

## CONSULTING SERVICES AGREEMENT

THIS AGREEMENT is entered into as of, and effective, \_\_\_\_\_, 2018.

**BETWEEN:**

**GOVERNMENT OF BERMUDA,**

as represented by the Ministry of The Cabinet Office with  
Responsibility for Government Reform, 105 Front Street,  
Hamilton HM 12, Bermuda

("Client")

- and -

("Consultant")

WHEREAS the Client requires professional consulting and advisory assistance concerning the development of ....., and Consultant provides professional services and has extensive experience in providing consulting services and advice on strategic planning to private and public sector organizations;

AND WHEREAS the Client wishes to retain Consultant to provide the consulting and advisory services that are more particularly described, and on the terms and conditions set out, herein;

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereto hereby agree as follows:

### ARTICLE 1 – DEFINITIONS AND INTERPRETATION

#### 1.1 DEFINITIONS

For the purposes of this Agreement, unless the context otherwise requires, the following terms shall have the respective meanings set out below and grammatical variations of such terms shall have corresponding meanings:

- (a) "**Agreement**" means, this Consulting Services Agreement, and all schedules attached hereto;
- (b) "**Client**" is the party who is retaining Consultant to perform this Agreement, including the provision of the Work Product and the Services;
- (c) "**Liability Cap**" has the meaning ascribed to it in Article 6 hereto;
- (d) "**Losses**" has the meaning ascribed to it in Article 5 hereto;
- (e) "**Maximum Compensation**" has the meaning ascribed to it in Article 4 hereto;
- (f) "**Maximum Compensation**" has the meaning ascribed to it in Article 4 hereto;

- (g) **"Consultant" Residual Rights** means Consultant proprietary methods, processes, tools, computer software, systems, frameworks, and analytical knowhow that Consultant may use to perform this Agreement but that are not conveyed, transferred, assigned or licensed to the Client herein, as same may be described and set out more particularly in Schedule 1 attached hereto;
- (h) **"Terms and Conditions"** means the terms and conditions expressly set forth in this Agreement.
- (i) **"Waiver of Consequential And Related Damages"** has the meaning ascribed to it in Article 6 hereto.
- (j) **"Work Product"** means any and all reports or studies, written advice or opinions, materials, presentations, correspondence and other tangible products or deliverables prepared by Consultant and provided to Client in connection with Consultant's performance of the Services, as well as any opinions, analysis, data, calculations, evaluations, estimates, forecasts, projections, assumptions, advice, recommendations or information contained in the applicable Work Product. Work Product furnished or provided to Client by Consultant pursuant to this Agreement shall not include Consultant Residual Rights, and shall be subject to the Terms and Conditions.

## 1.2 HEADINGS

The division of this Agreement into Articles, Sections and Exhibits and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. Except as expressly set out herein, references to an Article, Section or Exhibit refer to the applicable Article, Section or Exhibit to this Agreement and not to any Article, Section or any Exhibit of any Schedule attached to the main body of this Agreement.

## 1.3 EXTENDED MEANINGS

The Parties agree to the following interpretive terms and conditions:

- (a) words importing the singular number include the plural and vice versa and words importing gender include all genders in this Agreement;
- (b) use of the words "includes" or "including" or the abbreviation "e.g." means "including, without limitation", and the term "such as" will mean "such as without limitation";
- (c) reference to any agreement, indenture or other instrument in writing means such agreement, indenture or other instrument in writing as amended, modified, replaced or supplemented from time to time, unless otherwise agreed to herein;
- (d) reference to any statute or regulation or bylaw shall be deemed to be a reference to such statute or regulation or bylaw as amended, re-enacted or replaced from time to time, unless otherwise agreed to herein; and,
- (e) time periods within which a payment is to be made or any other action is to be taken hereunder shall be calculated excluding the day on which the period commences, but including the day on which the period ends.

