

CONTRACT FOR CONSULTANCY SERVICES

THIS AGREEMENT IS TO BE USED WITH THE REQUEST FOR TENDER. IT SHOULD BE ATTACHED TO THE REQUEST FOR TENDER WHEN ISSUED AND FORMS THE BASIS OF NEGOTIATIONS FOR THE CONTRACT WITH THE SUCCESSFUL BIDDER.
THIS AGREEMENT CAN BE USED FOR ALL CONSULTANCY SERVICES TO BE PROVIDED TO RDTL IN CONJUNCTION WITH THE REQUEST FOR TENDER.

[Insert date]

Government of the Democratic Republic of Timor-Leste

Consultant:

Consultancy Agreement

Contract No.

FORMAL INSTRUMENT OF AGREEMENT

BETWEEN

The Government of the Democratic Republic of Timor Leste
(RDTL)

AND

.....**(Consultant)**

This Agreement is made this.....day of

- 1 This Formal Instrument of Agreement and the General Terms and Conditions of the Consultancy Agreement, constitute the agreement between RDTL and the Consultant (**Parties**) which includes all schedules and all documents incorporated by reference.
- 2 The Consultant agrees to perform its obligations and the Consultancy Services in accordance with the General Terms and Conditions of the Consultancy Agreement and as described in **schedule 1**, to the satisfaction of RDTL.
- 3 In consideration of the performance of the Consultancy Services, RDTL shall pay the Consultancy Fees and any other relevant expenses from time to time in accordance with the General Terms and Conditions of the Consultancy Agreement.
- 4 Without limiting the Consultant's obligations under the General Terms and Conditions of the Consultancy Agreement, it is a fundamental condition of the agreement that the Consultant provides the services of the Principal Employees, set out in **schedule 2**, to deliver the Consultancy Services.

Executed as an agreement:

.....Date:.....
Signed On behalf of the RDTL

.....
Witness

.....
Name of Witness

..... Date.....
Signed on behalf of Consultant

.....
Witness [If Company, the Secretary/Director should witness]

.....
Name of Witness [If Company, the Company Name and Seal should be inserted]

GENERAL TERMS AND CONDITIONS OF THE CONSULTANCY AGREEMENT

AGREED TERMS

Interpretation

Definitions

The terms listed below shall bear the meaning, as follows:

Approved Expenses means the approved expenses specified in **schedule 2**.

Agreement means the agreement constituted by documents referred to in **clause 1** of the Formal Instrument of Agreement.

Business Day means a day other than a Saturday, Sunday or public holiday in RDTL.

Commencement Date means the Commencement Date specified in **schedule 2**.

Confidential Information means all information that is not public knowledge at the Commencement Date or comes into existence at a later date (whether that information is written or unwritten) relating to the business interests, methodology or affairs of RDTL or any person or entity with which it deals or is concerned, including:

the terms of this agreement;

all information, documents, materials or items of any nature and in any format which are provided by RDTL to the Consultant;

all information, documents, materials or items which are designated by RDTL as confidential or otherwise imparted in circumstances in confidence to the Consultant by RDTL;

all information of a confidential character which has been communicated to RDTL by any other person.

Consultancy Fees means the fees specified in **schedule 2**.

Consultancy Services means the services specified in **schedule 1**.

Expiry Date means the expiry date specified in **schedule 2** or the expiry date as extended by agreement between the parties.

Formal Instrument of Agreement means the document entered into between RDTL and the Consultant which incorporates these General Terms and Conditions.

Nominated Contact Person means the nominated contact person specified in **schedule 2**.

Principal Employees means the principal employees specified in **schedule 2** or such other persons as may replace these persons pursuant to **clause 2.3**.

Term means the period from the Commencement Date until the Expiry Date or the date of termination of the Consultant's engagement in accordance with **clause 0**, whichever is the earlier.

