**GOVERNMENT OF THE REPUBLIC OF FIJI**



**AGREEMENT**

**between**

**MINISTRY OF [INSERT] FOR AND ON BEHALF OF THE GOVERNMENT OF THE REPUBLIC OF FIJI**

**AND**

**NAME OF THE PARTY SUPPLYING THE GOODS**

This agreement is made on the \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 201\_\_\_\_.

|  |  |
| --- | --- |
| BETWEEN: | **Ministry of [insert]** for and on behalf of the **Government of the Republic of Fiji** of **address** (**‘Government’**) |
| AND: | **name of the party supplying the Goods [Insert details of entity]**[[1]](#footnote-1)of **address** (**‘Supplier’**) |

RECITALS

1. On **insert date**, the Government called for tender submissions for CTN **insert CTN reference number** – Supply of **insert details of Goods** (**‘Goods’**) which was determined through the tender process and the Supplier was the successful awardee for the above tender.
2. In reliance upon the representations made by the Supplier during and after the tender process, the Government has selected the Supplier to supply the Goods to the Government on the terms and conditions contained in this agreement and tender specification.
3. The Government engages the Supplier for the supply of Goodsas approved by the Government Tender Board on **insert date**.
4. The Goods will be ordered by the Government or an agency of the Government as and when required on the terms set out in this agreement.

**IT IS AGREED** that the Government engages the Supplier according to the terms set out in this agreement.

In consideration of which, the Government agrees to pay the Supplier the Amount Payable, in the manner set out in Item 4.

The following documents shall form part of this agreement:

 **Schedule – Copy of the Government Tender Board approval letter to the Supplier**

In interpreting this agreement, if any term or provision of this agreement is inconsistent with a term or provision of another document, the term or provision of this document will have priority to the extent of any inconsistency.

DETAILS

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| **Item 1** | **Notice Details**

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| --- |
| **Government** |
| Address: **Click here to enter text.**Telephone: **Click here to enter text.**Facsimile: **Click here to enter text.** |
| E-mail: **Click here to enter text.**Contact Person: **Click here to enter text.**Designation: **Click here to enter text.**  |
| **Supplier** |
| Address: **Click here to enter text.**Telephone: **Click here to enter text.**Facsimile: **Click here to enter text.** |
| E-mail: **Click here to enter text.**Contact Person: **Click here to enter text.**Designation: **Click here to enter text.** |

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| **Item 2** | **Term of the agreement**1. Commencement Date: **insert date.**
2. Termination Date: **insert date.**
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| **Item 3** | **Goods**In this agreement, Goods refer to **insert details of Goods** as more particularly described in the Tender Documents. |
| **Item 4** | **Amount Payable**The Government agrees to pay the Supplier a total of $**insert total cost of the Goods** VIP for the supply of Goods. |
| **Item 5** | **Delivery Point**The Supplier will deliver the Goods to **insert delivery address.** |
| **Item 6** | **Bank Details of the Supplier**Name of Account: **Click here to enter text.** Account Number: **Click here to enter text.**Name of Bank: **Click here to enter text.**Bank Address: **Click here to enter text.** |
| **Item 7** | **Liquidated Damages**$**insert amount to be deducted as liquidated damages** per day. |
| **Item 8** | **Bond**$**insert bond amount.** |

THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION
	1. Definitions

In this agreement, unless the context otherwise requires, the following terms have the following meanings:

**‘agreement’** refers to the entire agreement between the Government and the Supplier for the supply of Goods. The agreement includes any attached schedules, variations and amendments.

‘Amount Payable’ means the total amount payable for the supply of Goods as set out in Item 4.

‘Business Day’ means a day that is not a Saturday, Sunday or public holiday in the Republic of Fiji.

**‘Business Hours’** means from 8.00 am to 4.00 pm on a Business Day.

**‘Commencement Date’** means the date referred to in Item 2(a).

**‘Confidential Information’** means any information, irrespective of its form, relating to or in connection with this agreement, including:

* + 1. the existence and terms of any negotiations, discussions or agreements between the parties;
		2. all other information of a confidential or proprietary nature directly or indirectly disclosed by or on behalf of the Government to the Supplier; and
		3. the existence and terms and conditions of this agreement.

