

**Part 7 Example Contract**

**CONTRACT FOR THE PURCHASE OF SERVICES**

**BETWEEN:**

**SAINT HELENA GOVERNMENT (“SHG”)**

**and**

**(“THE SUPPLIER”)**

**DATED:**

## **TERMS AND CONDITIONS OF CONTRACT FOR THE PURCHASE FOR SERVICES**

### **1. DEFINITIONS**

In these Terms and Conditions:

- 1.1 "SHG" means the Saint Helena Government.
- 1.2 "The Contract" means the agreement concluded between SHG and the Supplier for the provision of Services including all these conditions, specifications, plans, drawings and other documents which are relevant to the Contract. In the case of any discrepancy among these documents these conditions shall prevail. These Conditions shall govern the Contract. No other conditions, or variations to the contract, whether negotiated prior to or after the date of the Contract shall have any effect unless expressly agreed in writing by SHG and the Supplier. Failure by SHG to reject any other term or condition or variation to these Conditions shall not imply acceptance of such conditions.
- 1.3 "The Supplier" means the person, persons, company or entity identified in the schedule to these terms and conditions.
- 1.4 "The Contract Price" is set out in the schedule to these terms and conditions and means the price payable to the Supplier by SHG under the Contract for the full and proper performance by the Supplier of his part of the Contract as determined under these terms and conditions.
- 1.5 "Issued Property" means all government property issued in connection with the Contract.
- 1.6 "Loss" includes destruction.
- 1.7 "Loss of Property" includes damage to property, loss of profits and loss of use.
- 1.8 "Month" means calendar month unless otherwise defined.
- 1.9 "Personal Data" has the same meaning as in section 1(3) of the Data protection Act 1984
- 1.10 "Personal Injury" includes sickness and death.
- 1.11 "Schedule" means the schedule to the Contract
- 1.12 "The Services" means all Services which the Supplier is required to carry out under the Contract.
- 1.13 "Sub-Contractor" means any person, firm or company under the Contract to the Supplier to perform work or provide professional services and/or supply goods and includes any other person or persons taken as a partner or director by such person, firm or company during the currency of the Contract and the surviving member or members of any such firm or company.
- 1.14 The headings of these Conditions shall not affect the interpretation thereof.
- 1.15 Any notice or other communication whatsoever which SHG is required or authorised to give or make to the Supplier shall, without prejudice to any other method of giving or making it, be sufficiently given or made if it is sent by post in a prepaid letter addressed to the Supplier by name at the last known place of abode or business of the Supplier and if the letter is not returned through the post undelivered that notice or communication shall be deemed for the purposes of the Contract to have been given or made at the time at which the letter would in the ordinary course of post be delivered.
- 1.17 The masculine includes the feminine.
- 1.18 The singular includes the plural and vice versa.
- 1.19 Reference to any enactment, order, regulation or other similar instrument, shall be construed as a reference to the enactment, order, regulation or instrument as amended by any subsequent enactment, order, regulation or instrument.

### **2. LAW**

- 2.1 The Contract shall be considered as a contract made in St Helena and subject to the law of St Helena.

### **3. SERVICE**

3.1 Subject to the provisions of the Contract the Supplier agrees to provide the Services set out in the schedule to this Contract.

#### **4. DURATION OF CONTRACT**

4.1 The services shall be provided during the period set out in the schedule to this Contract subject to SHG's rights of earlier termination under these Terms and Conditions.

#### **5. QUALITY AND PERFORMANCE**

5.1 The Supplier shall, in providing any Services exercise that degree of speed, care, skill, diligence and foresight which would reasonably and ordinarily be expected from a skilled and experienced service provider engaged in the provision of services similar to the Services under the same or similar circumstances as those applicable to these Terms and Conditions and which are in accordance with best industry practice and with any codes of practice published by relevant trade associations. Any Services provided by the Supplier shall be done so in a professional, proper, expeditious and courteous manner.

5.2 The Supplier shall provide adequate capacity to operate the service. This capacity includes equipment, materials and staff. If for any reason the level of service is greater than originally agreed then the Supplier will be responsible for securing the necessary additional capacity, with the additional financial reward.

