

**AGREEMENT DATED**

**27<sup>th</sup> January 2021**

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**Between**

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**The Ministry for Finance and Employment**

**(the 'Ministry')**

**And**

**David G. Curmi**

**(the 'Consultant')**

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**CONSULTANCY AGREEMENT**

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Two handwritten signatures in black ink, one larger and more stylized than the other, located in the bottom right corner of the page.

Consultancy Agreement entered into on this 27 day of January 2021 (the "Agreement"), entered into by and between:

The Ministry for Finance and Employment, represented hereon by Alfred Camilleri as duly authorised, hereinafter referred to as the "Ministry"

and

David G. Curmi, holder of Maltese identity card bearing number \_\_\_\_\_ hereinafter referred to as the "Consultant"

Each a "Party" and together collectively referred to as the "Parties"

WHEREAS

- A. The Ministry desires to engage the Consultant for the purpose of undertaking certain activities and providing consultancy services as better detailed in this Agreement;
- B. The Consultant has agreed to provide the Services to the Ministry on the terms and conditions set out in this Agreement.

Now therefore:

*By virtue of this Agreement the Ministry engages the Consultant who accepts and undertakes to provide the Services in accordance with the terms and conditions of this Agreement.*


**1. Definitions and Interpretation**

- 1.1 In this Agreement, unless the context otherwise requires the following expressions shall have the meanings set out below.

**Agreement** means this Agreement, including the schedules and annexes to it and any documents referred to or attached to it;

**Commencement Date** means the 1 January 2021;

**Confidential Information** means all information, whether in oral, visual, machine-readable or written form or is recorded, stored or embedded in a document and/or identified, marked or otherwise treated by the Ministry or any associated entity as being of a confidential



nature and which relates to the business, assets or affairs of the Ministry or any associated entity (which includes the Government of Malta and all entities within the Ministry's portfolio) which comes to the Consultant's knowledge or possession (or which ought reasonably to have been expected to have come to the Consultant's knowledge or possession) during the course of or in connection with the performance of the Services and shall, without prejudice to the generality of the foregoing and without limitation, include any information in respect of which the Ministry or any associated entity is bound by an obligation of confidence to any third party and any other information which the Consultant knows or reasonably ought to know is confidential or proprietary information of the Ministry, the Government of Malta or any associated entity;

- Consideration** means the consideration payable by the Ministry to the Consultant for the provision of the Services, as indicated in Clause 5.1;
- Good Industry Practice** means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness which would be expected from a skilled, trained and experienced person engaged in providing services which are the same or similar to the Services;
- Policies** means the internal regulatory and operational policies of the Ministry and/or those of the Government of Malta, as applicable to the Ministry and the Consultant, as in force from time to time;
- Proprietary Items** means any document, record, notebook, plan, model, component, device, or computer software or code, whether embodied in a disk or in any other form which is related to the Ministry's business;
- Services** means any and all of the services to be provided by the Consultant under this Agreement including as set out in **Schedule 1**;

**Term** means the period during which this Agreement shall be valid and enforceable between the Parties, as set out in Clause 3; and

**Taxes** means value added tax and any other similar and/or replacement tax or impost.

1.2 In this Agreement, unless the context otherwise requires:

1.2.1 the singular includes the plural and vice versa;

1.2.2 reference to a gender includes the other gender and the neuter;

1.2.3 Persons includes companies and all other entities, whether corporate or unincorporated;

1.2.4 references to a law, statutory provision or statutory instrument include a reference to that law, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it; and

1.2.5 any phrase introduced by the words "including", "includes", "in particular", "for example" or similar, shall be construed as illustrative and without limitation to the generality of the related general words.

1.3 The headings in this Agreement are for ease of reference only and shall not affect its interpretation.

1.4 References to clauses and schedules are, unless otherwise provided, references to the clauses of and schedules to this Agreement. The schedules to this Agreement are an integral part of this Agreement and any reference to this Agreement includes a reference to the schedules.

## 2. Engagement

2.1 The Ministry hereby engages the Consultant, who accepts, as from the Commencement Date, to perform the Services described in Schedule 1 of this Agreement, and such other services as may be required by the Ministry from time to time, in conformity with the provisions of this Agreement.

2.2 The Consultant shall perform the Services for the Ministry and any affiliated entity, including such commercial entities as may fall within the Ministry's portfolio, as the Ministry from time to time may reasonably require. Any such duties shall in any case fall within the competences of the Consultant.

