

Attachment 8: Draft Contract for Consultancy



Schedule for Services Contract

Government: His Majesty the King in right of the Government of the Cook Islands acting by and through the **Cook Islands Investment Corporation.**

Signed: _____

Name: **[Insert]**

Position: **[Insert]**

Date: **[Insert]**

Consultant:

Signed: _____

Name: **[Insert]**

Position: **[Insert]**

Date: **[Insert]**

Section 1 – Key Details

Project: [Insert]

Location: [Insert]

Commencement Date: This Agreement commences on [insert].

Services Completion Date: The Consultant will complete the provision of the Services and Deliverables by [insert].

Section 2- Background

[Insert]

Section 3- Contract Documents

In the event of any inconsistency between the content of this Schedule (being the content preceding the Terms and Conditions) and the Terms and Conditions for the Supply of Consultancy Services part of this Agreement (“**Terms and Conditions**”), the terms of this Schedule will prevail.

Section 4 - Services and Deliverables

Specifically, the responsibilities of the Consultant will be to complete the following activities:

[Insert]

The following table (“**Activities Table**”) sets out a description of the specific activities to be completed by the Consultant in respect of these stages and steps, and the timeframes for undertaking and completing them:

No.	Title	Activity	Due date
1	[Insert]	<ul style="list-style-type: none">• [Insert]• [Insert]	[Insert]
2	[Insert]	<ul style="list-style-type: none">• [Insert]• [Insert]	[Insert]

Section 5 – Delivery Timeframes

The Consultant will complete the activities described above within [insert] days/months immediately following the Commencement Date. This timeframe may be amended, following consultation between the Consultant and the Government in accordance with clause 24 of the Terms and Conditions.

Section 6 - Fees and Timing of Payments

Contract Price: The total price payable by the Government to the Consultant in consideration for the Services, the Deliverables and the performance of the Consultant's obligations under this Agreement is NZD \$[insert] (Contract Price).

The Contract Price is payable in instalments upon the achievement of the corresponding milestone as set out in the table below.

Instalment #	Milestone	Percentage	Contract price NZD
1	[insert]	[insert]	[insert]
2	[insert]	[insert]	[insert]
3	[insert]	[insert]	[insert]
	Total	100%	\$(insert)

Upon the achievement of any milestone, the Consultant will be entitled to invoice the Government for the instalment of the price attributable to that milestone. The Consultant will clearly stipulate milestones achieved on invoices. The Government will pay valid and validly rendered invoices in accordance with, and subject to, the provisions of clause 7 of the Terms and Conditions.

Travel costs: Travel related costs and expenses are not included in the Contract Price. If travel is required, the Government will either co-ordinate and pay for the Consultant's travel related costs and expenses, or reimburse the Consultant for all such costs and expenses, provided that, in the case of reimbursement:

- the Consultant complies with the Cook Islands Government Travel Policy;
- such costs and expenses have been approved in writing by the Government in advance; and
- the Consultant provides to the Government appropriate receipts evidencing that such costs and expenses have been incurred.

Cook Island Taxes etc.: The Consultant is responsible for complying with any and all tax obligations and requirements (including to Cook Islands Revenue Management) in respect of all services and deliverables provided by the Consultant in the Cook Islands under or in connection with this Agreement.

The Consultant is not an employee of the Government of the Cook Islands.

Section 7 – General

Reporting: The Consultant will report to [insert].

Compliance with policies etc: The Consultant will abide by the Cook Islands Government Public Sector Code of Conduct and, in particular, will carry out their duties in a transparent, participatory and culturally appropriate way. In addition, they must also operate in accordance with all Cook Islands law, regulations and procedures, particularly:

- the Cook Islands Government Financial Policy and Procedures Manual
- MFEM’s Environment and Social Safeguards Policy

The Consultant will also comply with the relevant GCF requirements set out in the:

- GCF’s Environmental and Social Safeguards
- The Anti-Fraud and Anti-Corruption Framework of the United Nations Secretariat
- GCF Policy on Prohibited Practices

Insurance: The Consultant is [not required to hold any insurance.] [required to hold]:

- Public Liability Insurance of a minimum of NZD \$[insert] any one occurrence and in the aggregate.
- Professional Indemnity Insurance of a minimum of NZD \$[insert] for any one claim and in the aggregate.