5.3 The Supplier shall be free to employ any staff for the purpose of providing the service subject to the following conditions:

- a. That a full Police vetting certificate is obtained and;
- b. That the SHG approves the staff to enter its premises.

5.4 It is the Supplier's responsibility to ascertain as far as reasonably possible that persons employed by him meet with the requirements of this agreement.

5.5 At the completion of this contract a new contract may be entered into by the SHG, which may or may not be with the original Supplier. The Supplier is therefore required to manage the service on the basis that it may be transferred to a successor Supplier who should be able to continue the service without any disruption or interruption. The Supplier is therefore prohibited from any action that might prevent or frustrate such a transfer to a successor Supplier.

#### **6. VARIATION OF REQUIREMENT**

6.1 SHG reserves the right to vary the requirements of the Contract, as detailed in the schedule, should this at any time become necessary. In the event of any variation of the contractual requirement, payment under the Contract shall be subject to fair and reasonable adjustment to be agreed between SHG and the Supplier.

#### **7. SUPPLIER'S ORGANISATION**

7.1 All personnel deployed by the Supplier to deliver the Services relating to the Contract must have appropriate qualifications and/or competence and in all respects be acceptable to the Supplier. Where so required, full particulars of all personnel to be so employed shall be forwarded in advance to SHG for confirmation of acceptability.

7.2 The Supplier shall take all reasonable steps to avoid changes of personnel assigned to and accepted for the work under the Contract except whenever changes are unavoidable or of a temporary nature caused by sickness etc. The Supplier shall give at least one month's notice to the SHG of proposals to change key personnel and Condition 8.1 and 8.2 shall apply to the replacement personnel.

7.3 The Supplier shall take the steps reasonably required by the SHG to prevent unauthorised persons being admitted to SHG's premises. If SHG gives the Supplier notice that any person is not to be admitted to or is to be removed from its premises or is not to become involved in (or removed from) the Services, the Supplier shall take all reasonable steps to comply with such notice.

7.4 The decision of the SHG as to whether any person is to be admitted to or is to be removed from involvement in the Services or as to the designation or approval of key personnel and as to whether the Supplier has furnished the information or taken the steps required of him by this Condition shall be final and conclusive.

7.5 The Supplier shall bear the cost of any notice, instruction or decision of the SHG under this Condition.

#### **8. PRICE**

8.1 The Contract Price payable to the Supplier for the delivery of Services in accordance with this Contract is set out in the Schedule.

8.2 This agreement will be entered into on the basis of a fixed price; however the SHG will bear the full additional costs of any costs arising as a direct result of changes in legislation affecting the operation of this agreement.

## **9. PAYMENT**

9.1 Unless otherwise stated in this Contract payments shall be claimed on completion of the work or once a month in arrears. Itemised claims, accompanied by all necessary documentation, shall be submitted in the form of an invoice to SHG for scrutiny and approval. Payment by BACS (Bank Automated Clearing System) if SHG so chooses shall be made within 30 days of receipt and agreement of invoices for work completed to the satisfaction of the SHG. Payments may be withheld or reduced by SHG in the event of unsatisfactory performance without prejudice to the other rights of the SHG under the Contract.

## **10. RECOVERY OF SUMS DUE**

10.1 Whenever under the Contract any sums of money shall be recoverable from or payable by the Supplier, the same may be deducted from any sum then due, or which at any time thereafter may become due, to the Supplier under the Contract or under any other Contract with SHG.

## **11. SUB-CONTRACTORS**

11.1 The Supplier may sub contract any part of the service to any other Supplier subject to the approval in writing of the SHG, which shall not be unreasonably withheld, and subject to the original Supplier maintaining full contractual responsibility and liability for whatever service has been contracted out. For clarification this means that any sub-Supplier must meet all the conditions set out in this contract e.g., with regard to staffing, equipment and health and safety practises etc and the Supplier remains responsible for ensuring that the sub-Supplier does meet them. No sub-Supplier in turn will be allowed to further sub-contract services.

11.1 Where the Supplier enters a sub-contract with a contractor or another supplier for the purpose of performing the contract, he shall cause a term to be included in such sub-contract which requires payment to be made to the contract or supplier within 30 days from receipt of the valid invoice as defined by the sub-contract requirements.

