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GOVERNMENT OF AMERICAN SAMOA

INDEPENDENT CONTRACTOR SERVICE CONTRACT #
(For Goods and Services)

C00894

This contract entered into by and between the Government of American Samoa (hereinafter GOVERNMENT) and AMERICAN SAMOA TELECOMMUNICATIONS AUTHORITY, P.O. Box M, Pago Pago, AS 96799 (hereinafter CONTRACTOR).

(1) DUTIES OF CONTRACTOR:

Within the term provided for herein CONTRACTOR shall faithfully and competently perform the duties below set out for the following agency, office, or department:

DEPARTMENT OF EDUCATION

GOVERNMENT expects the CONTRACTOR to be intimately familiar with the rules, regulations and requirements of the Universal Service Administrative Company (USAC) Schools and Libraries Division (SLD) Erate program prior to entering into this agreement. As such, it is the CONTRACTOR'S responsibility to abide by these rules, regulations and requirements. And/all cost incurred by the CONTRACTOR due to the CONTRACTOR'S negligence regarding the rules, regulations, and/or procedures of the USAC/SLD/Erate Program will be the sole responsibility of the CONTRACTOR.

Other and further duties reasonably related to those specifically set out and which may be accomplished within the term provided for herein may be assigned to the CONTRACTOR without additional cost to GOVERNMENT.

The duties of CONTRACTOR shall be:

E-Rate Year 21 - Local Telephone Services for the Department of Education. See RFP-035-2018.

- Provide Local Telephone services with the same quantity, function and services as AS-DOE's existing service.
- The CONTRACTOR mutually agrees to perform this contract in strict accordance with the scope of work and the designated specifications, schedules, drawings, conditions, bid documents, submitted Contractor proposals and contract documents issued via solicitation # RFP-035-2018.

(2) TERM AND PLACE OF PERFORMANCE:

WHEREAS, The CONTRACTOR understands that the Agreement is contingent on the GOVERNMENT'S receipt of federal and/or state funds for the work covered in this Agreement. If the GOVERNMENT does not receive adequate federal and/or state funds, this Agreement shall be null and void. In the event that the Agreement is rendered void, the GOVERNMENT will not be liable for any costs incurred by the CONTRACTOR prior to issuance of a Notice to Proceed.

It is hereby understood and agreed that the work under this Agreement shall not commence until after the issuance of the Notice To Proceed. No work may commence until after July 1, 2018, per the

requirements of the E-Rate Program. It is the intent of the GOVERNMENT to wait until after the Form 486 has been filed, for the Funding Request Number (FRN) associated with this contract, before issuing the CONTRACTOR a "Notice To Proceed." It will be at the discretion of the GOVERNMENT to waive this requirement.

Project must be completed within Three Hundred and Sixty (360) consecutive calendar days from the date specified in the Notice To Proceed, but in no event no later than July 1, 2018, in accordance with the requirement of the Erate program. Agreement may be extended if mutually agreed on by both parties in writing.

Should the Contractor fail to complete this Contract, and the Work provided herein, within the time fixed for completion, due allowance being made for the contingencies provided for herein, the CONTRACTOR shall become liable to the GOVERNMENT for all loss and damage that the GOVERNMENT may suffer on account thereof.

All performance hereunder shall be in American Samoa, and to be conducted during those hours when the CONTRACTOR is not scheduled to work for regular work with the GOVERNMENT.

(3) PAYMENT:

The CONTRACTOR agrees to bill USAC directly for the portion of this project that Erate/SLD/USAC will be authorizing for this project if the project gets funded. In this contract the GOVERNMENT will only pay the amount remaining after discounts are applied.

The CONTRACTOR agrees that before sending invoices to USAC for the Erate part of this project, the CONTRACTOR agrees to send all invoices to the GOVERNMENT for their approval. Once it is verified that the work is completed and/or equipment is on site, the GOVERNMENT shall approve the USAC invoices.