Note for drafter: Government is required to ensure consultant’s potential liability is, as far as practicable, covered by insurance. Select whether or not insurance is required. If not practicable, delete bottom two PLI and PII points. If required, insert amount at bottom two PLI and PII points. Delete this note prior to signing.

Contact Person and Addresses for Notices:

Government Contact:

[Name] [Position]

[Division]

[Ministry]

PO Box [insert], Rarotonga

Ph: [insert]

Email: [insert]

Consultant Contact:

[First name] [Surname]

Phone: [insert]

Email: [insert]

Terms and Conditions for the Supply of Consultancy Services

(The meaning of the defined terms used in this Agreement are set out in clause 33 below)

1. **Commencement:** This Agreement will commence on the Commencement Date.
2. **Supply of Services:**
 - (a) The Consultant will provide the Services and the Deliverables to the Government:
 - (i) in a prompt and timely manner and will ensure that they are provided in accordance with the delivery timeframes specified in this Agreement;
 - (ii) otherwise in accordance with, and subject to, the terms and conditions of this Agreement.
 - (b) The Consultant will take full responsibility for the supply, coordination and delivery of the Services and the Deliverables and will ensure that it has the tools, equipment, materials and other resources necessary to provide the Services in accordance with this Agreement.
 - (c) Time is deemed to be of the essence for the provision of the Services.
3. **Performance Requirements:** The Consultant represents and undertakes that it will:
 - (a) ensure that the Services and the Deliverables:
 - (i) comply with the specifications and requirements specified in this Agreement;
 - (ii) are fit for the purposes described in, or otherwise reasonably contemplated by, this Agreement; and
 - (iii) to the extent that they are required to be provided in writing, be in English, clear, unambiguous, accurate and complete, including so as to be reasonably understood by any reasonably competent and appropriately skilled person(s) receiving or reading them.
 - (b) ensure that the Services are provided with the highest degree, and to the highest standard, of skill, care, diligence, timeliness and quality, and will employ the methods and procedures, which would reasonably and ordinarily be expected from a reputable, skilled and experienced person engaged in the same type of activity, under the same or similar circumstances;
 - (c) comply with all relevant (i) Cook Island standards and, if not in conflict, international standards (both general and industry-specific); (ii) statutes; (iii) regulations; (iv) by-laws; (v) ordinances; (vi) other laws; and (vii) Cook Islands Government policies, applicable in respect of the provision of the Services;
 - (d) in providing the Services and Deliverables, comply with any reasonable directions and requirements notified by the Government from time to time, to the extent that these directions and requirements are not inconsistent with this Agreement;
 - (e) make itself aware of, and comply with, any special Government requirements when supplying Services to or in respect of Government property;
 - (f) ensure that any invoices, reports or other documentation it is required to provide to the Government under this Agreement are complete and accurate; and

- (g) not engage in any Serious Misconduct or corrupt, fraudulent, collusive, coercive, unethical or obstructive practices.

4. Completion of Milestones and Deliverables:

- (a) A Milestone will not be deemed to be achieved unless and until the Government has confirmed in writing signed by a duly authorised representative of the Government that the milestone has been achieved.
- (b) Each Deliverable will be subject to acceptance by the Government and will not be deemed to be supplied to the Government unless and until such acceptance has been notified to the Consultant in writing signed by a duly authorised representative of the Government.
- (c) If the relevant requirements of this Agreement have been met in respect of any Milestone or Deliverable, the Government will not unreasonably withhold or delay confirmation of the achievement of that Milestone, or acceptance of that Deliverable, (as applicable) in accordance with this clause 4.
- (d) The Government's confirmation that any Milestone has been achieved, and the Government's acceptance of any Deliverable, does not release the Consultant from its obligations under this Agreement (including by way of any representation or undertaking) in respect of any Milestone or Deliverable, including the Consultant's obligations to ensure that the Services and Deliverables comply with the requirements of this Agreement.