**‘Delivery Point’** means the delivery point referred to in Item 5 or any other place designated by the Government.

**‘Electronic Communication’** has the meaning given to that term inclause15.1 (Notice).

**‘Event of Default’** means any event or circumstance specified in clause 10.1 (Events of Default).

**‘Force Majeure’** means an event beyond the control of both parties and not involving a party’s fault or negligence. Such events may include wars or revolutions, strikes, civil commotion, earthquakes, tempest, fires and floods.

**‘Goods’** means the goods as set out in Item 3.

**‘Insolvent’** means, if the Supplier:

* + 1. being an individual, at any time be adjudged bankrupt or has a receiving order made against the Supplier or takes any proceeding or liquidation or composition or makes any conveyance or assignment of the Supplier’s effects or composition or arrangement for the benefit of the Supplier’s creditors, or purports so to do under the Bankruptcy Act 1944;
		2. being a body corporate, passes a resolution or the court makes an order for the liquidation of the Supplier’s affairs, or a receiver or manager on behalf of the creditors is appointed or circumstance which entitles the court or creditors to appoint a receiver or manager or the Supplier becomes the subject of winding-up proceedings; or
		3. is unable to pay debts as and when they fall due or has or suspended, or threatened to stop or suspend, payment of all or a class of debts.

**‘Item’** means an item in the Details section of this agreement.

**‘Receiving Officer’** refers to the authorised officer of the Government for whom the Items are to be delivered to, or such other officer that may be deputised to receive the said Items.

**‘Tender Documents’** means the documents [insert] in relation to CTN [insert].

**‘Termination Date’** means the date referred to in Item 2(b).

**‘VAT’** refers to Value Added Tax.

* 1. Interpretation

In this agreement, except where the context otherwise requires:

* + 1. the singular includes the plural and vice versa, and a gender includes other genders;
		2. another grammatical form of a defined word or expression has a corresponding meaning;
		3. a reference to a clause, paragraph or schedule is to a clause or paragraph of, or schedule to, this agreement, and a reference to this agreement includes any schedule;
		4. a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
		5. a reference to $ or dollars is to Fijian currency;
		6. a reference to time or date is to the date prevailing in Fiji;
		7. 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 assigns and substitutes;
		8. a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
		9. 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;
		10. the meaning of general words is not limited by specific examples introduced by ‘including’, ‘for example’ or similar expressions;
		11. 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;
		12. if an act prescribed under this agreement to be done by a party on or by a given day is done after 4.00 pm on that day, it is taken to be done on the next Business Day;
		13. if a day on or by which an obligation must be performed or an event must occur or is deemed to occur is not a Business Day, the obligation must be performed or the event must occur or will be deemed to occur on or by the next Business Day;
		14. in calculating any notice period, the day on which the Notice is served must not be included; and
		15. headings are for ease of reference only and do not affect interpretation.
1. Acknowledgment
	1. The Government reserves the right to order from the Supplier, as and when required.
	2. The Government will be under no liability if it does not order any Goods from the Supplier during the term of this agreement.
	3. The Supplier acknowledges that this agreement is not an exclusive supply agreement.
2. VARIATIONS
	1. The parties will not be bound by any variation, waiver of, or additions to this agreement except as agreed by both parties in writing and signed on their behalf.
	2. In the event a variation is required, the Supplier must submit all relevant documents e.g. Supplier’s confirmation or Supplier’s invoice, bill of lading and any other related documents to justify the need for the variation.
	3. Approval for a variation must be obtained from the Government Tender Board for any pricing changes including as declared through the Fijian Competition and Consumer Commission (where applicable).
	4. Any substituted Goods in place of the actual Goods awarded need to be approved by the Government at no added cost.
3. REPRESENTATIONS AND WARRANTIES BY THE supplier
	1. Representations and warranties

The Supplier represents and warrants to the Government as follows:

* + 1. the Supplier is a legal entity validly existing under the laws of the Republic of Fiji and has full power, authority and legal rights to comply with the terms and conditions of this agreement;
		2. the Supplier has completed all the administrative procedures required by all laws in order for this agreement to be valid and legally binding, including obtaining all the approvals, authorisations, registrations or filing requirements under the laws of the Republic of Fiji;
		3. the Supplier is in compliance at all times with all the applicable laws of the Republic of Fiji including applicable taxation and anti-corruption laws;
		4. as from the Commencement Date, this agreement constitutes legal, valid and binding obligations on the Supplier;
		5. the Supplier is not in default under any law or agreement applicable to the Supplier, the consequence of which default would materially and adversely affect the Supplier’s ability to perform its obligations under this agreement;
		6. all information supplied to the Government by the Supplier is true, correct and not misleading in all material respects; and
		7. the representations and warranties set out in this clause will be true, accurate and not misleading for the term of this agreement with reference to the facts and circumstances subsisting from time to time.
	1. Reliance

The Supplier acknowledges that the Government has entered into this agreement in reliance upon the representations and warranties contained in clause 4.1 (Representations and warranties).