#### **1.4 ENTIRE AGREEMENT**

This Agreement, and the Terms and Conditions, shall take precedence and priority over any inconsistent, conflicting or previously agreed upon proposals, arrangements, agreements and other terms. This Agreement constitutes the only and entire agreement between the parties relating to the subject matter hereof, including the Services and Work Product, and shall supersede, replace and prevail over all other terms, conditions, agreements or understandings, whether oral or in writing concerning the subject matter hereof. Any additional or different terms and conditions proposed by Client that are not expressly included in this Agreement shall not form any part of this Agreement. Any terms that are additional to the terms set forth in the Agreement (including any term(s) in any purchase order, proposal, acknowledgment, invoice, or other document of Client) will not be binding on either party unless specifically and expressly incorporated into the Agreement in writing.

#### **1.5 CURRENCY**

All dollar amounts in this Agreement are expressed in the currency of Bermuda .

#### **1.6 TIME OF THE ESSENCE**

Time shall be of the essence in the performance of the obligations under this Agreement.

#### **1.7 SCHEDULES**

The following Schedules are attached to, and form part of, this Agreement:

- Schedule 1 - Services & Work Products
- Schedule 2 - Service Fees and Expenses

#### **ARTICLE 2 – COOPERATION BY CLIENT**

Client will, in a timely fashion and in the form and manner requested, provide Consultant with all data, documentation and other information reasonably required by Consultant for the provision of Services. Client will use its reasonable efforts to provide all such information in a form that is accurate, complete and reliable but Client expressly disclaims and denies that such information will be error free or without quality deficiencies. Such information may not be complete, without defects, deficiencies or omissions (in part) because the Client may not have created or managed such information. Client shall not have any duty, responsibility or liability for any use or reliance that Consultant may place in any such information. Client will promptly inform Consultant of any facts or circumstances, including instructions, decisions and approvals that might be relevant to the timely and proper performance of the Services. Client is responsible for obtaining any necessary licenses, permits or authorizations required for the conduct of its business. Client will grant Consultant such access to property and use of facilities as is reasonably necessary for the performance of the Services. Client warrants that Client's workplace and facilities will comply with all applicable health, safety and environmental regulations, including Client's own company policies and regulations.

#### **ARTICLE 3 – STANDARD OF CARE**

Consultant shall perform this Agreement, including concerning the Services and the delivery of all Work Product, diligently, skillfully, safely, prudently and with a standard of care and quality that is reasonably consistent with professional practices and relevant service standards in xxx for the performance of such services. Consultant represents and warrants to Client that the Work Product, when complete and delivered in its entirety and in final form,

will conform to the requirements of this Agreement and that the Services will meet the professional standards set out herein. Other than the express limited warranty set forth herein, Consultant makes no other guarantees, warranties or representations whatsoever with respect to the Work Product and Services, express or implied, including any warranties that the Work Product will produce a desired purpose, warranties relating to merchantability/satisfactory quality, and any such warranties are expressly excluded. Consultant shall have no obligation to update any information in the Work Product for events or changes in circumstances after the date of submission of the Work Product. With respect to Article 2 and this Article 3, Consultant shall be excused and relieved of any breach of this Agreement or any other failure to perform the Services as required herein to the extent that any fault, mistake, deficiency, error, or lack of accuracy or completeness in any information that Client provides to Consultant pursuant to Article 2 has either caused or contributed to such breach or failure of Consultant.

#### **ARTICLE 4 – FEES, ESTIMATES, FORECASTS AND COSTS**

As full and complete remuneration for Consultant's performance of this Agreement, the Client shall pay the fees and expenses that are more particularly described and set out in Schedule 2 attached hereto. If Consultant or its personnel provides any indication of any other costs associated with Consultant's work, such indication shall not constitute any amendment to Schedule 2 hereof. With respect to any possible or potential future costs associated with this Agreement, Client agrees and acknowledges that Consultant is solely required to use commercially reasonable efforts to prepare realistic estimates as indications of any such possible future costs. The upper limit of compensation to be paid by the Client to Consultant in any connection with this Agreement shall be, in the aggregate as remuneration for all work, services and undertakings, [\$XXXX] ("Maximum Compensation"). All compensation and remuneration that is paid to Consultant in any connection with this Agreement shall not exceed the Maximum Compensation.

