

TERMS OF REFERENCE FOR THE PLANNING STAGE LOCAL LEGAL ADVISER (MH-DIDA-164212-CS-INDV / LOCAL LEGAL ADVISER) – DIGITAL RMI PROJECT

TERMS OF REFERENCE AND SCOPE OF SERVICES

Background

- 1 The Government of the Republic of the Marshall Islands (the Government) is undertaking an investment program supported by the World Bank under the proposed Digital RMI Project to strengthen its ICT sector, including new public and private investment in telecommunications infrastructure, digital government, new IT platforms and applications, cybersecurity and enhanced resilience, and expansion and improvement of access to outer islands.
 - 1.1 The Government is considering structural reforms of the telecommunications sector to promote private sector investment in new climate resilient infrastructure and improved services. This may include restructuring of the existing assets, loan obligations and essential services currently provided by the Marshall Islands National Telecommunications Authority (NTA), sale of NTA's retail business, and a public private partnership to ensure the national interest objectives are appropriately achieved on an ongoing basis. NTA is currently a largely Government owned entity (approximately 80%) with a minority dispersed private sector ownership (approximately 20%).
 - 1.2 Under a previous ICT Technical Assistance Project (P132119) the Government analysed options to strengthen the legal, regulatory and institutional environment to provide a foundation for improved access and affordability of telecommunications services. Work on the key deliverables under the Project was completed in February 2019, which included a recommended option of introducing a private provider of telecommunication services into the Marshall Islands.
 - 1.3 Under the private provider option essential telecommunication infrastructure assets (capacity on the HANTRU-1 cable system and associated facilities, existing fibre, towers, ducts and access and any new investments made in domestic fibre) would be transferred from NTA into a new special purpose vehicle ("SPV"), owned and operated by any retail providers that entered the market on an open access and cost recovery basis, but with the Government retaining certain ongoing rights to ensure the interests of the RMI were appropriately addressed and protected. The remaining retail focused assets of NTA (largely customer related) would be privatised. This option was identified as having the highest likelihood of triggering substantial new private sector-led investment, expanding coverage and supporting the introduction of better services and lower pricing.
 - 1.4 A license will also be issued to the private partner setting out quality, coverage, service availability and price obligations for retail services, including specifications for expanded coverage on the outer islands. A period of exclusivity may be contemplated, depending on the level of risk and amount of private investment contributed under the transaction.
 - 1.5 The private provider option provides the RMI with the best opportunity for the most impactful change and the Government has prioritized the use of IDA 19 resources to support the changes necessary in the sector.
 - 1.6 The Government has identified two distinct phases to the structural reforms:
 - (a) *The Planning Stage*: A pre-implementation stage work programme (provisionally covering the period from May 2020 through to November 2020)

which is intended to progress some distinct area of work that will support the Government's decision to proceed to implementation, enable the implementation stage to proceed efficiently, and support and prepare the NTA for matters it will need to address in ensuring readiness for the implementation stage.

- (b) *The Implementation Stage*: The work programme that supports and delivers the structural reforms (provisionally covering the period from December 2020 to November 2022), which seeks, negotiates and agrees on the terms with one or more private investors into the RMI's telecommunication sector, restructures NTA's assets and debts; confirms what new investment will be delivered by private investment and what will require public investment; identifies ongoing non-economic services (including remote community services) and how those should be funded and operated and prepares relevant legal and regulatory reforms to support the Digital RMI Project.

1.7 The Government has recently issued Planning Stage terms of references for:

- (a) a corporate restructuring firm ("Transactional Adviser") to advise it on the commercial, financial and transactional aspects related to the proposed restructuring; and
- (b) an international transactional legal firm ("International Legal Adviser") to support the Transactional Adviser with the transactional legal services related to the proposed restructuring.

1.8 The Government is now seeking a RMI lawyer qualified to practise in the RMI, to support the Government and the work of the International Legal Adviser through the provision of RMI legal advice in respect of the restructuring of NTA and the telecommunication sector reforms more generally.

Objectives of this Assignment

2 These terms of reference (TOR) relate to the RMI lawyer being sought to support the Government and the work of the Transactional Law Firm by providing the relevant RMI related legal advice (the Consultant).

2.1 The role is to provide advice on particular RMI related legal matters relating to the telecommunications market restructuring that the Government might require during the course of the Planning Stage.

2.2 The Consultant is expected to work through the RMI Attorney General and to work closely with the Government's Governance Adviser, Mr. Frank McLaughlin and the International Legal Adviser.

Scope of Services

3 The actual tasks involved in the scope of services will be determined on an as-needed basis by the Attorney General in consultation with the Government's Governance Adviser. The tasks are likely to include advice on:

- (a) Likely legal status of NTA and the legal frameworks which govern NTA;
- (b) Local law matter relating to the rights of NTA's minority shareholders, possibly including advice on methods for determining who are the minority shareholders including the appropriate way to determine rights of family members in relation to any deceased registered shareholders and the Court's jurisdiction (if any) for schemes of arrangements;

- (c) Land law, land access rights and other relevant legal requirements in the context of potentially new fibre network to be deployed in Majuro and Ebeye, and potentially for outer islands in relation to enhanced satellite tower infrastructure;
- (d) Employment rights and obligations, including the binding nature of any redundancy arrangements and support provided to employees;
- (e) Binding and enforceability advice under RMI law of any arrangements proposed to be entered into relating the restructuring; and
- (f) Relevant local legal requirements relating to foreign investment into the RMI and for registering or incorporating as a business in the RMI.

Timing and Administrative Arrangements

- 4 The Consultant will be expected to commence work within one week of contract signature.
 - 4.1 The Consultant will report to the Attorney General but shall consult with the Government's Governance Adviser in respect to any instructions.
 - 4.2 The Consultant shall immediately advise the Government of any direct or indirect financial interest or other enduring professional relationship which might reasonably be seen to affect the impartiality of his or her advice to the Government under this assignment.
 - 4.3 This assignment is expected to require approximately 30 non-consecutive days of work.
 - 4.4 The work will be done on a time basis. Authorisation for the funding of any work will be approved by the Consultant and the Governance Adviser agreeing in writing (for example by exchange of emails copied to the Attorney General), prior to particular work being undertaken:
 - (a) the scope of the work to be undertaken by the Consultant and a description of the nature and form of the Consultant's Services that are to be provided;
 - (b) the estimate of the likely cost to be incurred by the Consultant in respect of that work; and
 - (c) the timing for the delivery or performance of the Consultant's agreed Services.
 - 4.5 The end date for this assignment shall be 31 December 2020, unless extended by mutual agreement and subject to satisfactory performance.

Profile and Experience

- 5 The selected Consultant must:
 - (a) be qualified to practise law in the RMI;
 - (b) have at least 7 years' experience as a lawyer in the RMI;
 - (c) have practised in the RMI for a minimum of 2 years in the past 4 years; and
 - (d) be able to speak English.

5.2 It would be desirable if the Consultant is able to demonstrate experience in one or more of the following:

- (a) Experience advising on land and environmental law.
- (b) Experience advising on entitlements arising out of the death of family members and the process for determining those entitlements.
- (c) Experience advising on RMI contract law, including in relation to employment agreements.
- (d) Experience advising on RMI corporation law, including in relation to shareholders.