



REQUEST FOR EXPRESSION OF INTEREST

SELECTION OF INDIVIDUAL CONSULTANTS

REFERENCE NUMBER: SADC/TRF/2017/1/21

PROMOTION OF TRADE IN SERVICES IN ESWATINI

- 1. Ministry of Commerce, Industry and Trade** is inviting Individual Consultants to submit their CV and Financial Proposal for the following services:

PROMOTION OF TRADE IN SERVICES IN ESWATINI

The Terms of Reference defining the minimum technical requirements for these services are attached as Annex 1 to this Request for Expression of Interest.

- 2. Only Individual Consultants are eligible for this assignment provided that they fulfil the following eligibility criteria:**

- a) they are not bankrupt or being wound up, are having their affairs administered by the courts, have entered into arrangements with creditors, have suspended business activities, are being subject of proceedings concerning those matters, or are being in any similar situations arising from similar procedures provided for in the national legislation or regulations of the SADC member states;*
- b) they have not been convicted of offences concerning their professional conduct by a judgment which has the force of res judicata; (i.e. against which no appeal is possible);*
- c) they have not been declared guilty of grave professional misconduct proven by any means which Ministry can justify;*
- d) they have fulfilled obligations related to the payments of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those countries where the contract is to be performed;*
- e) they have not been the subject of a judgment which has the force of res judicata for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Ministry's financial interests; or*

f) they are not being currently subject to an administrative penalty.

3. The maximum budget for this contract is **€30,000.00 (Thirty Thousand Euros) for expert service/consultants fees only**. Proposals exceeding this budget will not be accepted.
4. Your Expression of Interest must be presented as per Standard Expression of Interest Forms attached as Annex 2 to this REOI, in the English language and be accompanied by copies of all the indicated supporting documents. If the supporting documents are not in English, these shall be accompanied by a certified translation into English.

5. Your proposal clearly marked **“REFERENCE NUMBER: SADC/TRF/2017/1/21 – PROMOTION OF TRADE IN SERVICES”** in a sealed envelope, should be submitted in our tender box located at the following address:

**Secretary to the Tender Committee
Ministry of Commerce, Industry and Trade
International Trade Department
Between DPMs Office and Swazi Bank
P. O. Box 451
Mbabane, Eswatini
Tel: +268 2404 5794
Fax: +268 2404 3833
Attn: Mr. Muntu M. Almeida
Email: muntualmeida@gmail.com or muntua.itd@realnet.co.sz
Copy: Mrs. Nonhlanhla Ndlangamandla
Email: mnguni2014@gmail.com**

6. The deadline for submission of your proposal, to the address indicated in Paragraph 5 above, is:

7th July, 2020 at 1600 hrs CAT

7. Proposals submitted by Fax or E-mail **are** acceptable.
8. Your CV will be evaluated against the following criteria.

	Criteria	Maximum points allocated
1	Education and Training	20
2	Specific Experience	70
3	General Experience	10
	Total	100

9. Your proposal should be submitted as per the following instructions and in accordance with the Terms and Conditions of the Standard Contract attached as Annex 3 to this REOI:

(i) **PRICES:**

The financial proposal shall be inclusive of all expenses deemed necessary by the Individual Consultant for the performance of the contract.

(ii) **EVALUATION AND AWARD OF THE CONTRACT:**

Expressions of Interest determined to be formally compliant to the requirements will be further evaluated technically.

An Expression of Interest is considered compliant to the requirements if:

- It fulfils the formal requirements (see Paragraphs 2,3,4,5,6 and 7 above),
- The financial proposal does not exceed the maximum available budget for the contract.

The award will be made to the applicant who obtained the highest technical score. Expressions of Interest not obtaining a minimum score of 70% will be rejected.

(iii) **VALIDITY OF THE EXPRESSION OF INTEREST:**

Your Expression of Interest should be valid for a period of 90 days from the date of deadline for submission indicated in Paragraph 6 above.

10. The assignment is expected to commence within two (2) weeks from the signature of the contract.
11. Additional requests for information and clarifications can be made until 10 working days prior to deadline indicated in the paragraph 6 above, from:

The Procuring entity: **Ministry of Commerce, Industry and Trade**

Contact person: **Mr. Muntu M. Almeida**

Telephone: **+268 2040 5794**

Fax: **+268 2404 3833**

E-mail: muntualmeida@gmail.com or muntua.itd@realnet.co.sz

Copy: mnguni2014@gmail.com; mahlalelap@yahoo.com

The answer on the questions received will be sent to the Consultant and all questions received as well as the answer(s) to them will be posted on the SADC Secretariat's website, International Trade Department website, Eswatini Investment Promotion Authority website and the Eswatini Government website alongside the procurement notice at the latest 7 working days before the deadline for submission of the proposals.