Subject to the terms and conditions hereof, CONTRACTOR shall be entitled to the following compensation and benefits:

<i>Description</i>	<i>Estimated Universal Service Fund (10%)</i>	<i>Estimated AS Department of Education (90%)</i>	<i>TOTAL</i>
TOTAL CONTRACT:	\$16,100.57	\$144,905.11	\$161,005.68

All payments to which CONTRACTOR is entitled shall be made upon certification of completed obligation by the government Agency Head and approved by Contracting Officer, Office of Procurement. Payments to which the CONTRACTOR is entitled shall be made as follows:

- *Upon submittal of monthly invoices for completed services and approval of same.*
- *The sum of invoices and payments for the period between ~~July 1, 2018 and June 30th~~ of the following year shall not exceed the total allotment of \$161,005.68 (\$16,100.57 USF portion + \$144,905.11 ASDOE portion).*

CONTRACTOR agrees that the Contingency Fee shall be used for adds, moves, and changes requested and authorized by the GOVERNMENT in writing during the construction process for eligible services only. If the GOVERNMENT does not request adds, moves, or changes, the contingency allotment will be given back to the Erate program. If applicable, the Contract Price will be reduced by the

Contract: ASTCA

E-Rate Year 21 - Local Telephone Services for the Department of Education

amount of the unused Contingency Fee at the completion of the Project. Per the requirement of the Erateprogram, the GOVERNMENT will file a Form 500 to reduce the amount of the Erate eligible committed funding accordingly.

Equipment Warranty. CONTRACTOR shall maintain a guarantee that all items delivered under this Agreement are protected against imperfections of materials and/or workmanship during the period of the Agreement. Within thirty (30) days of completion of the Project, the CONTRACTOR shall assign any manufacturers or other equipment warranties to the GOVERNMENT and shall provide the GOVERNMENT with any relevant document(s) thereto.

(4) ASSIGNMENT:

CONTRACTOR shall neither assign nor subcontract any portion of this contract. Furthermore, no assignment of any monies due hereunder to CONTRACTOR, either voluntarily or by operation of law, shall be valid without the prior written consent of GOVERNMENT. It is expressly understood and agreed that such consent will be wholly within the discretion of the GOVERNMENT and will be granted only in exceptional cases.

(5) AMENDMENTS IN WRITING:

This contract may be amended at any time during the term hereof without additional consideration, provided, however, no amendments or other variation of this contract shall be valid unless in writing and signed by CONTRACTOR and a duly authorized representative of GOVERNMENT.

(6) RELATIONSHIP OF PARTIES:

The relationship of the parties hereto shall in no event be deemed or construed to be that of employer and employee or of principal and agent, or of any other relationship other than CONTRACTOR as an independent CONTRACTOR to provide the services specified in this contract.

(7A) TERMINATION:

This clause applies only to contracts for \$10,000 or less:

GOVERNMENT may discharge CONTRACTOR and terminate this contract at any time when it shall determine that it has sufficient cause arising from CONTRACTOR'S dereliction or unsatisfactory performance of duty or failure to perform in accordance with each and every requirement of this contract or for misrepresentation by CONTRACTOR or conviction of CONTRACTOR of any felony. If the services of CONTRACTOR are terminated for cause prior to completion of the above-specified duties, GOVERNMENT may require repayment by CONTRACTOR of all advanced payments made and may require delivery of any partially completed work. In the event GOVERNMENT has benefited by the services rendered, the GOVERNMENT shall be liable only for the pro rata portion of the contract price for the portion of work completed, and any monies paid to CONTRACTOR in excess thereof shall be promptly repaid to GOVERNMENT.

GOVERNMENT may further at its option terminate this contract without cause effective upon receipt of written notice to CONTRACTOR. In the event of such termination without cause, CONTRACTOR shall be entitled only to pro rata payment for the portion of the work completed or services rendered to the effective date of termination, provided that any completed or partially completed work is first delivered to the GOVERNMENT.

