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September 19, 2013

EXECUTIVE ORDER NO. 018 - 2013

**AN ORDER AUTHORIZING THE USE OF ELECTRONIC SIGNATURES AND
ELECTRONIC RECORDS MANAGEMENT FOR THE EXECUTIVE BRANCH OF
THE AMERICAN SAMOA GOVERNMENT**

PREAMBLE

WHEREAS, the American Samoa Government does not presently have a legal regime through statutes and regulations guiding the use of electronic signatures and electronic records management for government purposes; and,

WHEREAS, Executive Order No. 005-2013 issued in connection with the U.S. Department of Labor settlement calls for the government to revise its payroll processing practices; and,

WHEREAS, the American Samoa Government is therefore currently migrating its payroll processing to an entirely electronic process including approvals; and,

WHEREAS, the American Samoa Government in mitigating certain aspects of its high risk status is currently migrating its purchasing processing to an entirely electronic process including approvals; and,

WHEREAS, other processes within the American Samoa Government are either partially or fully electronic or will become electronic in the future, requiring regulatory guidelines for their defined uses; and,

WHEREAS, the Office of the Governor will submit to the Legislature of American Samoa a variation of the Uniform Electronic Transactions Act of 1999, which this Order is modeled upon, within 18 months of the signing of this Order;

NOW, THEREFORE, the following Executive Order is hereby adopted to govern the use of electronic signatures and electronic data management within the American Samoa Government.

SECTION 1. AUTHORITY.

This Executive Order ("Order") is issued pursuant to the authority set forth in Sections 6 and 7 of the Revised Constitution of American Samoa and Section 4.0111 of the American Samoa Code Annotated.

SECTION 2. DEFINITIONS.

- (1) "Agreement" means the bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules, regulations and procedures given the effect of agreements under laws otherwise applicable to a particular transaction.
- (2) "Automated transaction" means a transaction conducted or performed, in whole or in part, by electronic means or electronic records, in which the acts or records of one or both parties are not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract, or fulfilling an obligation required by the transaction.
- (3) "Computer program" means a set of statements or instructions to be used directly or indirectly in an information processing system in order to bring about a certain result.
- (4) "Contract" means the total legal obligation resulting from the parties' agreement as affected by this Order and other applicable laws and regulations.
- (5) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- (6) "Electronic agent" means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part, without review or action by an individual.
- (7) "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.
- (8) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.
- (9) "Government agency" means any department, agency, board, commission, authority, office, bureau or institution.
- (10) "Information" means data, text, images, sounds, codes, computer programs, software, databases, or the like.
- (11) "Information processing system" means an electronic system for creating, generating, sending, receiving, storing, displaying, or processing information.
- (12) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation, or any other legal or commercial entity.
- (13) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- (14) "Security procedure" means a procedure employed for the purpose of verifying an electronic signature, record, or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgement procedures.

(15) “Transaction” means an action or set of actions occurring between two or more persons relating to the conduct of business, commercial, or governmental affairs.

SECTION 3. SCOPE.

- (a) Except as otherwise provided in subsection (b), this Order applies to electronic records and electronic signatures relating to a transaction.
- (b) This Order does not apply to a transaction to the extent it is governed by:
 - (1) a law governing the creation and execution of wills, codicils, or testamentary trusts;
 - (2) a law governing the performance of notarial acts.

SECTION 4. PROSPECTIVE APPLICATION.

This Order applies to any electronic record or electronic signature created, generated, sent, communicated, received, or stored on or after the effective date of this Order.

SECTION 5. USE OF ELECTRONIC RECORDS AND ELECTRONIC SIGNATURES; VARIATION BY AGREEMENT.

- (a) This Order does not require a record or signature to be created, generated, sent, communicated, received, stored or otherwise processed or used by electronic means or in electronic form.
- (b) This Order applies only to transactions between the American Samoa Government and a party each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties’ conduct.
- (c) A party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means. The right granted by this subsection may not be waived by agreement.
- (d) Except as otherwise provided in this Order, the effect of any of its provisions may be varied by agreement. The presence in certain provisions of this Order of the words “unless otherwise agreed”, or works of similar import, does not imply that the effect of other provisions may not be varied by agreement.
- (e) Whether an electronic record or electronic signature has legal consequences is determined by this Order and other applicable law.

SECTION 6. CONSTRUCTION AND APPLICATION.

This Order must be constructed and applied:

- (1) to facilitate electronic transactions consistent with other applicable law; and
- (2) to be consistent with reasonable practices concerning electronic transactions and with the continued expansion of those practices.

SECTION 7. RECOGNITION OF ELECTRONIC RECORDS AND ELECTRONIC SIGNATURES.