1. supplier’s responsibility
	1. General Obligations
		1. The Supplier is responsible for the efficient performance of this agreement and for the good conduct of its employees while they are on Government premises.
		2. The Supplier must ensure that:
			1. the Goods comply with its description, are of merchantable quality and are fit for the Government’s purpose;
			2. the Goods meet the standards and specifications set out in this agreement;
			3. the Goods comply with all legal requirements for licensing, transporting and fitness for purpose;
			4. the Supplier will deliver the Goods to the Government in the contracted quantity and at the contracted time. Time is of essence for the delivery of Goods ordered; and
			5. the representations and warranties stated in clause 4.1 (Representations and warranties) are provided in relation to the Goods.
		3. In supplying the Goods, the Supplier will exercise the degree of skill, care and diligence normally exercised by members of the Supplier’s profession performing tasks of a similar nature.
		4. The Supplier will provide adequate notice to the Government if it becomes aware of any changes which may affect the scope or timing of the delivery of the Goods.
		5. The Supplier acknowledges that the representations and warranties provided during the tender process and in this agreement are considered to have been relied upon by the Government in relation to entry into this agreement.
	2. Bank account and interest
		1. The Supplier must establish a dedicated bank account for the payment of the supply of Goods and payments must be made to the bank account specified in Item 6.
		2. The Supplier must ensure that any bank in which the payment of the supply of Goods is deposited is fully compliant with all applicable local and international banking standards and regulations, including capital adequacy requirements.
		3. Interest earned on the amount paid for the supply of the Goods, if any, must be accounted for and reimbursed to the Government.
2. QUALITY AND DESCRIPTION
	1. The Goods supplied under this agreement must:
		1. be of the quality and sort described and equal in all respects to the specification and sample which form part of this agreement;
		2. be treated and branded to indicate grade, manufacturer and preserved treatment;
		3. be in good condition; and
		4. be capable of any standard of performance specified in the tender specifications.
	2. For the purposes of this agreement, deterioration of such Goods resulting from its normal and proper use in the execution of this agreement is not deemed to be loss or damage, (except in so far as the deterioration is contributed to by the failure of the Supplier to maintain or repair the Goods).
	3. The Supplier must replace the Goods in case of any defect or fault caused by the manufacturing process.
	4. All Goods must comply with standard specification.
3. delivery
	1. The Supplier must bear all the costs involved in delivery of the Goods to the Delivery Point.
	2. The Supplier will deliver the Goods and will have full responsibility of the same whilst in its custody from the point of departure to the Delivery Point.
	3. Property in and risk of the Goods supplied to the Government will pass from the Supplier to the Government at the time of delivery to the Delivery Point.
	4. In the event the Supplier is unable to supply to the Government the required Goods as and when” needed at the specified date and time, the Supplier will inform the Government immediately in writing.
	5. If the Supplier fails to deliver the Goods on the specified date of delivery, the Government will be entitled to deduct liquidated damages as specified in Item 7 from the Bond referred to in Item 8. The payment of liquidated damages as specified in Item 7 per day for every day of delay by the Supplier is a reasonable estimation of the Government’s loss.
4. acceptance and rejection
	1. The Goods delivered in accordance with this agreement are only accepted when the Receiving Officer has inspected the Goods, such inspection must take place no later than 7 Business Days following delivery to the Delivery Point. The Government may reject the Goods, even after they have been accepted, if they are defective or are not in accordance with the requirements of this agreement.
	2. The Government must promptly inform the Supplier of the rejection of the Goods.
	3. The Government will hold the Goods that are rejected at the Supplier’s risk.
	4. The Supplier will replace or give the Government a credit for any Goods which are damaged or are incorrectly delivered if:
		1. the Government advises the Supplier within 14 Business Days of receiving the Goods, quoting the invoice number;
		2. the Government’s claim identifies the defect and nature of the claim; or
		3. the Goods are returned in the same condition in which they were received.
	5. Should the Supplier continue to default in supplying the Goods contrary to the requirements of this agreement, the Government may, without prejudice to any other remedy for breach of contract, at any time terminate this agreement by notice in writing to the Supplier. If the Government terminates this agreement under this clause, the Government may obtain the Goods elsewhere and will charge the Supplier the costs of obtaining the same together with the difference between the cost of obtaining the Goods from the alternative supplier and the Amount Payable specified in this agreement.
5. payment
	1. Each invoice submitted under this agreement must include the particulars of the Goods, quantity, rate and value and will be sent by the Supplier to the Receiving Officer or as otherwise directed by the Government.
	2. Unless otherwise provided, payment must be made after the Goods have, in all respect, been provided and the Goods delivered, in accordance with the requirements of this agreement and in accordance with the Amount Payable as set out in Item 4.
	3. All Amounts Payable as listed in this agreement are inclusive of Value Added Tax (VIP).
	4. The Government may, at its own discretion, order payments to be made as it may consider desirable, or within 30 days from the date in which the invoice relating to the Goods was received.
	5. Before payment, all Goods delivered will be subjected to inspection by the Receiving Officer who may withhold payment if the Goods have not been delivered in strict accordance with the requirements of this agreement.
	6. Payments will be made only on the certification of the Receiving Officer that the Goods have been delivered to the Receiving Officer’s satisfaction.
	7. The Supplier will continue to deliver the Goods to the Government at all times even if the Government has defaulted on the terms of payment set out in this agreement.
6. termination
	1. Events of Default

