



## **TERMS OF REFERENCE**

# **CONSULTANCY SERVICE TO DRAFT RULES OF PRACTICE AND PROCEDURE FOR THE ENVIRONMENTAL COMMISSION OF TRINIDAD AND TOBAGO**

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*This document has 38 pages*

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## 1.0 INTRODUCTION

1.1 The Environmental Commission (hereinafter referred to as “the Commission”) is seeking consultancy services to facilitate the drafting of new Rules of Practice and Procedure for the Commission.

1.2 The Commission is a superior Court of record established under section 81 of the Environmental Management Act, Chapter 35:05 (hereinafter referred to as “the Act”). The mandate of the Commission includes the hearing and determination of appeals from decisions or actions of the Environmental Management Authority (hereinafter referred to as “the EMA”) that are authorized under the Act. It also hears and determines applications by the EMA to enforce Consent Agreements and Administrative Orders and adjudicates upon complaints that are brought by private persons (as Applicants) against any other person (the Respondent) on the basis that the Respondent has violated the environmental requirements that are specified in the Act.

1.3 The Commission is the only specialist environmental Superior Court of Record in the Caribbean region and is further recognized as one of the few such environmental courts in the world. The full jurisdiction of the Commission is set out at sections 81 and 84 of the Act.

## 2.0 CURRENT CHALLENGES

### 2.1 Requirement of the Commission:

2.1.1 Under section 84(15) of the Act the Commission is empowered, subject to the approval of the President, to make rules governing the carrying on of its business and the practice and procedure in connection with the proceedings before it. The Commission’s existing Rules of Practice and Procedure (hereinafter referred to as “the Commission’s Rules” or “the Rules”) were made in 2001. The Commission’s Rules pre-date the new Civil Procedure Rules of the Supreme Court of Justice, 2005 and the subsequent amendments which led to the existing Consolidated Civil Proceedings Rules, 2016 (hereinafter referred to as “the New Supreme Court Rules (CPR)”).

2.1.2 In keeping with its policy and strategic goal of maximizing access to justice and fully maximizing the use of the Court, the Commission proposes a complete overhaul of its current Rules of Practice and Procedure with a view to making it user friendly for both attorneys and lay persons and with a view to developing the appropriate practices and procedures that are necessary to authorize an effective, specialized environmental court.

## 2.2 Challenges with the Current Rules of Procedure and Practice

2.2.1 Some of the challenges that have been identified with respect to the existing Rules are as follows:

- a) The Rules are vague and silent on many procedural steps that are commonly applied in litigation in the High Court. For example both the Act and the Rules are silent as to the procedure to be followed when a Respondent fails to file a Defence; or when a Defence is filed which effectively admits the claim. There is no indication in the existing Rules as to whether applications for Default or Summary Judgments may be made in these circumstances. The Rules attempt to cure this silence by inserting a general and catch-all provision at Rule 1.5 which states that the Commission may give directions on the procedure to be followed in respect of any matter not dealt with by the Act or Rules and that such directions **may** be guided by the Rules of the Supreme Court 1975 (commonly referred to as “the Old Rules”) hereinafter referred to as “the Old Supreme Court Rules (CPR)”. This has created uncertainty in the Rules that are applicable to the Commission. The Commission has identified a need to identify and cure all the gaps and ambiguities in the Rules.
- b) The Commission’s Rules, though written in plain text, are not always user friendly. The Commission promotes and caters to self-representation. Therefore, there is a need for the Rules to be easily accessible (contained in one document), concise and stated in plain language that is simple and easy for lay persons to understand. Some examples include:
  - i) The use of Latin words and phrases in the text;
  - ii) References, in the text, to other documents that are not associated with the Commission’s existing Rules without stating the contents of those documents, thereby forcing the reader to consult another document in order to fully understand the Rule (e.g. Rules 1.5, 3.6, 5.4, 5.5);
  - iii) The use of technical legal words and phrases in the text which are not explained such as “interlocutory applications”, “stay” and “joinder”; and
  - iv) The omission of some procedures from the text completely. For example, the only indication that a Defence ought properly to be filed on the service of an Application is provided in Schedule 1 Form 1 in the part of the Form entitled “Directions for Defending”. There is no specific rule outlining the need to file a Defence.
- c) The Commission’s Rules are silent on the method for the assessment of costs. An update of the Rules is required in order to specifically incorporate the cost regime which exists under the New Supreme Court Rules (CPR) and the Practice Direction to the Assessment of Costs which is annexed to the said CPR.

- d) There is a need to examine the appropriate provisions of the Act and the existing Rules to determine whether there are any restrictions to the Commission's jurisdiction to award costs under the current Act and Rules, and if same exists, the nature of the restrictions and recommendations for expansion of the jurisdiction.
- e) The Commission intends to incorporate Information Communications Technology (ICT) into its processes in order to facilitate hearings via video-conferencing and teleconferencing, electronic filing of documents, on-site hearings, taking evidence on site etc. The existing Rules do not provide for those type of proceedings or activities. Therefore, the updated Commission's Rules must facilitate these innovations.
- f) There is a need to re-organize or re-structure the Commission's Rules along thematic lines that are related to the stages in the litigation process, similar to the approach used in the New Supreme Court Rules (CPR).
- g) There is a need for all time lines to be specifically included in the text.
- h) The Rules need to be customer focused with matters before the Court being dealt with efficiently and expeditiously. The Consultant may need to examine the existing methods for initiating the various proceedings before the court and consider and explore whether and how same can be improved to ensure greater timeliness, expedience and efficiency in the hearing of the matters.
- i) There is a need to revisit how evidence is to be brought before the Court in appropriate instances, for example whether witness statements or affidavit evidence, with a view to identifying and incorporating the most efficient and expeditious method of dealing with matters.
- j) The existing Rules lack a philosophy or over-riding objective which ultimately guides or anchors the Court in the exercise of any discretion under the Rules and in the interpretation of any Rule. There is a need to articulate an over-riding objective which would set the appropriate tone for the Commission in the application of the Rules. The Commission may wish to adopt the over-riding object of the New Supreme Court Rules (CPR).

It is expected that the overhaul will address the challenges that are outlined above and any further issues that the Consultant identifies during the process.

## 2.3 Required Services – Deliverables

### 2.3.1 The Consultant will be required to:

- a) conduct comprehensive research, review and analysis of the existing Commission's Rules and advise the Commission on any and all amendments that are needed in order to ensure that the Commission's Rules set out all the practices and procedures that will enable it to carry on its mandate and jurisdiction under the Act. The new jurisdictions that are to be created upon the proclamation of the Planning and Facilitation of Development Act (Act No. 10 of 2014) and the Urban and Regional Planning Profession Act (Act No. 22 of 2020) are to be included in the research, review and analysis;
- b) incorporate the research, review and analysis at 2.3.1(a) into a comprehensive written research document and opinion/advice to the Commission, with any relevant case law, assessing the current Rules of Practice and on the proposed amendments; and
- c) draft the amended Commission Rules of Practice and Procedure under section 84(15) of the Act so that same is contained in one consolidated document. The draft must include provisions that cater to and facilitate the new jurisdictions that are to be created under the Planning and Facilitation of Development Act and the Urban and Regional Planning Profession Act.