ANNEXES:

ANNEX 1: Terms of Reference

ANNEX 2: Expression of Interest Forms

ANNEX 3: Standard Contract for Individual Consultants

Sincerely,

_____ *(signature)* _____

Name: Mr. Muntu M. Almeida
Title: TRF Project Manager
Date: 15th June, 2020

ANNEX I: TERMS OF REFERENCE

BACKGROUND INFORMATION

Background

The Kingdom of Eswatini is a small, landlocked economy located in the Southern part of Africa, bordered by South Africa and Mozambique. The country's economic livelihood is heavily dependent on exports and export earnings. However, more focus has been on trade in goods as compared to trade in services and the services sector has remained largely underdeveloped. Eswatini is a net importer of services and the tourism sector is currently the largest service industry. Services exports have grown slowly from US\$ 191 million in 2009 to US\$ 242 million in 2013 and the share of services in total exports has been declining, from 17% in 2009 to 11% in 2013. Both exports and imports are predominantly composed of commercial services other than travel and transport accounting respectively for 61% of services exports and 83% of services imports in 2012.

As a way of maximizing her opportunities for international trade, Eswatini has been engaged in various regional and multilateral trade in services negotiations. At the multilateral level, is a member of the World Trade Organization (WTO) since 1995 and has made some commitments under the General Agreement on Trade Services (GATS). The country is also negotiating a series of regional trade in services agreements in SADC, COMESA, AfCFTA and at Tripartite level involving COMESA, EAC and SADC. Bilateral negotiations under the SADC-EU EPA are also on-going.

The negotiations under COMESA and SADC involve common six priority services sectors inter-alia Transport, Communication, Tourism, Financial, Energy and Related services and Construction and Related-Engineering services. COMESA has an additional sector, Business identified as the seventh priority sector. The negotiations are at different levels with SADC and COMESA at advanced levels and have concluded negotiations in four of the priority sectors negotiated which are ready for implementation. The negotiation and implementation process involves an in-depth understanding of the laws, regulations and administrative processes for the different services sectors in Eswatini in order for the business community, including the private sector and MSMEs to better understand what is obtained for market penetration. The regulatory audit will also assist the Government of Eswatini to determine sectors where reforms are needed in order to provide a conducive business trading environment. A national Trade in Services Strategy has also been developed to boost exports, investment and create employment in five priority services sectors namely ICT, Tourism, Transport, Construction and Related Professional services and Cultural & Creative Industries.

Due to the complexity of the services sector and the broad range of actors involved across ministries, departments and agencies at different levels of government as well as in the private sector, implementing such a strategy remains a challenge. Hence the slow progress in positively integrating Eswatini into the global services economy and increasing her participation in services trade. Considering that the services sector plays an increasingly important role in the global economy and the growth and development of most developing countries, including Eswatini through the generation of opportunities for greater income, productivity, employment, investment and trade. It is therefore imperative to increase public and private sector advocacy and awareness, to mobilise policy attention and resources to boost the sector's contribution to growth, development and exports. This exercise therefore seeks to facilitate the implementation of the strategy and the implementation of the trade in services agreements whilst also providing regulatory information necessary for advancing the on-going bilateral and regional negotiations, including the negotiations at the multilateral level, which will ultimately lead to increased investment and exports in the area of trade in services.

OBJECTIVE, PURPOSE & EXPECTED RESULTS

Overall objective

The overall objective of the assignment is to assist Eswatini develop her services sector that will lead to market & product diversification and to support services stakeholders (mainly private sector, including MSMEs) to fulfil their trade potential at all levels and contribute to sustainable development and export earnings in the country.

Purpose

The purpose is to sensitise all relevant stakeholders on the trade in services agreements and develop an implementation framework for the national trade in services strategy and also to conduct a regulatory audit for the Construction, Distribution, Education, Environmental, Health and Recreational, Cultural and Sporting services sectors.

Results to be achieved by the Contractor

- Result Area 1. Develop an implementation framework for the national trade in services strategy.
- Result Area 2. Conduct a regulatory audit for the Construction, Distribution, Education, Environmental, Health and Recreational, Cultural and Sporting services sectors.
- Result Area 3. Facilitate a national workshop to sensitise relevant stakeholders, including the private sector and MSMEs on the Trade in services agreements negotiated by Eswatini.

SCOPE OF THE WORK

3.1 Specific Work

The specific work to be done by the Consultant entails the following:

Result Area 1. Develop an implementation framework for the national trade in services strategy.

- In consultation with the various key stakeholders, the consultant is expected to unpack/review the strategy;
- To undertake consultations with relevant stakeholders across all sectors to gather inputs on the implementation of the reviewed strategy;
- Consult with the relevant stakeholders for the identified priority sectors and come up with an action programme, including bankable projects which require funding (indicate short, medium and long-term priorities);
- To suggest means of effectively promoting the strategy to all relevant stakeholders from the public and private sector, including MSMEs to mention a few;

Result Area 2. Conduct a regulatory audit for the Construction, Distribution, Education, Environmental, Health and Recreational, Cultural and Sporting services sectors.