Each of the following events and circumstances is an **‘Event of Default’**:

* + 1. any representation and warranty made by the Supplier in this agreement, or any certificate, document and material submitted and delivered by the Supplier pursuant to this agreement proves to have been untrue or incorrect in any material respect;
		2. the Supplier fails to punctually perform any of its obligations under this agreement or is in breach of any of its obligations and covenants under this agreement and, where the breach is remediable, does not remedy such breach to the satisfaction of the Government within 30 Business Days after receipt of written notice from the Government requiring it to do so;
		3. any other event which constitutes a default by the Supplier which occurs in respect of any other agreement involving the borrowing of money or any guarantee between the Supplier and any bank or financial institution; and
		4. significant changes have occurred with respect to the Supplier, either of which, in the opinion of the Government, may have a material adverse effect on the ability of the Supplier to perform its obligations under this agreement.
	1. Termination by the Government
		1. Where there occurs any change of the laws or government policies, which makes it impossible for the Government to perform its obligations and covenants under this agreement, the Government may, by written notice to the Supplier, terminate the disbursement of the Amount Payable.
		2. The Government may terminate this agreement immediately by written notice at any time, if the Supplier:
			1. becomes Insolvent; or
			2. an Event of Default occurs.
		3. Notwithstanding clause 10.3 (Survival of clauses), the Government may terminate this agreement at any time by 7 days’ written notice and recover any unutilised portion of the Amount Payable.
	2. Survival of clauses

Clause 12 (Limitation and Indemnity), clause 14 (Dispute Resolution), clause 21 (Confidential Information and Public Announcements) and clause 23 (General Conditions) survive termination of this agreement.

1. SET OFF
	1. Any sums of money recoverable from or payable by the Supplier under this agreement may be deducted from any sum due, or which at any time thereafter may become due, to the Supplier under this agreement or under any other contract with the Government thereof.
	2. The Supplier represents and warrants that the Goods supplied under this agreement are free from all encumbrances, liens, charges, mortgages or other security interests.
2. LIMITATion and indemnity
	1. Limit of the Government’s liability

The Government is responsible only for performing the obligations specifically set out in this agreement. Except for those obligations, the Supplier agrees that the Government has no liability to the Supplier or any other person as a result of this agreement.

* 1. Indemnity

The Supplier must indemnify the Government from and against any and all claims, demands, actions, proceedings, costs (including legal costs and expenses) and liability to any third party from any losses, damages to property arising out of the negligence or other wrongful act or omission of its employees, or any other person’s acts or omissions, performance or non-performance of this agreement, by the Supplier as the case may be.