### 2.3.2 In carrying out the obligations under paragraph 4.1, the Consultant will be required to:

- a) Address all the challenges that are that are outlined at paragraphs 3.0 to 3.3 above and all other further issues that the Consultant, in his/her professional opinion, recognizes as a challenge or that ought to be addressed either before or during the performance of his/her obligations under the Agreement. The Client reserves the right to further qualify issues during the performance of the Agreement;
- b) Attend (physically or virtually) consultation meetings with the Chairman, Members and Registrar of the Commission as required by the Commission and/or the Consultant;
- c) Request and obtain the necessary instructions from the Commission as required during the research and drafting stages. All requests from, and instruction to, the Consultant are to be made in writing to the Registrar and are to be given in writing under the hand of the Registrar;

- d) Undertake appropriate research for use in providing advice to the Commission and in the preparation of the Draft Commission Rules. This research will include, but is not limited to, the Rules, Procedures and Practices of other environmental courts globally, the procedures set out in the New Supreme Court Rules and any case law reflecting same;
- e) Examine the existing Commission Rules and advise on any amendments that ought to be done, having regard to the research, review and analysis undertaken;
- f) Identify any legal and drafting problems in the existing Commission Rules and/or that arise during the drafting process and provide advice on solving same and, in particular, advise on (i) whether there is any provision in the existing Commission Rules that offends or is *ultra vires* the Act or the Constitution of Trinidad and Tobago and (ii) whether there are any restrictions to the Commission's jurisdiction to award costs under the current Act and Rules, and if same exists, the nature of the restrictions and recommendations for expansion of the jurisdiction. Also consider and advise how other global environmental courts deal with costs with respect to the potential for costs awards to act as a barrier to environmental litigation.
- g) Draft the Rules of Practice and Procedure using the modern "plain text" style of drafting to set out all the practices and procedures of the Commission that enable it to carry on its business. The Draft should identify any relevant case law that guides in the interpretation of the Rules. Additionally, the Draft Rules must include drafts of the appropriate Forms and Precedents and must be accompanied by the Explanatory Note;
- h) Submit completed Draft Commission Rules to the Registrar of the Commission on or before a date to be agreed which will be included in the final contract;
- i) Evaluate amendments proposed by the Commission and provide appropriate advice regarding same to the Registrar of the Commission within a time-frame to be agreed and which will be included in the final contract;
- j) Make corrections as needed to the submitted Draft based on instructions from the Commission through the Registrar;

- k) Evaluate amendments to the Revised Draft proposed by the stakeholders during the Stakeholder Consultation Process and provide appropriate advice to the Registrar of Commission within a time frame to be agreed and which will be included in the final contract;
- l) Make corrections as needed to the submitted Revised Draft after the consultation process is completed within a time frame to be agreed and which will be included in the final contract; and
- m) Submit the Final Draft Commission Rules to the Registrar of the Commission on or before a date to be agreed and which will be included in the final contract.

### **3.0 CHARACTERISTICS OF THE CONSULTANCY**

#### **3.1 Draft Form of Contract**

3.1.1 The Draft Form of Contract that is to be executed by the Registrar of The Environmental Commission and the Consultant is annexed hereto as an appendix (**APPENDIX A - Draft Form of Contract**). Annexed to the **APPENDIX A - Draft Form of Contract** are the following documents which will form part of the contract:

- a) **Appendix A1** - Scope of Work.
- b) **Appendix A2** - Draft Project Schedule.
- c) **Appendix A3** - Draft Payment Schedule.

#### **3.2 Consultancy Cycle - Timing of Delivery**

3.2.1 The Required Services under the Agreement are to be performed during a six-month period, unless an alternative time period is put forward by the Consultant in his/her Proposal and accepted by the Commission as the Client.

### **4.0 REQUEST FOR PROPOSALS - INSTRUCTIONS TO CONSULTANTS**

#### **4.1 Content of Proposal:**

4.1.1 Consultants are invited to submit a proposal for the execution and delivery of the required services. The **PROPOSAL** should include the following:

- a) **A Resume/Curriculum Vitae** stating:
  - (i) Information with regard to the following **mandatory qualifications** :
    - A Bachelor of laws (LLB) from a recognised university;
    - A Legal Education Certificate (L.E.C.) from a recognised law school or its equivalent; and
    - Admission to practise law in Trinidad and Tobago.



- (ii) Information with regard to the following:
  - Experience in legislative drafting and/or drafting of rules for a Court; and
  - Post-Graduate Training at the level of either a Master of Laws (LLM), Diploma or Certificate in Legislative Drafting.
- b) **Copies of certificates** or other documents evidencing the qualifications listed above;
- c) A completed **Declaration Form** (download from website);
- d) **Proposed Methodology - Work Plan:** This is a statement of the Consultant's approach to the project and the methodology and work-plan that the Consultant wishes to employ. The Consultant should consult the Draft Project Schedule which is annexed to the Draft Form Contract to determine whether the said project fits into his/her methodology or whether he/she wishes to make changes to the schedule in which case, the suggestions are to be explained and included in the proposal;
- e) **Conflict of Interest** - The proposal should include a statement describing any actual or potential conflict of interest or appearance of impropriety which could be created in performing the contractual obligations under the Contract.

In relation to the procurement process, a conflict of interest arises when the Consultant has an unfair advantage or engages in conduct, directly or indirectly, that may give him or her an unfair advantage including but not limited to:

- i) having, or had access to, confidential information of the Commission in relation to this procurement that is not available to other suppliers;
- ii) communicating with any person with a view to influencing preferred treatment in the procurement process (including but not limited to the lobbying of decision makers involved in the procurement process), or
- iii) engaging in conduct that compromises, or could be seen to compromise the integrity of the procurement process.

In relation to the performance of the contractual obligations contemplated under the contract, a conflict of interest arises when the Contractor's other commitments, relationships or financial interests:

- i) could, or could be seen to, exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgment, or
- ii) could be seen to compromise, impair or be incompatible with the effective performance of its contractual obligations.

Failure to disclose any actual or potential conflict of interest may lead to the Consultant being sanctioned by disqualification. Consultants are required to err on the side of caution by making a declaration in circumstances of uncertainty.

- f) **Pending Litigation/Regulatory Action** - The proposal should also indicate any pending litigation and/or regulatory action by an oversight body that could have an adverse material impact on the Consultant’s ability to serve the Commission;
- g) **Fees - Contract Price** - The proposal should state the fees associated with the delivery of the Required Services as set out in the Payment Schedule<sup>1</sup>. This sum should be all inclusive with payment terms specified.
- h) **Brief Summaries** – Brief summaries of contracts completed for the provision of services that were similar in scope and/or nature.

**4.2 Submission of Proposal:**

4.2.1 All proponents are required to submit one (1) original with two (2) copies of the Proposal.

4.2.2 All three (3) copies must be placed in a sealed envelope with the Consultant’s name/business and address on said envelope.

4.2.3 The sealed envelope must be placed in the Tender Box located at the lobby of the Environmental Commission, “Telly” Paul Building, Corner St. Vincent and New Streets, Port of Spain.

4.2.4 The package must be addressed to and labelled as follows:

<p><b>Registrar,</b> The Environmental Commission <b>Attention: Procurement Officer</b></p> <p>CONSULTANCY SERVICE TO DRAFT RULES OF PRACTICE AND PROCEDURE</p> <p><b>Consultant’s Name/Business:</b> <b>Consultant’s Address:</b></p>
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<sup>1</sup> The **Payment Schedule** is annexed as Appendix II to the Basic Form Contract which is Annexed to the Terms of Reference as **APPENDIX A**.