#### **ARTICLE 5 – INDEMNITY**

Consultant agrees to defend and indemnify Client from and against any and all damages, liens, fines, penalties, liabilities, losses, costs and expenses (including, without limitation, reasonable attorneys' fees) (collectively, "Losses") to the extent such Losses arise out of or relating to the personal injury of any person caused or contributed to by Consultant's negligence, violation of law, or willful misconduct while in Client's offices or on property which Client owns or which is under Client's control; and (ii) any actual or alleged infringement or violation of any patent, trademark, copyright or other intellectual property or proprietary right relating to the Services and Work Product.

#### **ARTICLE 6 – LIMITATION ON LIABILITY**

Neither party, nor its affiliates, nor their officers, directors, agents, or employees shall be liable to the other party or any third party (and each party hereby waives any claim) for incidental, indirect, special, collateral, consequential, exemplary or punitive damages and from loss of financing, loss of bonding, loss of reputation, and delay damages whether characterized as consequential or direct damages, whether same are based on contract, tort (including negligence), or strict liability, statutory or otherwise (collectively, "Waiver of Consequential and Related Damages"). This Waiver of Consequential and Related Damages shall apply to all claims arising out of or related to this Agreement, the Services or the Work Product. The only exception where this Article 6 shall be of no force and effect; shall be for fraud or willful misconduct, provided that mistakes or unintentional omissions in the Services or Work Product shall not in any event constitute fraud for purposes of this Agreement. Consultant is providing consulting Services, and disclaims any fiduciary relationship, and Client hereby irrevocably confirms that there is no fiduciary relationship

between Client and Consultant. To the extent not waived or released by the foregoing Waiver of Consequential and Related Damages, each party's total liability (per occurrence and in the aggregate for all occurrences) to the other party arising out of or related to this Agreement, including the Work Product or the Services, shall not exceed \$1 million, regardless of whether the loss or damage is a result of breach of contract, warranty, tort (including negligence), strict liability or otherwise ("Liability Cap"). In the event judgments, losses, damages or expenses are caused by the contributive, joint or concurrent negligence of each party, they shall be borne by each party in proportion to its own negligence. The parties agree and confirm that the Liability Cap is fair and reasonable in the commercial and public policy circumstances of this Agreement. Except for disclosure to the Client's advisors on a "need to know" basis, the Services and Work Product shall not be disclosed by the Client to any other person without the prior written consent of Consultant.

#### **ARTICLE 7 – CHANGE IN SERVICES**

All changes to the Services, Work Product, or to this Agreement otherwise, shall be subject to each party executing and delivering a written amendment to this Agreement setting out all such changes, additions or revisions, including all associated terms and conditions related thereto.

#### **ARTICLE 8 – TERMINATION**

The Client may unilaterally terminate the Agreement on twenty (20) days prior written notice to Consultant, subject to cure, at any time if the Client reasonably believes that the Work Product or Services cannot be delivered or completed in accordance with the terms of the Agreement. Upon any termination of this Agreement, Consultant shall be entitled to payment for Services rendered up to the date of termination.

#### **ARTICLE 9 – WORK PRODUCT NOTICE**

The parties agree that all Work Product delivered to the Client pursuant to this Agreement shall prominently bear the following notice, which shall not, in any manner or extent whatsoever, amend, revise or otherwise alter the professional duties and obligations of Consultant to the Client pursuant to this Agreement:

"This document, and the opinions, analysis, evaluations, or recommendations contained (collectively the "Work Product") was prepared by Consultant. ("Consultant") under contract with the Government of Bermuda, and is for the sole use and benefit of the contracting parties and designated beneficiaries, as permitted by the Agreement. There are no other intended third party beneficiaries, and Consultant, (and its affiliates) shall have no liability whatsoever to third parties for any defect, deficiency, error, omission in any statement contained in or in any way related to this document or the services provided. Any forecasts, estimates, projections, opinions or conclusions reached in the Work Product are dependent upon numerous technical and economic conditions over which Consultant has no control, and which are or may not occur. Reliance upon such opinions or conclusions by any third party is at the sole risk of such person relying thereon. The data, information and assumptions used to develop the Work Product were obtained or derived from documents or information furnished by others. Consultant did not independently verify or confirm such information and does not assume responsibility for its accuracy or completeness. Any forecasts, or costs or pricing estimates in the Work Product are considered forward-looking statements and represent Consultant's current opinion and expectation of a likely outcome. Work Product does not anticipate possible changes in governmental policies, governmental regulations, military action, embargoes, or production cutbacks, regional conflicts, or other events or factors that could cause the forecast or estimates to differ materially from what is contained in the forward-looking statements. The information contained in the Work Product