- Identify and compile a list of stakeholders from the identified services sectors (public, private and regulators) responsible for adopting and implementing relevant laws and regulations.
- Undertake stakeholder consultations in the various services sectors, including their sub sectors.
- Map horizontal laws and regulatory measures affecting trade and investment in the identified sectors (i.e. disciplines that cut across the different sectors).

- Through desk research and consultations with key stakeholders, identify legal, regulatory and administrative restrictions to trade and investment in the services sectors.
- Identify missing laws and regulations needed to ensure the adequate functioning of the services sectors and implement commitments in trade agreements.
- Propose reforms of existing laws and regulations where needed.

Result Area 3. Facilitate a national workshop to sensitise relevant stakeholders, including the private sector and MSMEs on the Trade in services agreements negotiated by Eswatini.

- Liaise with the International Trade Department (ITD) to organise a sensitisation workshop for the key services stakeholders.
- Compile a list of the stakeholders to be invited in consultation with ITD.
- Suggest means of effectively promoting the trade in services agreements to all relevant stakeholders from the public and private sector, including MSMEs, civil society.

3.2 Project management

3.2.1 Responsible body

The Ministry of Commerce, Industry and Trade through the International Trade Department (ITD) will be responsible for managing the contract/project.

3.2.2 Management structure

A Project Management Unit (PMU) is available within the International Trade Department (ITD) for oversight and coordination of the project. The consultant will work with and report to ITD on ensuring proper implementation given that the department is the main beneficiary from the contract. In addition, the consultant will submit all deliverables to ITD who will in turn authorize the issuance of payments for the contract.

3.2.3 Facilities to be provided by the Contracting Authority and/or other parties

The contracting authority will provide office space and other amenities deemed necessary to run the project, except for transport.

3.3 Deliverables

The following deliverables are expected

- An Implementation Framework for the Trade in Services strategy.
- A Regulatory Audit Report for the Construction, Distribution, Education, Environmental, Health and Recreational, Cultural and Sporting services sectors.
- A Report on the national workshop to sensitise stakeholders on the Trade in Services agreements.

LOGISTICS AND TIMING

Location

The contracted consultant will be based at the International Trade Department offices in Mbabane, but will also travel throughout the Kingdom of Eswatini to consult with the relevant stakeholders.

Start date & period of implementation

The intended start date is 20th July 2020 and the period of implementation of the contract will be 5 months from this date.

REQUIREMENTS

Staff

Key experts

Education and Training (20 Points)

- Possess a post graduate degree (Masters) in marketing, business and development studies, management, international trade law, economics or an equivalent from a reputable tertiary institution.
- A PhD in a relevant field will be an added advantage.

General experience (10 Points)

- At least five (10) years proven experience of working on regional integration issues.
- Strong interview skills and previous experience in conducting interviews with public and private sector stakeholders;
- Excellent research skills;
- Fluency in spoken and written English with excellent report writing and drafting skills in English;
- Excellent skills regarding the facilitation of seminars/workshops; and
- Demonstrated ability to make oral and public presentations on technical issues;

Specific professional experience (70 Points)

- Preferably 10 years, with a minimum of 5 years' professional experience on regional integration issues in the Sub-Saharan region;
- At least 10 years' experience in project planning and management;
- A minimum of 5 years' experience in projects financed by multilateral development institutions would be an advantage.
- Solid background in strategic planning and developing implementation programmes and framework;
- Proven capacity to provide technical advice to public sector, business community including SMMEs, civil society and other stakeholders;
- Experience or knowledge of services trade and investment-related issues would be an asset;
- Experience in reviewing and assessing policies, laws and regulations and identifying gaps to meet international standards and/or best practices;
- The incumbent must also be familiar with Government and public sector policies, institutional structures and operational procedures;

- Expertise and experience of at least 5 years working with SMMEs and large businesses in data collection and compilation.
- Possess a good understanding of Eswatini export business landscape including working on investment-related issues in Eswatini and with the relevant trade support institutions.
- Ability to facilitate workshops and facilitate stakeholder consultation.

Support staff & backstopping

The costs for backstopping and support staff, as needed, are considered to be included in the tenderer's financial offer.

Facilities to be provided by the Contractor

Consultant should provide his/her own secretarial services and have his/her own laptops computer, projection equipment and mobile phone.

REPORTS

Reporting requirements

To summarise, in addition to any documents, reports and output specified under the duties and responsibilities of each key expert above, the Contractor shall provide the following reports:

Name of report	Content	Time of submission
Inception Report	Analysis of existing situation and work plan for the project, methodology.	No later than 10 days after the start of implementation
Draft Final Report	Short description of achievements including problems encountered and recommendations.	No later than 30 days before the end of the implementation period.
Final Report	Description of achievements including problems encountered and recommendations; a final invoice.	Within 10 days of receiving comments on the draft final report from the Project Manager identified in the contract.