(7B) TERMINATION FOR CONVENIENCE (as per §10.0260(a), A.S.A.C):

This clause applies to all contracts in excess of \$10,000:

- (a) The GOVERNMENT may terminate performance of work under this contract in whole or, from time to time, in part if the contracting officer determines that a termination is in the GOVERNMENT'S interest. The contracting officer shall terminate by delivering to the CONTRACTOR a notice of termination specifying the extent of termination and the effective date.
- (b) After receipt of a notice of termination, and except as directed by the contracting officer, the CONTRACTOR shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:
 - (1) Stop work as specified in the notice;
 - (2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract;
 - (3) Terminate all subcontracts to the extent they relate to the work terminated;
 - (4) Assign to the GOVERNMENT, as directed by the contracting officer, all right, title, and interest of the CONTRACTOR under the subcontracts terminated, in which case the GOVERNMENT shall have the right to settle or to pay any termination settlement proposal arising out of those terminations;
 - (5) With approval or ratification to the extent required by the contracting officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause;
 - (6) As directed by the contracting officer, transfer title and deliver to the GOVERNMENT (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the GOVERNMENT;
 - (7) Complete performance of the work not terminated;
 - (8) Take any action that may be necessary, or that the contracting officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the CONTRACTOR and in which the GOVERNMENT has or may acquire an interest;
 - (9) Use its best efforts to sell, as directed or authorized by the contracting officer, any property of the types referred to in subparagraph (6) of this subsection; provided, however, that the CONTRACTOR (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the contracting officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the GOVERNMENT under this contract, credited to the price or cost of the work, or paid in any other manner directed by the contracting officer.
- (c) The CONTRACTOR shall submit to the contracting officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the contracting officer. The CONTRACTOR may request the GOVERNMENT to remove those items or enter into an agreement for their storage. Within 15 days, the GOVERNMENT will accept title to those items and remove them or enter into a

storage agreement. The contracting officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

- (d) After termination, the CONTRACTOR shall submit a final termination settlement proposal to the contracting officer in the form and with the certifications prescribed by the contracting officer. The CONTRACTOR shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the contracting officer upon written request of the CONTRACTOR within this 1-year period. However, if the contracting officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the CONTRACTOR fails to submit the proposal within the time allowed, the contracting officer may determine, on the basis of information available, the amount, if any, due the CONTRACTOR because of the termination and shall pay the amount determined.
- (e) Subject to paragraph (d) of this clause, the CONTRACTOR and the contracting officer may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (e) may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated.

(7C) TERMINATION FOR DEFAULT (GOODS & SERVICES)(as per §10.0260(b), A.S.A.C):

This clause applies to all contracts in excess of \$10,000:

- (a) Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract, or any extension thereof, otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the procurement officer may notify the CONTRACTOR in writing of the delay or nonperformance; and if not cured in ten days or any longer time specified in writing by the procurement officer, such officer may terminate the CONTRACTOR'S right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part the procurement officer may procure similar supplies or services in a manner and upon terms deemed appropriate by the procurement officer. The CONTRACTOR shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- (b) CONTRACTOR'S Duties. Notwithstanding termination of the contract and subject to any directions from the procurement officer, the CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the CONTRACTOR in which the GOVERNMENT has an interest.
- (c) Compensation. Payment for completed supplies delivered and accepted shall be at the contract price. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and procurement officer. The GOVERNMENT may withhold from amounts due the CONTRACTOR such sums as the procurement officer deems to be necessary to protect the GOVERNMENT against loss because of outstanding liens or

claims of former lien holders and to reimburse the GOVERNMENT for the excess costs incurred in procuring similar goods and services.

- (d) Excuse for Nonperformance or Delayed Performance. Except with respect to defaults of subcontractors, the CONTRACTOR shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by the CONTRACTOR to make progress in the prosecution of the work hereunder which endangers such performance) if the CONTRACTOR has notified the procurement officer within 15 days after the cause of the delay and the failure arises out of causes such as, acts of God, acts of the public enemy, acts of the government and any other governmental entity in its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes or other labor disputes, freight embargoes, or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the supplies of services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the contract requirements.