## **12. INDEMNITIES & INSURANCE**

12.1 The Supplier shall effect and maintain insurance necessary to cover jointly the SHG and the Supplier for the risks faced under these Conditions (including, but not limited to, employer's and public liability and covering fire damage, injury to persons and loss of or damage to property) which insurance may be limited in respect of any one claim (but shall not be limited in any other respect), provided that any such limit made under this Condition shall in any event be at least £1,000,000 or such other sum as the Parties may agree in writing.

12.2 In respect of all third party public and products liability insurance, the Supplier shall procure that all policies will include an indemnity to principals clause under which SHG shall be indemnified in respect of claims made against SHG arising from death or bodily injury or third party property damage and for which the insured is legally liable in the provision of the Services or in connection with the Contract.

12.3 The Supplier shall, whenever required by the SHG, produce to the SHG certificates signed on behalf of the Supplier's insurers stating that insurance complying with the requirements set out in Condition 14.1 is in force and the period for which it has been taken out.

12.4 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Contract.

12.5 The Supplier will indemnify and keep indemnified SHG against any damage to its property (including any materials, tools or patterns sent to the Supplier for any purpose) and against any claims for loss, expense, costs (including legal expenses) or injury to or of any person or to the property of any person which results during or after proper use, directly or indirectly, from defective materials, Goods, Services, workmanship or design used or supplied by the Supplier or by reason of the Supplier's negligence or for any act or omission on the part of the Supplier or the Supplier's employees, sub-contractors, assignees, representatives or agents arising out of the execution of the Purchase Order.

12.6 The Supplier shall indemnify and keep indemnified SHG against any liabilities, losses, costs or expenses (including legal expenses) incurred by SHG howsoever arising from any breach by the Supplier of any of its obligations hereunder or of any statutory duty or from any act or omission of the Supplier's employees, agents or sub-contractors.

12.7 The Supplier agrees to assign to SHG upon request the benefit of any warranty, guarantee or similar right which it has against any third party manufacturer or supplier of any Goods or Services or any part thereof.

- 12.8 SHG's rights under these Terms and Conditions are in addition to the statutory conditions, warranties and terms implied in favour of SHG by the Sale of Goods Act 1979, the Supply of Goods and Services Act 1982, related statutes and any statutory re-enactment(s) or modification(s) thereof.
- 12.9 The Supplier (if an individual) represents that he is regarded by The Tax Office as self-employed and accordingly shall indemnify the SHG against any tax, national insurance contributions or similar for which the SHG may be liable in respect of the Supplier by reason of this Contract.
- 12.10 (a) The Supplier shall ensure that all equipment to deliver the service is insured with an insurance company to be approved by the SHG under a comprehensive policy of insurance.
- (b) The Supplier shall punctually pay all premiums payable under the said policies and produce the receipts for such payments to the SHG on demand and do everything necessary to maintain the said policies in full effect and not to do anything whereby the said policies will or may be vitiated.

### **13. UNSATISFACTORY PERFORMANCE**

- 13.1 Should the Services or any portion thereof not be completed to the satisfaction of SHG within the time or times specified in the Contract, or if in the opinion of SHG progress made in the execution of the Service is unsatisfactory and unlikely to lead to such completion, then SHG may without prejudice to any other remedies by notice in writing to the Supplier determine the Contract either in respect of the Services which have not been carried out in accordance with the Contract at the time of such determination or in respect of all the Services to which the Contract relates other than those carried out in accordance with the Contract before that time, hereinafter called a relevant determination. In such cases the Supplier shall not be entitled under the Contract to payment of any amount by way of compensation.
- 13.2 Where the SHG has determined the Contract under Condition 14.1 hereof and without prejudice as aforesaid the SHG may obtain all or any of the Services in respect of which the Contract is so determined by arranging for those services to be carried out by alternative means and there shall be recoverable from the Supplier the amount by which the aggregate of the cost of obtaining the Services in this way, exceeds the amount which would have been payable to the Supplier in respect of all the Services so replaced if they had been carried out in accordance with the Contract.
- 13.3 In the event of the Supplier failing to carry out any Services in accordance with these Conditions, the SHG shall (without prejudice to any other remedy available) be entitled:
- a. to deduct from any account rendered by the Supplier in respect of unsatisfactory Services such sum as the SHG considers appropriate;
  - b. to have such Services carried out satisfactorily by other persons and in the meantime to debar the Supplier, his servants and agents from the Premises.
- 13.4 On the occurrence of a relevant determination the Supplier shall, notwithstanding such determination, cooperate in the transfer of the Services, to which the relevant determination relates to any alternative organisation under Condition 14.2 hereof in accordance with arrangements to be notified to him by SHG.
- 13.5 The failure of either party to seek redress for breaches or to insist on strict performance of any provision of the contract or the failure of either party to exercise any right or remedy to which it is entitled under the contract shall not constitute a waiver thereof and shall not cause a diminution of the obligations under the contract. No waiver of any provision of the contract shall be effective unless it is agreed to by both parties in writing. No waiver of any default shall constitute a waiver of any subsequent default.