Construction

Unless expressed to the contrary, in this document:

words in the singular include the plural and vice versa;

any gender includes the other genders;

if a word or phrase is defined its other grammatical forms have corresponding meanings;

a party may give or withdraw any consent to be given under this agreement in its absolute discretion and may impose any conditions on that consent;

"includes" means includes without limitation;

no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it; and

headings will be ignored in construing this agreement;

a reference to:

a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;

a person includes the legal personnel representatives, successors and assigns of that person;

any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced; and

an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;

this agreement includes all schedules and annexures to it;

“\$“ and “dollar“ is a reference to US Dollars;

a right includes a remedy, discretion, authority or power;

if the date on or by which any act must be done under this agreement is not a Business Day, the act must be done on or by the next Business Day;

where time is to be calculated by reference to a day or event, that day or the day of that event is excluded; and

any obligation of two or more persons will bind them separately and together.

Engagement of Consultant

Duration

RDTL will engage the Consultant and the Consultant will provide the Consultancy Services during the Term in accordance with this agreement.

Principal Employees

The Consultant must provide the services of the Principal Employees to perform the Consultancy Services on behalf of the Consultant.

The Consultant warrants that the Principal Employees are appropriately qualified, knowledgeable and experienced in the fields necessary to and will perform the Consultancy Services in accordance with this Agreement.

The Consultant will promptly notify RDTL if on any day the Principal Employees are, or will be, unable to perform the Consultancy Services.

Replacement of Principal Employees

If at any time:

a Principal Employee for any reason is or will be unable to perform the Consultancy Services (including by reason of illness) for **[insert number]** consecutive Business Days or for an aggregate of **[insert number]** Business Days during the Term; or

in the reasonable opinion of RDTL, a Principal Employee fails to perform the
Consultancy Services to the required standard,

the Consultant will, at RDTL's request and at no additional cost to RDTL, replace the
Principal Employee with other person(s) acceptable to RDTL at the earliest
opportunity.

RDTL has an absolute discretion as to whether it accepts any replacement Principal Employee proposed by the
Consultant.

Obligations of the Consultant

Times and locations

The Consultancy Services must be provided during the Term at such times as may be required by RDTL.

The Consultancy Services must be provided at the location or locations specified in **schedule 2** and such other
locations as RDTL may reasonably require.

Standard of Performance

The Consultant must ensure that it and the Principal Employees observe the highest standards of ethics when
providing the Consultancy Services during the Term. This includes no occurrence of any corrupt, fraudulent,
collusive or coercive practices, or conflict of interest in the provision of the Consultancy Services.

Performance of Consultancy Services

The Consultant must ensure that the Consultancy Services are performed in a careful, diligent, proper and
efficient manner in accordance with the highest professional standards applying to the Consultancy
Services.

Whilst performing the Consultancy Services, the Consultant must not, and must ensure that the Principal
Employees do not, intentionally do anything which is or may be harmful to or adversely affect the
interests of RDTL, its Ministries or their employees.

The Consultant must and must ensure that the Principal Employees:

act with the utmost good faith in all of the Consultant's dealings with RDTL, its
Ministries or their employees;

comply with all reasonable directions, policies, procedures and standards of conduct
given or determined by RDTL from time to time and, in compliance with
relevant legislation, regulations, codes of conduct and industry standards;

devote such time, attention and abilities during business hours and such other hours
as may be necessary to perform the Consultancy Services in the agreed
manner; and

attend all training programs as required from time to time by RDTL.

Time for Performance

The Consultant must comply and ensure that the Principal Employees comply with any time limits for the performance of the Consultancy Services as required by RDTL from time to time.

Delegation

The Consultant must not delegate or subcontract all or any part of the Consultancy Services without the prior written approval of RDTL.

If RDTL permits the Consultant to delegate all or part of the Consultancy Services, the Consultant will be liable and responsible for all acts, omissions and work of any sub-contractor. For the avoidance of doubt, any external suppliers to the Consultant are sub-contractors of the Consultant.