Upon request of the CONTRACTOR, the procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the GOVERNMENT under the clause entitled "Termination for Convenience."

- (e) Erroneous Termination for Default. If, after notice of termination of the CONTRACTOR'S right to proceed under the provisions of this clause, it is determined for any reason that the CONTRACTOR was not in default under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience, be the same as if the notice of termination had been issued pursuant to such clause.
- (f) Additional Rights and Remedies. The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

(8) EQUAL OPPORTUNITY (as per §10.0260(c), A.S.A.C):

This clause shall apply to all contracts in excess of \$10,000, unless this contract is exempt under the rules, regulations, and relevant orders of the Secretary of Labor (41 CFR, ch. 60):

During the performance of this contract, the CONTRACTOR agrees as follows:

- (a) The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to

- employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this Equal Opportunity clause.
- (b) The CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
 - (c) The CONTRACTOR will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the CONTRACTOR, advising the labor union or workers' representative of CONTRACTOR'S commitments under this Equal Opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 - (d) The CONTRACTOR will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and of the rules, regulations, and relevant orders of the Secretary of Labor.
 - (e) The CONTRACTOR will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
 - (f) In the event of the CONTRACTOR'S noncompliance with the Equal Opportunity clause of this contract or with any of the said rules, regulations, orders, this contract may be cancelled, terminated, or suspended, in whole or in part, and the CONTRACTOR may be declared ineligible for further GOVERNMENT contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967; and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
 - (g) The CONTRACTOR will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, so that such provisions will be binding upon each subcontractor or vendor. The CONTRACTOR will take such action with respect to any subcontract or purchase order as the GOVERNMENT may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the CONTRACTOR may request the GOVERNMENT to enter into such litigation to protect the interests of the GOVERNMENT.
- (9) CONTRACT WORK HOURS AND SAFETY STANDARDS ACT OVERTIME COMPENSATION (as per §10.0260(d), A.S.A.C):

For contracts in excess of \$2,500 which involve employment of mechanics or laborers:

This contract, to the extent that it is of a character specified in the Contract Work Hours and Safety Standards Act (40 USC 327-333), is subject to the following provisions and to all other applicable provisions and exceptions of such Act and the regulations of the Secretary of Labor thereunder.

- (a) Overtime Requirements. No CONTRACTOR or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, apprentices, trainees, watchmen, and guards shall require or permit any laborer, mechanic, apprentice, trainee, watchman, or guard in any work week in which he is employed on such work to work in excess of 8 hours in any calendar day or in excess of 40 hours in such work week on work subject to the provisions of the Contract Work Hours and Safety Standards Act unless such laborer, mechanic, apprentice, trainee, watchman or guard receives compensation at a rate not less than one and one-half times his basic rate of pay for all such hours worked in excess of 8 hours in any calendar day or in excess of 40 hours in such work week, whichever is the greater number of overtime hours.
- (b) Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the provisions of paragraph (a), the CONTRACTOR and any subcontractor responsible therefore shall be liable to any affected employee for his unpaid wages. In addition, such CONTRACTOR and subcontractor shall be liable to the American Samoa Government for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, apprentice, trainee, watchman, or guard employed in violation of the provisions of paragraph (a) in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of 8 hours or in excess of his standard work week of 40 hours without payment of the overtime wages required by paragraph (a).
- (c) Withholding for Unpaid Wages and Liquidated Damages. The Contracting Officer may withhold from the government prime CONTRACTOR, from any monies payable on account of work performed by the CONTRACTOR or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such CONTRACTOR or subcontractor for unpaid wages and liquidated damages as provided in the provisions of paragraph (b).
- (d) Subcontracts. The CONTRACTOR shall insert paragraphs (a) through (d) of this clause in all subcontracts, and shall require their inclusion in all subcontracts of any tier.
- (e) Records. The CONTRACTOR shall maintain payroll records containing the information specified in 20 CFR 516.2(a). Such records shall be preserved for three years from the completion of the contract.