4.2.5 **The proposal must be submitted no later than September 20<sup>th</sup> , 2021 at 2.00 p.m.** Late submissions will not be accepted.

4.2.6 The size of the opening in the tender box is *6cm x 29cm* and submissions must be able to pass through this opening.

4.2.7 Proponents/Representative are required to register their submission on the **Tender Submittal Form** located on the **Tender Submission Box**.

4.2.8 Further information can be obtained by e-mail to: [kristie.edwards@ec.gov.tt](mailto:kristie.edwards@ec.gov.tt)

4.2.9 The submitting Proponents shall bear all costs associated with the preparation and submission of the proposal and the Commission will in no case be responsible or liable for these costs.

4.2.10 Consultants are requested to submit written questions on matters on which clarification is needed by **September 3<sup>rd</sup>, 2021** no later than 3.00 p.m. These questions should be e-mailed to: [kristie.edwards@ec.gov.tt](mailto:kristie.edwards@ec.gov.tt) with the subject, "**Clarification re: Provision of Drafting Services**". Although the name of the Consultant seeking clarification will be kept confidential, the question/s and response will be posted on the Commission's website.

## 5.0 EVALUATION OF SUBMISSIONS

### 5.1 Evaluation Criteria:

#### 5.1.1 TECHNICAL CRITERIA

The Consultant will be assessed using a weighting/scoring method. A minimum score of 75 overall of the technical criteria is required for selection. These criteria and their weights are outlined as follows:

<b>Criteria</b>	<b>Weight</b>
Post Graduate Training	20
Relevant Experience	50
Proposed Methodology/Work-Plan	30
<b>Total Maximum score</b>	<b>100</b>

## 5.1.2 FINANCIAL CRITERIA

For all Consultants who attain and or exceed the minimum technical score of 75, a maximum weight/score of 30 will be awarded to the best priced proposal to determine which Consultant provides the most advantageous bid.

5.1.3 The Consultant that meets and or exceeds the pass score under 5.1.1 and provides the most advantageous price under the 5.1.2, will be deemed the “Top Consultant” and may be considered to enter into a contract.

5.1.4 Alternatively, should there be a tie of the final score of Consultants’ proposals (Technical and Financial), the Consultant with the higher technical score will be deemed the “Top Consultant” and may be considered to enter into a contract.

5.1.5 The Client is not bound to accept the Proposal with the lowest price.

## 5.2 Clarification Meeting

5.2.1 The Client reserves the right to conduct clarification meeting/s (virtually or physically) prior to its final evaluation and recommendation of an award of contract with the short-listed Consultant/s.

5.2.2 Virtual/physical meeting questions and responses will be documented and circulated via e-mail to the Consultant/s at the e-mail address provided by him/her.

## 5.3 Clarification of Proposal

5.3.1 A Proposal which is not completely clear in its meaning or contradictory in certain respects may, nevertheless be evaluated if it becomes clear following clarification with the Consultant.

5.3.2 The Client may request clarification from Consultants concerning inconsistencies or ambiguities in a bid submission in order to facilitate evaluation of the bid. Such a request will be e-mailed to the Consultant using the e-mail address which the Consultant provided in his/her proposal.

5.3.3 In responding to the request for clarification, the Consultant will not be permitted to change the contract price or any other aspect of the proposal or to add information to the proposal. The Client shall reject any Consultant if he/she amends his/her proposal in any manner in response to a request for clarification.

5.3.4 The Client will allow for correction of purely arithmetical or computation errors and typographical errors.

## 6.0 CONTRACT AWARD AND NOTIFICATION

### 6.1 Selection and Notification

6.1.1 Once the top Consultant is selected in accordance with section 5.0 above, he/she will be notified via a Letter of Acceptance of the technical proposal in writing and by e-mail by the Registrar of the Environmental Commission and he/she will be invited to negotiate the specific payment terms (not the price) and the specific time lines for delivery of the Required Services, that is, the Project Schedule and the Payment Schedule, that will be included in the Contract.

### 6.2 Negotiation of Specific Payment Terms (Not Price) and Specific Time Lines

6.2.1 Negotiations of the specific payment terms and time lines will take place **prior to** the execution or the “sign off” of the contract between the Registrar and the top selected Consultant.

6.2.2 If the Consultant fails to engage in negotiations with the Client, the offer of the award of the contract will be withdrawn and the Contract will not be executed.

6.2.3 The specific payment terms and specific time lines would be included in the Contract (via the Project Schedule and the Payment Schedule) once there is agreement with the Client on these terms. If there is no agreement, the offer of the award of the contract will be withdrawn and the Contract will not be executed.

6.2.4 In either of the circumstances at 6.2.2 and 6.2.3 above, the next best performing Consultant, who meets all the requirements of Section 5.0, will be selected, issued a letter of acceptance of the technical proposal and invited to negotiate the above mentioned terms to enter into a Contract.

## 7.0 CONTACT INFORMATION

7.1 Please use the following contact details for all correspondence with the Environmental Commission concerning this Terms of Reference:

The Registrar  
**Attention: Procurement Officer**  
Environmental Commission of Trinidad and Tobago  
Corner St. Vincent and New Streets  
Port of Spain  
Telephone: 625-7353, 627-3432 ext 151  
E-mail: [kristie.edwards@ec.gov.tt](mailto:kristie.edwards@ec.gov.tt)

APPENDIX A

DRAFT FORM OF CONTRACT

TRINIDAD AND TOBAGO

THIS AGREEMENT is made in duplicate on the ..... day of .....in the Year of Our Lord Two Thousand and Twenty-One between the Registrar of The Environmental Commission of Trinidad and Tobago (which expression shall mean and include the person for the time being carrying on the duties of Registrar, The Environmental Commission) acting on behalf of the Government of Trinidad and Tobago at E.F. "Telly" Paul Building, Corner St. Vincent and New Streets, Port of Spain in the island of Trinidad (hereinafter called "**the Client**") of the One Part and ....., of ....., in the island of Trinidad (hereinafter called "**the Consultant**") of the Other Part.

WHEREAS -

- A. The Client requires services for the drafting of its Rules of Practice and Procedure (hereinafter called "**the Required Services**") which is more particularly described in the "**Scope of Works**" which is hereto annexed as "**Appendix A1**" and in the "**Project Schedule**" which is hereto annexed as "**Appendix A2**".
- B. The Consultant has represented to the Client that she/he holds the requisite qualifications, experience and skills as are set out in the **Scope of Works** and is capable of carrying out the Required Services;
- C. By letter of award dated the ... day of ..... 2021, the Client informed the Consultant that he/she had been awarded the contract for the provision of the **Required Services** on the terms and conditions hereinafter set forth.

IT IS HEREBY AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 **Required Services** mean the required services that are outlined in the Scope of Works that is annexed as Appendix 1 and include the tasks, deliverables and delivery dates contained in the Project Schedule that is annexed as Appendix A2.

1.2 **Project Schedule** means the list of tasks, deliverables and delivery dates that are set out in the document titled Project Schedule that is annexed as Appendix A2.

1.3 **Payment Schedule** means the schedule that is annexed as **Appendix A3** to the Agreement herein.

2. APPOINTMENT

2.1 The Client hereby appoints the Consultant and the Consultant hereby accepts the appointment to provide the Required Services.