Submission & approval of reports

Copies of the reports referred to above must be submitted to the [*Project Manager*] identified in the contract. The reports must be written in English.

Both hard and soft copies of the reports referred to above must be submitted to the Project Manager who is identified in the contract and copied to the Director Trade and Deputy Director. The Director Trade and Deputy Director are responsible for approving the reports.

The documents referred to above must be submitted electronically via email as draft reports to the Project Manager. Comments and Approval of final drafts will be provided via e-mail within 15 days. After which two (2) hard copies of the final reports must be formally submitted to the Imprest administrator within two (2) weeks of receiving comments.

BUDGET

The budget available for this contract is € 30, 000.00 There is no budget for reimbursable expenses.

Evaluation Criteria

The following evaluation criteria will be used to assess the applications. An Application that scores above 70% will be considered technically responsive.

Category	Points
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Education and training	20
General experience	10
Specific professional experience	70
Total	100

Award criteria: Quality (i.e.: The award will be made to the applicant who obtained the highest technical score and is within budget. Expressions of Interest not obtaining a minimum score of 70% will be rejected).

ANNEX 2: Expression of Interest Forms

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A. COVER LETTER FOR THE EXPRESSION OF INTEREST FOR THE PROJECT

REFERENCE NUMBER: SADC/TRF/2017/1/21

REQUEST FOR SERVICES TITLE: PROMOTION OF TRADE IN SERVICES IN ESWATINI

[Location, Date]

To: SADC Secretariat

Dear Sirs:

I, the undersigned, offer to provide the consulting services for the **PROMOTION OF TRADE IN SERVICES IN ESWATINI** in accordance with your Request for Expression of Interests number [Reference number], dated [insert date] for the sum of [Insert amount(s) in words and figures¹¹]. This amount is inclusive of all expenses deemed necessary for the performance of the contract in accordance with the Terms of Reference requirements, and [“does” or “does not” delete as applicable] include any of the following taxes in Procuring Entity’s country: value added tax and social charges or/and income taxes on fees and benefits.

I hereby declare that all the information and statements made in my CV are true and accept that any misinterpretation contained in it may lead to my disqualification.

I take note that under the provisions of the SADC Procurement Policy applicable to this Request for Expression of Interest, a contract cannot be awarded to applicants who are in any of the following situations:

- a) *they are being bankrupt or wound up, are having their affairs administered by the courts, have entered into arrangements with creditors, have suspended business activities, are being subject of proceedings concerning those matters, or are being in any similar situations arising from a similar procedures provided for in the national legislation or regulations of the SADC member states;*
- b) *they have been convicted of offences concerning their professional conduct by a judgment which has the force of res judicata; (i.e. against which no appeal is possible);*
- c) *they have been declared guilty of grave professional misconduct proven by any means which SADC Secretariat can justify;*
- d) *they have not fulfilled obligations related to the payments of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those countries where the contract is to be performed;*
- e) *they have been the subject of a judgment which has the force of res judicata for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the SADC Secretariat’ financial interests; or*
- f) *they are being currently subject to an administrative penalty.*

I confirm that I am not in any of the situations described above, and I hereby declare that at any point in time, at the Ministry of Trade’s request, I will provide certified copies of documents to prove so.

I am aware that the penalties set out in the Procurement Policy may be applied in the case of a false declaration, should the contract be awarded to me.

¹ Amounts must coincide with the ones indicated under Total Cost of Financial proposal in Form FIN-2.

My proposal is binding upon me for the period indicated in Paragraph 9(iii) of this Request for Expression of Interest.

I undertake, if my Proposal is accepted, to initiate the consulting services related to the assignment not later than the date indicated in Paragraph 10 of the Request for Expression of Interest, and to be available for the entire duration of the contract as specified in the Terms of Reference.

I understand you are not bound to accept any Proposal you receive.

Yours sincerely,

Signature [*In full and initials*]: _____

Name and Title of Signatory: _____

B. CURRICULUM VITAE
[insert full name]

1. **Family name:** *[insert the name]*
2. **First names:** *[insert the names in full]*
3. **Date of birth:** *[insert the date]*
4. **Nationality:** *[insert the country or countries of citizenship]*
-
5. **Physical address:** *[insert the physical address]*
6. **Postal address**
7. **Phone:** *[Insert Postal Address]*
8. **E-mail:** *[insert the phone and mobile no.]*
[Insert E-mail address(es)]
9. **Education:**

Institution: [Date from – Date to]	Degree(s) or Diploma(s) obtained:
<i>[indicate the month and the year]</i>	<i>[insert the name of the diploma and the specialty/major]</i>
<i>[indicate the month and the year]</i>	<i>[insert the name of the diploma and the specialty/major]</i>

