

**FORM OF AGREEMENT BETWEEN
OWNER AND CONTRACTOR**

Contract No: _____ Account No. 101.10.425.8932

This AGREEMENT made as of the 1st day of July, in the year 2020.

BETWEEN the OWNER: COLLEGE OF MICRONESIA-FSM
NATIONAL CAMPUS
P.O. BOX 159
KOLONIA, POHNPEI FM. 96941
PHONE: (691) 320-2480/2481

And the CONTRACTOR: BRITESUN
PO BOX 190 KENG, WELOY
COLONIA, YAP FM. 96943
PHONE: (691) 350-2603

The CONTRACT FOR: PROCUREMENTS OF COMPUTERS,
COMPONENTS, ACCESSORIES, &
SUPPLIES

CERTIFYING OFFICER: SHAUN SULIOL
DIRECTOR, IT DEPARTMENT

The OWNER and the CONTRACTOR as set forth below:

**ARTICLE 1
THE CONTRACT DOCUMENTS**

The Contract Documents consist of this Agreement, (all details specified, prescribed, offered, accepted, considered, are embedded within the contract) with understanding and acceptance that all modifications, or addendum shall be reviewed and approved by both parties to become contract binding documents that may be issued and attached herein after the execution of this Agreement.

ARTICLE 2
SCOPE OF SERVICE

Contract made on the 17TH day of JUNE 2020, by and between College of Micronesia - FSM (COM-FSM), herein referred to as Owner and "Britesun", herein referred to as "Contractor".

Whereas COM-FSM contracted BRITESUN to supply Dell Computers, Components, Accessories, & Supplies with deliveries to the designated consignees per addresses (2) below and quantity distribution stated in the specification requirements. All Dell computers, components, accessories, and supplies specified under technical specification requirements are to be procured under this contract for the two (2) consignees via distribution destination addresses stated herein and in accordance to the delivery distribution breakdown under Article 4. The Contractor must ensure proper packaging of all Dell computers, components, accessories, and supplies for protection against damage or deterioration that may result from shipment, handling, storage or any other cause. Risk of loss or damage to the delivery of the Goods and related Services shall remain with the Contractor until delivery receipt of air waybill, or bill of lading of Goods and Services to the Owner at the specified destinations port at which title of the Goods and Services and such risk transfers to the Owner.

Yap Campus
College of Micronesia-FSM
C/O Britesun
PO Box 190
Keng, Weloy
Colonia, YAP FM. 96943
Phone: (691) 350-2603

National Campus
College of Micronesia-FSM
Attn: Shaun Suliol
P.O. Box 159
Kolonia Pohnpei, FM 96941
Phone: (691)320-2480
Fax: (691)320-2479
E-Mail: suliols@comfsm.fm

Contractor agrees to undertake the procurement services to provide the required computers, components, accessories, and supplies in accordance to the required technical specifications stated under article 4. Whereas the delivery deadline of all items and any related procurement services to its obligations must be completed within 5-8 weeks delivery timeline upon first payment receipt, as set forth between July 31, 2020, and no later than August 30, 2020. Any delays thereafter must be communicated in writing immediately to the Owner with acceptable resolution to permit extension of the deadline with a grace period of 2-3 weeks. The grace period will be granted only if the cause of the

delays were uncontrollable factors beyond the Contractors management control. **Any breached resolution must bear a 1 percent (1%) penalty fee of contract remaining value per day to be deducted from the final payment until all obligations are completed upon full delivery.** The Owner shall not bear the risk of loss or damage to the goods and services until its delivery transfer to the Consignees/Owner designated addresses of delivery. Thereafter Owner shall bear the entire risk of loss or damage to the goods and services, given that any defects, damages, or losses caused by manufacturer or Contractor shall be borne by the Contractor within **one-year period from the date of the final invoice.** Any refurbished or remanufactured products, parts, components, accessories, and supplies are not acceptable.