or this document or otherwise provided by Consultant is dated as of the date Consultant completed its work. Consultant has no obligation to update or revise the Work Product or to revise any opinions, forecasts, estimates or assumptions in the Work Product because of events, circumstances or transactions occurring after that date."

#### **ARTICLE 10 – FORCE MAJEURE**

A "Force Majeure" event means any act, event, non-occurrence, omission or accident beyond either party's reasonable control which by its nature could not have been foreseen, or if it could have been foreseen, was unavoidable, and prevents a party from carrying out its obligations under this Agreement and renders performance either impossible or impracticable. A Force Majeure event would include, but is not limited to, war, insurrection, acts of terror, chemical or nuclear contamination, epidemics, riots, civil disturbance or political unrest, labour disruptions, walk-outs, strikes, lockouts, governmental actions or inactions, and acts of God, including but not limited to, earthquake, flood, inclement weather, storms, fire or any other natural physical disasters; the unavailability of any means of public transport; actions, inactions, changes in law, orders, restraints, restrictions, embargo or prohibitions by any governmental authority; or the refusal or delay by any regulatory body in issuing any required licence or permit (each a "Force Majeure" event), or any other event beyond the reasonable control of the affected party, then, that party shall be excused from performing such obligation for the duration of the Force Majeure event (other than the obligation to pay monies due), and that party shall not be liable to the other for any failure to perform such obligations, to the extent that performance is delayed or prevented by Force Majeure. Neither party will be considered to be in breach of this Agreement and shall be exempted from any liability, except the obligation to make payment, to the extent performance is delayed by Force Majeure. Each party will use reasonable efforts to overcome the impact and consequences of any Force Majeure event. Any increase in the price for the Services of Work Product caused by a Force Majeure shall be paid by the Client, subject to the prior notification to, and agreement with, the Client.

#### **ARTICLE 11 – ASSIGNMENT AND SUB-LETTING**

Consultant shall not assign, transfer, or subcontract their interests and obligations in this Agreement without the prior written consent of the Client. This Agreement automatically terminates upon any purported assignment, transfer or novation by Consultant without the prior written approval of the Client.

#### **ARTICLE 12 – INTELLECTUAL PROPERTY**

Consultant has and will retain all right, title and interest, including all intellectual property rights, in and to all analysis, methods, documents, data, software, know-how and other intellectual property which may be used or relied upon to create the Work Product and to perform the Services ("Consultant Residual Rights"). Subject to the foregoing, all Work Product shall become Client's sole and exclusive property immediately upon its creation (including all drafts and preliminary versions, provided that any disclosure to third parties shall be subject to the terms and conditions of this Agreement. Consultant shall not have any lien, encumbrance or proprietary right or interest in, or to, such Work Product other than to any associated Consultant Residual Rights.

#### **ARTICLE 13 – PAYMENT TERMS; COSTS; TAXES**

Without limiting Article 4 hereof, all payments for the Services, Work Product and reimbursable expenses shall be due, and paid in full by Client net 30 days after the invoice date in accordance with the terms of payment and fee Schedule 2 attached hereto. If the Services or Work Product of Consultant are changed as described in Article 7, Consultant's

payments shall be adjusted in conformity with the agreement between the parties. Past due invoices shall bear interest at a rate of 5% per annum. All payments shall be made free and clear of, and without reduction for or on account of, any present or future income taxes, value added taxes (VAT), stamp, consumption, or other taxes, levies, imports, duties, charges, fees, deductions, withholdings, restrictions or conditions of any nature whatsoever now or hereafter imposed, levied, collected, withheld or assessed by any governmental entity or authority. Consultant shall not perform any services for which the remuneration and compensation has not been agreed to in writing between the parties.