2.3 The Consultant warrants that he is not precluded in any manner from providing the Services to the Ministry, and further warrants that he shall provide the Services with all due care, skill and ability, in accordance with generally accepted professional techniques and Good Industry Practice, and shall observe sound management practices, and employ appropriate technology and safe methods.

2.4 The Consultant shall not divulge any information obtained during the performance of its obligations undertaken in terms of this Agreement, including any Confidential Information.

### 3. Term of the Agreement

3.1 The Consultant's engagement under this Agreement shall commence on the Commencement Date and shall, unless it is terminated prematurely pursuant to any provision herein, or according to law, continue in full force and effect for a fixed period of three (3) years (the "Term") renewable at the option of the Parties.

### 4. Duties and Responsibilities of the Consultant

4.1 The Consultant shall devote such time and attention to the Services as may be necessary for the satisfactory provision thereof and shall be available for consultation with the Ministry at all reasonable times.

4.2 The Consultant shall report directly to the Minister for Finance and Employment and any other person indicated to the Consultant by the Ministry, in relation to the Services.

4.3 The Consultant undertakes to perform the duties and exercise such powers as the Ministry may assign to him in terms of this Agreement, to comply with all directions given by the Ministry and to act loyally and faithfully to the Ministry.

4.4 The Consultant undertakes to abide by all applicable laws and the Policies.

4.5 The Consultant shall throughout the Term, at no extra cost to the Ministry, provide all the equipment necessary for the provision of the Services to the satisfaction of the Ministry.

4.6 The Consultant shall immediately notify the Ministry in writing of any conflict or potential conflict of interest. The Consultant agrees to disclose to the Ministry any matters which may,

in the reasonable opinion of the Ministry, be considered to interfere or conflict with the proper performance of the Consultant's obligations under this Agreement

- 4.7 The Ministry shall report to the Consultant any problems that it may encounter from time-to-time and the Consultant shall endeavour to rectify such problems within such reasonable period of time as may be agreed with the Ministry.
- 4.8 The Consultant acknowledges that the Consideration to which the Consultant is entitled in terms of this Agreement include due compensation to the Consultant for all Services provided in terms of this Agreement and the Consultant shall accordingly not be entitled to receive any additional remuneration from the Ministry.
- 4.9 The Consultant shall choose the location from where to perform the Services but shall attend meetings at the Ministry's premises and/or in such place or places in Malta or abroad as the Ministry may from time to time reasonably require. The Ministry shall allocate working space for the Consultant at its premises, should the Consultant so require.
- 5. Consideration**
- 5.1 The Consultant shall be paid a fixed fee of Euro seven hundred and seventy four thousand (€774,000) for the whole term of three (3) years payable monthly in arrears at the fixed rate of Euro twenty thousand (€21,500) per month (the "Consideration") plus VAT of €3,870. The Consideration indicated in Clause 5.1 shall remain fixed for the duration of the Term.
- 5.2 All other costs, charges and expenses which relate to the Consultant's performance of its obligations under this Agreement and the provision of the Services shall be borne by the Consultant.
- 5.3 The Consultant shall invoice the Ministry on a monthly basis. Each invoice shall relate to the agreed fixed rate for the relevant calendar month as set out in Clause 5.1. The Consultant shall issue the invoice relating to the particular calendar month by not later than five (5) days from the end of the calendar month.
- 5.4 The Ministry will pay the Consultant within thirty (30) days of receipt of the relevant invoice from the Consultant.
- 5.5 The Consultant shall be exclusively responsible for the payment of national insurance contributions and for discharge of any income tax and liability for Taxes arising out of remuneration under this Agreement, as well as for accounting to the relevant fiscal and/or revenue authorities in respect thereof. The Consultant shall keep the Ministry indemnified in

respect of any claim or demand made by such authorities against the Ministry in respect of the Services performed by the Consultant.

5.6 Each amount stated as payable by the Ministry under this Agreement is expressed as exclusive of Taxes.

## 6. Confidentiality

6.1 The Consultant is aware that in the performance of the Services he will gain access to Confidential Information possessed by the Ministry and/or kept in custody by the Ministry. The Consultant acknowledges and accepts that such Confidential Information is solely owned by the Ministry.

6.2 During the Term of this Agreement and at any time after the expiry or termination of this Agreement, the Consultant warrants that:

- (i) he shall not divulge or disclose Confidential Information to any third party in any way, unless ordered by a court of competent jurisdiction;
- (ii) he shall not make use of Confidential Information for any purpose other than the performance of the Services and, in particular, shall not make use of such information for his own benefit or for the benefit of any third party; and
- (iii) he shall take all necessary measures to prevent the Confidential Information from being disclosed to any third party without the Ministry's permission.