ARTICLE 3

DUTIES, TAXES, CUSTOMS CLEARANCE

The Contractor is responsible for paying all applicable shipping/handling costs, sales export and import duties, taxes, and fees whether in country of origin, or any transit country, and ensuring that all necessary licenses, duties, taxes, custom clearances are obtained and declared accordingly. The **Contractor is responsible for duties, taxes, and custom clearances of the Yap Campus Shipment in "Care Of" (c/o Britesun), COLONIA, YAP FM. 96943.** The Owner is responsible only for the duties, taxes, and custom clearances on the shipment allocated for the **National Campus, Kolonia Pohnpei 96941.** The Contractor is responsible for furnishing two (2) invoices to the Owner at no costs, reflecting the breakdown of the total values of the contract per allocated destination/consignee, prior to the shipment schedule of arrivals.

ARTICLE 4

SPECIFICATION REQUIREMENTS

All PC computers, equipment, components, accessories, and supplies must be fully functional, new and free of defects. Any refurbished or remanufactured PC computers, equipment, components, accessories, and supplies are not acceptable. All PC computers, equipment, components, accessories, and supplies purchased under this contract must be of the original equipment manufacturer specifically; **DELL, APC, & Lexmark**).

Destination 1: Yap Campus, C/O Britesun/Colonia Yap, FM. 96943

QTY.	UNIT	EQUIPMENT SPECIFICATIONS
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97	ea.	DELL OptiPlex 5070 MMF, Intel Core i7-9700T, Win. 10 Pro 64 bit, 8GB DDR4 RAM, M.2 256 Class 40 SSD Drive
97	ea.	DELL Micro All-in-One Stand MFS18
97	ea.	DELL 20 Montior: P2018H
35	ea.	APC Smart-UPS 1500VA LCD 120V with SmartConnect
5	ea.	LEXMARK MS821dn Printer

Destination 2: National Campus/Kolonia, Pohnpei, FM. 96941

QTY.	UNIT	EQUIPMENT SPECIFICATIONS
30	ea.	DELL OptiPlex 5070 MMF, Intel Core i7-9700T, Win. 10 Pro 64 bit, 8GB DDR4 RAM, M.2 256 Class 40 SSD Drive
30	ea.	DELL Micro All-in-One Stand MFS18
30	ea.	DELL 20 Montior: P2018H
11	ea.	APC Smart-UPS 1500VA LCD 120V with SmartConnect
1	ea.	LEXMARK MS821dn Printer

ARTICLE 5
COMPENSATION

Payment shall be made in three **(3)disbursement schedules** to the contractor upon approval, certification, and issuance of payment request per Contractor's Invoice from Director of IT Department as the Certifying Officer. Subject to terms, conditions, and schedules as provisions of the contract, Owner will pay Contractor up to a total amount of **One hundred seventy seven thousand five hundred eighty dollars(\$177,580.00)** during the term of the contract in accordance with the agreed payment plans, terms, and conditions upon the execution of this Agreement by both parties hereto. All payments must be made payable to: **Britesun, to be deposited into Bank of Guam Pohnpei Branch Savings Account Number: 0108-024623.**

Below are **payment plan schedules**, in which must be payable to the contractor upon each terms and conditions are fully met: The first payment shall be disbursed after contract signing upon the contractor's first invoice of 30% of the contract value. Second payment request shall be processed base on second invoice of 20% with shipment confirmation in the Bill of Lading, Air Waybill, or Carrier Tracking Number as supporting document(s) to enable disbursement. The final(3rd) payment shall be disbursed upon final invoice from the Contractor with procurement

certification. The Certifying Officer must provide delivery confirmation & inspection report in the Receiving Report to prove that all items received are in good, acceptable, and functional conditions in accordance to the contract provisions in order to expedite the final payment request to the Comptroller's Office, through the Procurement and Property Management Office. Each payment request shall be processed and disbursed within 7-14 days upon Contractor's original invoice receipt from the Certifying Officer.

First Payment:	Upon Contract Signing & First Invoice
Second Payment:	Upon Shipment Confirmation & Second Invoice
Final Payment:	Upon Receiving Report & Final Invoice

Payments Terms	Percentage	Amount
1st	30%	53,274.00
2nd	20%	35,516.00
3rd	50%	88,790.00

For the purpose of this contract, the Director of Information Technology Department shall be the certifying officer who shall monitor the scope of services to certify per terms, conditions, and schedules, and shall submit payment request for the contractor in accordance with the compensation and payment plans schedules in the table above.