5. Delays

- (a) Without limiting any other rights or remedies of the Government, if there is a delay, or if the Consultant becomes aware that there is likely to be a delay, in the provision of the Services, the Consultant will:
 - (i) immediately notify the Government in writing of the delay; and
 - (ii) take all reasonable steps immediately available to it to avoid and minimise the effects of the delay.
- (b) The Government is entitled to cancel this Agreement with immediate effect by written notice to the Consultant if Services are not provided in accordance with the performance and delivery timeframes specified in this Agreement, except to the extent that the relevant delay is due to matters for which the Consultant is not responsible pursuant to clauses 5(c) and 17.
- (c) The Consultant will not be responsible for any delay in the performance of provision of the Services to the extent that this is solely caused by a delay in the Government performing its obligations under this Agreement, provided that the Consultant complies with its obligations under clause 5(a).

6. Price:

- (a) Except as otherwise expressly specified and provided for in the Schedule, the Contract Price is the total amount payable by the Government for the provision of the Services and the Deliverables, and the performance of the Consultant's other obligations under this Agreement.

- (b) The Contract Price is stated exclusive of VAT.
- (c) The Consultant is not entitled to claim expenses, surcharges or margins or disbursements except if otherwise agreed in advance and in writing signed by a duly authorised representative of the Government.

7. Payment:

- (a) The Government will not be required to pay any amount which becomes payable by the Government to the Consultant under this Agreement unless and until the Government's Contact Person receives, in accordance with this clause 7, a valid, and validly rendered, VAT tax invoice for that amount. To be valid each such invoice must:
 - (i) state the invoice number, date of provision of the relevant Services and/or Deliverables and a full description of the Services and/or Deliverables provided (including, where applicable, the relevant milestone to which the invoice relates);
 - (ii) comply with any applicable tax (including VAT) requirements; and
 - (iii) be addressed and delivered to the Government Contact Person's address specified in the Schedule.
- (b) Subject to clause 7(a), the Government will pay any amount which becomes payable by the Government at the time specified in the Schedule for payment of that amount, or where no such time is specified in the Schedule, on the first Wednesday on or after the 20th of the month following the date on which the Government receives the Consultant's invoice or the completion of the delivery of the relevant Services, whichever is the later.
- (c) Payment will be effected by Electronic Funds Transfer (EFT) (direct credit).

- 8. Subcontracting:** The Consultant will not enter into any Subcontract without the Government's prior consent. Where the Consultant enters into a Subcontract, the Consultant will be responsible and liable for all acts and omissions of any Subcontractor as if such acts and omissions were the acts and omissions of the Consultant. The entry by the Consultant into a Subcontract will not relieve the Consultant from liability for the performance of any of its obligations under this Agreement.

9. Intellectual Property:

- (a) All Intellectual Property which is not developed, commissioned or created under or in connection with this Agreement ("**Existing IP**"), but which is used or supplied for the purposes of this Agreement, will remain vested in its current owner.
- (b) All new Intellectual Property which is developed, commissioned or created under or in connection with this Agreement, including:
 - (i) any Intellectual Property (excluding Existing IP) in the Deliverables; and
 - (ii) any Intellectual Property in modifications, adaptations and additions to Existing IP, ("**New IP**") will be owned by, and will vest in, the Government immediately upon creation.

- (c) In all cases where the Government does not own or is not otherwise licensed to use any Intellectual Property supplied, or otherwise made available, to the Government under this Agreement (including in Deliverables), the Consultant:
 - (i) grants to the Government (and all other parts of the Crown) a royalty-free, non-exclusive, perpetual and irrevocable licence; or
 - (ii) in the case of any Intellectual Property owned by third parties, will procure that the Government (and all other parts of the Crown) is granted a royalty-free, non-exclusive, perpetual and irrevocable licence,to use, copy and otherwise Exploit any such Intellectual Property for its business and operational purposes. Each such licence extends to the agents, employees, consultants and suppliers of the Government, but only for the purposes of enabling them to provide services, goods or other deliverables to or for the Government.
- (d) The Consultant warrants and represents to the Government that the New IP and any Pre-existing IP supplied, or otherwise made available, by the Consultant to the Government under or in connection with this Agreement will not infringe the Intellectual Property rights of any third party.