### **14. TERMINATION**

- 14.1 SHG shall in addition to its powers under any other of these Conditions have power to terminate the Contract at any time by giving to the Supplier written notice, to expire at the end of three months' notice and upon the expiration of the notice the Contract shall be determined without prejudice to the rights of the parties accrued to the date of determination but subject to the operation of the following provisions of this Condition.
- 14.2 In the event of such notice being given SHG shall at any time before the expiration of the notice be entitled to exercise and shall as soon as may be reasonably practicable within that period exercise such of the following powers as he considers expedient:
- a. to direct the Supplier, where work has not been commenced, to refrain from commencing work;
  - b. to direct the Supplier to complete in accordance with the Contract all or any of the Services, or any part or component thereof, which shall be paid for at a fair and reasonable price.

14.3 Neither the expiration nor the termination of the contract shall prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue either to the authority or to the Supplier.

14.4 The Supplier may terminate this contract at any time by giving to the SHG at least 6 months' notice in writing.

#### **15. TERMINATION ON CHANGE OF CONTROL AND INSOLVENCY**

15.1 The SHG may terminate the Contract by written notice having immediate effect if:-

- a) The Supplier undergoes a change of control, within the meaning of Annex 1, and in the exclusive opinion of the SHG such control does or could impact adversely and materially on the performance of the Supplier or;
- b) where the Supplier is an individual or a firm, the Supplier or any partner in the firm having been requested in writing by the SHG to do so, fails within 28 days, to satisfy the SHG that he is able to pay his debts then outstanding and owed to any party .

15.2 The SHG may only exercise its right under Condition 16.1(a) within 6 Months after a change of control occurs and shall not be permitted to do so where it has agreed in advance to the particular change of control that occurs. The Supplier shall notify the SHG immediately when any change of control occurs.

#### **16. INTELLECTUAL PROPERTY RIGHTS**

16.1 The Supplier shall, at its expense, defend any actions arising from infringements or alleged infringements of its rights in or to exploit or to licence any right or interest of any kind arising out of or granted or created in respect of any and all patents, trademarks, service marks, domain names, registered designs, inventions, know-how, confidential information, unregistered trademarks and service marks, trade and business names, unregistered design rights and other rights in designs and rights in databases, subsisting anywhere in the world or rights of the same or similar effect or nature as or to those above, in each case, in any jurisdiction ("Intellectual Property Rights") in connection with the Goods and/or Services and the Supplier undertakes to indemnify and keep indemnified SHG against any costs, claims, proceedings, expenses and demands arising from the use, application, supply or delivery of any process, article, matter or thing supplied under these Terms and Conditions that would constitute or is alleged to constitute any infringement of any person's Intellectual Property Rights.

16.2 SHG retains Intellectual Property Rights in, and ownership of all materials, plans, drawings, specifications, patterns and/or designs provided by SHG to the Supplier, and they shall be returned to SHG at its request at any time.

16.3 Where Goods and/or Services are made to the specification, model, or plans, the Intellectual Property Rights in the Goods and/or Services, in so far as they relate to the specification, model, or plans, and any improvements or developments thereof shall be the absolute property of SHG, and the Supplier will assign all such Intellectual Property Rights to SHG when such assignment is necessary.

