

xxth xxx 2020

CONTRACT

For the provision of

Consultancy Services

Between

TRISTAN DA CUNHA GOVERNMENT

-and-

XXXXXXXXXXXXXXXXXX

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THIS AGREEMENT is dated xxth xxxx 2020

PARTIES

- (1) **Client xxx** for the **Tristan da Cunha Government, Administration Building, Edinburg of the Seven Seas, Tristan da Cunha Island.**

Service Provider for **xxxx**, Address **xxxxx**.

AGREED TERMS

1. INTERPRETATION

- 1.1 The following definitions and rules of interpretation apply in this agreement (unless the context requires otherwise).

Capacity: as agent, consultant, director, employee, owner, partner, shareholder or in any other capacity.

Commencement Date: xxth xxxxxx 2020.

Client Property: all documents, books, manuals, materials, records, correspondence, papers and information (on whatever media and wherever located) relating to the Business or affairs of the Client or its customers and business contacts, and any equipment, keys, hardware or software provided for the Consultant's use by the Client during the Engagement.

Confidential Information: information in whatever form (including without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to the business, customers, products, affairs and finances of the Client or the Consultant for the time being confidential to the Client or the Consultant and trade secrets including, without limitation, technical data and know-how relating to the Business of the Client or the Consultant or any of its suppliers, customers, agents, distributors, shareholders, management or business contacts and including (but not limited to) information that the Consultant creates, develops, receives or obtains in connection with his Engagement, whether or not such information (if in anything other than oral form) is marked confidential.

Engagement: the engagement of the Consultant by the Client on the terms of this agreement.

Insurance Policies: Appropriate contract of insurance with a recognised provider for any risk and liabilities that may occur in the undertaking of the professional duties.

Intellectual Property Rights: patents, utility models, rights to Inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets)

and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Invention: any invention, idea, discovery, development, improvement or innovation made by the Consultant in the provision of the Services, whether or not patentable or capable of registration, and whether or not recorded in any medium.

Pre-Contractual Statement: any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the Engagement other than as expressly set out in this agreement or any documents referred to in it.

Services: the services provided by the Consultant in a consultancy capacity for the Client as more particularly described in Schedule 1 attached.

Substitute: a substitute engaged by the Consultant under the terms of clause 3.3

Termination Date: the date of termination of this agreement, howsoever arising.

Works: all advice, records, reports, documents, papers, drawings, designs, transparencies, photos, graphics, logos, typographical arrangements, software, and all other materials in whatever form, including but not limited to hard copy and electronic form, prepared by the Consultant in the provision of the Services.

- 1.2 The headings in this agreement are inserted for convenience only and shall not affect its construction.
- 1.3 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.4 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.

2. TERM OF ENGAGEMENT

- 2.1 The Client shall engage the Consultant and the Consultant shall provide the Services on the terms of this agreement.
- 2.2 The Engagement shall commence on the Commencement Date and shall continue until **Two natural months after the Commencement Date** unless and until terminated:
- (a) as provided by the terms of this agreement; or
 - (b) unless otherwise agreed by both parties each having given to the other not less than four weeks' prior written notice of the proposed amendment to the Termination Date.
- 2.3 Time shall be of the essence as regards the performance by the Consultant of his obligations under this Contract.

3. DUTIES AND OBLIGATIONS

- 3.1 During the Engagement the Consultant shall provide the Services with all due care, skill and ability and use his best endeavours to promote the interests of the Client.
- 3.2 If the Consultant is unable to provide the Services, he shall advise the Client of that fact as soon as reasonably practicable.
- 3.3 The Consultant may, with the prior written approval of the Client and subject to the following proviso, appoint a suitably qualified and skilled Substitute to perform the Services on his behalf, provided that the Substitute shall be required to enter into direct undertakings with the Client, including with regard to confidentiality. If the Client accepts the Substitute, the Consultant shall continue to invoice the Client in accordance with clause 4 and shall be responsible for the remuneration of the Substitute. For the avoidance of doubt, the Consultant will continue to be subject to all duties and obligations under this agreement for the duration of the appointment of the Substitute.
- 3.4 The Consultant shall:
- (a) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
 - (b) promptly report to the Client any request or demand for any undue financial or other advantage of any kind received by the Consultant in connection with the performance of this agreement;

- (c) ensure that all persons associated with the Consultant or other persons who are performing services [or providing goods] in connection with this agreement comply with this clause 3.5; and
- 3.5 Failure to comply with clause 3.5 may result in the immediate termination of this agreement.
- 3.6 The Client shall provide the Consultant with complete, accurate and timely instructions and information relevant to the Engagement.
- 3.7 The Consultant shall provide the Services solely for the purpose set out in this agreement and the Consultant will not be liable for any losses arising from any other use of the Works.
- 4. FEES**
- 4.1 The Payments under this Contract shall not, unless varied in accordance with the terms herein, exceed ----- GBP (the “Financial Limit”) which is the Contract Price for the said Services excluding expenses permitted under clause 5.1.
- 4.2 In consideration for the provision of the Services the Client shall pay the Consultant the charges in accordance with the Payment Terms contained in Schedule 2 attached. The charges shall be paid in **British Pound Sterling**
- 4.3 Unless otherwise agreed in writing the Consultant shall invoice the charges to the Client at the intervals specified in Schedule 2.
- 4.4 In consideration of the provision of the Services during the Engagement, the Client shall pay each invoice submitted by the Consultant in accordance with clauses 4.1 and 4.2 within **30 days** of receipt.
- 4.5 The Contract Price is exclusive of VAT. Both Parties accept that VAT is not chargeable in respect of this Contract.
- 4.6 The Client shall be entitled to deduct from the fees due to the Consultant any sums that the Consultant may owe to the Client at any time.
- 4.7 Payment in full or in part of the fees claimed under clause 4 shall be without prejudice to any claims or rights of the Client against the Consultant in respect of the provision of the Services.

