

TERMS AND CONDITIONS FOR THE ENGAGEMENT OF A CONSULTANT

Her Majesty the Queen acting by and through the Cook Islands Investment Corporation (the "CIIC") agrees to engage the Consultant and the Consultant agrees to provide the Services described in the Schedule on the following conditions:

1. **Application:** These terms and conditions supersede any contrary provisions in any previous agreements between parties, written or otherwise. No right under these terms shall be deemed to be waived except by notice in writing by each party. In the event that any one or more of the provisions contained in these conditions are declared invalid by order, decree or judgment of any Court of competent jurisdiction, these conditions are to be read as if such provision had not been inserted.
2. **Services:** The Consultant shall perform the Services as described in the attached Schedule in accordance with any requirements set out in these terms and conditions and/or in the Schedule. The time of performance of the Services is a fundamental element of these terms and conditions. The Consultant shall notify the CIIC in writing immediately when the Consultant becomes aware there may be a delay in the delivery of the Services. The CIIC is entitled to cancel these terms and conditions or change its specification (without incurring additional charges) if the Services are not supplied on the supply dates or times specified in the Schedule. Where the Consultant has the benefit of any warranties or covenants from a third party in respect of the Services, the Consultant shall disclose and assign the benefit of the warranties and/or covenants to the CIIC.
3. **Skill:** The Consultant shall use the highest reasonable standard of skill, care and quality and employ techniques, methods, procedures and materials of a high quality and standard in accordance with best professional practice in rendering the Services. The Consultant will comply with all relevant (a) Cook Island standards and international standards (if not in conflict) (both general and industry-specific); (b) statutes; (c) regulations; (d) by-laws; (e) ordinances; and (f) Government policies, applicable in respect of the supply of the Services.
4. **Independent Judgment:** Where the Services require the Consultant to certify, decide or use discretion under a contract between the CIIC and a third party, the Consultant must act independently, and with professional skill and judgment, and according to the terms of the contract between the CIIC and the third party.
5. **Delay:** If at any time the Consultant's performance falls behind the programme set out in the Schedule then the Consultant shall notify the CIIC and, where the delays are due to matters within the control of the Consultant, shall take all practicable steps to remedy such delay.
6. **Variations:** The CIIC may order variations to the Services in writing or may request the Consultant to submit proposals for variation to the Services. Where the Consultant considers a direction from the CIIC or any other circumstance is or may give rise to a variation the Consultant shall notify the CIIC as soon as practicable.
7. **Payment:** The CIIC shall pay the Consultant for the Services the fees and expenses at the times and in the manner set out in the Schedule. The prices stated in the Schedule are fixed unless there is a written agreement stipulating the price may be varied, when it may be varied and how the price is

to be determined. The Consultant is not entitled to claim expenses, surcharges, margins or disbursements except if otherwise agreed in advance and in writing by the CIIC.