#### **17. PROVISION OF EQUIPMENT**

17.1 Any equipment provided by SHG for the purpose of the Contract shall remain the property of SHG and shall only be used for the purpose of carrying out this Contract; to be returned promptly to SHG on expiry or termination of the Contract. The Supplier will reimburse SHG for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the actions of the employee or agent of the Supplier. Equipment supplied by SHG shall be deemed to be in good condition when received by or on behalf of the Supplier, unless the SHG is notified otherwise in writing within seven days.

#### **18. OCCUPATION OF SHG PREMISES**

18.1 Any land or premises (including temporary buildings) made available to the Supplier by SHG in connection with the Contract shall be made available to the Supplier subject to agreement and shall be used by the Supplier solely for the purposes of performing the Contract unless otherwise agreed to in writing by SHG prior to the alternative use. The Supplier shall have the use of such land or premises as licensee and shall vacate the same according to the terms of the agreement or determination of the Contract. Any utilities required by the Supplier shall be subject to the charges set out in the Schedule.

#### **19. TRANSFER, SUB-LETTING AND SUBCONTRACTING**

19.1 The Supplier shall not give, bargain, sell, assign, sub-let, sub-contract or otherwise dispose of the Contract or any part thereof or the benefit or advantage of the Contract or any part thereof without the previous consent in writing of SHG. Where such consent is given, it will be conditional upon such assignee or sub-contractor accepting these Terms and Conditions.

**20. ANTI-CORRUPTION**

20.1 The Supplier or anyone associated with the Supplier (associates shall be determined in accordance with section 8 of the Bribery Act 2010 and a person associated with the Supplier includes, but is not limited to, any sub-contractor of the Supplier) shall not offer or give, or agree to give, to any officers or staff or representatives of SHG any gift or consideration of any kind as an inducement or reward for doing or refraining from doing or for having done or refrained from doing, any act in relation to the obtaining or execution of this or any other contract with SHG or for showing or refraining from showing favour or disfavour to any person in relation to this or any such contract. The Supplier's attention is drawn to the criminal offences created by the Prevention of Corruption Acts 1889 to 1916 and the Bribery Act 2010, any breach of these acts shall be a material default upon which SHG may immediately terminate this contract.

**21. DISCRIMINATION**

21.1 The Supplier shall not unlawfully discriminate within the meaning and scope of the provisions of the Race Relations Ordinance, Cap 84, or any statutory modification or re-enactment thereof relating to discrimination in employment. The Supplier shall take all reasonable steps to secure the observance of these provisions by all servants, employees or agents of the Supplier and all sub-contractors employed in the execution of the Contract.

**22. USE OF MATERIALS**

22.1 The SHG is committed to supporting the Government's initiative on the environment. The Supplier must give due regard to environmental considerations throughout the carrying out of the Contract, including the use of materials that are or can be recycled and materials that are proven to be environmentally safe.

**23. ARBITRATION**

23.1 All disputes differences or questions between the parties to the Contract with respect to any matter or thing arising out of or relating to the Contract, other than a matter or thing as to which the decision of SHG is under the Contract to be final and conclusive and except to the extent to which special provision for arbitration is made elsewhere in the Contract, shall be referred to the arbitration of two persons, one to be appointed by SHG and one by the Supplier, or their umpire, in accordance, as far as they can be suitably applied on St Helena, with the provisions of the Arbitration Acts 1950, 1975 and 1979, or any statutory modification or re-enactment thereof for the time being in force.

**24. SUPPLIER'S PROPERTY**

24.1 All property of the Supplier while at the Premises shall be at the risk of the Supplier and the SHG shall accept no liability for any loss or damage howsoever occurring thereto or caused thereby except where any such loss or damage was caused or contributed to by any act, neglect or default of any Servant of the Crown at the Premises acting in the course of his employment. The SHG shall accept liability to the extent to which such loss or damage is so caused or contributed to as aforesaid.

**25. PERSONAL INJURY AND LOSS OF PROPERTY**

25.1 The SHG shall, immediately in writing, notify the Supplier of any claim or proceedings made or brought in respect of any such Personal Injury or Loss of Property.

25.2 If the Supplier admits that he is liable wholly to indemnify the Crown in respect of any such claim or proceeding he or, if he so wishes, his insurers, shall, subject to Condition 26.6 and 26.7 of this Condition be responsible for dealing with or settling that claim or proceeding.