3. COMMENCEMENT DATE

3.1 The Agreement shall come in to force and effect on the date of execution by the Parties.

4. COMPLETION DATE

4.1 The Consultant shall complete and deliver the Required Services on or before the completion dates that are identified in the Project Schedule, or such other dates as may be agreed to by the Parties in writing pursuant to Clause 23 herein.

4.2 Unless terminated earlier pursuant to Clauses 18 and 19 herein, the Agreement shall terminate when, in accordance with the provisions herein, the Required Services have been completed and the payments of remuneration have been made.

5. CONSIDERATION

5.1 In consideration of the performance and completion of all the Required Services the Client shall pay to the Consultant the sum of \$..... to be

paid in accordance with the Payment Schedule on the terms under Clause 6 herein.

6. CONSULTANT'S OUTPUT, REPORTS AND DELIVERABLES

6.1 The Consultant shall submit the deliverables under the Agreement in accordance with the Required Services Project Schedule.

6.2 The Consultant shall incorporate into the deliverables any revision or enlargement that the Client deems necessary to the delivery of the Required Services.

6.3 The Consultant shall not be entitled to any extension of the time limit due to factors which have not been brought to the attention of the Client. Any extension of the time limits of the Agreement shall only be warranted by factors which the Consultant could not reasonably foresee when the Agreement was signed, which it could not prevent and the consequences of which it was unable to avert despite taking all necessary action to that end.

7. ERRORS AND OMISSIONS

7.1 The Consultant shall perform such additional services as may be necessary to correct errors and omissions that he/she made in the Required Services, without undue delay and without additional cost to the Client. The acceptance of the Required Services by the Client shall not relieve the Consultant of the responsibility for subsequent correction of such errors. Nothing herein shall be construed to relieve the Consultant of the responsibility for his/her subsequent correction of such errors. Nothing herein shall be construed to relieve the Consultant of his/her liability for additional costs resulting from errors or negligence.

8. GENERAL OBLIGATIONS AND STANDARDS OF PERFORMANCE

8.1 The Consultant shall provide the Required Services and, further, shall devote so much of his/her time, attention and ability as is reasonably required to execute the Required Services.

8.2 The Consultant shall exercise all reasonable skill, care and diligence in performing the Required Services.



8.3 The Consultant shall do all that is necessary for the effective and complete performance of the Required Services in a manner that accords with the professional standards of his/her profession.

8.4 The Consultant shall obey all lawful and reasonable instructions given by the Client in relation to the execution of the Required Services.

8.5 The Consultant will endeavour to make available, in a timely manner, all the necessary financial, technical, physical and human resources that are reasonably required for the efficient and effective performance of the Required Services.

8.6 The Consultant shall, throughout the performance of the Required Services and subsequent to its completion, maintain the strictest secrecy with respect to third parties in respect of the Client's confidential information and shall not divulge such information without the written authorization of the Client;

8.7 The Client undertakes to provide the Consultant, should she/he so require, with such instructions as is reasonably within the Client's capacity to provide in order to enable the Consultant to perform the Required Services effectively and efficiently.

## 9. EXTRA SERVICES

9.1 If the Consultant is of the opinion that any instructions given by the Client are outside of the scope of the required services and constitute extra services, the Consultant shall promptly notify the Client in writing of his/her opinion. In the event that the Client determines that such instructions do constitute extra services, it shall provide added compensation which is to be mutually agreed by the Parties prior to the performance of the said extra services. In the event that the Client and the Consultant do not reach a mutual agreement, either on what constitutes extra services and/or what constitutes fair and equitable compensation, the provisions of the Mediation and Arbitration Clause herein shall apply.

9.2 Extra services are services that fall outside of the ambit of the Required Services.

9.3 The Consultant shall not perform any extra services, whether on a request in writing of the Client or otherwise, unless:

- a) the Consultant notifies the Client in writing that the services that he/she is about to perform are outside the scope of the Required Services and constitute extra services; and

- b) both Parties execute a written Agreement for the performance of the extra services by the Consultant at an agreed price.

## 10. ASSIGNMENT/SUB-CONTRACTING

10.1 The Consultant shall not assign in whole or in part any of his/her rights or obligations under this Agreement without the prior written consent of the Client.

10.2 The Consultant shall not sub-contract the whole or any part of this Agreement without the prior written consent of the Client.

## 11. INDEMNITY

11.1 The Consultant shall defend, indemnify, and hold harmless the Client, its agents, servants and employees from and against any and all suits, claims, demands and damages of whatsoever kind or nature arising out or resulting from of any negligent act, error or omission of the Consultant, its agents, servants and employees in the performance of the Required Services under this Agreement.

## 12. LIABILITY OF CONSULTANT

12.1 The Consultant shall be liable to the Client for the performance of the Required Services in accordance with the provisions of this Agreement and for any loss suffered as a result of any default of the Consultant, his/her servants, agents or assigns, in such performance subject to the following limitations:

- a) The Consultant shall not be liable for any damage or injury caused by or arising out of the act, neglect, default or omission of any persons other than the Consultant or his or her assigns, servants, agents, partners or principals.
- b) The Consultant shall not be liable for any loss or damage caused by or arising out of circumstances over which the Consultant or his or her assigns, servants, agents, partners or principals had no control.

## 13. CONFIDENTIALITY

13.1 The Consultant shall keep confidential and shall not disclose or use in any manner, other than as authorized, directly or indirectly, any processes, information, records and/or documents owned by the Client and/or used by the Client in connection with the operation of its business including the Client's court matters and administrative matters.

13.2 This clause shall survive the expiration or termination, for whatever reason, of this Agreement.

#### 14. PROPRIETARY RIGHTS

14.1 All services provided under this Agreement and all materials, products, inventions, works and deliverables developed or prepared by the Consultant under this Agreement are the property of the Client and all title and interest therein shall vest in the Client. These rights include patent rights, copyright, derivative rights, trade secrets and trademarks.

#### 15. DELIVERY UP OF DOCUMENTS

15.1 The Consultant shall not retain any copies of the aforementioned files, records, reports, documents, information, letters, and such items without the Client's prior written permission.

15.2 Upon the expiration of this Agreement or in the event of the earlier termination of this Agreement in accordance with Clauses 18 and 19 herein or whenever requested by the Client, the Consultant shall immediately deliver to the Client all such files, records, documents, information and other items in his/her possession or under his/her control related or relevant to the Client's business.

#### 16. CONFLICT OF INTEREST

16.1 The Consultant shall not engage directly or indirectly in any business or professional activity that would conflict with the performance of his/ her obligations under this Agreement.

#### 17. SUSPENSION

17.1 The Client may, by written notice of suspension to the Consultant, suspend all payments to the Consultant if the Consultant fails to perform any of its obligations under this contract including the carrying out of the Required Services, provided that such notice of suspension shall specify the nature of the failure and shall request the Consultant to remedy such failure within a period not exceeding seven (7) days after receipt by the Consultant of such notice of suspension.

## 18. TERMINATION BY THE CLIENT

18.1 The Client may terminate this contract immediately after the occurrence of any of the events specified in sub-paragraphs (a) and (b) of this Clause and by not less than fourteen (14) days written notice of termination to the Consultant after an event referred in paragraphs (c) through (f) of this Clause:

- (a) If the Consultant fails to remedy a failure in the performance of its obligations herein, as specified in a notice of suspension pursuant to Clause 18.1 above, within fourteen (14) days of receipt of such notice of suspension or within such further period as the Client may have subsequently approved in writing;
- (b) If the Consultant becomes bankrupt or takes advantage of any law for the benefit of debtors;
- (c) If the Consultant fails to comply with any final decision reached as a result of mediation and arbitration proceedings pursuant to Clause 26 herein;
- (d) If the Consultant submits to the Client a statement which has a material effect on the rights, obligations or interests of the Client and which the Consultant knows to be false;
- (e) If, as a result of force majeure, the Consultant is unable to perform a material portion of the Required Services for a period of not less than fourteen (14) days; or
- (f) If the Client, in its sole discretion and for any reason whatsoever, decides to terminate this contract.

