**THIS AGREEMENT** is made this [ ] day of [ ] 2021

**Between:**

**(1) The Cayman Islands** **Government** acting herein and represented by the [ ] of Government Administration Building, 133 Elgin Avenue, George Town, Grand Cayman, KY1-9000, Cayman Islands **(Customer)**

**(2) [ ]** incorporated and registered in [ ] with company number [NUMBER] whose registered office is at [ ]**(Supplier)**

(each a “Party” and jointly, the “Parties”)

1. On [date] the Customer issued a Request for Proposals (RFP number [XXX]) seeking [insert details].
2. The Supplier has been chosen by the Customer as the preferred supplier.
3. This Agreement sets out the terms upon which the Supplier will supply [insert details] to the Customer.

**THE PARTIES HEREBY AGREE:**

1. **INTERPRETATION**

The following definitions and rules of interpretation apply in this Agreement.

* 1. Definitions:

**Business Day:**  a day other than a Saturday, Sunday or public holiday in the Cayman Islands, when banks are open for business.

**Commencement Date:**  is the date entered at the beginning of this Agreement

**Goods:** the goods (or any part of them)as set out in Schedule A to this Agreement

* 1. Interpretation:
	2. A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
	3. A reference to a party includes its personal representatives, successors and permitted assigns.
	4. A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
	5. Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
	6. A reference to **writing** or **written** includes fax and email.
1. **SUPPLY OF GOODS**
	1. The Supplier shall ensure that the Goods shall:
	2. correspond with their description as set out in Schedule A;
	3. be of satisfactory quality and fit for any purpose held out by the Supplier or made known to the Supplier by the Customer, expressly or by implication, and in this respect the Customer relies on the Supplier’s skill and judgement;
	4. where they are manufactured products, be free from defects in design, materials and workmanship and remain so for [12] months after delivery; and
	5. comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

* 1. The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.
	2. The Customer may inspect and test the Goods at any time before delivery. The Supplier shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier’s obligations under the Contract.
	3. If following such inspection or testing the Customer considers that the Goods do not comply or are unlikely to comply with the Supplier’s undertakings at [*Clause 2.1*](#co_anchor_a188444_1), the Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.
	4. The Customer may conduct further inspections and tests after the Supplier has carried out its remedial actions.
1. **DELIVERY OF GOODS**
	1. The Supplier shall ensure that:
	2. the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
	3. each delivery of the Goods is accompanied by a delivery note which the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and; and
	4. it states clearly on the delivery note any requirement for the Customer to return any packaging material for the Goods to the Supplier. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.

**3.2** The Supplier shall deliver the Goods:

1. on the date specified in Schedule B or otherwise as agreed in writing with the Customer;
2. to the Customer’s premises at 133 Elgin Avenue, George Town or such other location as instructed by the Customer before delivery (**Delivery Location**); and
3. during the Customer’s normal hours of business on a Business Day, or as instructed by the Customer.

**3.3** Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.

**3.4** If the Supplier:

1. delivers less than 95% of the quantity of Goods ordered, the Customer may reject the Goods; or
2. delivers more than 105% of the quantity of Goods ordered, the Customer may at its sole discretion reject the Goods or the excess Goods,

and any rejected Goods shall be returnable at the Supplier’s risk and expense. If the Supplier delivers more or less than the quantity of Goods ordered, and the Customer accepts the delivery, the Supplier shall make a pro rata adjustment to the invoice for the Goods.

**3.5** The Supplier shall not deliver the Goods in instalments without the Customer’s prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Customer to the remedies set out in *Clause 5.*

* 1. Title shall pass to the Customer upon payment. Risk shall pass to the Customer upon delivery.

**4. SUPPLIER WARRANTIES**

* 1. The Supplier warrants and represents to the Customer that:
	2. it has full capacity and authority and all necessary consents to enter into and to perform this Agreement;
	3. it is not prevented or restrained legally, commercially or otherwise from entering into or undertaking the provisions of this Agreement;
	4. there are no pending legal, governmental or regulatory investigations, actions, suits or proceedings to which the Supplier is or may be the subject that, individually or in the aggregate, if determined adversely to the Supplier, could reasonably be expected to have a material adverse effect on:
		1. the financial condition or prospects of the Supplier; or
		2. its ability to perform its obligations under this Agreement.
	5. in performing its obligations under this Agreement, the Supplier will comply with all laws and regulations of the Cayman Islands and directives of the Customer and any statutory authority;
	6. the Supplier has all licenses, authorisations, consents and approvals required by applicable laws in order to perform its obligations under this Agreement;
	7. the Supplier will use its best endeavours to not introduce, or permit the introduction of, any virus or other harmful element into the Customer’s computer systems;
	8. all statements and representations by the Supplier or on its behalf to the Customer are, to the best of its knowledge, information and belief, true and accurate, and the Supplier will advise the Customer of any fact, matter or circumstance of which it may become aware which would render any such statement or representation false or misleading or likely to mislead.
	9. The Customer may terminate this Agreement forthwith by written notice to the Supplier if the Company is in breach of Clause 4.1 (b) or (c).
1. **CUSTOMER REMEDIES**
	1. If the Supplier fails to deliver the Goods by the dates set out in Schedule B, the Customer shall, without limiting or affecting other rights or remedies available to it, have one or more of the following rights:
	2. to terminate the Agreement with immediate effect by giving written notice to the Supplier;
	3. to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
	4. to recover from the Supplier any costs incurred by the Customer in obtaining substitute goods from a third party;
	5. to require a refund from the Supplier of sums paid in advance for Goods that the Supplier has not delivered; and
	6. to claim damages for any additional costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier’s failure to meet such dates.