25.3 If, when the Supplier or his insurers are dealing with any such claim or proceeding, any matter or issue arises which involves, or may involve, any privilege or special right of the SHG (including a matter relating to the discovery or production of documents) the Supplier or his insurers shall consult SHG before taking any further action on the matter and shall act in relation thereto as may be required by SHG; and if either the Supplier or his insurers fail to comply with this Condition, Condition 26.5 shall cease to apply.

25.4 Where any claim or proceeding in respect of any liability referred to in Condition 26.2 above, is settled otherwise than by the Supplier or his insurers, he shall not be required to pay by way of indemnity any sum greater than that which would be reasonably payable in settlement having regard to the circumstances of the case and in particular to the damages which might be recoverable at law.

**26. DISCLOSURE OF INFORMATION AND USE OF DOCUMENTS**

- 26.1 Except with the consent in writing of the SHG the Supplier shall not make use of the Contract or information issued or furnished by or on behalf of the SHG otherwise than for the purpose of the Contract.
- 26.2 Any specifications, plans, drawings, or any other documents issued by or on behalf of the SHG for the purposes of the Contract remain the property of the SHG and must be returned on completion of the Contract.
- 26.3 The Supplier shall take every precaution to ensure that information about the Contract, or arising from or connected with the Contract, is divulged only to the minimum number of employees and then only to the extent essential to each person's action in carrying out the Contract. In respect of any confidential information it may receive from the other party, each party undertakes to keep secret and strictly confidential and not disclose any such confidential information to any third party, without the prior written consent of the party disclosing it. No information regarding the Services being provided under the Contract or facilities to photograph or film shall be given or permitted by the Supplier except with prior written permission of the SHG to whom any press or other enquiry or any such matter should be referred.
- 26.4 Except with the consent in writing of the SHG, the Supplier shall not disclose the Contract or any provision thereof to any person other than a person employed by the Supplier in the carrying out of the Contract or any other person concerned with the same. Such disclosure shall be made in confidence and extend so far only as may be necessary for the purposes of the Contract.
- 26.5 The Supplier shall not communicate with representatives of the general or technical press, radio, television or other communications media, in respect of matters related to this contract, unless specifically granted permission to do so in writing by the SHG.
- 26.4 The Supplier shall protect personal data in accordance with the principles as laid down in the Data Protection Act 1984 and shall fully indemnify the SHG, his Servants or Agents against the costs of dealing with any claims made in respect of any information subject to the Data Protection Act 1984, which claims would not have arisen but for some act, omission or negligence on the part of the Supplier, his Sub-contractors, agents or staff.
- 26.7 The provisions of this Condition shall continue without limit in time.
- 27. DISRUPTION TO SERVICE AND FORCE MAJEURE**
- 27.1 Where the service is disrupted for any reason the Supplier is required to provide alternative arrangements to meet the requirements of the agreed service provision.
- 27.2 The Supplier shall not be liable for any loss, damage, injury or delay due to any cause beyond his control including (without prejudice to the generality of the foregoing expression) acts of government, strikes, lockouts, fire, lightening, explosion, flooding, riots, civil commotions, acts of war, malicious mischief or theft PROVIDED that if the service to be rendered hereunder shall be interrupted by such cause as aforesaid to a serious degree the service charge payable in respect of the period of such interruption shall be reduced by such amount as may be reasonable.

## ANNEXE 1

1. (i) For the purposes of clause 15.1(a), a person shall be taken to have control of a company if he exercises, or is able to exercise or is entitled to acquire, direct or indirect control over the company's affairs, and in particular, but without prejudice to the generality of the preceding words, if he possesses or is entitled to acquire—

(a) the greater part of the share capital or issued share capital of the company or of the voting power in the company; or

(b) such part of the issued share capital of the company as would, if the whole of the income of the company were in fact distributed among the participators (without regard to any rights which he or any other person has as a loan creditor), entitle him to receive the greater part of the amount so distributed; or

(c) such rights as would, in the event of the winding-up of the company or in any other circumstances, entitle him to receive the greater part of the assets of the company which would then be available for distribution among the participators.

(ii) Where two or more persons together satisfy any of the conditions of subsection (i) above, they shall be taken to have control of the company.