## 19. TERMINATION BY THE CONSULTANT

19.1 The Consultant may, by not less than fourteen (14) days' written notice to the Client, such notice to be given after the occurrence of any of the events specified in paragraphs (a) through (d) of this clause, terminate this contract:

- (a) If, subject to Clause 4 herein, the Client is in material breach of its obligations pursuant to this contract and has not remedied the same within thirty (30) days (or such longer period as the Client may have subsequently

approved in writing) following the receipt by the Client of the Consultant's notice specifying such breach;

- (b) If as a result of force majeure, the Consultant is unable to perform a material portion of the Required Services for a period of not less than fourteen (14) days; or
- (c) If the Client fails to comply with any final decision reached as a result of mediation or arbitration proceedings pursuant to Clause 26 herein.

## 20. CESSATION OF SERVICES

20.1 Upon termination of this contract by notice of either Party to the other pursuant to Clauses 18 and 19 herein, the Consultant shall immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Required Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditure for this purpose to a minimum.

## 21. PAYMENT UPON TERMINATION

21.1 Upon the termination of this Agreement under Clauses 18 and 19 herein, and subject to the obligation of the Consultant to reduce expenditure to a minimum as contained in Clause 20, the Consultant shall be entitled to receive the remuneration due under this Agreement for the provision of the deliverables under Required Services up to the effective date of termination and reimbursement in full for such costs as shall have been incurred during the contract period prior to the effective date of such termination and which are directly attributable to the incomplete portion of the deliverables under the Required Services of this Agreement. The Consultant shall also submit to the Client all data, research and analyses formulated as at the termination date.

21.2 If the Parties do not agree upon the value of work performed prior to the termination of this Agreement (other than deliverables or work that has been unsatisfactorily performed) the provision for mediation and arbitration pursuant to Clause 26 shall apply.

## 22. FORCE MAJEURE

22.1 For the purpose of this Agreement, Force Majeure, means an event which is beyond the reasonable control of a Party and which makes a Party's performance of its obligations under this Agreement impossible or so

impractical as reasonably to be considered impossible in the circumstances, and includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action (except where such strikes, lock-outs and other industrial action are within the powers of the Party invoking the Force Majeure to prevent), confiscation or any other action taken by Government or Government agencies.

22.2 Force Majeure shall not include :

- a) Any event which is caused by the negligence or intentional action of a Party or such Party's agents or employees;
- b) Any event which a diligent Party could reasonably have been expected to take into account at the time of the execution of this Agreement and to avoid or overcome in the carrying out of his/her obligations herein;
- c) Insufficiency of funds or failure to make any payment required hereunder.

22.3 In an event that gives rise to circumstances of force majeure, the obligation of the Parties to perform the said Required Services shall forthwith be suspended until such circumstances shall have ceased, provided that the Party affected by such an event has taken all reasonable alternative measures with the objective of carrying out the terms of the Agreement.

22.4 A Party affected by an event of force majeure shall notify the other Party of such events, as soon as possible and in any event not later than seven (7) days following the occurrence of such an event, providing evidence of the nature and cause of such event.

22.5 A Party affected by an event of force majeure shall take all reasonable measures to remove its inability to fulfil its obligation under the Agreement with minimum delay and shall give notice of the restoration of normal conditions as soon as reasonably possible.

22.6 In the event that the Consultant is unable to perform his/her obligations as a result of force majeure, the Client shall not be liable to make any payment to the Consultant in respect of the period of the suspension and any period already paid in respect of that period shall be credited to the period following the resumption of performance of the Required Services.

22.7 The Parties shall take all reasonable measures to minimize the consequences of any event of force majeure.

22.8 No later than seven (7) days after the Consultant, as a result of an event of force majeure, has become unable to execute the Required Services, the Parties shall consult with each other with a view to agreeing on appropriate measures to be taken in the circumstances.

### 23. AMENDMENT/WAIVER

23.1 The Client shall have the absolute right to amend the Required Services or to change the general basis for the execution of the Required Services at any time and such action on its part shall in no event be deemed a breach of contract.

23.2 If the Client amends the scope of the Required Services or changes its general basis and the Consultant is of the opinion that extra services are made necessary as a result thereof, the provisions of the Extra Services Clause herein shall apply.

23.3 No amendment, change in, addition to, or waiver of any of the Required Services and/or any provisions of this Agreement shall be binding upon the Parties unless in writing, and signed by an authorized representative of the relevant Party.

23.4 No waiver by any of the Parties of any breach of any of the provisions of this Agreement shall be construed as a waiver of any subsequent breach, whether of the same or of a different provision of this Agreement.

### 24. STATUS OF THE CONSULTANT

24.1 Under this Agreement the Consultant is at all times an independent Consultant and nothing herein shall be construed as establishing a relationship of master and servant or agent and principal between the Client and the Consultant.

### 25. FAIRNESS AND GOOD FAITH

25.1 The Parties undertake to act in good faith with respect to each other's rights under this contract and to adopt all reasonable measures to ensure the realization of the objectives under this Agreement.

25.2 The Parties recognize that it is impractical in this Agreement to provide for every contingency which may arise during the life of the Agreement, and the

Parties hereby agree that it is their intention that this Agreement shall operate fairly as between them, and without detriment to the interest of either of them, and that, if during the term of this Agreement either Party believes that this Agreement is operating unfairly, the Parties shall use their best efforts to agree on such action as may be necessary to remove the cause or causes of such unfairness, but failure to agree on any action pursuant to this Clause shall not give rise to a dispute subject to arbitration in accordance with Clause 26 herein.

## 26. MEDIATION AND ARBITRATION

26.1 The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this contract or its interpretation.

26.2 Any dispute, difference and questions whatsoever arising between the Parties as to their respective rights, duties and/or liabilities under the Agreement shall be referred to mediation. The mediator shall be appointed from the roster of registered Mediators located at the Mediation Board of Trinidad and Tobago. Any resolution arrived at in mediation shall be binding on the Parties.

26.2 Where the Parties fail to arrive at a resolution within twenty (20) days of mediation, the matter shall be sent to Arbitration and an Arbitrator shall be appointed from the roster of Arbitrators at the Dispute Resolution Centre of Trinidad and Tobago for the final determination of the dispute under the Arbitration Act, Chapter 5:01 or any statutory re-enactment, amendment or modification thereof for the time being in force.

## 27. LIABILITY OF THE REGISTRAR

27.1 The Registrar of the Environmental Commission shall in no way be held personally liable for anything arising under this Agreement.

## 28. HEADINGS

28.1 Headings contained in this Agreement are for reference purposes only and should not be incorporated into this Agreement and shall not be deemed to be any indication of the meaning of the Clauses to which they relate.

## 29. ENTIRETY OF AGREEMENT

29.1 This Agreement contains all covenants, stipulations and provisions agreed to by the Parties. No agent or representative of either Party has authority to make an agreement and the Parties shall not be bound or be liable for any statement, representation, promise or agreement not set forth herein.