5. EXPENSES

- 5.1 The Consultant shall bear his own expenses incurred in the course of the Engagement with the exception of economy class travel, accommodation, agreed subsistence and car hire. (all incurred reasonably and with the agreement of the client). These expenses shall be payable by the Client. Costs shall be pre-agreed by the Client.

6. OTHER ACTIVITIES

Nothing in this agreement shall prevent the Consultant from being engaged, concerned or having any financial interest in any Capacity in any other business, trade, profession or occupation during the Engagement provided that:

- (a) such activity does not cause a breach of any of the Consultant's obligations under this agreement;
- (b) the Consultant shall give priority to the provision of the Services to the Client over any other business activities undertaken by the Consultant during the course of the Engagement.

7. CONFIDENTIAL INFORMATION

- 7.1 Each party acknowledges that in the course of the Engagement that they will have access to Confidential Information. Each party has therefore agreed to accept the restrictions in this clause 7.
- 7.2 Each party shall not (except in the proper course of his duties), either during the Engagement or at any time after the Termination Date, use or disclose to any third party (and shall use his best endeavours to prevent the publication or disclosure of) any Confidential Information. This restriction does not apply to:
- (a) any use or disclosure authorised by the disclosing party or required by law, court order, any regulatory or professional body; or
 - (b) any information which is already in, or comes into, the public domain otherwise than through the receiving party's unauthorised disclosure.
- 7.3 At any stage during the Engagement, the Consultant will promptly on request return all and any Client Property in his possession to the Client.

8. DATA PROTECTION

- 8.1 Each party shall comply with the General Data Protection Regulation (Regulation (EU) 2016/679) as it applies to each party in connection with this agreement.

8.2 Not used.

9. INTELLECTUAL PROPERTY

9.1 The Consultant shall retain all intellectual property rights to the Works. The Consultant hereby grants to the Client a non-exclusive, non-transferable licence to use the Works for the purposes for which they were created.

9.2 Not used:

9.3 The Consultant warrants to the Client that:

- (a) he has not given and will not give permission to any third party to use any of the Works, nor any of the Intellectual Property Rights in the Works;
- (b) he is unaware of any use by any third party of any of the Works or Intellectual Property Rights in the Works; and
- (c) the use of the Works or the Intellectual Property Rights in the Works by the Client will not infringe the rights of any third party.

9.4 The Consultant agrees to be liable to the Client for all or any direct costs, claims, damages or expenses incurred by the Client, or for which the Client may become liable, with respect to any intellectual property infringement claim relating to the Works supplied by the Consultant to the Client. The Client may at its option satisfy this liability (in whole or in part) by way of deduction from any payments due to the Consultant.

9.5 Not used.

9.6 The Consultant acknowledges that, except as provided by law, no further fees or compensation other than those provided for in this agreement are due or may become due to the Consultant in respect of the performance of his obligations under this clause 9.

9.7 Not used.

10. INSURANCE AND LIABILITY

10.1 The Consultant shall have liability for and shall indemnify the Client for any direct loss, liability, costs (including reasonable legal costs), damages or expenses arising from any breach by the Consultant or a Substitute engaged by the Consultant of the terms of this agreement including any negligent or reckless act, omission or default in

the provision of the Services and shall accordingly maintain in force during the Engagement full and comprehensive Insurance Policies.

- 10.2 The Consultant shall ensure that the Insurance Policies are taken out with reputable insurers.
- 10.3 The Consultant shall supply to the Client copies of such Insurance Policies, certificates and evidence that the relevant premiums have been paid.
- 10.4 The Consultant shall comply with all terms and conditions of the Insurance Policies at all times. If cover under the Insurance Policies shall lapse or not be renewed or be changed in any material way or if the Consultant is aware of any reason why the cover under the Insurance Policies may lapse or not be renewed or be changed in any material way, the Consultant shall notify the Client without delay.
- 10.5 The Consultant's aggregate liability of whatever nature whether in contract, tort or otherwise, for any loss whatsoever and howsoever caused by or arising from this Engagement, shall not exceed **£1,000,000** or, if greater, 10 times the total of fees invoiced under this agreement.