6.3 Upon the expiry or termination of this Agreement, the Consultant shall immediately, completely and effectively return to the Ministry all the information relating to the business of the Ministry, including, but not limited to the Ministry's documents, records and reports, in the Consultant's possession or under his control, whether or not the same was originally supplied to the Consultant by the Ministry.

6.4 The Consultant acknowledges that all of the Consultant's writings, works of authorship, and other materials created or undertaken by the Consultant are a result of this Agreement are the property of the Ministry, including any copyrights, patents, or other intellectual property rights pertaining thereto. The Consultant hereby assigns to the Ministry all the Consultant's right, title, and interest, including all rights of copyright, patent, and other intellectual property rights, to or in such materials. To the extent that such rights do not automatically, on creation, vest in the Ministry absolutely, the Consultant holds them on trust for the Ministry. The Consultant agrees promptly to execute all documents and do all acts as may, in the opinion of the Ministry, be necessary to give effect to this Clause 6.4.

6.5 The Consultant recognizes that, as between the Ministry and the Consultant, all Proprietary Items, whether or not developed by the Consultant, are the exclusive property of the Ministry. Upon termination of this Agreement by either party, or upon the request of the Ministry at any time during the Agreement, the Consultant will return to the Ministry all of the Proprietary Items in the Consultant's possession or control, and the Consultant shall not retain any copies of any of the Proprietary Items.

**7. Conflicting Activities**

During the term of this Agreement, the Consultant shall not, except with the written permission of the Ministry be directly or indirectly engaged or concerned (whether as an employee, consultant, agent, director or otherwise) in any business, trade, profession or other occupation which could reasonably be expected to be in direct conflict with the performance of the Services under this Agreement.

**8. Termination**

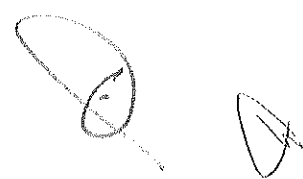
8.1 This Agreement may be terminated by the Ministry by giving at least three (3) months' notice in writing to the Consultant in any of the following events:

8.1.1. If the Consultant has committed a serious breach of duty, including a proved breach of a provision stipulated in this Agreement, or other serious act of proved misbehaviour and, in the case of a breach of duty or other act which is continuous, has continued in such breach or act and has failed to remedy such breach, or has been proved guilty in a court of law of conduct which in the opinion of the Ministry has brought the Consultant into disrepute.

8.1.2 If the Consultant becomes unable to perform any of his regular duties for a continuous period of three (3) months or to comply with any order from the Ministry by reason of infirmity of body or mind owing to ill-health or accident.

8.2 In the event that the Ministry terminates this Agreement before the expiry of the Term of this Agreement for any reason other than those specified in Clauses 8.1.1 and 8.1.2 above, the Ministry shall pay the Consultant a pro-rata lump sum of the Consideration as set out in Clause 5 for the remaining Term of the Agreement as set out in Clause 3.

8.3 The expiration or earlier termination of this agreement shall not affect such of its provisions as are expressed to operate or have effect subsequent to termination, nor any right of action already accrued to either Party.





8.4 On expiry or earlier termination of this Agreement, howsoever arising, the Consultant shall immediately return all property of the Ministry including, without limitation, all Confidential Information, Proprietary Items, documents, books, materials, records, correspondence, papers, clients lists, any keys which are in his possession or control. The Consultant shall further irretrievably delete any information relating to the business of the Ministry stored on any magnetic or optical disk or memory and all matter derived from such sources which is in his possession or control outside the premises of the Ministry, and shall provide a signed statement that he has complied fully with his obligations under this Clause 0.

**9. Independent Consultant**

9.1 The Consultant is and will remain at all times an independent Consultant and is not, and will not represent itself to be an agent, joint venturer, partner, officer, director or employee of Ministry or as being related to Ministry in any way other than as an independent Consultant.

9.2 The Parties agree not to make any representations or engage in any acts which could establish an apparent relationship of agency, joint venture, partnership or employment with each other. For greater certainty, the Parties will not be bound by any agreement, contract, representation or warranty made by the other Party with any other person, firm or corporation or by any action, except where reasonably necessary for the purposes of providing the Services and where the Consultant has first obtained the prior written consent of Ministry.