### 30. APPLICABLE LAW

30.1 The terms of this Agreement shall be construed in accordance with the laws of Trinidad and Tobago.

### 31. SEVERABILITY OF PROVISIONS

31.1 In case any one of the provisions contained in this Agreement should be declared invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired, provided that the remaining provisions are enforceable and the invalid, illegal or unenforceable provision or provisions are not fundamental to this Agreement.

### 32. NOTICES, CORRESPONDENCE, COMMUNICATION

32.1 The Consultant will give any notice, correspondence, instruction or response to the Client, or submit any documents, including deliverables, under this Agreement, to the Registrar, Environmental Commission, **either** in soft copy in PDF format or by personal delivery to the addresses below:

Address: TO BE INSERTED BEFORE EXECUTION

Email Address:

The exception is the Final Draft Rules of Practice and Procedure which must be submitted to the Client both in soft-copy in PDF format and by the personal delivery of two bounded hard copies to the Registrar at the addresses above.

32.2 All notices, correspondence, instructions, responses and documents from the Client to the Consultant will be given or submitted in writing, under the hand of the Registrar, either in soft copy in PDF format or by personal delivery to the Consultant at the addresses below:

Address: TO BE INSERTED BRFORE EXECUTION

Email Address:

32.3 When notices, correspondence, instructions, responses are communicated to or documents including deliverables are submitted to either party via e-mail, the receiving party is required to acknowledge receipt of same.

32.4 Each of the Parties shall give notice to the other of the change of any addresses, telephone number or e-mail contact at the earliest possible opportunity, but in any event within forty-eight (48) hours of such change.

33. AUTHORISED REPRESENTATIVES

33.1 Any action required or permitted to be taken, and any document required or permitted to be executed under this contract, may be taken or executed on behalf of the Client by the Registrar of the Environmental Commission.

33.2 Any action required or permitted to be taken and any document required or permitted to be executed under this Agreement may be taken or executed on behalf of the Consultant by NAME TO BE INSERTED

IN WITNESS WHEREOF the Registrar of the Environmental Commission for and on behalf of the Government of Trinidad and Tobago and ..... hereunto set their hands on the ..... day of ....., 2021.

**SIGNED** by ..... ]  
Registrar, Environmental Commission ]  
for and on behalf of the Government ]  
of Trinidad and Tobago ]  
]

In the presence of: ]  
..... ]

**SIGNED** by ..... ]  
In the presence of: ]  
..... ]

## **Appendix A1**

### **SCOPE OF WORKS**

#### **1.0 Purpose:**

1.1 The Environmental Commission (“the Commission”) is seeking legislative drafting services to facilitate the drafting of new Rules of Practice and Procedure for the Commission. The purpose of this Scope of Work is to set out the services that the Consultant will be required to perform under the Agreement, herein after referred to as “the Required Services”.

#### **2.0 Background:**

- 2.1 The Commission is a superior Court of record established under section 81 of the Environmental Management Act, Chapter 35:05 (hereinafter referred to as “the Act”). The mandate of the Commission includes the hearing and determination of appeals from decisions or actions of the Environmental Management Authority (hereinafter referred to as “the EMA”) that are authorized under the Act. It also hears and determines applications by the EMA to enforce Consent Agreements and Administrative Orders and adjudicates upon complaints that are brought by private persons (as Applicants) against any other person (the Respondent) on the basis that the Respondent has violated the environmental requirements that are specified in the Act.
- 2.2 The Commission is the only specialist environmental Superior Court of Record in the Caribbean region and is further recognized as one of the few such environmental courts in the world. The full jurisdiction of the Commission is set out at sections 81 and 84 of the Act.
- 2.3 Under section 84(15) of the Act the Commission is empowered, subject to the approval of the President, to make rules governing the carrying on of its business and the practice and procedure in connection with the proceedings before it. The Commission’s existing Rules of Practice and Procedure (hereinafter referred to as “the Commission’s Rules or the Rules”) were made in 2001. The Commission’s Rules pre-date the new Civil Procedure Rules of the Supreme Court of Justice, 2005 and the subsequent amendments which led to the existing Consolidated Civil Proceedings Rules, 2016 (hereinafter referred as “the New Supreme Court Rules (CPR)”).

### 3.0 Objective of the Environmental Commission:

3.1 In keeping with the its policy and strategic goal of maximizing access to justice and fully maximizing the use of the Court, the Commission proposes a complete overhaul of its current Rules of Practice and Procedure with a view to making it user friendly for both attorneys and lay persons and with a view to developing the appropriate practices and procedures that are necessary to authorize an effective, specialized environmental court.

3.2 Some of the challenges that have been identified with respect to the existing Rules are as follows:

- a) The Rules are vague and silent on many procedural steps that are commonly applied in litigation in the High Court. For example both the Act and the Rules are silent as to the procedure to be followed when a Respondent fails to file a Defence; or when a Defence is filed which effectively admits the claim. There is no indication in the existing Rules as to whether applications for Default or Summary Judgments may be made in these circumstances. The Rules attempt to cure this silence by inserting a general and catch-all provision at Rule 1.5 which states that the Commission may give directions on the procedure to be followed in respect of any matter not dealt with by the Act or Rules and that such directions **may** be guided by the Rules of the Supreme Court 1975 (commonly referred to as “the Old Rules”) hereinafter referred to as “the Old Supreme Court Rules (CPR)”. This has created uncertainty in the Rules that are applicable to the Commission. The Commission has identified a need to identify and cure all the gaps and ambiguities in the Rules.
- b) The Commission’s Rules, though written in plain text, are not always user friendly. The Commission promotes and caters to self-representation. Therefore, there is a need for the Rules to be easily accessible (contained in one document), concise and stated in plain language that is simple and easy for lay persons to understand. Some examples include:
  - i) The use of Latin words and phrases in the text;
  - ii) References, in the text, to other documents that are not associated with the Commission’s existing Rules without stating the contents of those documents, thereby forcing the reader to consult another document in order to fully understand the Rule (e.g. Rules 1.5, 3.6, 5.4, 5.5);
  - iii) The use of technical legal words and phrases in the text which are not explained such as “interlocutory applications”, “stay” and “joinder”; and

- iv) The omission of some procedures from the text completely. For example, the only indication that a Defence ought properly to be filed on the service of an Application is provided in Schedule 1 Form 1 in the part of the Form entitled "Directions for Defending". There is no specific rule outlining the need to file a Defence.
- c) The Commission's Rules are silent on the method for the assessment of costs. An update of the Rules is required in order to specifically incorporate the cost regime which exists under the New Supreme Court Rules (CPR) and the Practice Direction to the Assessment of Costs which is annexed to the CPR, 2016.
- d) There is a need to examine the appropriate provisions of the Act and the existing Rules to determine whether there are any restrictions to the Commission's jurisdiction to award costs under the current Act and Rules, and if same exists, the nature of the restrictions and recommendations for expansion of the jurisdiction.
- e) The Commission intends to incorporate Information Communications Technology (ICT) into its processes in order to facilitate hearings via video-conferencing and teleconferencing, electronic filing of documents, on-site hearings, taking evidence on site etc. The existing Rules do not provide for those type of proceedings or activities. Therefore, the updated Commission's Rules must facilitate these innovations.
- f) There is a need to re-organize or re-structure the Commission's Rules along thematic lines that are related to the stages in the litigation process, similar to the approach used in the New Supreme Court Rules (CPR).
- g) There is a need for all time lines to be specifically included in the text.
- h) The Rules need to be customer focused with matters before the Court being dealt with efficiently and expeditiously. The Consultant may need to examine the existing methods for initiating the various proceedings before the court and consider and explore whether and how same can be improved to ensure greater timeliness, expedience and efficiency in the hearing of the matters.
- i) There may be a need to revisit how evidence is to be brought before the Court in appropriate instances, for example whether witness statements or affidavit evidence, with a view to identifying and incorporating the most efficient and expeditious method of dealing with matters.