10. **Language skills:** (Indicate competence on a scale of 1 to 5) (1 – excellent; 5 – basic)

Language	Reading	Speaking	Writing
<i>[insert the language]</i>	<i>[insert the no.]</i>	<i>[insert the no.]</i>	<i>[insert the no.]</i>
<i>[insert the no.]</i>	<i>[insert the no.]</i>	<i>[insert the no.]</i>	<i>[insert the no.]</i>

11. **Membership of professional bodies:** *[indicate the name of the professional body]*
12. **Other skills:** *[insert the skills]*
13. **Present position:** *[insert the name]*
14. **Years of experience:** *[insert the no]*
15. **Key qualifications:** (Relevant to the assignment)
[insert the key qualifications]
16. **Specific experience in the region:**

Country	Date from - Date to
<i>[insert the country]</i>	<i>[indicate the month and the year]</i>
.....
<i>[insert the country]</i>	<i>[indicate the month and the year]</i>

17. Professional experience:

Date from – Date to	Location of the assignment	Company & reference person (name & contact details)	Position	Description
[indicate the month and the year]	[indicate the country and the city]	Name of the Company: Address of the company: Phone: Fax: Email: Name and title of the reference person from the company:	[indicate the exact name and title and if it was a short term or a long term position]	Name of the Assignment: Beneficiary of the Assignment: Brief description of the Assignment: Responsibilities:
[indicate the month and the year]	[indicate the country and the city]	Name of the Company: Address of the company: Phone: Fax: Email: Name and title of the reference person from the company:	[indicate the exact name and title and if it was a short term or a long term position]	Name of the Assignment: Beneficiary of the Assignment: Brief description of the Assignment: Responsibilities:
[indicate the	[indicate the	Name of the Company:	[indicate the exact	Name of the Assignment: Beneficiary of the Assignment:

Date from – Date to	Location of the assignment	Company & reference person (name & contact details)	Position	Description
<i>month and the year]</i>	<i>country and the city]</i>	Address of the company: Phone: Fax: Email: Name and title of the reference person from the company:	<i>name and title and if it was a short term or a long term position]</i>	Brief description of the Assignment: Responsibilities:
.....
<i>[indicate the month and the year]</i>	<i>[indicate the country and the city]</i>	Name of the Company: Address of the company: Phone: Fax: Email: Name and title of the reference person from the company:	<i>[indicate the exact name and title and if it was a short term or a long term position]</i>	Name of the Assignment: Beneficiary of the Assignment: Brief description of the Assignment: Responsibilities:

18. Other relevant information: (e.g. Publications)

[insert the details]

19. Statement:

I, the undersigned, certify that to the best of my knowledge and belief, this CV correctly describes myself, my qualifications, and my experience. I understand that any wilful misstatement described herein may lead to my disqualification or dismissal, if engaged.

I hereby declare that at any point in time, at the SADC Secretariat's request, I will provide certified copies of all documents to prove that I have the qualifications and the professional experience as indicated in points 8 and 14 above¹, documents which are attached to this CV as photocopies.

By signing this statement, I also authorize the Ministry of Trade to contact my previous or current employers indicated at point 14 above, to obtain directly reference about my professional conduct and achievements.

_____ Date: _____

ATTACHMENTS: **1) Proof of qualifications indicated at point 9**
 2) Proof of working experience indicated at point 15

¹ *The proof of stated qualifications shall be in the form of the copies of the degrees and diploma obtained, while for the professional experience the proof shall be either acknowledgement letters from the previous employers or copies of the Purchase Order/ Contract signed with them.*

C. FINANCIAL PROPOSAL
REFERENCE NUMBER: SADC/TRF/2017/1/21

N°	Description ³	Unit ⁴	No. of Units	Unit Cost (in Euro)	Total (in Euro)
Fees		Day			
Reimbursable expenses, out of which		Total			
1	Per diem allowances	Day	N/A		
2	Flights ⁵	Trip	N/A		
3	Miscellaneous travel expenses ⁶	Trip	N/A		
4	Insurances cost, out of which:	Lump sum	N/A		
	i) Life insurance (including repatriation)	Lump sum	N/A		
	ii) Health insurance	Lump sum	N/A		
	iii) Third party liability insurance	Lump sum	N/A		
	iv) Professional liability insurance	Lump sum	N/A		
5	Drafting, reproduction of reports	Lump sum	N/A		
6	Office rent	Per month	N/A		
7	Others ⁴	TBD			
TOTAL FINANCIAL OFFER (Fees)					

Signature [*In full and initials*]: _____

Name and Title of Signatory: _____

³ Delete items that are not applicable or add other items as the case may be.

⁴ Indicate unit cost.