- (a) Except as otherwise provided in subsection (b), a record or signature may not be denied legal effect or enforceability solely because it is in electronic form.
- (b) If a law requires a signature, an electronic signature satisfies the law.
- (c) If a law requires a record to be in writing, an electronic record satisfies the law.
- (d) If a law prohibits the use of an electronic signature, it may be accepted for electronic record, if the person presents it in its original state.

SECTION 8. PROVISION OF INFORMATION IN WRITING; PRESENTATION OF RECORDS.

- (a) If parties have agreed to conduct a transaction by electronic means and a law requires a person to provide, send, or deliver information in writing to another person, the requirement is satisfied if the information is provided, sent, or delivered, as the case may be, in an electronic record capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention by the recipient if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record.
- (b) If a law other than this Order requires a record (i) to be posted or displayed in a certain manner, (ii) to be sent, communicated, or transmitted by a specific method, or (iii) to contain information that is formatted in a certain manner, the following rules apply:
 - (1) the record must be posted or displayed in the manner specified in the other law.
 - (2) except as otherwise provided in subsection (d)(2), the record must be sent, communicated, or transmitted by the method specified in the other law.
 - (3) the record must contain the information formatted in the manner specified in the other law.
- (c) If a sender inhibits the ability of a recipient to store or print an electronic record, the electronic record is not enforceable against the recipient.
- (d) The requirements of this section may not be varied by the agreement, but:
 - (1) to the extent a law other than this Order requires information to be provided, sent, or delivered in writing but permits that requirement to be varied by agreement, the requirement under subsection (a) that the information be in the form of an electronic record capable of retention may also be varied by agreement; and
 - (2) a requirement under the law other than this Order to send, communicate, or transmit a record by first class mail, postage prepaid, or regular United States mail, may be varied by agreement to the extent permitted by the other law.

SECTION 9. ATTRIBUTION AND EFFECT OF ELECTRONIC RECORD AND ELECTRONIC SIGNATURE.

- (a) An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of a person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or signature was attributable.
- (b) The effect of an electronic record or electronic signature attributed to a person under subsection (a) is determined from the context and surrounding circumstances at the time

of its creation, execution, or adoption, including the parties' agreement, if any, and otherwise as provided by law.

SECTION 10. EFFECT OF CHANGE OR ERROR.

If a change or error in an electronic record occurs in a transmission between parties to a transaction, the following rules apply:

- (1) If the parties have agreed to use a security procedure to detect changes or errors and one party has conformed to the procedure, but the other party has not, and the nonconforming party would have detected the change or error had that party also conformed, the conforming party may avoid the effect of the changed or erroneous electronic record.
- (2) In an automated transaction involving an individual, the individual may avoid the effect of an electronic record that resulted from an error made by the individual in dealing with the electronic agent of another person if the electronic agent did not provide an opportunity for the prevention or correction of the error and, at the time the individual learns of the error, the individual:
 - (A) promptly notifies the other person of the error and that the individual did not intend to be bound by the electronic record received by the other person;
 - (B) takes responsible steps, including steps that conform to the other person's reasonable instructions, to return to the other person or, if instructed by the other person, to destroy the consideration received, if any, as a result of the erroneous electronic record; and
 - (C) has not used or received any benefit or value from the consideration, if any, received from the other person.
- (3) If neither paragraph (1) nor paragraph (2) applies, the change or error has the effect provide by other law, including the law of mistake, and the parties' contract, if any.
- (4) Paragraphs (2) and (3) may not be varied by agreement.

SECTION 11. RETENTION OF ELECTRONIC RECORDS; ORIGINALS.

- (a) If a law requires that a record be retained, that requirement is satisfied by retaining an electronic record of the information in the record which:
 - (1) accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise; and
 - (2) remains accessible for later reference.
- (b) A requirement to retain a record in accordance with subsection (a) does not apply to any information the sole purpose of which is to enable the record to be sent, communicated, or received.
- (c) A person may satisfy subsection (a) by using the services of another person if the requirements of that subsection are satisfied.
- (d) If a law requires a record to be presented or retained in its original form, or provides consequences if the record is not presented or retained in its original form, that law is satisfied by an electronic record retained in accordance with subsection (a).
- (e) If a law requires retention of a check, that requirement is satisfied by retention of an electronic record of the information on the front and back of the check in accordance with subsection (a).

- (f) A record retained as an electronic record in accordance with subsection (a) satisfies a law requiring a person to retain a record for evidentiary, audit, or like purposes, unless a law enacted before or after the effective date of this Order, specifically prohibits the use of an electronic record for the specified purpose.
- (g) This section does not preclude a governmental agency of this territory from specifying additional requirements for the retention of a record subject to the agency's jurisdiction.

SECTION 12. CREATION AND RETENTION OF ELECTRONIC RECORDS AND CONVERSION OF WRITTEN RECORDS BY GOVERNMENT AGENCIES.