ARTICLE 6
INDEMNIFICATION

Contractor agrees to indemnify, defend and hold harmless owner for any claims made by its employees for injuries, wages, or other damages including courts costs and attorney fees incurred while on the premises of COM-FSM, or incident to the job duties outlined in this agreement. The Contractor also agrees to indemnify, defend and hold harmless COM-FSM for any liability claims by third parties, student, faculty or staff of COM-FSM for any negligent or intentional acts of the Contractor or its agents or employees that causes damage that arise in any manner.

ARTICLE 7
WARRANTY

The Contractor is to provide one-year warranties from the date if the final invoice on all goods and services specified under this

contract with support services for repairs, or replacements of any defects, damages, losses, or any non-conforming specifications of goods and services. The Contractor warrant that the supplied computers, components, accessories, and supplies are designed and extensively tested with compatibility with all standard operating systems, applications, software, peripheral, and network operating systems developed for Industry Standard Architecture (ISA), Peripheral Component Interconnect (PCI), and Extended Industry Standard Architecture (EISA) systems. Within the warranties as implies under this agreement, the Contractor must bear all repairs and replacements costs including all associated costs, fees, taxes, for shipping/handling costs of returns and replacements transportation/handling costs. The Contractor must maintain additional stock of **five CPUs, five Monitors, including spare accessories and supplies** per technical specifications at location(Britesun PO BOX 190 KENG, WELOY COLONIA, YAP FM. 96943 PHONE:(691)350-2603) for ease of replacements if no acceptable solution, or repairs performed and completed within **36 hours** of the warranty deficiency report by the Owner. Any refurbished or remanufactured products, parts, components, accessories, and supplies are not acceptable.

ARTICL 8 **DISPUTE RESOLUTION**

This contract binds the parties and their employees, agents, successors, assignees and legal representatives, if any. Both parties agreed that the Jurisdiction for any legal action brought pursuant to the terms and conditions of this contract shall only be in the FSM Supreme Court in the State in which the Owner is locate. Both parties agrees that in the event of any unresolved dispute between the parties, any action filed in court in any way related to this agreement shall be filed in the Supreme Court of the Federated States of Micronesia and no other, with the prevailing party to be awarded its costs and attorneys' fee.

ARTICLE 9 **TERMINATION OF THE CONTRACT**

The Owner for any of the following reason below may terminate the Contract:

- A. There is substantial evidence indicating that the Contractor has neglected or discontinued to perform any part of the scope of services approved in this contract;

- B. The Owner feels and determines that the Contractor's performance is unsatisfactory and may compromise the integrity or quality of the procurements.
- C. Upon approved termination by both parties, **the Contractor must fully reimbursed all received payments within 15 calendar days from the termination date.** Non-complied reimbursements schedule thereafter shall bear consequential penalty, not limited to the market interest rate compounded daily, attorney's collection fees, other applicable costs incurred due to failure of the Contractor.

ARTICLE 10
WAIVER

No delay or omission in the exercise of any right or remedy of either party on any breach by the other party shall impair such right or remedy or be construed as a waiver. Any waiver of any breach must be in writing and shall not be a waiver of any other breach concerning the same or any other provision of this agreement.

ARTICLE 11
PARTIES BOUND

This contract binds the parties and their employees, agents, successors, assignees and legal representatives, if any.

ARTICLE 12
COMPLIANCE

Contractor shall comply with all the laws of the State of Pohnpei, State of Yap, the Federates States of Micronesia, and any code or standards adopted pursuant to this contract. Contractor is responsible for the payment of all taxes, including payment of all applicable employment taxes and Social Security for its employees.

ARTICLE 13
AMENDMENT

No term or condition of the contract shall be amended without the written consent of the parties in this contract.

SIGNATURE PAGE

This Agreement entered into as of the day and year first written above.

Joe Habuchmai - VPAS

Date

Certification of Funds:

Account No. : 101.10.425.8932

Roselle Togonon - Comptroller

Date

Karen Simion - Interim President

Date

Dr. Waguk Tolensru - Chairman, BOR

Date

FOR THE CONTRACTOR:

Haresh Daryanani - Britesun

Date