- j) The existing Rules of Practice and Procedure lack a philosophy or over-riding objective which ultimately guides or anchors the Court in the exercise of any discretion under the Rules and in the interpretation of any Rule. There is a need to articulate an over-riding objective which would set the appropriate tone for the Commission in the application of the Rules. The Commission may wish to adopt the over-riding object of the New Supreme Court Rules (CPR).

3.3 It is expected that the overhaul will address the challenges that are outlined above and any further issues that the Consultant identifies during the process.

#### **4.0 Required Services to be Provided by the Consultant:**

4.1 The Consultant will be required to:

- a) conduct comprehensive research, review and analysis of the existing Commission's Rules and advise the Commission on any and all amendments that are needed in order to ensure that the Commission's Rules set out all the practices and procedures that will enable it to carry on its mandate and jurisdiction under the Act. The new jurisdictions that are to be created upon the proclamation of the Planning and Facilitation of Development Act (Act No. 10 of 2014) and the Urban and Regional Planning Profession Act (Act No. 22 of 2020) are to be included in the research, review and analysis;
- b) incorporate the research, review and analysis at 4.1(a) above into a comprehensive written research document and opinion/advice to the Commission, with any relevant case law, assessing the current Rules of Practice and on the proposed amendments; and
- c) draft the amended Commission Rules of Practice and Procedure under section 84(15) of the Act so that same is contained in one consolidated document. The draft must include provisions that cater to and facilitate the new jurisdictions that are to be created under the Planning and Facilitation of Development Act and the Urban and Regional Planning Profession Act.

4.2 In carrying out the obligations under paragraph 4.1, the Consultant will be required to:

- a) Address all the challenges that are that are outlined at paragraphs 3.0 to 3.3 above and all other further issues that the Consultant, in his/her professional opinion, recognizes as a challenge or that ought to be addressed during the performance of his/her obligations under the Agreement. The Client reserves the right to further qualify issues during the performance of the Agreement;

- b) Attend (physically or virtually) consultation meetings with the Chairman, Members and Registrar of the Commission as required by the Commission and/or the Consultant;
- c) Request and obtain the necessary instructions from the Commission as required during the research and drafting stages. All requests from, and instruction to, the Consultant are to be made in writing to the Registrar and are to be given in writing under the hand of the Registrar;
- d) Undertake appropriate research for use in providing advice to the Commission and in the preparation of the Draft Commission's Rules. This research will include, but is not limited to, the Rules, Procedures and Practices of other environmental courts globally, the procedures set out in the New Supreme Court Rules and any case law reflecting same;
- e) Examine the existing Commission's Rules and advise on any amendments that ought to be done, having regard to the research, review and analysis undertaken;
- f) Identify any legal and/or drafting problems in the existing Commission's Rules that arise during the drafting process and provide advice on solving same and, in particular, advise on (i) whether there is any provision in the existing Commission Rules that offends or is *ultra vires* the Act or the Constitution of Trinidad and Tobago and (ii) whether there are any restrictions to the Commission's jurisdiction to award costs under the current Act and Rules, and if same exists, the nature of the restrictions and recommendations for expansion of the jurisdiction. Also consider and advise how other global environmental courts deal with costs with respect to the potential for costs awards to act as a barrier to environmental litigation.
- g) Draft the Rules of Practice and Procedure using the modern "plain text" style of drafting to set out all the practices and procedures of the Commission that enable it to carry on its business. The Draft should identify any relevant case law that guides in the interpretation of the Rules. Additionally, the Draft Rules must include drafts of the appropriate Forms and Precedents and must be accompanied by the Explanatory Note;
- h) Submit completed Draft Commission's Rules to the Registrar of the Commission on or before a date to be agreed which will be included in the final contract;
- i) Evaluate amendments proposed by the Commission and provide appropriate advice regarding same to the Registrar of the Commission within a time-frame to be agreed and which will be included in the final contract;

- j) Make corrections as needed to the submitted Draft based on instructions from the Commission through the Registrar;
- k) Evaluate amendments to the Revised Draft proposed by the stakeholders during the Stakeholder Consultation Process and provide appropriate advice to the Registrar of Commission within a time frame to be agreed and which will be included in the final contract;
- l) Make corrections as needed to the submitted Revised Draft after the consultation process is completed within a time frame to be agreed and which will be included in the final contract; and
- m) Submit the Final Draft Commission's Rules to the Registrar of the Commission on or before a date to be agreed and which will be included in the final contract.

## **5.0 Project Schedule and Deliverables:**

5.1 The Required Services are further particularized and outlined in the *draft*<sup>2</sup>Project Schedule which is hereto annexed as "Appendix A2".

5.2 The Required Services are to be performed over a period to be agreed and set out in the *draft*<sup>3</sup>Project Schedule hereto annexed as "Appendix A2".

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<sup>2</sup> Delete the word "draft" when contract is finalized

<sup>3</sup> Delete the word "draft" when contract is finalized



**Appendix A2**

**DRAFT PROJECT SCHEDULE**

ITEM NO.	TASK	PARTY RESPONSIBLE	START DATE	END DATE	DELIVERABLE
<b>PHASE 1 - RESEARCH, ANALYSIS AND ADVICE</b>					
1	<p>CONDUCT A COMPREHENSIVE REVIEW OF EXISTING PROCEDURAL RULES</p> <ul style="list-style-type: none"> <li>• Attend consultation meetings with the Commission as required by the Commission and/or the Consultant;</li> <li>• Request and obtain the necessary instructions from the Commission as is required for the conduct of the review;</li> <li>• Undertake appropriate legal and general research for use in review and analysis and for providing advice to the Commission and in the preparation of the Draft Commission Rules in keeping with Paragraphs 4.0 to 4.2 of the Scope of Work; and</li> <li>• Any other research or activity that in the Consultant’s professional opinion, is necessary to achieving the objectives and deliverables under Paragraphs 4.0 to 4.2 of the Scope of Work.</li> </ul>	CONSULTANT			1. Detailed Draft of Research Plan
2	<p>PROVIDE WRITTEN FEED BACK TO THE CONSULTANT ON PHASE 1 - ITEM 1</p> <ul style="list-style-type: none"> <li>• Meet Consultant to discuss feed-back on Draft Research Plans if needed; and</li> <li>• Give Consultant further instructions if needed.</li> </ul>	CLIENT			Written comments/ Instructions