(10) EXAMINATION OF RECORDS (as per §10.0260(e), A.S.A.C):

This clause applies if this contract was negotiated:

The CONTRACTOR agrees that the Contracting Officer, the Comptroller General of the United States, or the Secretary of the Interior, or any of their duly authorized agents or representatives, shall, until the expiration of three years after final payment under this contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the CONTRACTOR involving transactions related to this contract.

The CONTRACTOR further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that the Contracting Officer, the Comptroller General of the United States, or the Secretary of the Interior, or any of their duly authorized agents or representatives, shall, until the expiration of three years after final payment under the subcontract, have access to and the right to examine any directly pertinent book, documents, papers and records of such subcontractor, involving transactions related to this contract.

(11) CLEAN AIR AND WATER (as per §10.0260(f), A.S.A.C):

This clause is applicable to all contracts over \$100,000, unless this requirement has been waived by EPA:

(a) "Air Act," as used in this clause, means the Clean Air Act (42 USC 7401 et seq.).

"Clean air standards," as used in this clause, means:

- (1) Any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, work practices, or other requirements contained in, issued under, or otherwise adopted under the Air Act or Executive Order 11738;
- (2) An applicable implementation plan as described in section 110(d) of the Air Act (42 USC 7410(d));
- (3) An approved implementation procedure or plan under section 111(c) or section 111(d) of the Air Act (42 USC 7411(c) or (d)); or
- (4) An approved implementation procedure under section 112(d) of the Air Act (42 USC 7412 (d)).

"Clean water standards," as used in this clause, means any enforceable limitation, control, condition, prohibition, standard, or other requirement promulgated under the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by section 402 of the Water Act (33 USC 1342), or by local government to ensure compliance with pretreatment regulations as required by section 307 of the Water Act (33 USC 1317).

"Compliance," as used in this clause, means compliance with:

- (1) Clean air or water standards; or
- (2) A schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency, or an air or water pollution control agency under the requirements of the Air Act or Water Act and related regulations.

"Facility," as used in this clause, means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a contractor or subcontractor, used in the performance of a contract or subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility except when the administrator, or a designee, of the Environmental Protection Agency, determines that independent facilities are collocated in one geographical area.

"Water Act," as used in this clause, means Clean Water Act (33 USC 1251 et seq.).

(b) The CONTRACTOR agrees:

- (1) To comply with all the requirements of section 114 of the Clean Air Act (42 USC 7414) and section 308 of the Clean Water Act (33 USC 1318) relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, and all regulations and guidelines issued to implement those acts before the award of this contract;
- (2) That no portion of the work required by this prime contract will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this contract was awarded unless and until the EPA eliminates the name of the facility from the listing;
- (3) To use best efforts to comply with clean air standards and clean water standards at the facility in which the contract is being performed; and
- (4) To insert the substance of this clause into any nonexempt subcontract, including this subparagraph (b)(4).

(12) PATENTS (as per §10.0260(g), A.S.A.C):

For Contracts involving research, development, experimental or demonstration work:

The CONTRACTOR shall hold and save the GOVERNMENT and its officers, agents, servants, and employees harmless from liability of any nature or kind including cost and expenses for, or on account of, any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the contract, including its use by the GOVERNMENT, unless otherwise specifically stipulated in the contract documents.

License and/or royalty fees for the use of a process which is authorized by the GOVERNMENT on the project must be reasonable, and paid to holder of the patent or his authorized licensee, directly by the GOVERNMENT and not by or through the CONTRACTOR.

If the CONTRACTOR uses any design, device, or materials covered by letters for patent or copyright, he shall provide for such use by suitable agreement with the owner of such patented or copyright design, device, or material. It is mutually agreed and understood, that, without exception, the contract prices shall include all royalties or costs arising shall from the use of such design, device, or materials, in any way involved in the work. The CONTRACTOR and/or his sureties shall indemnify and save harmless the GOVERNMENT from any and all claims for infringement, by reason of the use of such patented or copyrighted design, device, or materials or any trademark or copyright in connection with work agreed to be performed under this contract, and shall indemnify the GOVERNMENT for any cost, expense or damage which it may be obligated to pay by reason of such infringement at any time during the work or after completion of the work.