⁵ Indicate route of each flight, and if the trip is one- or two-ways

⁶ Provide clear description of what is their exact nature

ANNEX 3: STANDARD CONTRACT FOR INDIVIDUAL CONSULTANTS

The following Annexes are integral part of this Contract:

SERVICE CONTRACT

Entered into By and Between

THE GOVERNMENT OF THE KINGDOM OF ESWATINI
THROUGH THE MINISTRY OF COMMERCE, INDUSTRY AND TRADE

(Duly represented by **SIBONISO NKAMBULE** in his capacity as the **Principal Secretary for the Ministry of Commerce Industry and Trade**) (Hereinafter referred to as the "**Contracting Authority**")

And

(An Expert in Promotion of Trade in Services in Eswatini
(Hereinafter referred to as the "**Contractor**")

For:

SADC TRF/2017/1/21

NOW THEREFORE the Parties agree as follows:

1. DEFINITIONS

1.1 In this Agreement, in the absence of the express provision or statement to the contrary:

"Contract" means the Agreement covered by these terms and all the Annexes and documents incorporated and/ or referred to therein and attachments thereto;

"Contracting Authority" means the Government of Eswatini;

"Contractor" ;

"Contract Value" means EURO 30,000.00;

"Days" means working days excluding weekends and holidays;

"Services" means the work to be performed by the Contractor pursuant to this Contract, as described in Annex 1 hereto;

"VAT" means as defined in the relevant legislation.

1.2 Words importing any one gender shall include the other.

2. COMMENCEMENT AND DURATION

This Agreement shall commence on the date of signature by both Parties and shall continue in force for a period of five months.

3. SERVICES

The Contractor will undertake the performance of the services in accordance with the provisions of Annex 1 of this Agreement and shall in the performance

of the services, exercise all reasonable skill, care and diligence to be expected of a Contractor carrying out such services.

4. PAYMENT

- 4.1 The Contractor shall be paid for the services at the rates and upon the terms set out in Annex 2.
- 4.2 Payment shall be made to the Contractor, in Euros, unless otherwise provided and where applicable VAT shall be payable on such sums at the applicable rate.
- 4.3 The Contractor must in all cases provide their VAT registration number on all invoices.
- 4.4 Invoices shall be delivered by the Contractor to the Contracting Authority and shall be paid within thirty (30) days of receipt by the Project Director, subject to the Contractor having complied with her obligations in full as stated in Annex 2 of the Agreement.
- 4.5 The Contracting Authority reserves the right to delay and/ or withhold, fully or partially, payments that have not been supported by full and appropriate supporting evidence that the services provided were delivered and accepted by the Contracting Authority.

5. ASSISTANCE WITH LOCAL REGULATIONS AND PAYMENT OF TAXES

- 5.1 The Contractor shall be responsible for paying any tax and social security contributions in his country of residence, for any activity deriving from this Agreement. Such costs shall be assumed to be included in the Contractor's fees.
- 5.2 The Contractor shall be responsible for paying any taxes resulting from the activities performed under this Agreement, imposed to the individual in the country or countries of the assignment with the exception of the ones set out in 4.2 above.

6. SUPERVISION OF SERVICES

- 6.1 The Contractor undertakes to deliver the services in compliance with a system of quality assurance acceptable to the Contracting Authority which shall include any steps to comply with the standards operated by the Contracting Authority.
- 6.2 The Contractor shall be informed of the specific requirements in relation to the above, and at the request of the Contracting Authority, he shall allow access to information, records and other materials during normal office hours as the Contracting Authority may require, confirming that the work in progress is in accordance with these quality procedures.

7. COMPLIANCE WITH THIS AGREEMENT

- 7.1 The Contracting Authority shall be entitled to seek confirmation from the Contractor at any time during the delivery of this Agreement, and for a period of one (1) year after the completion of the service, that the Contractor has complied with the terms of the Agreement.
- 7.2 The Contracting Authority may also request that the Contractor provides reasonable documentary evidence to support that the Contractor has complied with the terms of the Agreement.
- 7.3 The Contracting Authority may delay or withhold payments in the event of non-compliance as provided in the Payment Clause above.

8. ASSIGNMENT AND SUBCONTRACTING

- 8.1 The Contractor shall not sub- contract, sublet, assign or transfer or in any way dispose of any rights, interests or obligations under this Agreement.
- 8.2 Where the Contractor considers it necessary to use the services of a third Party, the Contractor shall inform the Contracting Authority's Project

Director in writing, only once written approval is provided can the Contractor proceed to use a third party.

8.3 When the Project Director agrees that the Project under the Agreement can be performed by a third party, under the direct control of the Contractor.

8.4 The Contracting Authority will not be responsible for the third party's performance of duties or services assigned to it, and neither for ensuring that the conditions of employment are met nor for any other employment obligations relating to that third party, including, but not restricted to taxation, and insurance, including professional indemnity insurance, employer's liability insurance and public liability insurance.