10. **Warranties and Representations:** The Consultant represents, warrants and undertakes that:

- (a) it has full power, capacity and authority to execute, deliver and perform its obligations under this Agreement;
- (b) it has and will continue to maintain at its cost, all necessary consents, permissions, permits licences and rights to enter into and perform its obligations under this Agreement;
- (c) there are no existing agreements, undertakings or arrangements which prevent it from entering into this Agreement or which would impede the performance of its obligations under this Agreement;
- (d) it has not offered any inducement in connection with the entering into or negotiation of this Agreement;
- (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 this Agreement; and
- (f) all information provided, and statements, representations and commitments made, by the Consultant, under or in relation to this Agreement (including in the Consultant's proposal given in response to the Request for Quotation relating to the Services), are in all material respects true, accurate and not misleading and, where applicable, will be met and/or complied with.

11. **Confidentiality:** Each party will keep confidential the terms of this Agreement and will keep confidential, and will not at any time, directly or indirectly, disclose or permit to be disclosed, use

for itself or use to the detriment of the other party, the other party's Confidential Information, except:

- (a) as is expressly provided for in this Agreement;
- (b) as required by law;
- (c) in respect of information that already is or becomes public knowledge otherwise than as a result of a breach of this Agreement; or
- (d) as authorised in writing by the other party.

12. **Indemnity:** The Consultant indemnifies and holds harmless the Government in respect of all costs (including legal costs on a solicitor and client basis), claims, liabilities, losses, damages and expenses suffered or incurred by the Government as a direct or indirect consequence of:

- (a) any unlawful, negligent, tortious, criminal, reckless or dishonest errors, acts or omission of the Consultant in connection with the performance of this Agreement; and
- (b) any claim or proceeding brought against the Government to the extent the claim or proceeding is based on an allegation that the Government's possession or use of any Intellectual Property supplied or licensed by the Consultant under this Agreement infringes any third party's Intellectual Property, except to the extent any such Claim arises from information or Intellectual Property supplied by the Government for incorporation into the Services and/or Deliverables.

13. **Liability:**

Note for drafter:

Clause (a): Change "Subject to clause 13(b) and (c)"- if liability cap is removed.

Clause (b) (Liability cap clause):

- *This clause can be deleted depending on whether the contract will contain a liability cap or not.*
- *Liability cap in the range of 1-5 times the amount (select relevant) decided on case-by-case basis.*
- *The cap agreed upon, should take into account, amongst other things:*
 - o *Level and type of risk involved and likelihood of it eventuating;*
 - o *Financial consequences of a risk eventuating;*
 - o *Potential impact of agreeing to the liability cap on CIG's own insurance arrangements;*
 - o *Respective bargaining strength of the parties;*
 - o *Contract value*

Clause (d): Delete "and 13(b)" if liability cap is removed.

Delete this note prior to signing.

- (a) Subject to clause 13(c) and (d), neither party will be liable to the other party for any loss of profit, revenue, business and/or goodwill, or for any punitive, indirect or consequential loss or damage arising under or in connection with this Agreement, regardless of whether that party has been advised of the possibility of such loss or damage.
- (b) Subject to clause 13(d) and to the fullest extent permitted by law, each party's total aggregate liability to the other party under or in connection with this Agreement will not exceed an amount equal to [one/two/three/four/five] [(1/2/3/4/5)] times the Contract Price (as such price may be increased or otherwise amended from time to time, including in accordance with the provisions of the Agreement).
- (c) Clause 13(a) does not limit or exclude the Consultant's liability for:
 - (i) any additional operational and/or administrative costs and expenses arising from the act, omission, event or default giving rise to the relevant liability ("**Liability Event**");
 - (ii) any wasted expenditure or charges rendered unnecessary or incurred by the Government arising from a Liability Event;
 - (iii) the additional cost of procuring commensurate replacement services; and
 - (iv) any compensation (including by way of damages) payable by the Government to a third party.
- (d) Clauses 13(a) and 13(b) does not limit or exclude the Consultant's liability in respect of:
 - (i) a breach of clause 11;
 - (ii) claims relating to death, personal injury or property damage (including under the indemnity in clause 12(a); and
 - (v) the indemnity under clause 12(b).

14. Insurance:

- (a) The Consultant will take out and maintain at its own cost, at all times during the term of this Agreement, such insurance as is specified in the Schedule. All such insurance will be on such terms and with such insurers as the Government may reasonably require.
- (b) The Consultant will, if requested by the Government, provide the Government with written evidence that all insurances are in force and will produce, whenever reasonably required by the Government, the relevant policies and evidence of payment of the current premiums. If the Consultant fails to provide such evidence, the Government 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 amounts payable by Government to the Consultant under this Agreement.