1. Wages and conditions of employment
	1. The Supplier will in respect of all persons employed upon the execution of this agreement observe the provisions of the Employment Relations Act 2007 and any other laws for the time being in force, relating to such persons.
2. DISPUTE RESOLUTION
	* 1. The parties will attempt in good faith to resolve any dispute arising out of or in connection with this agreement through negotiations between the parties.
		2. If the dispute cannot be settled through negotiations, the parties must refer the dispute to mediation administered by the Fiji Mediation Centre.
		3. If the dispute cannot be settled through negotiations or mediation within 10 Business Days, then the dispute must be referred to arbitration for determination.
		4. The arbitration must be conducted in accordance with the Arbitration Act 1965. The venue of the arbitration must be in Suva, Fiji and conducted in the English language. A single arbitrator must be appointed. The arbitration award is binding on the parties.
3. NOTICES
	1. Notice

Any notice, demand, consent, approval or communication under this agreement (**‘Notice’**) must be:

* + 1. in writing and signed by a person duly authorised by the sender; and
		2. hand delivered or sent by prepaid post, courier, facsimile or e-mail or other electronic means (**‘Electronic Communication’**) to the recipient's address for Notices specified in Item 1, as varied by any Notice given by the recipient to the sender.
	1. Receipt of Notice

A Notice given in accordance with clause 15.1 (Notice) takes effect when taken to be received (or at a later time specified in it), and is taken to be received if:

* + 1. hand delivered, on delivery;
		2. sent by prepaid post, on the fifth Business Day after the date of posting (or on the fourteenth Business Day after the date of posting if posted to or from a place outside Fiji);
		3. sent by courier, on the date of delivery(as stated in the consignment tracking advice obtained from the courier company);
		4. sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight Business Hours after the transmission, the recipient informs the sender that it has not received the entire Notice;
		5. sent by Electronic Communication, when it reaches the recipient’s electronic address designated for Notices and if the recipient has not designated an information system for the purpose of receiving communication, the time of receipt is taken to be the time when the Electronic Communication comes to the attention of the addressee.
1. Corrupt gifts and payments of commission
	1. The Supplier must not:
		1. offer or give or agree to give any person in Government service any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or borne to do any act in relation to the obtaining or execution of this or any other agreement for Government services or for showing or forbearing to show favour or disfavour to any person in relation to this or any other contract for Government services; or
		2. enter into this or any other agreement with the Government in connection with which a commission has been paid or agreed to be paid by the Supplier or on the Supplier’s behalf or to the Supplier’s knowledge, unless, before this agreement is made, particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the representative of the Government.
	2. Any breach of clause16 (Corrupt Gifts and Payments of Commission) by the Supplier or any of its representatives (whether with or without the knowledge of the Supplier) or the commission of any offence by the Supplier or any of its representatives, will entitle the Government to terminate this agreement and determine the amount of any loss resulting from such termination and to recover from the Supplier the amount of any such loss and the value of any such gift, consideration or commission.
2. Loss of damage of the Goods
	1. Notwithstanding that any of the Goods acquired or allocated by the Supplier for delivery therein may have been inspected or approved, the Supplier will remain and be responsible to make good loss of or damage to the Goods however occasioned including Customs and Port and Service tax where applicable occurring at any time prior to delivery of the Goods.
	2. If after delivery the Government rejects any of the Goods, the same will, at the date or rejection, or at such earlier time as the same will cease to be in the possession of the Government be at risk in all respects of the Supplier and the Supplier will have no claim against the Government in respect of any loss thereof or damage thereto from whatever cause.
	3. Provided that, if the Goods be retained by the Government, after notice of objection given by the Supplier in accordance with the agreement, the Goods will not be at the risk of the Supplier until they will cease to be in the possession of the Government.
3. Insurance
	1. The Supplier must at all times have valid insurance cover necessary for the Supplier to perform its obligations under this agreement including appropriate product liability and general liability insurance at a level that a prudent person would obtain in relation to the obligations of the Supplier under this agreement. The Supplier must provide evidence of such insurance upon demand if requested by the Government.
4. Arrange access to THE delivery point
	1. The Government will as soon as practicable make arrangements to allow the Supplier access to the Delivery Point.
5. Cash security bond
	1. The Supplier will furnish a performance bond as set out in Item 8 in a form acceptable to the Government and executed as surety or sureties by a bank, insurance company or other person or persons approved by the Government (‘Bond’). The Bond will be held as security against any default in supplying the Goods against the specifications or quality as set out in this agreement. and the supply of the Goods on time as will be specified by the Government and in the event that the Supplier fails to carry out in a proper manner all or any of its obligations under this agreement. Such Bond cannot be cancelled without prior approval of the Director of the Fiji Procurement Office.
	2. Failure to pay the Bond by the Supplier will result in withdrawal of the award by the Government Tender Board.
	3. The Government may make a demand for payment under the Bond at any time in respect to any amount due and payable by the Supplier to the Government or to pay for any costs incurred by the Government (including obtaining an alternative supplier to supply the Goods) if the Supplier has breached a term or provision of this agreement.
	4. If the Bond expires during the term of this agreement, the Supplier must obtain a new bond to replace the expired Bond prior to the expiry of the Bond.
	5. If the Government makes a demand under the Bond, the Supplier must obtain a replacement Bond or top-up the Bond so that the Bond is maintained for the sum specified in Item 8.
	6. If the Supplier fails to comply with clauses 20.4 and 20.5, the Supplier is in breach of this agreement and the Government may terminate this agreement in accordance with clause 10.2(b).
6. Confidential INFORMATION AND PUBLIC ANNOUNCEMENTS
	1. Confidential Information

