisation)	Contract Negotiation Period	
	Via Email	
	During Progress Meetings	
	Between Countries/Other stakeholders (as applicable)	
	Addressing SPREP Requests	
ii. Professionalism Conduct Feedback (Lead Consultant/ Organisation)	.	
iii. Ability to Submit to Timelines ability to communicate efficiently when unable to do so (Lead Consultant/ Organisation)		
iv. Quality of Deliverables Submitted		

(Lead Consultant/ Organisation)	
v. Other Comments (Lead Consultant/ Organisation)	
vi. Recommend to Re-engage (Lead Consultant/ Organisation)	

**replicate sections i) – vi) if required for other members of the team if necessary.*

APPENDIX L: SAMPLE CONTRACT AMENDMENT

AMENDMENT TO

Consultancy Agreement between SPREP Signed XXXXX

Amendment #1

The Amendment # 1 is required to enable

The Consultancy Agreement which was signed on the XXX required the work to finish on the XXXX.

In all other respects, the parties confirmed the Agreement

The Agreement is amended as follows:

Schedule 1 – End Date	Delete End Date and replace with new End Date as follows “XXXX”
--------------------------	--

Kosi Latu
Director General
SPREP

XXXX
Director
XXXXX

Date: _____

Date: _____

ADDENDUM 1

Summary of Changes to the SPREP Procurement Manual: Effective 1 January 2022

GENERAL

Policy updated to

1. amend references to Division to Programme/Department, Finance and Administration Adviser to Director Finance and Administration, Human Resources Adviser to Director Human Resources and Legal Adviser to Legal Counsel.

PROCUREMENT MANUAL

Policy updated to

1. Include revisions and new additions to SECTION II: Procurement Principles particularly with respect to:
 - Procurement Basics and Exceptions with new sections to cover Emergency Response and Other Situations
 - Application and Accountability to extend and clarify the best value for money option
2. Include revisions to Section III: Procurement Principles particularly with respect to:
 - Appointment and Composition of the Tender Evaluation Committee
 - Honorarium /Sitting fees
3. Include revisions and new additions to SECTION IV: Preparing the Draft Request for Tender (RFT) to enhance and extend requirements under this section and to include recommendations from recent EU Pillar Assessments undertaken for SPREP noting updated requirements mainly to the exclusion criteria to disqualify a tender and new sections for Tender Clarification, Variation of RFT and Termination of RFT.
4. Include revisions to SECTION V: Approaching the Market particularly with respect to:
 - Receipt and Opening of Tenders to remove reference to Procurement Officer when receipting tenders and new requirement for tenderers' responsibility in properly checking the email address for tender submission and implications where there is non-compliant. Revisions also cover amendments to clearly define criteria for passing technical aspects of the tender as well as maintenance of the tabulation of valid tenders.
 - Invalidation of Tenders to include additional requirements as per the results and recommendations of the recent EU Pillar Assessments undertaken for SPREP particularly over exclusion criteria, exemptions and the principle of proportionality.
5. Include revisions to Section VI: Tender Evaluation particularly with respect to:
 - Evaluation Process to include a new clause to cover Financial evaluation

- Confidentiality of which amendments include the authority of SPREP to seek clarification/additional information, shortlist one or more tenders and seek best and final offers or enter into negotiations or discussions with one more of the tenderers.
- Conflict of Interest (COI) clauses to clearly define COI and the different situations where such may apply. New clauses added as well to include actions from SPREP in a COI situation, stand down period for former SPREP staff and the need for disclosure of COI as part of the application process.
- Selection of the Preferred Bidder to include new clauses to extend justification reasons in the Panel Report for the preferred bidder and a second option in the event the preferred supplier does not take up the offer, and steps to be undertaken by the evaluation committee in the event where the committee is unable to identify a suitable supplier.

6. Include revisions and new additions to Section VII: Awarding a Contract particularly with respect to responsibilities for drafting the contracts, signing authorities to the routing process and new section to define a binding contract. Also, a new additional clause to cover requirements of confidentiality and security in light of the results and recommendations of the recent EU Pillar Assessments undertaken for SPREP.

7. New Section VIII added to cover requirements for Contract Management and Amendments

8. Revised to Section IX: Complaints, includes an amendment to the timeline for reviewing complaints. This amendment is also in line with recommendations of the recent EU Pillar Assessments undertaken for SPREP.

APPENDICES

Policy updated to include revised templates and contracts:

1. Appendix A: Conflict of Interest form (SPREP)
2. Appendix B: Pre-approval routing slip
3. Appendix C: Request for Tender template
4. Appendix D: SPREP Application form and conflict of interest form (Tenderer)
5. Appendix E: Honour form (Tenderer)
6. Appendix F: Tender evaluation and recommendation
7. Appendix G: Sample Consultancy Agreement (CA1)
8. Appendix H: Sample Consultancy Agreement (CA2)
9. Appendix I: Sample Goods Contract
10. Appendix J: Sample Small Service Agreement (Administration Services)
11. Appendix K: Contractor review form
12. Appendix L: Sample Contract amendment