8. **Liability:** Where the Consultant breaches these terms and conditions, the Consultant is liable to the CIIC for reasonably foreseeable claims, damages, liabilities, losses or expenses caused directly by the breach. The Consultant shall not be entitled to anticipatory profits or to special (including multiple or punitive), incidental or consequential damages or losses.
9. **Contribution to Loss:** If either Party is found liable to the other (whether in contract, tort or otherwise), and the claiming Party and/or a Third Party has contributed to the loss or damage, the liable Party shall only be liable to the proportional extent of its own contribution.
10. **Indemnity:** The Consultant indemnifies the CIIC in respect of all costs (including legal costs), claims, liabilities, losses, damage and expenses suffered or incurred by the CIIC and any other person claiming through the CIIC as a direct or indirect consequence of any unlawful, negligent, tortious, criminal, reckless or dishonest errors, acts or omission of the Consultant in the performance of its obligations under these terms and conditions. This indemnity survives the termination of these terms and conditions.
11. **Insurance:** The Consultant shall take out and maintain at its own cost, at all times during the continuance of these terms and conditions, such insurances as specified in the Schedule. All such insurance shall be on such terms and with such insurers as the CIIC may reasonably require. The Consultant shall, if requested by the CIIC, provide the CIIC with written evidence that all insurances are in force and shall produce, whenever reasonably required by the CIIC, the relevant policies and evidence of payment of the current premiums. If the Consultant fails to provide such evidence the CIIC may, after notifying the Consultant in writing, arrange or keep in force that insurance and may, for the purpose of doing so, pay the relevant premiums and deduct a corresponding amount from any moneys payable by CIIC to the Consultant under these terms and conditions.
12. **Intellectual Property:** "Intellectual Property" includes copyright, designs, drawings, specifications, reports, data and documentation. All Intellectual Property arising from the provision of the Services ("New IP") is owned by the CIIC and the Consultant shall co-operate with the CIIC (including by signing documents) to help the CIIC protect its rights in the New IP. To the extent that New IP incorporates or requires Intellectual Property arising outside of the provision of the Services ("Pre-existing IP"), the Consultant licences, or shall procure the licence to the Pre-existing IP for the CIIC on a perpetual, royalty-free basis. The Consultant warrants and represents to the CIIC that the New IP and the Pre-existing IP will not infringe the Intellectual Property rights of any third party.
13. **Termination:** The CIIC may, at its convenience, terminate all or part of the Services by 10 days' written notice to the Consultant who shall immediately make arrangements to stop the Services and minimise further expenditure. The Consultant may, in the event the CIIC is in material default, terminate these terms and conditions by 10 days' written notice to the CIIC. Any suspension or termination shall not prejudice or affect the accrued rights or claims and liabilities of the parties. Further, the CIIC may terminate these terms and conditions immediately where, in the opinion of the CIIC, there has been serious misconduct by the Consultant. Serious misconduct includes, but is not

limited to: bringing the CIIC into disrepute, where the Consultant, in the judgment of the CIIC, has engaged in corrupt or fraudulent practices in competing for or executing these terms and conditions, theft of property, offensive behaviour towards CIIC personnel, members of the public or contractors.

14. **Confidentiality:** The Consultant must keep confidential all information provided by the CIIC in relation to these terms and conditions and the provisions of the Services and not disclose the same without the written consent of the CIIC.
15. **Public Statements:** The Consultant must not make any public statements about the Services or these terms and conditions without the CIIC's written approval.
16. **General Warranties:** The Consultant represents, warrants and undertakes that:
 - a. it has full power, capacity and authority to execute, deliver and perform its obligations under these terms and conditions;
 - b. it has and will continue to have, all necessary consents, permissions, licences and rights to enter into and perform its obligations under these terms and conditions;
 - c. there are no existing agreements, undertakings or arrangements which prevent it from entering into these terms and conditions or which would impede the performance of its obligations under these terms and conditions;
 - d. it has not offered any inducement in connection with the entering into or negotiation of these terms and conditions; and
 - e. it has not (nor is any of its representative directors or employees) a party to any litigation, proceedings or disputes which could adversely affect its ability to perform its obligations under these terms and conditions.
17. **Conflict:** The Consultant confirms it has no knowledge of any conflict of interest in providing the Services. If any conflict arises or has the potential to arise during the supply of the Services, the Consultant shall immediately inform the CIIC in writing and the CIIC will decide on the appropriate steps to be followed in such event, which may include the right of the CIIC to terminate these terms and conditions with immediate effect.
18. **Key Personnel:** The Key Personnel for the provision of the Services are as listed in the Schedule. Any change to the Key Personnel requires the written consent of the CIIC.
19. **Assignment:** The Consultant must not assign, transfer or subcontract all or part of its rights or obligations under these terms and conditions without the prior written consent of the CIIC's, such consent to be provided at the CIIC's absolute discretion.
20. **Law:** These terms and conditions are governed by the laws of the Cook Islands. The parties agree to submit to the exclusive jurisdiction of the High Court of the Cook Islands.