The Supplier must not disclose any Confidential Information provided to or acquired by the Supplier under this agreement or publish or disseminate such Confidential Information unless:

* + 1. the information is public knowledge (other than because of a breach of this agreement by the Supplier);
		2. disclosure is required by law; or
		3. the Supplier obtains the prior written consent of the Government.
	1. Public announcements
		1. The Supplier must not make any public announcements regarding this agreement, without the prior written consent of the Government.
		2. The Government may make any public announcements regarding this agreement as it deems fit.
1. Entire agreement

This agreement constitutes the entire agreement, understanding and arrangement between the parties relating to the subject matter of this agreement and supersedes and cancels any previous agreement, understanding and arrangement relating thereto whether written or oral.

1. general conditions
	1. Force Majeure
		1. A party is not liable for damages or termination for default, if and to the extent that the party’s delay in performance or other failure to perform its obligations under this agreement is the result of Force Majeure.
		2. If Force Majeure occurs, unless otherwise agreed in writing within a period of 7 days, each party must continue to perform its obligations under this agreement as far as is reasonably practical, and must seek all reasonable alternative means for performance of the obligations not prevented by the Force Majeure.
	2. Anti-bribery and corruption
		1. The Supplier must comply at all times with all applicable laws including applicable anti-corruption laws.
		2. The Supplier agrees that it has not, and covenants that it will not, directly or indirectly, promise, authorise, ratify or offer to make or make any payments or provide anything of value to the Government or anyone for the improper purpose of influencing or inducing or as a reward for any act, omission or decision to secure an improper advantage or to improperly assist itself or the Government in obtaining or retaining business to any person (or at the request of any person) including an official of the Government of the Republic of Fiji.
		3. The Supplier acknowledges that the Government may be entitled to terminate this agreement by written notice to the Supplier should the Supplier fail to comply with its obligations with respect to anti-bribery and corruption set out in this clause.
	3. Stamp duty

Any stamp duty payable under this agreement must be paid by the Supplier.

* 1. Waiver

None of the conditions of this agreement must be waived unless both parties agree in writing to such waiver. A waiver by a party to this agreement must not prejudice the party's rights in respect of any subsequent breach of this agreement by the other party.

* 1. 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 term of this agreement continue in force.

* 1. Relationship

Unless expressly stated, this agreement does not create a relationship of employment, trust, agency or partnership between the parties.

* 1. No reliance

Neither party has relied on any statement by the other party not expressly included in this agreement.