Statutory obligations, licences and registrations

The Consultant must comply with its statutory obligations in respect of the Consultancy Services, including compliance with:

any applicable industrial awards and agreements;

minimum terms and conditions of employment;

industrial relations laws;

any applicable environmental laws;

occupational health and safety laws; and

any applicable international laws or standards that have been entered into by RDTL.

The Consultant must obtain and maintain and ensure that the Principal Employees obtain and maintain during the Term any licences or registrations required for the Consultant and the Principal Employees to perform the Consultancy Services.

Reporting to RDTL

The Consultant must promptly report to the Nominated Contact Person or such other person as may be nominated by RDTL from time to time, such information as RDTL may reasonably require, or as to which RDTL should properly be informed, in relation to:

the Consultant's engagement;

the provision of the Consultancy Services; and

the business of RDTL or any of its Ministries.

Fees for Consultancy Services

Amount payable

Subject to clauses 00 and 0, in consideration of the Consultancy Services, RDTL will pay to the Consultant the Consultancy Fees.

No Consultancy Fees are payable in respect of any period in which the Consultant does not, for any reason, provide the Consultancy Services.

RDTL will pay the Consultancy Fees in accordance with schedule 2.

If RDTL requires the Consultant and/or the Principal Employees to perform any services in addition to the Consultancy Services, additional fees will be payable to the Consultant. Such fees will be agreed with the Consultant prior to the Consultant providing the additional services.

Approved Expenses

RDTL will reimburse the Consultant for all Approved Expenses properly incurred by the Consultant or the Principal Employees in the provision of the Consultancy Services in accordance with the terms of this agreement.

Any reimbursement claimed by the Consultant under **clause 00** must be detailed in a suitably formatted invoice submitted by the Consultant and must be substantiated to RDTL's reasonable satisfaction.

Taxes and duties

The Consultant, as between the parties, is liable for and must pay (or reimburse on demand) all charges, taxes and duties (including any fine or penalty and including import or export duty, sales tax, excise tax, income tax, wage income tax, withholding tax and services tax) on or relating to this agreement, any document executed under it or any dutiable transaction evidenced or effected by it.

Equipment and resources

Access to and use of RDTL resources

RDTL will provide the Consultant with the equipment, materials and resources listed in **schedule 2**. RDTL may at its sole reasonable discretion amend, add to or delete from the list in **schedule 2**. The Consultant will comply with and will ensure that the Principal Employees comply with all directions of RDTL from time to time in relation to the security of and access to RDTL's property, office facilities, services, materials and personnel.

Resources provided by Consultant

Subject to **clause 0**, the Consultant will provide at its own expense and apply to the performance of its obligations under this agreement all equipment, hardware, software, implements, materials, services and labour (including office facilities, motor vehicles and telecommunications equipment) required or desired in the performance of its obligations under this agreement.

Disbursements

Except as otherwise expressly provided for in this agreement, the Consultant is responsible for the payment of all costs, expenses or disbursements incurred by the Consultant or the Principal Employee as a result of and in connection with the Consultant entering into this agreement or the performance of its obligations under this agreement.

Indemnity

Indemnity

The Consultant will indemnify, keep indemnified, defend and hold harmless RDTL and its Ministries and all of their respective officers, employees, agents, successors and assigns from all and any liability or for any claims associated with or arising from provision of the Consultancy Services which relate to:

any failures by the Consultant or any of the Principal Employees to comply with its obligations under **clause 0**;

or

any injury to any person or the death of any person, or loss or damage to RDTL or any of its Ministries or to a third party's real, personal, tangible or intangible property (including data and computer programs),

caused by any act or omission of the Consultant or any of the Consultant's employees, servants or agents, including for the avoidance of doubt the Principal Employees; or any breach by the Consultant of this agreement.

Insurances

Prior to the Commencement Date the Consultant must obtain and must maintain during the Term current policies of professional indemnity and public liability insurance of the type and level of cover specified in **schedule 2** in respect of the Consultancy Services.

The Consultant will provide RDTL with written evidence of the currency of such insurance policies prior to the Commencement Date and at any time upon request.