#### **ARTICLE 14 – SEVERABILITY**

If any provision of these Terms and Conditions is held to be unenforceable by a court of competent jurisdiction, Client and Consultant agree to negotiate a reasonable adjustment to such provision to restore the provision. In any event, the enforceability of the remaining provisions shall not be affected.

#### **ARTICLE 15 – GOVERNING LAW & JURISDICTION**

This Agreement shall be interpreted and governed in all respects solely by the laws of Bermuda, regardless of its conflicts of laws principles. Disputes that are not resolved through settlement discussions between the parties shall be resolved by recourse to the exclusive jurisdiction of the courts of Bermuda.

#### **ARTICLE 16 – ANTI-BRIBERY AND ANTI-CORRUPTION**

Each party agrees to adhere to and comply with any and all applicable international anti-corruption laws and regulations, including, but not limited to those in Bermuda, the *UK Anti-Bribery Act*, the *Canadian Corruption of Foreign Public Officials Act*, the *Prevention of Corruption Act, 1988*, and any amendments and regulations relating to such laws, in addition to Client's internal corporate ethics policies. No Client or Consultant employee, or any individual or entity acting on behalf of either party, shall offer or give anything of value, or that may be perceived as valuable, to a public official or any other individual for the purpose of influencing any act, securing any improper advantage, or obtaining/retaining business. No Client or Consultant employee may receive or accept anything of value, or that may be perceived as valuable, for the purpose of influencing any act, securing an improper advantage, or obtaining/retaining business. Either party may immediately terminate this Agreement at any time if it has a good faith basis to believe that the other party failed to comply with the provisions of this Article, including any non-compliance prior to the effective date of this Agreement.

#### **ARTICLE 17 – GENERAL**

##### **17.1 NOTICES**

- (a) All notices, communications and statements ("**Notices**") required, permitted or contemplated hereunder or hereby, must be given in writing and will be sufficiently given and received if:
  - (i) personally delivered prior to 4:00 p.m. local time during normal business hours of the addressee at the address set forth below (personally delivered Notices will be deemed received by the addressee when actually delivered), or
  - (ii) sent by facsimile transmission, on the date of dispatch, provided that the sender's facsimile machine produces a printed confirmation of

successful transmission and further provided that if the transmission is not completed prior to 4:00 p.m., local time, at the recipient's address, the Notice will be deemed received at the commencement of normal business hours at the recipient's address on the Business Day next following the completion of such transmission,

(b) The addresses of the parties for receipt of Notices are as set forth below:

(i) Government of Bermuda

Acting Director, Office of Project Management and Procurement

Tel: (441) 294-9116

Email: gdsimmons@gov.bm

Address:

General Post Office Building-2<sup>ND</sup> Floor  
Church Street Hamilton HM12, Bermuda

(ii) Consultant.

(iii) Attention: Telephone:

Email:

Address:

## **17.2 WAIVERS AND CONSENTS IN WRITING**

(a) no waiver of any provision of this Agreement; and,

(b) no consent required pursuant to the terms of this Agreement, is binding or effective unless it is in writing and signed by the party providing such waiver or consent.

## **17.3 SURVIVAL**

Notwithstanding any other provision of this Agreement, the provisions of Article 3, Article 5, Article 6, Article 12, Article 15 and this Section 17.3 will survive the expiry or any earlier termination of this Agreement.

## **17.4 INSURANCE**

During the term of this Agreement, Consultant shall maintain the following insurance:

(a) Commercial General Liability Insurance, with a limit of \$1,000,000 per occurrence and \$2,000,000 annual aggregate;

(b) Business Automobile Liability Insurance, with a combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident;



- (c) Workers' Compensation Insurance in accordance with statutory requirements and Employer's Liability Insurance, with a limit of \$500,000 for each occurrence; and,
- (d) Professional Liability Insurance, with a limit of \$1,000,000 per claim and annual aggregate.

**IN WITNESS WHEREOF** the Parties have executed this Agreement as of the date first above written.

**GOVERNMENT OF BERMUDA**

**CONSULTANT**

By:

By:

Name: xx

Name: \_\_\_\_\_

Title: xx

Title: \_\_\_\_\_

SAMPLE