(iii) For the purposes of subsection (i) above a person shall be treated as entitled to acquire anything which he is entitled to acquire at a future date, or will at a future date be entitled to acquire.

(iv) For the purposes of subsections (i) and (ii) above, there shall be attributed to any person any rights or powers of a nominee for him, that is to say, any rights or powers which another person possesses on his behalf or may be required to exercise on his direction or behalf.

(v) For the purposes of subsections (i) and (ii) above, there may also be attributed to any person all the rights and powers of any company of which he has, or he and associates of his have, control or any two or more such companies, or of any associate of his or of any two or more associates of his, including those attributed to a company or associate under subsection (iv) above.

2. (i) For the purposes of this Contract, a "participator" is, in relation to any company, a person having a share or interest in the capital or income of the company, and, without prejudice to the generality of the preceding words, includes—

(a) any person who possesses, or is entitled to acquire, share capital or voting rights in the company;

(b) any loan creditor of the company;

(c) any person who possesses, or is entitled to acquire, a right to receive or participate in distributions of the company or any amounts payable by the company (in cash or in kind) to loan creditors by way of premium on redemption; and

(d) any person who is entitled to secure that income or assets (whether present or future) of the company will be applied directly or indirectly for his benefit.

In this subsection references to being entitled to do anything apply where a person is presently entitled to do it at a future date, or will at a future date be entitled to do it.

(ii) For the purposes of this Contract "associate" means, in relation to a participator—

(a) any relative or partner of the participator;

(b) the trustee or trustees of any settlement in relation to which the participator is, or any relative of his (living or dead) is or was, a settlor ("settlement" includes any disposition, trust, covenant, agreement or arrangement, and "settlor" in relation to a settlement, means any person by whom the settlement was made; and

(c) where the participator is interested in any shares or obligations of the company which are subject to any trust, or are part of the estate of a deceased person—

(aa) the trustee or trustees of the settlement concerned or, as the case may be, the personal representatives of the deceased; and

(bb) if the participator is a company, any other company interested in those shares or obligations;

and has a corresponding meaning in relation to a person other than a participator.

(iii) In subsection (ii) above "relative" means husband or wife, parent or remoter forebear, child or remoter issue, or brother or sister.

(iv) For the purposes of this Contract "director" includes any person occupying the position of director by whatever name called, any person in accordance with whose directions or instructions the directors are accustomed to act, and any person who—

(aa) is a manager of the company or otherwise concerned in the management of the company's trade or business, and (bb) is, either on his own or with one or more associates, the beneficial owner of, or able, directly or through the medium of other companies or by any other indirect means, to control 20 per cent. or over of the ordinary share capital of the company.

(v) In subsection (iv)(bb) above the expression "either on his own or with one or more associates" requires a person to be treated as owning or, as the case may be, controlling what any associate owns or controls, even if he does not own or control share capital on his own.

(vi) Subject to subsection (viii) below, for the purposes of this Contract "loan creditor", in relation to a company, means a creditor in respect of any debt incurred by the company—

(a) for any money borrowed or capital assets acquired by the company; or

(b) for any right to receive income created in favour of the company; or

(c) for consideration the value of which to the company was (at the time when the debt was incurred) substantially less than the amount of the debt (including any premium thereon);

or in respect of any redeemable loan capital issued by the company.

(vii) Subject to subsection (viii) below, a person who is not the creditor in respect of any debt or loan capital to which subsection (vi) above applies but nevertheless has a beneficial interest therein shall, to the extent of that interest, be treated for the purposes of this contract as a loan creditor in respect of that debt or loan capital.

(viii) A person carrying on a business of banking shall not be deemed to be a loan creditor in respect of any loan capital or debt issued or incurred by the company for money lent by him to the company in the ordinary course of that business.

## SCHEDULE

**Parties:** (1) St Helena Government (“SHG”)

(2) (“Supplier”)

**Supplier’s Address:**

**Services to be provided:**


**Period of Contract:**

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**Contract Price:**

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Signed on  
behalf of SHG: \_\_\_\_\_

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

Date: \_\_\_\_\_

Signed on  
behalf of Supplier: \_\_\_\_\_

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

Date: \_\_\_\_\_