* 1. Assignment and change of control
		1. The Supplier must not assign, transfer or subcontract this agreement or any of its rights, duties, liabilities or obligations under this agreement to any person without the prior written consent of the Government.
		2. For the purposes of clause 23.8(a), consent may be given with conditions and is at the absolute discretion of the Government.
		3. For the purposes of clause 23.8(a), the Supplier is deemed to assign this agreement if:
1. there is a change in the legal or beneficial ownership of the Supplier which has the effect of altering the effective control of the Supplier;
2. there is a change in the legal or beneficial ownership of the ultimate holding company or other holding company of the Supplier which has the effect of altering the effective control of the Supplier; or
3. there is a change in the person who controls any of the following in respect to the Supplier:
4. more than 50% of the votes eligible to be cast in the election of directors or any similar matter;
5. the right to appoint or remove directors (or members of the governing body having functions similar to the board of directors) representing more than 50% of the votes exercisable by the directors (or persons having similar functions); or
6. an interest of more than 50% in any category of profits, distributions or net liquidation proceeds.
	* 1. In the event the Supplier does not comply with this clause, the Government may terminate this agreement.
	1. Amendments

This agreement may be modified or amended provided that any such modification or amendment is in writing signed by the parties and approved by the Government. It is agreed, however, that any amendment to laws, rules, or regulations cited in this agreement will result in the correlative modification of this agreement, without the necessity for executing written amendments.

* 1. Binding effect

This agreement is binding upon and inures to the benefit of the parties and their respective successors and assignees.

* 1. Entire agreement

This agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous written or oral discussions, representations, negotiations and agreements between the parties in connection with its subject matter.

* 1. Governing language

This agreement must only be executed in the English language, which must also be its governing language and except as otherwise required by applicable law, all Notices and correspondence required under this agreement must be in the English language.

* 1. Governing law and jurisdiction

This agreement is governed by and interpreted in accordance with the laws of the Republic of Fiji and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the Republic of Fiji.

Execution

Signed by the parties in the day and the year first above mentioned.

|  |  |  |
| --- | --- | --- |
| **Executed** for and on behalf of the **insert name of party paying for the supply of Goods** on behalf of the **Government of the Republic of Fiji** by the Permanent Secretary for **insert name of the party paying for the supply of Goods** in the presence of: |  |  |
| Signature of Witness |  | Signature of **insert name of Permanent Secretary** Permanent Secretary for **insert name of party paying for the supply of Goods** |
| Name of Witness |  |  |
| Occupation of Witness |  |  |
| Address of Witness |  |  |

***\*Choose whichever is applicable***

|  |  |  |
| --- | --- | --- |
| **Executed** for and on behalf of **[Insert company name]** in accordance with section 53 of the Companies Act 2015 by: |  |  |
| Signature of Director |  | Signature of Director / Secretary |
| Name of Director (print) |  | Name of Director / Secretary (print) |

|  |  |  |
| --- | --- | --- |
| **The common seal** of the **[insert name of organisation]** is affixed to this document in the presence of the undersigned who certify that they are the proper officers by whom and in whose presence the said seal is to be affixed: |  |  |
| Signature of Director |  | Signature of Director / Secretary |
| Name of Director (print) |  | Name of Director / Secretary (print) |
| **Executed** for and on behalf of **[insert the name of the statutory body]** in accordance with [insert relevant section of the legislation providing for the execution powers] [[2]](#footnote-2) by: |  |  |
| Signature of the Choose an item. |  | Signature of Choose an item.  |
| Name of the Choose an item. (print) |  | Name of Choose an item. (print) |

|  |  |  |
| --- | --- | --- |
| **The common seal** of the **[insert the name of the Charitable Trust]** is affixed to this document in the presence of the undersigned who certify that they are the proper officers by whom and in whose presence the said seal is to be affixed inaccordance with section 10 of the Charitable Trusts Act 1945 by: |  |  |
| Signature of the Trustee  |  |  |
| Name of Trustee (print) |  |  |
| Signature of the Trustee  |  |  |
| Name of Trustee (print) |  |  |
| Signature of the Trustee  |  |  |
| Name of Trustee (print) |  |  |

**SCHEDULE: COPY OF THE GOVERNMENT TENDER BOARD APPROVAL LETTER TO THE SUPPLIER**

1. *For example:* ***Investment Fiji****, a body corporate established under section 3 of the Investment Fiji Act 1980.*

***National Trust of Fiji****, a body corporate duly registered under the Charitable Trusts Act 1945.*

 ***Water Authority******of Fiji****, a corporate body established under section 5 of the Water Authority of Fiji Act 2007.* [↑](#footnote-ref-1)
2. ***For example: Investment Fiji in accordance with section 4 of the Investment Fiji Act 1980.*** [↑](#footnote-ref-2)