- 15. Termination for Convenience:** The Government may terminate this Agreement with immediate effect by written notice to the Consultant. In the event of such termination, the Consultant will be entitled to invoice the Government (to the extent it has not already done so), and the Government

will pay (to the extent the Government has not already done so as at the date of such termination), for the Services and/or Deliverables that have been provided, and which it is reasonable for the Consultant to have provided, in full or in part, as at the date of such termination (and, if and where applicable, on a pro rata basis) (“**Unpaid Work Done**”). The Consultant will provide to the Government, within the timeframes reasonably required by the Government, evidence that any amount which the Consultant invoices for Unpaid Work Done is for actual Services and/or Deliverables which the Consultant has provided, and which it is reasonable for the Consultant to have so provided, prior to such termination.

16. **Termination for Cause:** Either party may terminate this Agreement at any time and with immediate effect by written notice to the other party (“**Defaulting Party**”) if the Defaulting Party has committed a material breach of this Agreement, provided that, where that breach is reasonable capable of remedy, the Defaulting Party has also failed to remedy that breach within 10 business days following receipt from the other party of an earlier written notice requiring the Defaulting Party to remedy the breach and stipulating that the other party intends to terminate this Agreement if the Defaulting Party fails to do so. Any Serious Misconduct by the Consultant will be deemed to be a material breach of this Agreement which is incapable of remedy for the purposes of this Agreement.

17. **Force Majeure**

(a) Subject to clause 17(b), neither party (“**Affected Party**”) will be liable for any delay or default in the performance of its obligations under this Agreement to the extent such delay or default is due to any event or circumstance beyond the Affected Party’s reasonable control (a “**Force Majeure**”). A Force Majeure includes natural disasters, epidemics or pandemics, but does not include:

- (i) any delay, default or event to the extent that it could have been avoided by the Affected Party taking reasonable steps or exercising reasonable care; and
- (ii) any delay, default or event arising from any financial difficulty associated with the Affected Party.

(b) If a Force Majeure occurs, the Affected Party must:

- (i) as soon as reasonably practicable after becoming aware of the occurrence or likelihood of the Force Majeure, notify the other party in writing of the Force Majeure; and
- (ii) use its best endeavours to overcome, and to mitigate the effects of, the Force Majeure and to complete its obligations under this Agreement.

18. **Notices:**

(a) Any written notices required to be given under this Agreement and other correspondence relating to this Agreement must be addressed to the relevant party’s Contact Person named in the Schedule.

(b) All such notices and correspondence will be:

- (i) delivered by hand or by tracked courier to the intended recipient's physical address; or

- (ii) sent by email to the intended recipient's email address.
 - (c) A notice given in accordance with this clause 18 will be deemed to be received:
 - (i) if delivered by hand or tracked courier, upon delivery; or
 - (ii) if sent by email, one hour after the email is sent unless a return email is received by the sender within that one hour period stating that the addressee's email address is wrong or that the message cannot be delivered,
 - 2. provided that the Government will be deemed to have received delivery of a notice only upon the Government also acknowledging in writing receipt of the notice.
19. **GCF Requirements:** *[Note to drafter – These are GCF specific requirements. Remove this clause if not relevant. Delete this note before signing]* The parties acknowledge that the Services and Deliverables are being funded, in full or in part, by the Green Climate Fund (“GCF”) and that the GCF requires that certain provisions be included in agreements funded by the GCF. Accordingly, the Consultant agrees as follows:
- (a) The Consultant will take all necessary measures to prevent and address instances of Sexual Exploitation, Sexual Abuse and Sexual Harassment (as those terms are defined in the GCF’s *Policy on the Prevention and Protection from Sexual Exploitation, Sexual Abuse, and Sexual Harassment*, as adopted by the Board of the GCF and contained in annex X to decision B.23/16, paragraph (a)).
 - 3. The Consultant will immediately notify the Government in the event of any instances of Sexual Exploitation, Sexual Abuse and Sexual Harassment.
 - (b) The Consultant will ensure all necessary measures are taken to prevent and address Fraud and Corruption (as those terms are defined in the GCF’s *Policy on Prohibited Practices*, as adopted by the Board of the GCF and contained in annex XIV to decision B.22/19, paragraph (a)). The Consultant will notify the Government promptly upon becoming aware of:
 - (i) any allegations of Fraud or Corruption that may have been committed using GFC proceeds; or
 - (ii) any credible risks of money laundering and/or financing of terrorism (“ML/FT”) in relation to the activities undertaken under or in connection with this Agreement,
 and, in the case of ML/FT, will consult with the Government on the necessary steps to address such identified risks.
 - (c) The Government (and/or its appointed representatives, which may include UNEP or Green Climate Fund officials) may carry out reviews and/or initiate investigations in respect of wrongdoing by the Consultant’s employees, agents, contractors, subcontractors, service providers and other representatives (“Personnel”). The Consultant will co-operate with, and will use all reasonable endeavours to procure that its Personnel co-operate with, any such review or investigation. When exercising its right of review and investigation under this clause 19(c), the Government and its representatives will comply with the Consultant’s reasonable security, confidentiality and health and safety requirements.