9.3 Nothing contained in this Agreement is intended to create nor will be construed as creating an employment relationship between the Consultant and the Ministry. The Parties declare that, for the purposes of regulation 3 of the Employment Status National Standard Order (Legal Notice 44 of 2012, as amended) the Consultant:

- (i) Does not depend on the Ministry for his income and that the income expected to be derived under this Agreement is expected to constitute less than 75% of his income over a period of one year;
- (ii) does not depend on the Ministry to determine where and how the assigned work is to be carried out;
- (iii) performs the Services using equipment, tools and materials, which are not provided by the Ministry;
- (iv) is not subject to a working time schedule or minimum work periods established by the Ministry;

- (v) is not integrated in the structure of the production process, the work organisation or the Ministry's hierarchy;
  - (vi) does not perform an activity which is a core element in the organization and pursuit of the objectives of the Ministry; and
  - (vii) does not carry out similar tasks to existing or former employees of the Ministry
- and shall therefore not be considered to be an employee of the Ministry.

9.4 If, for whatever reason, and despite the declaration made in Clause 9.3, the Consultant is deemed to be an employee of the Ministry, then the Parties declare that any such employment relationship shall be deemed to be for a fixed duration commencing on the Commencement Date for a period of three (3) years, which period is subject to automatic extensions of one (1) month each, unless the Ministry informs the Consultant that there shall be no further extension.

## 10. Notices

- 10.1 All notices between the Parties with respect to this Agreement shall be in writing and signed by or on behalf of the Party giving it.
- 10.2 Any notice between the Parties with respect to this Agreement may be served by delivering it by hand, by registered mail, or by electronic mail to last known address of such Party, or to such other address in Malta as the addressee may from time to time have notified for the purpose of this Clause 10.
- 10.3 Notices shall be deemed to have been received upon delivery, if delivered by hand, or upon receipt of successful delivery notification, if sent by registered mail or electronic mail.

## 11. Data Protection

- 11.1 The Ministry and the Consultant acknowledge that they collect personal data independently of each other and that each of them determines the use it makes of the personal data collected, as a controller of such personal data. Accordingly, each of them undertakes to abide by their respective obligations as controller of personal data in accordance with the applicable data protection legislation.

## 12. General

- 12.1 Entire Agreement



12.2 This Agreement contains the entire agreement and understanding of the Parties and supersedes all prior agreements, arrangements or understandings (whether written, oral or implied) relating to the subject matter of this Agreement, and all such prior agreements, arrangements or understandings shall be deemed to have been terminated by mutual consent with effect from the date hereof.

12.3 Variation

Save for any changes required to this Agreement pursuant to any change in law or regulation, no variation or amendment of this Agreement shall be valid or effective unless made in writing and signed by or on behalf of the Parties.

12.4 Severability

If a provision of this Agreement is or becomes illegal, invalid or unenforceable, this shall not affect the validity or enforceability of any other parts of this Agreement.

12.5 Waivers

The rights and remedies provided by this Agreement may be waived only in writing by the relevant Party in a manner that expressly states that a waiver is intended, and such waiver shall only be operative with regard to the specific circumstances referred to. Any failure to exercise or any delay in exercising a right or remedy by either party shall not constitute a waiver of that right or remedy or of any other rights or remedies.

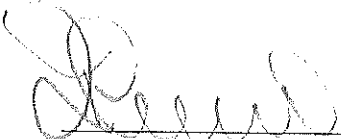
12.6 Assignment

Neither Party shall, without the prior written consent of the other Party, assign, transfer (in whole or in part) or charge or deal in any manner with this Agreement or the benefit of or the rights under this Agreement

**13. Governing Law and Jurisdiction**


13.1 This Agreement shall be governed by and construed in accordance with the laws of Malta, and the parties agrees to irrevocably submit to the exclusive jurisdiction of the Courts of Malta in respect of any claim, dispute or difference arising out of or in connection with this Agreement.

The undersigned have executed this Agreement and signed two original copies thereof on the date and year set forth above.



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**David G. Curmi**  
Consultant



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**Alfred Camilleri**  
For and on behalf of  
Ministry for Finance and  
Employment

## Schedule 1 – The Services

In general terms, the Services provided under this Agreement shall include the provision of consultancy, strategic guidance and advice to the Ministry and, more specifically the performance of the role of Executive Chairman of Air Malta p.l.c. which includes the role of Chief Executive Officer of the Company.

The tasks described above are intended only as a guide to the tasks associated with the Consultant's role and in no way intended to restrict the consultancy services as required by the Ministry.