11. TERMINATION

- 11.1 Notwithstanding the provisions of clause 2.2, the Client may terminate the Engagement with immediate effect with no liability to make any further payment to the Consultant (other than in respect of amounts accrued before the Termination Date) if at any time the Consultant:
 - (a) commits any gross misconduct affecting the Business of the Client;
 - (b) commits any serious or repeated breach or non-observance of any of the provisions of this agreement or refuses or neglects to comply with any reasonable and lawful directions of the Client;
 - (c) is convicted of any criminal offence (other than an offence under any road traffic legislation in the United Kingdom or elsewhere for which a fine or non-custodial penalty is imposed);
 - (d) is in the reasonable opinion of the Client negligent or incompetent in the performance of the Services;
 - (e) is declared bankrupt or makes any arrangement with or for the benefit of his creditors.
 - (f) is incapacitated from providing the Services for a period in excess of one week.

- (g) commits any fraud or dishonesty or acts in any manner which in the opinion of the Client brings or is likely to bring the Consultant or the Client into disrepute or is materially adverse to the interests of the Client;
- (h) commits any breach of the Client's policies and procedures notified to the Consultant; or
- (i) commits any offence under the Bribery Act 2010.

11.2 The rights of the Client under clause 11.1 are without prejudice to any other rights that it might have at law to terminate the Engagement or to accept any breach of this agreement on the part of the Consultant as having brought the agreement to an end. Any delay by the Client in exercising its rights to terminate shall not constitute a waiver of these rights.

11.3 Notwithstanding the provisions of clause 2.2, the Consultant may terminate the Engagement with immediate effect where:

- (a) termination rules are prescribed by legislation or professional obligations;
- (b) the Client breaches a material term of this agreement (including non-payment of fees) and does not remedy the breach within 14 days.

12. OBLIGATIONS ON TERMINATION

12.1 On the Termination Date the Consultant shall:

- (a) promptly deliver to the Client all Client Property in his possession or under his control;
- (b) irretrievably delete any information relating to the Business of the Client stored on any magnetic or optical disk or memory and all matter derived from such sources which is in his possession or under his control outside the premises of the Client. For the avoidance of doubt, the contact details of business contacts made during the Engagement are regarded as Confidential Information, and as such, must be deleted from personal social or professional networking accounts; and
- (c) provide a signed statement that he has complied fully with his obligations under this clause 12.1.

12.2 Notwithstanding clauses 7.3 and 12.1, the Consultant shall be permitted to retain copies of Client Property and documents relating to the Engagement after the Engagement has ended which it would otherwise be required to return or destroy under this agreement if required by legal or regulatory requirements, subject to its continuing confidentiality obligations.

13. STATUS

- 13.1 The relationship of the Consultant to the Client will be that of independent contractor and nothing in this agreement shall render him an employee, worker, agent or partner of the Client and the Consultant shall not hold himself out as such.
- 13.2 This agreement constitutes a contract for the provision of services and not a contract of employment and accordingly the Consultant shall be fully responsible for and shall be liable to the Client for and in respect of:
- (a) any income tax, National Insurance and social security contributions and any other employment related liability, deduction, contribution, assessment or claim arising from or made in connection with the performance of the Services, where the recovery is not prohibited by law. Further, the Consultant shall be liable to the Client for all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the Client in connection with or in consequence of any such employment related liability, deduction, contribution, assessment or claim other than where the latter arise out of the Client's negligence or wilful default;
 - (b) any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Consultant or any Substitute against the Client arising out of or in connection with the provision of the Services.
- 13.3 The Client may at its option satisfy such liability (in whole or in part) by way of deduction from any payments due to the Consultant.

14. NOTICES

- 14.1 Any notice or other communication given to a party under or in connection with this contract shall be in writing, sent by fax or electronic mail. The address for service of each Party shall be its registered office or such other address as either Party may have previously have notified to the other Party in writing.
- 14.2 Any notice or communication shall be deemed to have been served:
- (a) if delivered by personally, at the time of delivery;
 - (b) if sent by fax, at the time of transmission;
 - (c) if sent by electronic mail, at the time of sending.
- 14.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

15. ENTIRE AGREEMENT

- 15.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 15.2 Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.
- 15.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement that is not set out in this agreement.
- 15.4 Nothing in this clause or elsewhere in this agreement shall limit or exclude any liability for fraud or purport to exclude or restrict a liability which cannot be excluded or restricted as a matter of law.

16. VARIATION

No variation of this agreement or of any of the documents referred to in it shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

17. COUNTERPARTS

This agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

18. THIRD PARTY RIGHTS

- 18.1 A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.
- 18.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement are not subject to the consent of any other person.

19. GOVERNING LAW

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of St Helena.

20. JURISDICTION

Each party irrevocably agrees that the courts of St Helena shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

SCHEDULE 1

SERVICES

- 1- Completion of Inception (Stage 1)**
- 2- Completion of Concept Design (Stage 2)**
- 3- Completion of Design Development (Stage 3)**

SCHEDULE 2

COST BREAKDOWN & PAYMENT SCHEDULE

Occurrence	% of Contract Price	Sum
At completion of stage 1	10	
At completion of stage 2	30	
At completion of stage 3	60	

The above % are indicative but proposals must reflect reasonable levels of work at each stage.

Signed for and on behalf of
Government of Tristan da Cunha

Signed for and on behalf of