9. **BREACH**

Should any Party breach any term of this Agreement and fail to remedy such within thirty (30) days of receiving written notice requiring the Party in breach to remedy the breach, the aggrieved Party shall, without prejudice to any rights it may have in law, be entitled to terminate the Agreement in writing.

10. **LIABILITY OF THE CONTRACTOR**

10.1 The Contracting Authority will be relying on the Contractor's skills, expertise and experience in relation to the performance of the services in accordance with this Agreement and upon the accuracy of all representations and statements made and the advice given in connection with the provision of the services.

10.2 The Contractor shall at its own expense, indemnify, protect and defend the Contracting Authority, its agents and employees from and against all actions, claims, losses or damages arising out of the Contractor's performance of work and services under this Agreement, provided that:

- (a) The Contractor is notified of such actions, claims, losses or damages not later than thirty (30) days after the Contracting Authority becomes aware of them;
 - (b) Compensation for damages or losses resulting from the Contractor's liability in respect of the Contracting Authority is capped to an amount equal to the contract value. However, compensation for losses or damages caused to third parties by the Contractor's wilful misconduct cannot be capped;
 - (c) The Contractor's liability shall be limited to actions, claims losses or damages directly caused by such failure to perform its obligations under the Agreement and shall not include liability arising from unforeseeable occurrence's incidental or indirectly consequential to such failure.
- 10.3 The Contractor at its own expense, upon the request of the Contracting Authority, shall remedy any defect in the performance of her obligations under the Agreement.
- 10.4 The Contractor shall not be liable for actions, claims, losses or damages occasioned by the Contracting Authority's omission to act on any recommendation; or overriding any act or decision of the Contractor; or requiring the Contractor to implement a decision or recommendation with which the Contractor disagrees or on which she expresses a serious reservation.

11. **INSURANCE**

- 11.1 The Contractor must ensure that full and appropriate professional indemnity insurance and third party liability insurance, is in place for all services provided.

11.1.1 The cost of such insurance will be covered from reimbursable expenses of the Agreement.

11.2 Where national requirements or practices provide for different regulations concerning insurance, the Contractor may provide written confirmation of all insurances held and signed declaration that these are in line with the regulations or practices in their country of operation.

11.2.1 Only if such confirmation has been provided and written confirmation of its acceptance provided to the Contractor by the Contracting Authority, will this remove the obligation to meet the requirements of sub –clause 11.1 above, in full.

11.3 The Contractor shall take insurance with an insurer of good repute and the Contractor shall maintain such insurance for a period of one (1) year from completion of the services under this Agreement, so long as the insurance continues to be available upon reasonable terms at reasonable commercial rates, failing which the Contracting Authority shall be entitled to take out insurance itself to cover any potential liability in relation to the performance of the services under this Agreement. The cost of such insurance shall be a debt immediately due from the Contractor.

11.4 The provisions of this Clause shall remain in full force and effect notwithstanding the completion of the performance of the services hereunder and the satisfaction of all other provisions of this Agreement.

12. **COPYRIGHT**

12.1 Unless otherwise specified, the title of the copyright and any of the intellectual property arising out of the performance of this Agreement shall be vested in the Contracting Authority, which shall have the unfettered right to assign and grant sub licenses in respect of same.

- 12.2 The said materials shall not be reproduced or disseminated without proper compensation and written permission from the Contracting Authority.
- 12.3 This provision shall apply to the title to rights arising from the performance under this Agreement but shall not apply to the internal systems or rights in relation to the Contractor's own systems not created specifically for this purpose and where the same are an important part of the services.
- 12.3.1 The Contractor shall grant a free and irrevocable license/ to the Contracting Authority and its assignees for the use of same in that connection.
- 12.4 The Contractor warrants that it is free of any duties or obligations from third parties which may conflict with this Agreement and, without prejudice to the generality of the Liability Clause 10 above, agrees to indemnify the Contracting Authority against any and all actions, costs, damages, direct, indirect or consequential, and other expenses of any nature whatsoever which the Contracting Authority may incur or suffer as a result of the breach by the Contractor of this warranty.

13. **NON- DISCLOSURE AND CONFIDENTIALITY**

- 13.1 The Contractor shall keep in confidence all information received from and all work carried out for the Contracting Authority during the implementation of this Agreement and shall not use, publish or divulge to third parties without the prior written consent of the Contracting Authority.
- 13.2 The Contractor shall not make any communication to the press or any broadcast, including, but not limited to, the inclusion of information on

a website, about the services without the prior written consent of the Project Director.

13.3 In the event the Contractor violates the above Clause 13.2, then he will automatically and legally be held liable to pay the amount estimated as the minimum reasonable damages resulting from breach of confidentiality. This is without prejudice to the right of the Contracting Authority to demonstrate that a higher amount of loss has or may be incurred as a result of liabilities held by the Contractor in relation to the Contracting Authority.