Confidentiality

Confidentiality Obligations

The Consultant must:

keep confidential all Confidential Information; and

not disclose the Confidential Information to any person except:

as required by law;

with the prior written consent of RDTL; or

to its employees for the purposes of this agreement.

Use of Confidential Information

The Consultant must not use, permit the use of or modify any Confidential Information except for the purposes of and in accordance with this agreement.

Security

The Consultant must, and must ensure that the Principal Employees:

maintain proper and secure custody of all Confidential Information; and

prevent the disclosure of the Confidential Information to third parties.

Delivery

The Consultant must immediately deliver all Confidential Information including any copies to RDTL:

at the expiration or earlier termination of this agreement; or

at any time at the request of RDTL.

Employees

Notwithstanding any other clause of this agreement:

the Consultant undertakes to ensure that all of its employees and any person to whom Consultancy Services have been delegated in accordance with **clause 0**, who use or have access to the Confidential Information are informed of the confidential nature of the Confidential Information and keep the Confidential Information strictly confidential in accordance with **clause 0** and **clause 0**; and

the Consultant must indemnify RDTL against any loss or damage which RDTL may sustain or incur as a result of any failure of the Consultant to comply with its undertaking under paragraph (a).

Breach of confidence

The Consultant must promptly notify RDTL if it becomes aware of any breach of confidence by any person to whom it has divulged all or any part of the Confidential Information and must

give RDTL all reasonable assistance in connection with any action, demand, claim or proceeding which RDTL may institute against any such person for breach of confidence.

Obligation to disclose

Where the Consultant creates or develops any Confidential Information, the Consultant must immediately disclose that Confidential Information to RDTL.

Equitable relief

The Consultant acknowledges that RDTL shall be entitled to equitable relief against the Consultant (in addition to any other rights available under this agreement or at law) if the Consultant breaches the Consultant's obligations contained in this **clause 0**.

Obligations to continue

The obligations of the Consultant under this **clause 0** shall survive the expiration or termination of this agreement and shall be enforceable at any time at law or in equity and shall continue for the benefit of and be enforceable by RDTL.

Intellectual Property

Ownership of intellectual property

The Consultant assigns to RDTL all right, title and interest, in all intellectual property rights and other proprietary rights (**Rights**) in all works, documents, computer programs, items or things produced or created by the Consultant, the Principal Employees or created on behalf of the Consultant in the course of providing the Consultancy Services (**Works**). The Consultant also agrees that it will not, without written authority from RDTL, provide the Works to any other person or use the Works except in providing the Consultancy Services to RDTL.

The Rights include patent, copyright, trademark, design and eligible layout rights including any applications or rights to apply for registration of the same.

The Consultant must sign all documents and do anything reasonably required by RDTL to give effect to the assignment of the Rights.

The Consultant warrants that the Works:

are not copies taken wholly or substantially from other work, document, computer program, item or thing anywhere in the world;

do not infringe any other person's rights in any other work, document, computer program, item or thing anywhere in the world; and

have not had any right in them granted, transferred or assigned by the Consultant to any third party.

If the Consultant is unable, for any reason, to assign the Rights to RDTL, the Consultant or the Principal Employees must, prior to producing or creating any works, notify RDTL in writing. The Consultant must describe each of the Works and give RDTL reasons as to why it cannot assign the Rights in them to RDTL.

RDTL will then decide whether it will insist on an assignment of the Rights in those Works or whether it will be satisfied with a licence to use the relevant Works. RDTL will notify the Consultant, in writing, of its

decision. If RDTL decides that a licence will be satisfactory, the Consultant agrees to assist RDTL in negotiating the terms of the licence with the owner of the Rights in the Works.

Licence of background Consultant intellectual property

The Consultant grants to RDTL a perpetual, non-exclusive, royalty-free and transferable licence of all its background Rights, which are in existence prior to the commencement of the Consultancy Services and which form part of the Works, including any template documents or databases.