(13) PROHIBITION AGAINST GRATUITIES AND KICKBACKS(as per §10.0260(h), A.S.A.C):

- (a) Gratuities. It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore.

- (1) GOVERNMENT may, by written notice to CONTRACTOR, terminate the right of CONTRACTOR to proceed under this agreement if it is found, after notice and hearing by the Contracting Officer, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by CONTRACTOR or any agent or representative of CONTRACTOR to any officer or employee of the American Samoa Government, including members of the American Samoa Legislature, with a view toward securing an agreement or securing favorable treatment with respect to the performing of such an agreement, provided that the existence of the facts upon which the Contracting Officer makes such findings shall be in issue and may be reviewed by any competent court.
- (b) Kickbacks. It shall be a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.
- (1) GOVERNMENT may, by written notice to the CONTRACTOR, terminate the right of CONTRACTOR to proceed under this contract if it is found, after notice and hearing by the Contracting Officer, that any payment, gratuity, or offer of employment was made by or on behalf of a subcontractor under a contract to the prime contractor, or higher tier subcontractor, or any person associated therewith as an inducement for the award of a subcontract or order.
- (c) Remedies of GOVERNMENT. In the event this contract is terminated as provided herein above, GOVERNMENT shall be entitled: (i) to pursue the same remedies against CONTRACTOR the GOVERNMENT could pursue in the event of a breach of contract by CONTRACTOR; or (ii) recover the full amount of such payment, gratuity, or the amount of money which would have been earned as a result of the illegal offer of employment by the person so employed.
- (d) Prescribed Remedies not Exclusive. The rights and remedies of GOVERNMENT provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.
- (14) CONTINGENT FEES(as per §10.0260(i), A.S.A.C):
- CONTRACTOR warrants that no person or selling agency has been employed or retained to solicit or secure this contract on an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by CONTRACTOR for the purpose of securing business. For breach or violation of this warranty, GOVERNMENT shall have the right to annul this contract without liability or in its discretion to deduct from the contract price, or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
- (15) COVENANT AGAINST COLLUSION(as per §10.0260(j), A.S.A.C):

in the event of breach of contract by CONTRACTOR, and as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages not to exceed 10% of the contract price.

(16) INDEMNITY:

CONTRACTOR shall indemnify, defend and hold harmless the GOVERNMENT, its officers, employees and agents from and against any and all claims and demands whatsoever, including costs and attorneys fees, resulting from CONTRACTOR'S negligent acts or omissions in connection with performance of this contract or use by CONTRACTOR of any patented article, patented process, patented appliance, or copyright material.

(17) TAX CLEARANCE:

American Samoa tax rules for the purpose of collecting Taxes under American Samoa Code Annotated (A.S.C.A.) Title 11, Section 11.0403 – Revenue;

- (a) Businesses are required to pay taxes on income earned in American Samoa. This will include quarterly estimated tax payments, 2% wage tax and withholding of all employment taxes as applicable under the Internal Revenue Service (IRS) and American Samoa tax laws.
- (b) Wages earned in American Samoa are taxed in accordance with American Samoa tax laws. A non-resident who performs personal services in American Samoa is taxed if their presence is greater than 90 days and earnings are \$3,000 or more U.S. dollars.
- (c) Tax Clearance. In accordance with the American Samoa Code Annotated, Title 11, as now or hereafter amended, the final payment on this agreement unless otherwise agreed to in writing by an authorized official of the GOVERNMENT, shall not be made until the CONTRACTEE obtains receipt of a tax clearance from the Tax Office to the effect that all the delinquent taxes levied or accrued under the American Samoa statutes against the CONTRACTOR have been paid.