* 1. If the Supplier has delivered Goods that do not comply with the undertakings set out in clause 2.1 then, without limiting or affecting other rights or remedies available to it, the Customer shall have one or more of the following rights, whether or not it has accepted the Goods:
1. to terminate the Agreement with immediate effect by giving written notice to the Supplier;
2. to to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier’s own risk and expense;
3. to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
4. to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
5. to recover from the Supplier any expenditure incurred by the Customer in obtaining substitute goods from a third party; and
6. to claim damages for any additional costs, loss or expenses incurred by the Customer arising from the Supplier’s failure to comply with clause 2.1.
	1. The terms of this Agreement shall extend to any repaired or replacement goods supplied by the Supplier.
	2. The Customer’s rights and remedies under this Agreement are in addition to, and not exclusive of, any rights and remedies implied by statute and common law.

**6.**  **CHARGES AND PAYMENT**

* 1. The charges for the Goods are set out in Schedule C of this Agreement, and shall be the full and exclusive remuneration of the Supplier in respect of the Goods. Unless otherwise agreed in writing by the Customer, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the Goods and delivery.
	2. The charges for the Goodsshall be inclusive of the costs of packaging, insurance and carriage of the Goods. No extra charges shall be effective unless agreed in writing and signed by the Customer.
	3. The Supplier shall invoice the Customer upon delivery of the Goods. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice.
	4. In consideration of the supply of Goods by the Supplier, the Customer shall pay the invoiced amounts within 30 days of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier.
	5. If the Customer fails to make a payment due to the Supplier under the Agreement by the due date, then the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest will accrue at 3% per annum.
	6. The Customer may at any time, without notice to the Supplier, set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Agreement. If the liabilities to be set off are expressed in different currencies, the Customer may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Customer of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Agreement or otherwise.

**7. INDEMNITY**

**7.1** The Supplier shall indemnify the Customer against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Customer arising out of or in connection with:

* 1. any claim made against the Customer by a third party for death, personal injury or damage to property arising out of, or in connection with the Goods; and
	2. any claim made against the Customer by a third party arising out of or in connection with the supply of the Goods.

**7.2** This clause 7 shall survive termination of the Agreement.

**8.**   **INSURANCE**

**8.1** During the term of the Agreement and for a period of six years thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance in an amount sufficient to cover the value of the Agreement to cover the liabilities that may arise under or in connection with the Agreement, and shall, on the Customer’s request, produce both the insurance certificate giving details of cover and the receipt for the current year’s premium in respect of each insurance.

**8.2** Any insurance carried by the Customer, its employees, servants or agents shall be excess and not contributory insurance to that provided by the Supplier.

**8.3** For the avoidance of doubt, the Parties agree and acknowledge that nothing in these Conditions regarding insurance shall relieve the Supplier from the diligent performance of any of its obligations under the Agreement.

**8.4** The Supplier shall be solely responsible for any deductible losses under any policy.

**8.5** Every insurance policy effected by the Supplier in accordance with the Agreement shall include worldwide jurisdiction and not in any way exclude the Cayman Islands as a covered jurisdiction.

**9.** **CONFIDENTIALITY**

**9.1** Each party undertakes that it shall not at any time during this Agreement and for a period of five years after termination of this Agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 9.2.

**9.2** Each party may disclose the other party’s confidential information:

**(a)** to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party’s obligations under the Agreement. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party’s confidential information must comply with this clause 9; and

**(b)** as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

**9.3** Neither party shall use the other party’s confidential information for any purpose other than to perform its obligations under this Agreement.