In addition to any other terms of this agreement intended to survive expiration or termination, this provision survives the expiration or termination of this agreement.

Termination of the Consultant's engagement

Immediate termination by RDTL

RDTL may at any time immediately terminate the Consultant's engagement by giving written notice to the Consultant if any of the following events occur:

- the Consultant or the Principal Employees commit any serious or persistent breach of this agreement which is, in the reasonable opinion of RDTL, incapable of rectification;
- the Consultant or the Principal Employees commit any serious or persistent breach of this agreement which continues unremedied for 10 Business Days after the Consultant receives notice from RDTL of that breach;
- the Principal Employees in the performance of Consultancy Services commit any act of serious misconduct, fraud or dishonesty;
- the Consultant or any of the Principal Employees fail or refuse to comply with any lawful direction given by RDTL;
- the Consultant is placed under some form of official management or insolvency administration or the bankruptcy of any of the Principal Employees;
- the conviction of any of the Principal Employees for a criminal offence which in the reasonable opinion of RDTL will detrimentally affect RDTL or any of its related corporations; or
- the Principal Employees use or abuse alcohol or drugs to the extent that, in the reasonable opinion of RDTL, it materially affects the Principal Employees' performance of the Consultancy Services or the Principal Employees' ability to carry out the Consultancy Services.

Immediate termination by the Consultant

The Consultant may at any time immediately terminate the Consultant's engagement by giving written notice to RDTL, if:

- RDTL commits any serious or persistent breach of this agreement, which is in the reasonable opinion of the Consultant incapable of rectification; or
- RDTL commits any serious or persistent breach of this agreement which continues unremedied for 21 days after RDTL receives written notice from the Consultant of that breach.

Termination on notice by RDTL

RDTL may at any time and for any reason terminate the Consultant's engagement on the provision of four weeks' written notice to the Consultant or immediately upon payment of an amount equal to four weeks' Consultancy Fees.

Entitlements on termination and expiry

On expiry or termination of the Consultant's engagement pursuant to this **clause 0**, RDTL will pay to the Consultant the amount of any Consultancy Fees and reimburse any Approved

Expenses owing pursuant to **clause 0** up to and including the date of expiry or termination of the Consultant's engagement. Payment of this amount is acknowledged to be in full satisfaction and discharge of all claims and demands of the Consultant against RDTL in respect of this agreement.

Survival of provisions

The obligations of the Consultant and the Principal Employees under **clauses 0, 0, 0 and 18** survive the termination of the Consultant's engagement.

RDTL property

Upon the expiry or termination of the Consultant's engagement, irrespective of the time, manner, or cause of that termination, the Consultant must immediately return to RDTL any Confidential Information or other documentation or property of RDTL or its Ministries which is in the possession, custody or control of the Consultant, including any property of RDTL which is in the possession, custody or control of the Principal Employees.

Dispute resolution

Overview

In the case of any breach, claim, controversy or dispute arising out of or in connection with this agreement (**Dispute**), the following procedure for resolution of the Dispute shall apply.

Notification of Dispute

The aggrieved party will immediately notify the other party, in writing, of any Dispute within seven days of becoming aware of such a Dispute.

Consultation

Upon receipt of the notice referred to in **clause 18.2**, RDTL and the Consultant will enter a process of consultation to resolve the Dispute amicably and without disruption to the Consultancy Services.

Conciliation

If RDTL and the Consultant are unable to amicably resolve the Dispute, either party may request the Dispute be submitted to conciliation in accordance with the UNCITRAL Rules of Conciliation.

Arbitration

Any claim, controversy or dispute that is not resolved amicably in accordance with the provisions of this Agreement may be referred to arbitration by either party in accordance with the current UNCITRAL Arbitration Rules. The arbitration shall be conducted in RDTL, in the English or Portuguese language at the option of either party with appropriate translation in the other. The appointing authority shall be the President of the Court of Appeals of Timor Leste. The parties agree to be bound by the arbitral award and the final resolution of the claim, controversy or dispute, subject to any rights of recourse to judicial review, as provided by Law.