3	<p>PROVIDE A WRITTEN RESEARCH DOCUMENT AND OPINION/ADVICE, WITH RELEVANT CASE LAW, ASSESSING THE CURRENT RULES OF PRACTICE AND THE PROPOSED AMENDMENTS TO THE REGISTRAR IN ACCORDANCE WITH PARAGRAPHS 4.0 TO 4.2 OF THE SCOPE OF WORK</p> <ul style="list-style-type: none"> <li>• Advise on any amendments that ought to be done, having regard to the review and research undertaken under Item 1 above; and</li> <li>• Any other advice that in the Consultant's professional opinion, is necessary to achieving the objectives and deliverables under the Contract.</li> </ul>	CONSULTANT			Written Opinion/ Advice
4	<p>PROVIDE WRITTEN FEED BACK TO THE CONSULTANT ON PHASE 1 ITEM 3</p> <ul style="list-style-type: none"> <li>• Meet Consultant to discuss feed back; and</li> <li>• Give Consultant further instructions if needed</li> </ul>	CLIENT			Written Comments/ Instructions
5	<p>PROVIDE WRITTEN RESPONSE TO ISSUES AND QUESTIONS RAISED, IF NEEDED, TO REGISTRAR</p>	CONSULTANT			Written Response if required
<b>PHASE 2 - DRAFT RULES (FIRST REVISION)</b>					
6	<p>PROVIDE FIRST DRAFT OF COMMISSION RULES OF PRACTICE AND PROCEDURE UNDER SECTION 84(15) OF THE ACT TO THE CLIENT- (DRAFT RULES) IN ACCORDANCE WITH PARAGRAPHS 4.0 TO 4.2 OF THE SCOPE OF WORKS.</p> <ul style="list-style-type: none"> <li>• Request and obtain any instructions and /or comments from the Commission as required during the drafting stage; and</li> <li>• Submit Draft Commission Rules (including appropriate Forms, Precedents and all other utilized Source Materials in collated bundle) to the Registrar of the Commission.</li> </ul>	CONSULTANT			Draft Rules soft copy - PDF

7	REVIEW AND PROVIDE WRITTEN COMMENTS and/ or Instructions ON THE DRAFT RULES OF PRACTICE AND PROCEDURE TO THE CONSULTANT, IF NEEDED ON PHASE 2 ITEM 6	CLIENT			Written Comments/ Instructions
8	<p>PROVIDE WRITTEN RESPONSE TO COMMENTS/ INSTRUCTIONS AND MAKES CHANGES TO THE DRAFT RULES AS PER COMMENTS/INSTRUCTIONS, IF NEEDED - (DRAFT RULES FIRST REVISION)</p> <ul style="list-style-type: none"> <li>• Evaluate amendments proposed by the Commission and provide appropriate advice regarding same to the Registrar of the Commission;</li> <li>• Make corrections as needed to the submitted Draft based on written instructions and/or comments from the Commission, through the Registrar, and submit Revised Draft to the Registrar; and</li> <li>• Attend consultation meetings with the Commission as required by the Commission and/or the Consultant to discuss the fore-going.</li> </ul>	CONSULTANT			<p>1. Written Response to Comments</p> <p>2. Draft Rules (First Revision)</p>

**PHASE 3 - STAKEHOLDER REVIEWS AND FINAL DRAFT RULES**

9	<p>PROVIDE FEEDBACK/INSTRUCTIONS ON STAKEHOLDER CONSULTATIONS TO THE CONSULTANT</p> <ul style="list-style-type: none"> <li>• Conduct stakeholder consultations;</li> <li>• Invite Consultant to attend stakeholder meetings, if required; and</li> <li>• Collate stakeholder concerns and/or comments into appropriate issues/instructions for the Consultant</li> </ul>	CLIENT			Written Comments/ Instructions
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10	<p>PROVIDE WRITTEN RESPONSE TO COMMENTS/ INSTRUCTIONS AND MAKES CHANGES TO THE DRAFT RULES AS PER COMMENTS/INSTRUCTIONS, IF NEEDED - (THIRD DRAFT RULES)</p> <ul style="list-style-type: none"> <li>• Evaluate proposed amendments to the Revised Draft as proposed by stakeholders and communicated in writing from the Registrar to the Consultant.</li> </ul>	CONSULTANT			<p>1. Written Response to Comments</p> <p>2. Second Draft Rules</p>
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	<ul style="list-style-type: none"> <li>• Make corrections as needed to the submitted Revised Draft after the consultation process is completed</li> <li>• Submit final draft Commission rules to the Registrar</li> <li>• Attend consultation meetings with the Commission as required by the Commission and/or the Consultant to discuss the fore-going;</li> </ul>				
<b>11</b>	CONDUCT FINAL REVIEW AND ISSUE FINAL COMMENTS and/or /INSTRUCTIONS TO CONSULTANT IF REQUIRED	CLIENT			1. Written Comments/ Instructions if required
<b>12</b>	MAKE FINAL CHANGES AND SUBMIT FINAL DRAFT RULES, IF NEEDED.	CONSULTANT			1. Written Response to Comments if required  2. Final Draft Rules
<b>13</b>	COMPLETION DATE				

## Appendix A3

### Draft Payment Schedule

<b>PHASE 1 - RESEARCH AND ADVICE</b>			
<b>TASK</b>	<b>DELIVERABLE</b>	<b>DATE DUE</b>	<b>COST</b>
<p>CONDUCT A COMPREHENSIVE REVIEW OF EXISTING PROCEDURAL RULES</p> <p>PROVIDE A WRITTEN OPINION/ADVICE, WITH RELEVANT CASE LAW, ASSESSING THE CURRENT RULES OF PRACTICE AND THE PROPOSED AMENDMENTS TO THE REGISTRAR</p> <p>PROVIDE WRITTEN RESPONSE TO ISSUES AND QUESTIONS RAISED ON THE ADVICE PROVIDED, IF NEEDED.</p>	<ol style="list-style-type: none"> <li>1. Written Opinion/ Advice</li> <li>2. Written Response to Issues and Questions Raised by Client</li> </ol>		
<b>PHASE 2 - DRAFT RULES (FIRST REVISION)</b>			
<p>PROVIDE FIRST DRAFT OF COMMISSION RULES OF PRACTICE AND PROCEDURE UNDER SECTION 84(15) OF THE ACT TO THE CLIENT- (DRAFT RULES)</p> <p>PROVIDE WRITTEN RESPONSE TO COMMENTS/ INSTRUCTIONS AND MAKES CHANGES TO THE DRAFT RULES AS PER COMMENTS/INSTRUCTIONS, IF NEEDED - ( DRAFT RULES - FIRST REVISION)</p>	<ol style="list-style-type: none"> <li>1. Draft Rules</li> <li>2. Written Response to Comments / Instructions</li> <li>3. Draft Rules - First Revision</li> </ol>		

**PHASE 3 - STAKEHOLDER REVIEWS AND FINAL DRAFT RULES**

<p>PROVIDE WRITTEN RESPONSE TO COMMENTS/ INSTRUCTIONS FROM THE CLIENT BASED ON STAKEHOLDER REVIEWS</p> <p>MAKE CHANGES TO THE DRAFT RULES AS PER COMMENTS/INSTRUCTIONS, IF NEEDED - (DRAFT RULES - SECOND REVISION)</p> <p>CONDUCT FINAL REVIEW AND ISSUE FINAL COMMENTS/INSTRUCTIONS TO CONTRACTOR IF REQUIRED</p> <p>MAKE FINAL CHANGES AND SUBMIT FINAL DRAFT RULES, IF NEEDED.</p>	<p>1. Written Responses to Comments/Instructions</p> <p>2. Draft Rules - Second Revision</p> <p>3. Final Draft Rules</p>		
<p><b>PROJECT COMPLETE</b></p>			