**10.** **TERMINATION**

**10.1** Without affecting any other right or remedy available to it, the Customer may terminate the Agreement:

1. with immediate effect by giving written notice to the Supplier if:
	1. there is a change of control of the Supplier; or
	2. the Supplier’s financial position deteriorates to such an extent that in the Customer’s opinion the Supplier’s capability to adequately fulfil its obligations under the Agreement has been placed in jeopardy; or
	3. the Supplier commits a breach of clause 4.1(e) or clause 13,
2. for convenience by giving the Supplier three months’ written notice.

**10.2** Without affecting any other right or remedy available to it, either party may terminate the Agreement with immediate effect by giving written notice to the other party if:

1. the other party commits a material breach of any term of the Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
2. the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or
3. the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

**11.** **CONSEQUENCES OF TERMINATION**

**11.1** Termination or expiry of this Agreement shall not affect the parties’ rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination or expiry.

**11.2** Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement shall remain in full force and effect.

**12.**   **FORCE MAJEURE**

Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under it if such delay or failure results from events, circumstances or causes beyond its reasonable control and which could not have been avoided by the use of reasonable diligence. If the period of delay or non-performance continues for [NUMBER] [weeks **OR** months], the party not affected may terminate the Agreement by giving [NUMBER] [days’] written notice to the affected party.

**13.**   **ANTI-BRIBERY**

**13.1**  The Supplier shall:

**(a)**   comply with any and all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Anti-Corruption Act (2019 Revision) (**Relevant Requirements**);

**(b)** not engage in any activity, practice or conduct which would constitute an offence under Anti-Corruption Act (2019 Revision) if such activity, practice or conduct had been carried out in the Cayman Islands;

**(c)** have and shall maintain in place throughout the term of this Agreement its own policies and procedures, including but not limited to adequate procedures under the Anti-Corruption Act (2019 Revision), to ensure compliance with the Relevant Requirements, and will enforce them where appropriate;

**(d)** promptly report to the Customer any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this Agreement;

**(e)** immediately notify the Customer (in writing) if a public officer becomes an officer or employee of the Supplier or acquires a direct or indirect interest in the Supplier (and the Supplier warrants that it has no public officers as officers or employees or direct or indirect owners at the date of this Agreement);

**(f)** within one (1) month of the date of this Agreement, and annually thereafter, certify to the Customer in writing signed by an officer of the Supplier, its compliance with this clause 13 by the Supplier and all persons associated with it and all other persons for whom the Supplier is responsible under clause 13.1(e) The Supplier shall provide such supporting evidence of compliance as the Customer may reasonably request.

**13.2**  Without prejudice to clause 13.1*,* the Supplier shall ensure that any person associated with the Supplier who is performing services in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this clause 13. The Supplier shall in any circumstances be responsible for the observance and performance by such persons of the Relevant Requirements, and shall in any circumstances be directly liable to the Customer for any breach by such persons of any of the Relevant Requirements howsoever arising.

**13.3** For the purpose of this clause 13, the meaning of adequate procedures and public officer and whether a person is associated with another person shall be determined in accordance with Anti-Corruption Act (2019 Revision) (and any guidance issued in relation to that Law). For the purposes of this clause 13a person associated with the Supplier includes but is not limited to any subcontractor of the Supplier.

**14.**  **GENERAL**

**14.1**  **Assignment and other dealings.**

1. The Customer may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights and obligations under this Agreement.
2. The Supplier shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement without the prior written consent of the Customer.

**14.2**  **Notices.**

1. Any notice or other communication given to a party under or in connection with this Agreement shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by fax to its main fax number or sent by email to the address notified by the other party for the purposes of this clause.
2. A notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if sent by fax or email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clausebusiness hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
3. This clause 14.2 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

**14.3** **Severance.**

If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

**14.4**  **Waiver.**

A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

**14.5 No partnership or agency.**

Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

**14.6** **Third party rights.**

1. Unless it expressly states otherwise, the Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act, 2014 to enforce any term of the Agreement.
2. The rights of the parties to rescind or vary the Agreement are not subject to the consent of any other person.

**14.7**  **Variation.**

Except as set out in this Agreement, no variation of this Agreement, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the parties or their authorised representatives.

**14.8**  **Governing law.**

This Agreement, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of the Cayman Islands.

**14.9 Jurisdiction.**

Each party irrevocably agrees that the courts of the Cayman Islands shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Agreement or its subject matter or formation.

|  |  |  |
| --- | --- | --- |
| Signed by [ ] for and on behalf of **CAYMAN ISLANDS GOVERNMENT** |   |  |
|  |
| Signed by [NAME OF DIRECTOR] for and on behalf of **[ ]** |   | Director |

**SCHEDULE A**

[Insert details of Deliverables from RFP]

**SCHEDULE B**

[Insert timeline/project implementation plan from the RFP]

**SCHEDULE C**

[Insert pricing details from the RFP]