- (d) The Consultant will screen and monitor potential environmental and social risks and impacts arising from the implementation of this Agreement and report to the Government on the same, including measures to mitigate them.
 - (e) The Consultant will continuously assess and monitor activities to ensure continued compliance with the GCF's *Gender Action Plan*, as adopted by decision B.24/12 of the Board of the GCF, to the extent such plan is applicable to the Consultant and/or the implementation of this Agreement.
 - (f) The Consultant will ensure proper acknowledgement is given to the GCF for any publications prepared or produced pursuant to this Agreement by giving appropriate credit to the GCF as per the GCF branding guidelines.
20. **Conflict:** The Consultant confirms it has no knowledge of any conflict of interest in providing the Services and Deliverables. If any conflict of interest arises or has the potential to arise during the provision of the Services and Deliverables, the Consultant will immediately inform the Government in writing and the Government will decide on the appropriate steps to be followed in such event, which may include the right of the Government to terminate this Agreement with immediate effect.
 21. **Public statements:** The Consultant must not make any public statements about the Services or this Agreement without the Government's written approval.
 22. **Assignment:** The Consultant may not transfer or assign any of its rights or obligations under this Agreement to any other person without the Government's prior written consent (which consent may with given or withheld at the Government's absolute discretion).
 23. **Entire agreement:** This Agreement records the entire understanding and agreement of the parties relating to the matters dealt with in this Agreement. This Agreement supersedes all previous arrangements, understandings or representations (whether written, oral or both) relating to these matters.
 24. **Amendments:** No amendment or other variation to this Agreement will be effective unless it is recorded in writing, signed by a duly authorised representative of each party.
 25. **No waiver:** Any waiver by a party of any of its rights or remedies under this Agreement will be effective only if it is recorded in writing and signed by a duly authorised senior representative of each party. If the waiver relates to a breach of any provision of this Agreement, this will not (unless stated otherwise) operate as a waiver of any other breach of that provision. No waiver of any breach, or failure to enforce any provision, of this Agreement at any time by either party will in any way affect, limit or waive that party's right to subsequently require strict compliance with this Agreement.
 26. **Partial invalidity:** If any provision of this Agreement is or becomes invalid or unenforceable, that provision will be deemed deleted from this Agreement. The invalidity or unenforceability of that provision will not affect the other provisions of this Agreement, all of which will remain in full force

and effect to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provision.