Each government agency, with approval from the Secretary of American Samoa, shall determine whether, and the extent to which, a government agency will create and retain electronic records and convert written records to electronic records.

SECTION 13. ADMISSIBILITY IN EVIDENCE.

In a proceeding, evidence of a record or signature may not be excluded solely because it is in electronic form.

SECTION 14. AUTOMATED TRANSACTION.

In an automated transaction, the following rules apply:

- 1) A contract may be formed by the interaction of electronic agents of the parties, even if no individual was aware of or reviewed the electronic agents' actions or the resulting terms and agreements.
- 2) A contract may be formed by the interaction of an electronic agent and an individual, acting on the individual's own behalf or for another person, including by an interaction in which the individual performs actions that the individual is free to refuse to perform and which the individual knows or has reason to know will cause the electronic agent to complete the transaction or performance.
- 3) The terms of the contract are determined by the substantive law applicable to it.

SECTION 15. TIME AND PLACE OF SENDING AND RECEIPT.

- (a) Unless otherwise agreed between the sender and the recipient, an electronic record is sent when it:
 - (1) is addressed properly or otherwise directed properly to an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record;
 - (2) is in a form capable of being processed by that system; and
 - (3) enters an information processing system outside the control of the sender or of a person that sent the electronic record on behalf of the sender or enters a region of the information processing system designated or used by the recipient which is under the control of the recipient.

- (b) Unless otherwise agreed between a sender and the recipient, an electronic record is received when:
 - (1) it enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record; and,
 - (2) it is in a form capable of being processed by that system.
- (c) Subsection (b) applies even if the place the information processing system is located is different from the place the electronic record is deemed to be received under subsection (d).
- (d) Unless otherwise expressly provided in the electronic record or agreed between the sender and the recipient, an electronic record is deemed to be sent from the sender's place of business and to be received at the recipient's place of business. For purposes of this subsection, the following rules apply:
 - (1) If the sender or recipient has more than one place of business, the place of business of that person is the place having the closest relationship to the underlying transaction.
 - (2) If the sender or the recipient does not have a place of business, the place of business is the sender's or recipient's residence, as the case may be.
- (e) An electronic record is received under subsection (b) even if no individual is aware of its receipt.
- (f) Receipt of an electronic acknowledgment from an information processing system describe in subsection (b) establishes that a record was received but, by itself, does not establish that the content sent corresponds to the content received.
- (g) If a person is aware that an electronic record purportedly sent under subsection (a), or purportedly received under subsection (b), was not actually sent or received, the legal effect of the sending or receipt is determined by other applicable law. Except to the extent permitted by the other law, the requirements of this subsection may not be varied by agreement.

SECTION 16. ACCEPTANCE AND DISTRIBUTION OF ELECTRONIC RECORDS BY GOVERNMENTAL AGENCIES.

- (a) Except as otherwise provided in Section 11(f) each government agency through the Secretary of the Territory, shall determine whether, and the extent to which, a government agency will send and accept electronic records and electronic signatures to and from other person and otherwise create, generate, communicate, store, process, use, and reply upon electronic records and electronic signatures.
- (b) To the extent that a governmental agency uses electronic records and electronic signatures under subsection (a) the governmental agency through the Secretary of the Territory, given due consideration to security, may specify:
 - (1) the manner and format in which the electronic records must be created, generated, sent, communicated, received, and stored and the systems established for those purposes;
 - (2) if electronic records must be signed by electronic means, the type of electronic signature required, the manner and format in which the electronic signature must

- be affixed to the electronic record, and the identify of, or criteria that must be met by, any third party used by a person filing a document to facilitate the process;
- (3) control processes and procedures as appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality and auditability of electronic records; and
 - (4) any other required attributes for electronic records which are specified for corresponding non-electronic records or reasonably necessary under the circumstances.
- (c) Except as otherwise provided in Section 11(f), this Order does not require a governmental agency of the Territory to use or permit the use of electronic records or electronic signatures.

SECTION 15. UNAUTHORIZED USE OF ELECTRONIC SIGNATURES.

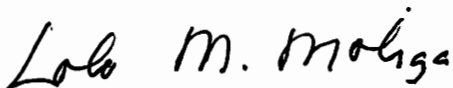
Any unauthorized use of electronic signatures by employees of the American Samoa Government will be referred to the Department of Human Resources for personnel action, as prescribed under A.S.C.A Title 7. Unauthorized use of electronic signatures includes:

- (a) Forgery of an individual's electronic signature;
- (b) Unpermitted use of an electronic signature per agency guidelines; and
- (c) Any other policy or regulation established by a governmental agency further classifying the unauthorized use of electronic signatures.

SECTION 16. EFFECTIVE DATE

This Order shall take effect immediately and shall continue in effect until amended, superseded or revoked by subsequent Order.

Dated: Sept. 19, 2013



LOLO M. MOLIGA
Governor of American Samoa