14. **SUSPENSION AND TERMINATION**

14.1 The Contracting Authority may at any time, by giving thirty (30) days written notice to the Contractor, terminate in whole or in part or suspend the performance of the services, due to factors beyond the control of the Contracting Authority or by reason of some breach or default of the Contractor.

14.2 If the suspension continues for a period in excess of twelve (12) months, then either Party may terminate the Agreement by written notice to the other Party.

14.3 The Contractor may, after giving thirty (30) days written notice to the Project Director, terminate the Agreement unilaterally without providing any reasons for such decision.

14.4 In the event of early termination of the Agreement, termination not due to any breach on the part of the Contractor, the Contractor shall be entitled to a fair and reasonable proportion of the fees payable for the part of the services carried out up to the date of such termination or suspension, but this shall not

include any loss of profit or contracts or any other expenses, losses or claims arising out of such termination or suspension or consequential thereupon.

15. **WAIVER**

No failure, delay, relaxation or indulgence on the part of The Contracting Authority in exercising any power or right conferred upon such Party in terms of this Agreement, shall operate as a waiver of such power or right, nor shall any single or partial exercise of any such power or right preclude any other or further exercise thereof, or the exercise of any other power or right under this Agreement.

16. **VARIATIONS**

No variation, addition or cancellation of any part of this Agreement shall be of any force or effect unless reduced to written as an Addendum and signed by the Parties.

17. **DISPUTE RESOLUTION**

17.1 The Parties shall endeavour to settle any dispute or claim arising out of the interpretation, application or implementation of this Agreement or the breach thereof, amicably through consultation and negotiation between the Parties.

17.2 If after 7 days from commencement of such negotiations, the Parties have failed to negotiate an amicable settlement; either Party may refer the matter to arbitration for determination.

18. **DOMICILE**

18.1 The Parties elect the following addresses as their respective *domicilia citandi et executandi* at which all notices and other communications must be delivered for purposes of this Agreement:

(a) **CONTRACTING AUTHORITY**

The Principal Secretary

Ministry of Commerce Industry and Trade

Inter- Ministerial Building

Block 8 and Level 1

Mhlambanyatsi Road

P. O. Box 451

Mbabane, Eswatini

Tel: +268 2404 3201

Telefax: +268 2404 4711

Email: ps_commerce@gov.sz/nkambulesib@gmail.com

(b) **CONTRACTOR**

Tel:

Email

18.2 Any notice or other communication sent by one Party to the other shall be in writing and deemed to have been received by the other Party to whom the notice was addressed if it is hand delivered during ordinary business hours at the domicilium citandi et executandi address of such Party and signed for by the person receiving the notice, or if sent by post, within seven (7) days of postage thereof by registered mail.

18.3 Any Notice sent by telefax to either Party at its telefax number shall be deemed, unless the contrary is proved to have been received within two (2) hours if it is transmitted during ordinary business hours excluding Saturdays and Sundays.

18.4 Notice of not less than fourteen (14) days, of change of address shall be given to the Parties hereto in writing, provided that none of the Parties shall be entitled to select a post box or an address outside Eswatini.

19. **GOVERNING LAW**

19.1 This Agreement shall be governed and construed in accordance with the laws of the Kingdom of Eswatini.

19.2 The Parties agree to submit to the exclusive jurisdiction of the courts of the Kingdom of Eswatini.

Signed at Eswatini on this..... day of2020.

WITNESSES:

1.

.....

For and behalf of the Contracting
Authority

2.

Signed at Eswatini on this day of 2020

WITNESSES:

1.

.....

For and behalf of the Contractor

2.

Annex 1: Terms of Reference

Annex 2: Payment Schedule and Requirements

Signed today ***[insert the date]*** in four (4) originals in the English language by:

For the Procuring Entity		For the Individual Consultant	
Name :		Name :	
Position :			
Place :		Place :	
Date:		Date :	
Signature:		Signature :	

Annex 1: Terms of Reference

Annex 2: Payment Schedule and Requirements

1. For Services rendered pursuant to Annex 1, the Procuring Entity shall pay the Individual Consultant an amount not to exceed the ceiling of Euros ***[insert ceiling amount]***, which shall be considered the contract value. This amount has been established based on the understanding that it includes all of the Consultant's costs and profits as well as any tax obligation that may be imposed on the Individual Consultant in his/her country of residence.
accordance with the following schedule:

30% upon the Development of an implementation framework for national trade in services strategy

40% upon the Procuring Entity's receipt of Final report on a regulatory audit on service sectors

30% upon the Procuring entity's receipt of Final report.

4. **Payment Conditions:** Payment shall be made in Euros not later than 30 days following submission of original invoice by the Individual Consultant, in duplicate, accompanied by the requested supporting documents. All payments under the contract shall be made by bank transfer into the bank account indicated by the Individual Consultant in her/his invoices.