27. **Remedies cumulative:** The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided elsewhere in this Agreement or by law.
28. **Further assurances:** Each party will make all applications, do all things and execute all documents reasonably required in order to give effect to the provisions and intent of this Agreement.
29. **Counterparts:** This Agreement may be signed in any number of counterpart copies which, read together, will constitute one and the same document. The transmission by electronic means by a party to the other party of a signed counterpart copy of this Agreement will be deemed proof of signature of the original and the copy so transmitted will be deemed an original.
30. **Survival:** Any termination or expiry of this Agreement (whether in whole or in part) will be without prejudice to the rights and remedies of either party in respect of any breach of this Agreement by the other party prior to such termination or expiry. The provisions of clauses 2, 7, 9, 11, 12, 13, 18, 22, 25, 26, 27, 30, 31 and 32, together with those other provisions of this Agreement which are incidental to, and required in order to give effect to, those clauses, or which by their nature are intended to survive termination or expiry of this Agreement (in whole or in part), will remain in full force and effect following the termination or expiry of this Agreement (in whole or in part).
31. **Law and Jurisdiction:** This Agreement is governed by the laws of the Cook Islands. Subject to clause 32, the parties submit to the exclusive jurisdiction of the courts of the Cook Islands in respect of all matters relating to this Agreement.
32. **Dispute resolution:** In the event of a dispute arising between the parties in respect of any matter relating to this Agreement, the authorised representatives of the parties must resolve the dispute in the first instance by negotiation. If the dispute cannot be resolved by negotiation within 5 business days of the notice of dispute having been served by one party on the other, the parties may seek resolution under the Arbitration Act 2014. The place of arbitration will be Rarotonga, the Cook Islands and there will be one arbitrator. Either or both parties (and/or any of their respective representatives) may participate or appear in any arbitration in relation to any such dispute or difference by way of audio-visual link (or similar technology which can adequately facilitate such remote participation or appearance).
33. **Definitions:** In this Agreement, unless the context requires otherwise:
 - “**Agreement**” means this agreement, including the Schedule and any attachments or appendices to the Schedule;
 - “**Commencement Date**” means the commencement date specified as such in the Schedule;
 - “**Confidential Information**” of a party is information which:
 - (a) relates to that party’s business, operations, facilities or programmes;
 - (b) is disclosed by that party on the express basis that such information is confidential; or

(c) might reasonably be expected by either party to be confidential in nature, and which is disclosed by that party to the other party;

“Contract Price” means the price payable by the Government to the Consultant in consideration for the Services, the Deliverables and the performance of the Consultant’s obligations under this Agreement, as specified in the Schedule;

“Crown” means the His Majesty the King in right of the Government of the Cook Islands, and includes every department, instrument and agent of the Government, and any body corporate or organisation that is wholly owned or controlled by or has significant financial inter-dependence with any such department, instrument, agent, body corporate or organisation, and any local authority;

“Deliverables” means the outputs and deliverables described and/or specified in the Schedule and all other outputs, documents, models, data (including databases and other compilations), materials or works provided, or to be provided to, the Government as part of the provision of the Services;

“Exploit” means any activity which would, in the absence of a licence, constitute an infringement of the relevant Intellectual Property, including the use, modification, development and enhancement of any software and the copying, modification or adaption of, or the making of derivative works from, any copyright works, and Exploitation has a corresponding meaning;

“Intellectual Property” means trade marks, rights in domain names, copyright, patents, registered designs, circuit layouts, rights in computer software, databases and lists, rights in inventions, confidential information, know-how and trade secrets, operating manuals, quality manuals and all other intellectual property, in each case whether registered or unregistered (including applications for the grant of any of the foregoing) and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world, including the goodwill associated with the foregoing and all rights of action, powers and benefits in respect of the same;

“Milestone” means a milestone identified or specified as a milestone in the Schedule;

“Serious Misconduct” includes bringing the Government into disrepute, engaging in corrupt or fraudulent practices in competing for or executing this Agreement (or any other agreement or arrangement involving the Government), theft of property, offensive behaviour towards Government personnel, members of the public or contractors;

“Services” means the services to be provided by the Consultant under this Agreement, including the completion of activities and the provision of the Deliverables described and/or specified in the Schedule, together with any services and activities which are incidental to, and reasonably required for, the proper performance and provision of those services; and

“Subcontract” means any agreement or arrangement with any third party pursuant to which that third party agrees to provide, or has management, direction or control over, all or any part of the Services and/or the provision of the Deliverables, and “Subcontractor” has a corresponding meaning.

34. **Interpretation:** In this Agreement, unless the context requires otherwise: (a) references to clauses are to the clauses in the Terms and Conditions part of this Agreement, and references to the Schedule include a reference to the Attachments to the Schedule; (b) the words “includes”, “including” and “in particular” (and similar words) do not limit the generality of any words which precede them; (c) the singular includes the plural and vice versa; (d) references to a “party” or the “parties” is to a party or to the parties to this Agreement; (e) a “business day” means any day of the week excluding Saturdays, Sundays and days which are observed as public holidays in the Cook Islands, as specified in the Public Holidays Act 1999; and (f) headings used in this Agreement are for reference purposes only and will not affect the interpretation of this Agreement.