(18) APPLICABLE LAW; JURISDICTION:

This contract shall be construed according to the laws of American Samoa. All judicial proceedings shall be in the High Court of American Samoa. CONTRACTOR hereby appoints the Treasurer, Government of American Samoa, as agent for service within the jurisdiction, if an agent of CONTRACTOR cannot be found in American Samoa after a reasonable search.

(19) PROHIBITION AGAINST INTEREST IN CONTRACT:

- (a) No member of or delegate to the Congress of the United States or Fono of American Samoa shall be permitted to any share or part of this contract or to any benefit to arise from the same; provided that the foregoing provision of this contract shall not apply if made with a corporation for its general benefit.
- (b) No employee of the GOVERNMENT, who in their capacity as an employee of the GOVERNMENT exercises any function or responsibility in connection with the carrying out of the project or the award or administration of this contract, shall have any private interest, direct or indirect, in this contract.

- (c) The CONTRACTOR represents and covenants that none of its owners, shareholders, officers, directors, trustees, partners, employees, managers or other associated persons with a private interest in this contract are government employees exercising the functions or responsibilities described in subparagraph 19(b) hereof.

(20) NOTICES:

All notices and correspondence required to be sent to either party hereunder shall be sent to the parties or their respective addresses as listed below either by certified mail or via personal delivery. Service of any notice or demand by mail shall be deemed complete ten (10) days after mailing or ten (10) days after the date actually received, whichever is first. Notice may also be given by facsimile followed by certified mailing of the original notice.

AMERICAN SAMOA GOVERNMENT

Contracting Officer:

Chief Procurement Officer
Office of Procurement
Pago Pago, AS 96799
Phone: (684) 699-1170
Fax: (684) 699-2387

With Copies to:

Director
Department of Education
American Samoa Government
Pago Pago, AS 96799
Phone: (684) 633-5237
Fax: (684) 633-4240

Attorney General
P.O. Box 7
American Samoa Government
Pago Pago, AS 96799
Phone: (684) 633-4163
Fax: (684) 633-1838

CONTRACTOR:


American Samoa
Telecommunications Authority
P.O. Box M
Pago Pago, AS 96799
Phone: (684) 699-1221
Fax: (684) 699-9026
Email: celeste.anandale@astca.net

Each party may change its designated address by serving notice on the other party as provided above.

AGREED TO BY AND BETWEEN:


Contractor:

AMERICAN SAMOA TELECOMMUNICATIONS AUTHORITY


By: Pulelei'ite Li'a Tufele, Jr.
As Chief Executive Officer

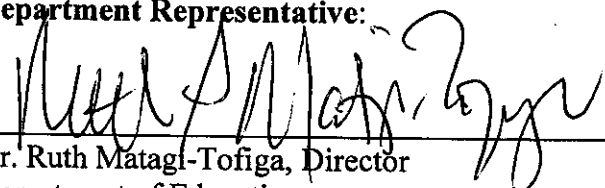
3/23/2018
Date

For the American Samoa Government:


Dr. Oreta Mapu Crichton
Chief Procurement Officer

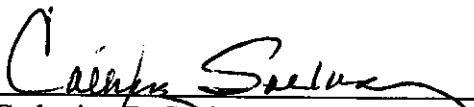
04/04/18
Date

Department Representative:


Dr. Ruth Matagi-Tofiga, Director
Department of Education

3/23/2018
Date

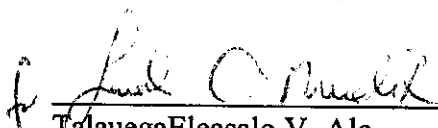
Budget (Funding):


Catherine D. Saelua, Director
Office of Program Planning and Budget
Account #: 100621-5325

Note:
Can only on number
to end of fiscal year 2018
7/1/18 - 9/30/18
from

3/26/18
Date

Office of the Attorney General (As to Form):


Talauega Eleasalo V. Ale
Attorney General

3/23/18
Date