Governing Law

The governing law for the purposes of this Agreement shall be the law of RDTL, including the conflicts rules, as determined by the arbitrators to be applicable, in the case of diversity of parties to any arbitration.

General

Set-off

The Consultant authorises RDTL to set-off against and deduct from all or any amounts payable to the Consultant any amount owing by the Consultant to RDTL on any account.

Amendment

This agreement may only be varied, supplemented or replaced by a contract executed by the parties.

Waiver and exercise of rights

The failure of a party to insist upon strict performance of any of the terms or provisions of this agreement will not be deemed a waiver of any subsequent breach or default in the terms or provisions of this agreement.

A party is not liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

Assignment

The Consultant must not assign or deal with any right or obligation under this agreement without the prior written consent of RDTL. Any dealing in breach of this clause is of no effect.

Counterparts

This agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one agreement.

Severability

If a provision of this agreement is illegal or unenforceable in any relevant jurisdiction, it may be severed for the purposes of that jurisdiction without effecting the enforceability of the other provisions of this agreement.

Entire understanding

This agreement contains the entire understanding between the parties as to the subject matter of this agreement.

All previous negotiations, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting the subject matter of this agreement are merged in and superseded by this agreement and are of no effect. No party is liable to any other party in respect of those matters.

No oral explanation or information provided by any party to another:

affects the meaning or interpretation of this agreement; or

constitutes any collateral agreement, warranty or understanding between any of the parties.

Relationship of parties and Principal Employees

This agreement is not intended to create a partnership, joint venture or agency relationship between RDTL and the Consultant or the Principal Employees.

The relationship between the Consultant and RDTL is and shall remain that of principal and independent Consultant and the Principal Employees shall not be deemed to be the legal representative, agent, servant or employee of RDTL for any purpose whatsoever, whether by virtue of this agreement or for any other reason.

Notices

General

A notice, demand, certification or other communication under this agreement shall be in writing, in the English language and may be given by an agent of the sender.

Method of Service

In addition to any means authorised by law a communication may be given by:

being personally served on a party;

being left at the party's current address for service;

being sent to the party's current address for service by pre-paid ordinary mail or if the address is outside the Democratic Republic of Timor-Leste, by pre-paid air mail; or

cable, telex or if by facsimile, to the party's current facsimile number for service.

Address for Service

The addresses and numbers for service of RDTL and the Consultant are initially the addresses and facsimile numbers set out in **schedule 2**.

Any party may from time to time change its address or facsimile number for service by written notice to the other party.

Service

A communication given shall be deemed to be received when delivered or on the effective date stipulated in the notice, whichever is later.

Form Received

A communication given by facsimile, cable or telex shall be deemed given in the form transmitted unless the message is not fully received in legible form and the addressee immediately notifies the sender of that fact.

Service After Hours

If a communication to a party is received by it:

after 5:00 pm; or

on a day which is not a Business Day,

it will be deemed to have been received at the commencement of the next Business Day.

Schedule 1

Consultancy Services

The Consultant will provide the following services to RDTL through the Principal Employee:

Schedule 2

Commencement, Expiry and Consultancy Fees

Commencement Date	
Expiry Date	
Principal Employees	
Nominated contact person	
Consultancy fees	The Consultancy Fees at the commencement of the Term are
Frequency of Payment of Consultancy Fees	The Consultancy fees will be paid [at the completion of the performance of the Consultancy Fees, as a lump sum within 30 days of receipt of a suitably formatted invoice from the Consultant]. [Insert other triggers for payment of the Consultancy Fees as may be appropriate].
Approved Expenses	N/A
RDTL resources to be provided to the Consultant	N/A
Insurance	
RDTL's Address Details for Service	Contact person: Title: Address for Service: Facsimile Number:
[INSERT Consultant's] Address Details for Service	Contact Person: Title: Address for Service: Facsimile Number: