



CONSTRUCTION SERVICE AGREEMENT

THIS CONSTRUCTION SERVICE AGREEMENT ("**Agreement**") is made on the ____ day of _____
20 ____

BY AND BETWEEN:

- (1) The Government of Bermuda as described in Schedule 1, hereinafter referred to as the "**Government**", "**we**", "**our**" or "**us**"; and
- (2) The supplier of services under this Agreement, whose name and contact details are set out in Schedule 1 to this Agreement and is hereinafter referred to as the "**Supplier**" or "**you**".

The Government and the Supplier are individually referred to as a "**party**" and collectively as the "**parties**".

This Agreement, which consists of the General Terms and Conditions, Schedule 1, Schedule 2, Schedule 3, and Exhibit A, sets out the terms and conditions upon which you will provide service to us.

GENERAL TERMS AND CONDITIONS

IN CONSIDERATION of the premises and mutual promises in this Agreement the parties, intending to be legally bound, agree as follows:

That in this Agreement, capitalised terms have the respective meanings referred to in this Agreement, including any derivatives, words by their context importing the plural shall include the singular and vice versa, references to either gender includes any other gender or a neutral entity where appropriate, and a reference to any Law means as amended from time to time and include any successor legislation, regulations or Laws.

1. Definitions

In this Agreement unless the context otherwise requires, the expressions set forth below have the following meanings in any schedules or annexes hereto:

"Agreement" means this Construction Service Agreement and includes Schedule 1, Schedule 2, Schedule 3, Schedule 4 and Exhibit A;

"Best Industry Practice" means the exercise of that degree of skill, professional care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector in Bermuda or in England;

"Business Days" means Monday to Friday between 9am – 5pm in Bermuda;

"Claims" means any written or oral actions, claims or demands for money including taxes or penalties or service or for any allegation of a breach in rendering or failure to render any Service

performed or which ought to have been performed, patents, trade secrets, copyright, or other intellectual property rights connected to any Equipment including infringement of Software, costs, penalties, fees and expenses including legal and professional fees, charges or expenses;

"Commencement Date" means the date of the commencement of the use of the Service as set out in Schedule 1;

"Completion Date" means the date of the completion of the use of the Service as set out in Schedule 1;

"Confidential Information" means the terms of this Agreement as well as any information or data disclosed to a party which (i) if in tangible form, is marked clearly as proprietary or confidential, (ii) if oral, is identified as proprietary, confidential, or private on disclosure or (iii) any other information which is not in the public domain, which upon receipt, should reasonably be understood to be confidential, provided, however, that such information or data is provided under or in contemplation of this Agreement;

"Contact" means the Public Officer appointed as the liaison between you and us;

"Consents" means any qualifications, rights, permits, licenses, immigration approvals, authorisations or other consents;

"Data" means logbooks, records or data files, including, but not limited to: electronic storage media, Software, Source Code, any data base and data base rights, personal or personally



identifiable information relating to an identified or identifiable individual, voice and data transmissions, including the originating and destination numbers and internet protocol address, date, time and duration, created, used or connected with the Service;

“Effective Date” means the date first written above or the date when the Supplier commences provision of the Service;

“Equipment” means the Supplier provided equipment including any mobile devices, hardware, Software or cables used to provide a Service;

“Exhibit A” means the unconditional and final release form on final payment;

“Expenses” means all expenses (including legal expenses), charges and costs including all costs, fees, charges, fines and penalties related to travel and accommodation, penalties and fines;

“Fee” means the gross fee to be paid for the Service provided in accordance with the terms of this Agreement;

“Government” means the Government of Bermuda;

“Hazardous Substances” includes, without limitation, flammables, explosives, radioactive materials, asbestos, polychlorinated biphenyls (PCB's), chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, petroleum and petroleum products, and substances declared to be hazardous or toxic under any Law;

“in writing” shall mean any fax, letter or purchase order on a party's letterhead bearing the signature of an authorised person or an e-mail emanating from the e-mail address of an authorised person;

“Indemnified Parties” means Ministers, Public Officers, employees, agents, advisors and consultants;

“Insurance Policy” means an amount of not less than the minimum level of insurance required by law or a regulatory body or that is required to cover for similar service as provided in this Agreement or the amount as set out in Schedule 1, whichever is greater, covering you and your officers, directors, employees, agents, or subcontractors for professional negligence, errors

and omissions which shall be on an “*occurrence basis*”. “*The Government of Bermuda*” shall be endorsed as an additional insured on the required policy and the insurances afforded to the Government of Bermuda shall be the primary insurance;

“Law” means all laws (including the common law), statutes, regulations, treaties, judgments and decrees and all official directives, by-laws, rules, consents, approvals, authorizations, guidelines, orders and policies: (i) having the force of law in Bermuda from time to time, including, for greater certainty, those related to the issuance of Consents, and any building codes, or (ii) of any governmental authority;

“Loss” means all Claims, damages, Expenses, disbursements, costs of investigation, litigation, settlement, judgment and interest, lost revenue, loss of opportunity to make money, loss of contracts or for the inability to fulfill customer contracts, lost or damaged data or other commercial or economic loss, whether based in contract, tort (including negligence) or any other theory of liability or other loss not limited to those contemplated at the time of entering into this Agreement and whether such loss or liabilities are direct, indirect, incidental, special or consequential, whether foreseen, foreseeable, unforeseen or unforeseeable;

“License” means the non-exclusive, unlimited, royalty-free right granted by the Supplier to us;

“Materials” means written advice, technical specifications, designs, drawings, plans, reports, tenders, proposals, equipment and documents or information required for the Work and other related information or data provided by you or the Representative necessary for the proper execution and completion of the Service and required to complete the Objective;

“Objective” means the plan and effort necessary in order to successfully achieve the result desired by the Government;

“Public Officer” means any person employed by, or acting as an agent for us;

“Representative” means the person(s) providing the Service on your behalf;

“Retention Money” means the accumulated retention moneys which the Government retains under this Agreement.



“Service” means all structural engineering support, including, but not limited to, construction, labour, technical matters, planning, service redundancy and other ancillary and connected services, provided by you or on your behalf as set out in this Agreement;

“Security Procedures” means rules and regulations governing health and safety procedures and information technology security protocols;

“Schedule 1” contains details of the parties, the Fee, Term, Insurance Policy and other special conditions;

“Schedule 1” means the schedule which forms a part of this Agreement and contains instructions for the performance of the Service, Fees, Expenses and the Term;

“Schedule 2” contains the fee structure related to the provision of the Service not contained in Schedule 1;

“Schedule 3” contains instructions or information related to the provision of the Service not contained in Schedule 1;

“Schedule 4” contains the statement of work;

“Schedule 5” contains the schedule of rates for the provision of the Service;

“Site” means the location or premises where the Services are to be performed;

“Software” means the Supplier provided software including modified software, third party software and bespoke software used for the Equipment and the Service;

“Taxes” means payroll tax, social insurance contributions and other taxes payable by you for your Representatives;

“Term” means the term of this Agreement as set out in Schedule 1; and

“Work” means the provision of Service and Materials required to fulfill the Objective.

2. Provision of Service

2.1 You shall perform the Service in order to complete the Objective, during the Term upon the terms and conditions of this Agreement including Schedule 1, Schedule 2, Schedule 3, and Schedule 4, and we agree to pay the Fee for the Service, subject to the terms and conditions of this Agreement.

2.2 In the event of conflict between these General Terms and Conditions, Schedule 1, Schedule 2, Schedule 3 and Schedule 4, the order of precedence to resolve any such conflict shall be as follows: (i) these General Terms and Conditions; (ii) Schedule 1; (iii) Schedule 2; (iv) Schedule 3; and (v) Schedule 4.

2.3 You will provide us with clear briefings and reports on your progress of the Work in timeframes as set out in a schedule to this Agreement and ensure that all the facts given about the Work are accurate and complete. You will co-operate fully with us during the provision of Service in order to complete the Work.

2.4 You shall use your best efforts to complete the Service, or any part of the Service, in accordance with Best Industry Standards and any milestones as set out in any schedule or by the date as agreed between the parties.

2.5 You shall provide us with all Materials as requested or by the date as agreed between the parties.

2.6 We shall inform you of the Contact to whom you or the Representative shall be reporting to and who will accept the Service.

2.7 You acknowledge and warrant that you are fully satisfied as to the scope and nature of the Work and of your obligations under this Agreement as a result of you having visited the Site, examined all exposed conditions affecting the Work; be fully familiar with all of the conditions thereon and affecting the same, and, having carefully examined all Materials, acknowledge that there are no discrepancies or omissions in the Materials that you are aware of, or has not brought to our or the Representative's attention. Where elements of the design are identified but the quantity or quality is not specified, you and the Representative shall make a reasonable assumption as to the quantity and/or quality of the Materials and/or labour necessary for any such element and shall communicate such assumption to the Contact for review and approval.



- 2.8 You shall, before starting each portion of the Work, carefully study and compare the various Materials relative to that portion of the Service, as well as information provided to you, in writing from us, take measurements of any existing conditions related to that portion of the Service and you shall observe any conditions at the Site affecting it.
- 2.9 These obligations are for the purpose of facilitating coordination and construction by you and are not for the purpose of discovering errors, omissions, or inconsistencies in the Materials; however, you shall promptly report to the Contact any errors, inconsistencies, variances from Law, or omissions discovered by or made known to you as a request for information in such form as the Contact may require.
- 2.10 It is recognized that your review is made in your capacity as a construction contractor and not as a licensed design professional unless otherwise specifically provided in the Materials.
- 2.11 You hereby specifically acknowledge and declare that you have reviewed the Materials and any other additional information to have enabled you to determine the cost to complete the Work in accordance with the Agreement.
- 2.12 You shall procure the benefit of any warranties or guarantees in respect of goods and materials you supply to us and provide us with copies of such warranties or guarantees.
- 2.13 We shall make available to you relevant information or data as requested by you in a timely manner to enable you to complete your obligations under this Agreement.
- 2.14 We have the right to engage third party service providers at our cost and you and the Representatives shall co-operate with such third party service providers but you shall not be responsible for them.
- 2.15 The Service is provided to us on a **non-exclusive basis**.
- 3. Security Procedures**
- 3.1 The Service shall be provided in such place

and location as instructed by us, in writing.

- 3.2 If the Service is required to be provided on our premises, you and the Representative will comply with all premises rules, including health and safety rules, as notified to you and both you and the Representative(s) will conduct yourselves in a professional and safe manner. You shall notify us if you become aware of any health and safety violations related to the provision of Service.
- 3.3 If you have access to Government IT systems, you shall comply with Security Procedures. We may require personnel with access to premises or IT systems to sign a confidentiality undertaking.
- 3.4 You and the Representative(s) shall at all times comply with the Security Procedures, which may be amended from time to time.
- 3.5 Failure to adhere to the Security Procedures and the requirements of this section may be considered a material breach of this Agreement and may result in termination for default.
- 4. Supplier's Representations and Warranties**
- 4.1 You shall be responsible to us for acts, errors or omissions of the Representative(s) performing all or portions of the Service for or on your behalf or any sub-subcontractors.
- 4.2 The Representative shall act on your behalf for the administration and provision of the Service. The Representative shall have full authority to act on your behalf for the provision of Service.
- 4.3 You represent that you and the Representative and any other person engaged by you, will perform all activities relating to the Service:
- (a) in accordance with Best Industry Practice and in a professional and lawful manner;
 - (b) if applicable, using appropriately skilled and experienced personnel whose identity, address and right to live and work in Bermuda and (to the maximum extent permissible) whose absence of



- relevant criminal records has been verified;
- (c) in strict accordance with the standards and timelines as may be set out in a schedule; and
- (d) in accordance with Laws; and our rules, regulations and policies.
- 4.4 We may request, by notice in writing to you, the replacement of the Representative and such request shall not be unreasonably withheld or delayed.
- 4.5 You shall use your best efforts to promptly replace the Representative with another qualified individual employed by you, and such replacement shall be subject to our approval, which shall not be unreasonably withheld or delayed.
- 4.6 If you or Representative are unavailable to provide the Work and in our reasonable opinion, any suggested replacement is not satisfactory to us, then we may terminate this Agreement
- 4.7 You shall pay each Representative its costs, charges, Expenses or other fees for any Service each Representative provides in connection with this Agreement.
- 4.8 You shall enforce strict discipline and good order among your employees and Representatives carrying out the Service. You shall not permit employment of unfit persons or persons not skilled in tasks assigned to them with respect to the provision of Service.
- 4.9 There may be occasions where certain Service may have to be outsourced. You will seek prior permission from us prior to outsourcing any service. In the event of any outsourcing, you will be responsible for all outsourced Service or personnel.
- 4.10 You acknowledge that we will be:
- (a) relying on the Materials on the basis that they are accurate and complete in all material respects and are not misleading;
- (b) relying on your and the Representative's skills, expertise and experience concerning the provision of the Service;
- (c) relying on the accuracy of all Materials; and
- (d) using your Reports, Materials and any other advice and assistance provided under this Agreement.
- 4.11 You shall provide, remain responsible and pay for labour, materials, equipment, tools, construction equipment and machinery, water, heat, air-conditioners, utilities, transportation, and other facilities and related service necessary for proper execution and completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Service.
- 4.12 You shall confine operations at the Site to areas permitted by Laws, and the Materials and shall not unreasonably encumber the Site with materials or equipment.
- 4.13 You and all Representative(s) shall keep respective employees and contractors out of areas beyond the Site except where necessary for actual performance of Service. You shall schedule and use the Site in such a manner as to cause or occasion a minimum of inconvenience or disturbance to or interference with normal operations of the Site, including, without limitation, taking precautions to minimize noise, dust and construction hazards and the interruptions of existing Service and utilities.
- 4.14 You acknowledge that you are aware of the Best Industry Practice required at the Site as necessary to ensure that construction does not unreasonably inconvenience, disturb or interfere with employees, visitors, tenants, occupants and others at or surrounding, the Site.
- 4.15 You shall keep the Site and surrounding area free from excessive accumulation of waste materials or rubbish caused by operations under this Agreement.
- 4.16 Upon completion of the Work, you shall remove waste materials, rubbish, your tools, construction equipment, machinery and surplus material from and about the Site at your Expense and restore the Site to similar



- or same condition as immediately prior to commencement of this Agreement.
- 4.17 Make substitutions to the Service only with our consent, after evaluation and in accordance with a Change Order.
- 4.18 You covenant, represent and warrant that the Work shall be provided without the use of lead-based paint or of any constituent or product that contains lead-based paint.
- 4.19 You shall use your best endeavors to replace the appointed person with another qualified individual employed by you at your cost and expense, and such replacement shall be subject to our approval, which approval shall not be unreasonably withheld or delayed.
- 4.20 You will provide information or sign any other agreements necessary or as requested by us, in order that either you or us can fulfill obligations in accordance with this Agreement.
- 4.21 Any Materials prepared by you for us may be used by us for any purpose.

5. Hazardous Substances

- 5.1 You are responsible for compliance with the requirements regarding Hazardous Substances. If you encounter a Hazardous Substance not addressed in the Materials, and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a Hazardous Substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the Site by you or any Representative, you shall, upon recognizing the condition, immediately stop providing Service in the affected area and report the condition to the Contact and us.
- 5.2 When the Hazardous Substance has been rendered harmless, work in the affected area shall resume upon written agreement of both parties. By Change Order, the time for completion shall be extended appropriately and the Fee shall be increased in the amount of your reasonable additional costs of shutdown, delay and start-up of the Work.

- 5.3 You agree that you shall not cause or permit to occur: the use, generation, release, manufacture, refining, production, processing, storage, or disposal of any Hazardous Substance, on, under, or about the Site, or the transportation to or from the Site of any Hazardous Substance, except for the use of minor insubstantial amounts of petroleum products and other substances customarily used in construction projects provided such use is in compliance with Laws and any guidelines as provided by us or the Contact to you, from time to time.
- 5.4 You shall not keep any Hazardous Substances at the Site at any time during the time of performing and completion of the Work, except in compliance with environmental regulations and Laws or the guidelines we may prescribe, from time to time.

6. Inspection and Acceptance

- 6.1 We will notify you of our Contact who shall be responsible for reviewing and approving all Work produced by you or the Representative.
- 6.2 We shall at all times retain the right to inspect the work provided by you or the Representative and shall have the right to review, require correction or additional follow up, if necessary, and accept the Service and any written work product submitted by you or the Representative. Review(s) of any written work product shall be carried out within thirty (30) days of receipt, unless we extend to a date certain, so as not to impede the progress of the Work.
- 6.3 You shall make any required corrections promptly at no additional charge and return a revised copy of the written work product to us within seven (7) days of notification or a later date if extended by us, such extension not to be unreasonably withheld or delayed. In the event that you are required to implement changes with respect to your performance of Service, such change shall be implemented within a reasonable time, as we may determine in consultation with you.



- 6.4 You shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.
- 6.5 Your failure to proceed with reasonable promptness to make necessary corrections to the Work shall be a default. If your corrected performance or written work product remains unacceptable, we may terminate this Agreement, delay or reduce the Fee and/or reject the hours submitted in connection with such work to reflect the reduced value of Service received.

7. Approval by Other Authorities

- 7.1 Where the Work is subject to the approval or review of an authority, department of government, or other agency (“**Authority**”), such applications for approval or review from an Authority shall be your responsibility, but each such application to an Authority shall be copied to us.
- 7.2 Unless authorised by us in writing, such applications for approval or review from an Authority shall not be obtained by you from that Authority.

8. Time of the Essence and Delay

- 8.1 Time of the Essence: You shall perform the Service expeditiously to complete the Work and to meet the Objective.
- 8.2 You shall complete any portion or portions of the Service in such order as we require.
- 8.3 We shall have the right to take possession of and use any completed or partially completed portions of the Work notwithstanding any provisions expressed or implied to the contrary.
- 8.4 We shall give due consideration to all Materials, and shall make any decisions which are required to be made in connection therewith within a reasonable time so as not to delay the progress of the Work.
- 8.5 Delay: In the event of a delay, you shall give at least five (5) days’ prior written notice to us and the parties shall work together to discover any increases in scope, cost or duration of the Service as a result of the delay.
- 8.6 Furthermore:

- (a) You shall inform us of the circumstances and probable effects of any delay;
- (b) You shall inform us if any Service have to be suspended or cannot be performed and the reasons for such delays;
- (c) In the event of any increase in scope and/or costs, these shall be regarded as additional Service requiring a Change Order; and
- (d) The time for completion of the Service shall be increased accordingly and we shall in our discretion may change the amount of the Fee accordingly.

8.7 Progress Report: If required, you shall submit progress reports in connection with the Work (“**Report**”) on at least a monthly basis, or as otherwise required, to us. The Report shall include a summary of the activities and accomplishments during the previous reporting period.

8.8 The Report will relate to your itemized invoice for time spent carrying out the Work in the prior month and include an itemized forecast of the intended time to be spent on known Work related activities in the coming month (which will require ratification by us). The Report will also include year to date totals for payments received and work completed (expressed in BMD\$). Any decisions and/or actions we require during the upcoming reporting period(s) should be included in the Report. We shall determine the specified date for submission of the Report for the reporting period and promptly communicate the same to you.

9. Third Party Service

- 9.1 Where the exercise of powers or performance of duties are authorised or required by the terms of an agreement between you and any third party, you may:
- (a) Have due regard to the third party contract provided that the details of such powers and duties are acceptable to you and agreed in writing where they are not described in any schedule;



- (b) If authorized to certify, determine or exercise discretion to do so fairly between us and the third party not as an arbitrator but as an independent professional using Best Industry Practice; and
- 9.2 If so authorised vary the obligations of any third party, subject to obtaining our prior approval to any variation which can have an important effect on costs or quality or time in respect of the Service (except in any emergency when you shall inform us as soon as practicable).
- 10. Additional Service**
- 10.1 Additional service or variations in the Service may be required after the Effective Date of this Agreement and may be performed upon our prior written approval. Such written approval shall be evidenced by a change authorisation order ("**Change Order**") or such other written authorisation as approved and signed by the Contact or a duly authorised Public Officer. In such case, a Change Order shall be issued within a reasonable time thereafter.
- 10.2 All Change Orders are subject to the terms and conditions of this Agreement.
- 10.3 The Fee for additional service shall be agreed by us in writing prior to any additional service being performed.
- 11. Remedies**
- 11.1 Without prejudice to any other remedies and rights available to us, if the Materials are inaccurate or misleading or the Service are not performed in accordance with this Agreement, then we, in our sole option, may:
- (a) Require correct Materials;
 - (b) require, in whole or in part, the Service to be re-performed during the Term or within six (6) months of the Completion Date;
 - (c) carry out an assessment of the value of the defective Materials or Service and deduct that value from amounts that we are required to pay you; or
 - (d) obtain the Materials or Work from another service provider and you will be

required to pay all amounts payable by us in obtaining alternative Materials or Work from another service provider to make good or to deliver defective Materials or Service.

12. Fee, Invoicing and Payment

- 12.1 We shall pay the Fee and/or undisputed invoices thirty (30) days in arrears, subject to any retentions or deductions as set out in this Agreement.
- 12.2 The Fee shall be set out in Schedule 1 and paid in Bermuda Dollars.
- 12.3 The Fee has been calculated to take account of payroll tax and social insurance contributions that, as a non-employee, you are required to pay in full for you and the Representatives.
- 12.4 We may dispute an invoice within thirty (30) days of receipt, however, we reserve the right to dispute payments, made on an invoice at any time if we suspects fraud or willful misconduct on your part ("**Fault**"). In the event that any Fault is discovered in relation to payments made to you, we reserve the right to recover such payments from you, at your cost (which shall include all legal and collection fees and expenses) or to set off any disputed amounts against unpaid invoices.
- 12.5 Your failure to submit a proper invoice in a timely manner may result in a delay in payment by us. You agree that we are not responsible, nor will we be liable to you or under law or equity for any interest or expenses that you may incur resulting from any delays in payment caused by your failure to comply with your obligations under this Agreement.
- 12.6 **Fee Deductions:** The Fee will be subject to deductions by law in the event that you have not registered as a service provider with the relevant Government department.
- 12.7 The Fee will be subject to further deductions for the following reasons:
- (a) where there has been an overpayment to you for any reason;
 - (b) where there has been a mistake of payment made to you;



- (c) if you have not delivered the Service or any part of the Service, as required;
 - (d) where we have suffered loss by your failure to follow instructions or exercise due diligence;
 - (e) if you cause damage to Government property, the value of replacement or repair of the damaged property;
 - (f) if you leave or terminate this Agreement without giving the required notice, the value of the Fee for the notice period; and
 - (g) any overpayments or advances of payment taken in excess of the Fee.
- 12.8 **Invoicing:** You shall provide a monthly invoice for the Service as set forth herein, with supporting documentation and itemising the following:
- (a) Your name, invoice date and invoice number;
 - (b) Change Order number, if applicable;
 - (c) Details of Service performed;
 - (d) Time and service rendered in hourly (or less than daily) increments with sufficient detail to determine appropriate expenditure of hourly efforts;
 - (e) Other supporting documentation including copies of any invoices or receipts for reimbursable expenditures as provided for herein;
 - (f) Mailing address and the person to whom payment is to be sent or the banking institution and full account information for payment by wire transfer, unless such information has previously been provided to us; and
 - (g) Your telephone number, fax number and e-mail address.
- 12.9 You will only be paid the Fee for the time that you provide a Service. For the avoidance of doubt, you will not be paid during any time that you do not provide Service or if you provide additional service which have not been prior approved in writing from the Public Officer. In addition, you will not be paid for public holidays and in the event that you provide Service on a public holiday or provide additional service without prior written approval, such amounts will not be paid or if paid, will be deducted from the Fee, unless otherwise agreed in writing.
- 12.10 You shall be responsible to pay the Representative for the provision of the Service.
- 12.11 Except for the Fee and any approved Expenses, no other amounts are payable to you. We may set off any amounts owed by you to us against any Fees or Expenses.
- 12.12 If we are late in paying any undisputed Fees, you may charge us a monthly interest rate of 1% on any outstanding Fee.
- 12.13 Except for the Fee and any prior approved Expenses, no other amounts are payable by us to you or the Representative. We may set off any amounts owed by you to us against any Fee or Expenses.
- 13. Expenses**
- 13.1 Neither you, nor the Representative, are allowed to incur Expenses associated with the provision of the Service without having received our prior written consent. You shall be liable for all Expenses not prior approved.
- 13.2 If prior approved, all air travel shall be at economy class, unless otherwise agreed in writing.
- 13.3 While performing the Service in or from Bermuda, the Representative may require accommodation. In the event that accommodation is required, we may assist you or the Representative in acquiring accommodation but we shall not be liable to pay for such accommodation. You shall be liable for all Expenses and utility fees including but not limited to: water; internet or other communication access; access to use a telephone; and other charges incurred by residing or otherwise staying at a property of your own choosing. You agree to abide by the rules and regulations of the property owner and you shall indemnify us against any loss the property owner may suffer as a result of your or the Representative, residing or staying at that



- property.
- 13.4 We shall pay the Fee and approved Expenses by direct transfer into your bank account. It is your responsibility to inform us of your current contact and bank details in order that we can contact and make payment to you.
- 13.5 Without prejudice to Section 12.1, we reserve the right to refuse to pay an invoice in the event that the invoice is presented six (6) months after the time when it should have been presented for payment.
- 14. Taxes**
- 14.1 You shall be responsible to register with the appropriate department of the Government in order to pay for all Taxes associated with the provision of a Service and you consent to us deducting due or outstanding Taxes from the Fee on your behalf, at our option. Your Tax numbers shall be out in Schedule 1.
- 14.2 In the event that we have not made deductions on your behalf, you shall provide us with proof of payment of amounts due to us such as any Taxes and all other receivables to us, prior to you receiving your final payment. In the event that you do not provide proof in writing, we shall have the right to deduct any outstanding amounts owed, including any Taxes, from final payment of the Fee.
- 15. Substantial Completion**
- 15.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Materials so that we can occupy the Site or utilize the Work for its intended use.
- 15.2 When you consider that the Service, or a portion thereof which we agree to accept separately, is substantially complete, you shall prepare and submit to the Contact a comprehensive list of items ("**List**") to be completed or corrected prior to final payment. Failure to include an item on the List does not alter your responsibility to complete all the Service in accordance with the Materials.
- 15.3 Upon receipt of the List, the Contact will make an inspection to determine whether the Service or designated portion thereof is substantially complete. When the Contact determines that the Service or designated portion thereof is substantially complete, the Contact will issue a Certificate of Substantial Completion (the "**Certificate**") to you which shall establish the date of substantial completion, establish your responsibilities and that of the Government in relation to security, maintenance, heat, utilities, damage to the Service and insurance, and fix the time within which you shall finish all items on the List accompanying the Certificate. Warranties required by the Materials shall commence on the date of substantial completion of the relevant Service or designated portion thereof unless otherwise provided in the Certificate.
- 15.4 The Certificate shall be submitted to us and you for written acceptance of responsibilities assigned in such Certificate. Upon such acceptance and consent of surety, if any, we shall make payment in accordance with an invoice subject to retainage applying to such Service or designated portion thereof. Such payment shall be adjusted for any Service that is incomplete or not in accordance with the requirements of the Work.
- 16. Final Completion and Final Payment**
- 16.1 Upon receipt of your written notice that the Work is ready for final inspection and acceptance and upon receipt of a final invoice, the Contact will promptly make such inspection and, when the Contact finds the Work acceptable under the Materials and the Service is fully performed, the Contact will promptly issue a final Certificate for payment stating that to the best of the Contact's knowledge, information and belief, and on the basis of the Contact's on-site visits and inspections, the Service have been completed in accordance with the Materials and this Agreement and that the entire balance found to be due to you and noted in the final invoice is due and payable.



- 16.2 The Contact's final Certificate for Payment will constitute a further representation that conditions stated in Section 14.3 as precedent to you being entitled to final payment have been fulfilled. In addition to the requirements in section 14.3 Final Completion will not be recognized until: (1) all items on the list accompanying the Certificate have been completed to our satisfaction, and you are in possession of our written notice of acceptance of the Work and approval by the Contact; and (2) our final approval, if any, has been issued by the appropriate authority and received by us.
- 16.3 Final payment shall not become due until you have delivered to us a complete final unconditional release in the form attached hereto as Exhibit A arising out of this Agreement or receipts in full covering all labour, materials and equipment for which a claim, action or demand could be filed, or a bond satisfactory to us to indemnify us against such claim, action or demand.
- 16.4 If such claim, action or demand remains unsatisfied after payments are made, you shall refund to us all money that we may be compelled to pay in discharging such claim, action or demand, including costs and reasonable attorneys' fees.
- 16.5 The making of final payment shall constitute a waiver of claims, actions or demands by us except those arising from:
- (a) liens, claims, security interests or encumbrances arising out of the Agreement and unsettled;
 - (b) failure of the Work to comply with the requirements of the Materials; or
 - (c) terms of any warranties required by the Materials.
- 16.6 Acceptance of final payment by you, a Representative or material supplier shall constitute a waiver of all Claims against us and any Indemnified Parties by that payee except those previously made in writing and identified by that payee as unsettled at the time of final application for payment.
17. **Indemnity, Limitation, Insurance, Force Majeure and Business Continuity**
- 17.1 **Indemnity:** You shall have liability for and shall indemnify the Indemnified Parties against any Claims arising from any breach by you, or by the Representative(s), of the terms of this Agreement, including any negligent act, errors, omission or wilful misconduct to act in the provision of the Service. We may satisfy such indemnity (in whole or in part) by way of deduction from any payment due to you.
- 17.2 You shall indemnify, hold harmless and, if requested by us, in our sole and absolute discretion, defend (with counsel approved by us) the Indemnified Parties from and against any and all Loss, including, without limitation: bodily injury, property damage, or the removal of any products and restoration of the Site, to the extent arising out of a breach of any covenant, representation and warranty set forth in this Agreement or the presence of any Hazardous Substances or lead-based paint used in the delivery of the Work.
- 17.3 Without limiting the foregoing, you shall retain full responsibility for, and shall bear all costs associated with any remediation of the Site due to the presence of any Hazardous Substances or lead-based paint in any products to the extent remediation is requested by any authority or by us, in our sole discretion. If you fail to undertake promptly such remediation upon our request, we shall have the right, but not the obligation, to undertake such remediation at your sole cost and expense, and charge you all costs and expenses of such remediation, plus an administrative overhead charge equal to 10% of the amount of such remediation.
- 17.4 Subject to Section 18.8 and to the fullest extent permitted by Law, the total aggregate liability to either party for all Claims resulting in any way from the performance of the Service shall not exceed the total compensation actually paid to you for Service completed under this Agreement for the three (3) month period immediately preceding the date on which the latest Claim(s) first arose.



- 17.5 In the event Claims are caused by the contributive, joint or concurrent negligence by you or the Representative, such Claims shall be borne by each party in proportion to its own negligence
- 17.6 If the use of a Service is enjoined as a result of a Claim, in addition to the indemnity set forth above, you shall (at your expense): (i) obtain for us the right to use the infringing Service; (ii) modify such Service in a manner that does not infringe any third party intellectual property rights; or (iii) substitute equivalent Service that are acceptable to us and does not infringe any third party intellectual property rights.
- 17.7 No Liability: In no event shall the Indemnified Parties be liable to you for any Loss.
- 17.8 Nothing in this Agreement shall exclude or limit any liability which cannot be limited or excluded by law and you shall accordingly maintain the Insurance Policy in full force and effect during the Term.
- 17.9 All Claims against us must be commenced in court within one (1) year after the cause of action has accrued or the act, omission or event occurred from which the Claim arises, whichever is earlier, without judicial extension of time, or said Claim is barred, time being of the essence.
- 17.10 Insurance: You shall maintain at your sole expense, on a primary basis, and an "occurrence basis", at all times during the Term, the Insurance Policy. The Insurance Policy shall be evidenced by delivery to us of certificate(s) of insurance executed by the insurer(s) listing coverages and limits, expiration dates and terms of the policy or policies and all endorsements, and upon request a certified copy of each policy including all endorsements. Failure to provide acceptable proof of insurance as required by us shall entitle us to either obtain or maintain the Insurance Policy on your behalf at your sole cost and expense, or to terminate this Agreement without prejudice to any other of our rights or remedies in connection with this Agreement.
- 17.11 You shall be responsible for the payment of all deductible amounts on such policy or policies and shall on request supply to us copies of such Insurance Policy and evidence that the relevant premiums have been paid.
- 17.12 You shall notify us forthwith of any changes to any of the policies, or of any claims or potential claims which have arisen to which the insurer(s) of the above policy or policies may be required to respond.
- 17.13 The policy clause "Other Insurance" or "Excess Insurance" shall not apply to any insurance coverage currently held by the Government, or to the Government's Self-Insured Retentions of whatever nature.
- 17.14 If you subcontract any work under this Agreement, you shall ensure that each subcontractor maintains insurance coverage with policy limits of at least the amounts stated above.
- 17.15 The insurance requirements set forth above do not in any way limit the amount or scope of your liability under this Agreement. The amounts listed indicate only the minimum amounts of insurance coverage that we are willing to accept to help ensure full performance of all terms and conditions of this Agreement.
- 17.16 Force Majeure: Neither of the parties shall be liable for failure or delay to perform obligations under this Agreement to the extent that this delay is caused by flood, fire, epidemic or pandemic and other event beyond its reasonable control (not caused by its own act or negligent omission) ("force majeure") but each party shall use its best efforts to perform its obligations notwithstanding the force majeure event unless such inability to perform arises as a direct result of the event beyond reasonable control e.g. in the event of a pandemic and employees are instructed to self-isolate or quarantine.
- 17.17 Business Continuity: Where applicable, you shall maintain, test and where appropriate implement business continuity procedures to reduce the risk of force majeure



impacting the provision of the Service and upon request, provide such evidence to us.

18. Non-Solicitation

During the Term and for a period of 12 months after expiration or termination of this Agreement, you shall not solicit (whether directly or indirectly) any of our employees or consultants who were involved in the performance or receipt of the Service, unless otherwise agreed to by us, in writing.

19. Non-Disclosure of Confidentiality Information

19.1 Each party must ensure that all Confidential Information is protected against unauthorized access, use, copying or disclosure. Each party acknowledges that the improper use, copying or disclosure of any Confidential Information could be unlawful.

19.2 Each party may disclose information related to this Agreement to its personnel, contractors, consultants and professional advisors, on a 'need to know' basis as required for the performance of the Service.

19.3 Each party will comply with either party's instructions if it has access to personal data as a result of providing the Service.

19.4 A breach or anticipated breach of the confidentiality provisions of this Agreement, may cause either party irreparable harm and each party agrees that monetary damages alone may not be an adequate remedy and, accordingly, that either party will, without prejudice to any other rights or remedies that it may have, be entitled, without proof of special damages and without the necessity of giving an undertaking in damages, to seek an injunction or specific performance together with all other remedies as may be available in law or equity.

19.5 If either party fails to abide by the confidentiality provisions at any time during the Term, then such failure shall constitute a material breach of this Agreement and the party in breach shall pay the equivalent of the Fee for a three (3) month period as liquidated damages, in

addition to any attorney's fees and costs of enforcement.

19.6 You and anyone acting on your behalf shall be jointly and severally liable to the Government under this section.

20. Intellectual Property, Copyright and Ownership

20.1 We shall own all Materials provided in accordance with this Agreement.

20.2 Intellectual Property: You represent and warrant to us that you or the Representative have created the Materials for and on our behalf or have obtained a written and valid Consent and assignment of all existing and future intellectual property rights in the Materials.

20.3 Materials provided under this Agreement shall be original works created by you or the Representative and shall:

(a) not include intellectual property owned by or licensed to a third party except for intellectual property which you have the right to use (including the right to use such intellectual property for the purposes of this Agreement); and

(b) not subject us to any claim for infringement of any intellectual property rights of a third party.

20.4 You shall do all things necessary to assign to us all existing and future intellectual property rights in the Materials embodying such rights to the fullest extent permitted by law. Insofar as they do not so vest automatically by operation of law or under this Agreement, you shall hold legal title in such rights on trust for us.

20.5 You agree that all Materials and other works created in full or in part by you or a Representative for the Service may be maintained, changed, modified and/or adapted by us without the consent of either you or the Representative. Notwithstanding the foregoing, you and us may agree in writing that certain identified Materials or designated intellectual property rights will remain with you.

20.6 Copyright: All corresponding copyright and other intellectual property in the Materials



- and the Service shall belong us and we may utilise any Material and a Service freely including by adapting, publishing and licensing.
- 20.7 Materials or Confidential Information may not be used or copied for direct or indirect use by you or a Representative after expiry or termination of this Agreement without our express written consent.
- 20.8 We acknowledge that you and the Representative possess knowledge and expertise relating to the subject matter of a Service ("**Supplier Know-How**"), which may include intellectual property rights in certain pre-existing tools and materials used by you in performing a Service. Nothing in this Agreement is intended to transfer us any rights in the Supplier Know-How, which shall remain your property.
- 20.9 To the extent that any Supplier Know-How is included in any Materials and you hereby grant to us a perpetual, unlimited, royalty-free, non-exclusive right and license to use and reproduce the Supplier Know-How to the extent reasonably necessary to achieve the Objective.
- 20.10 Government logo: You may not use Government's name or logo for any publicity or marketing purposes, unless consent for such use is provided in writing.
- 21. Grant of License**
- 21.1 You grant to us a License in order to enable us to use any software required to use any Equipment or a Service.
- 21.2 You shall ensure the continued compatibility of any software required to use any Equipment or a Service including providing any major releases, updates or upgrades of any software.
- 21.3 In the event you are not able to support any software update, upgrade, version or new release that changes major functionality and is not compatible with the Equipment or a Service, you shall use your best efforts to resolve such issues and to provide optimal functionality for the Equipment and the Service.
- 22. Term, Termination and Suspension**
- 22.1 Term: This Agreement shall be effective from the Effective Date for the Term.
- 22.2 The Service shall commence on the Commencement Date and continue until the Completion Date, whereupon this Agreement shall expire unless terminated earlier in accordance with its terms.
- 22.3 You shall not commence any additional service after the Completion Date or in the event of notification of termination of this Agreement, however, in the event that service is provided to us beyond the Completion Date, the terms and conditions of this Agreement shall continue on a day-to-day basis terminable without cause upon twenty-four (24) hours prior written notice by either party to the other.
- 22.4 Termination: Either party may terminate the Service or this Agreement, in part or in whole, during the Term upon prior written notice, without cause, in accordance with the termination notice period as set out in Schedule 1.
- 22.5 We may terminate this Agreement at any time based upon your default of your obligations under this Agreement. We, in our sole discretion, may provide you with a notice to cure ("**Cure Notice**") the breach that would otherwise amount to a basis to terminate this Agreement as a result of your failure to fulfill your obligations hereunder. You shall respond to any such Cure Notice within a reasonable time or within such time as provided therein, and you shall either cure the specified breach or provide assurances to cure the same which we, in our sole discretion, deem adequate.
- 22.6 Either party may terminate this Agreement immediately, if the other party:
- (a) commits an irremediable breach; or
 - (b) is subject to a change of control or chooses to discontinue its business; or
 - (c) or its parent or holding entity becomes or is deemed insolvent, is unable to pay its debts as they fall due, has a receiver, administrative receiver, administrator or manager appointed of the whole or any part of its assets or business, makes any composition or



- arrangement with its creditors or an order or resolution is made for its dissolution or liquidation other than for the purpose of solvent amalgamation or reconstruction, or it takes or suffers any similar or analogous procedure, action or event in consequence of debt in any jurisdiction; or
- (d) is affected by a force majeure event which lasts Ten (10) Business Days or more.
- 22.7 In the event of termination of this Agreement, all Fees then due and payable shall be paid to you.
- 22.8 Upon expiry or termination of this Agreement, you shall promptly return all our property or information or you shall irretrievably delete, as commercially practicable as possible, all Confidential Information, stored in any way using any device or application and all matter derived from such sources which is in your possession, custody or power and provide a signed statement that you have fully complied with your obligations under this section, save for any back-up required by law or as required in accordance with your record retention policy.
- 22.9 Upon expiry or termination of this Agreement, you shall provide us with all such assistance as may be reasonably necessary in order to end the relationship in a manner which causes the least inconvenience to us including assisting with the transfer of Data.
- 22.10 **Suspension:** We may temporarily suspend the Service hereunder and shall confirm such instruction in writing to you.
- 22.11 Upon any such suspension, we shall pay all Fees and Expenses up until the time of such suspension of the Service. If, following suspension of the Service, there is no resumption within six (6) months, this Agreement may be terminated by you, and us shall make a payment of all outstanding Fees and Expenses in accordance with this Agreement if such amounts are due.
- 22.12 We may issue a written order to resume the provision of the Service within six (6) months of suspension in accordance with the terms and conditions of this Agreement.
- 22.13 The rights arising under this termination section represent your sole remedy and excludes common law rights to terminate and claim damages for any Loss you may suffer under this Agreement.
- 23. General**
- 23.1 Any notice or other communication required to be given under this Agreement shall be duly given or served if it is in writing (for the purposes of this section, a notice shall be deemed to be in writing if it is in the form of a printed or hand-written letter or other document, or in the form of an e-mail message), signed and delivered by hand or sent by prepaid recorded post to the address of the party as first set out above (or such other address as is notified in writing to the other party from time to time); or sent by e-mail to the e-mail address of the party as provided by that party (or such other e-mail address as is notified in writing to the other party from time to time).
- 23.2 This Agreement is effective on the Effective Date. Where this Agreement refers to past or current obligations, this Agreement applies retrospectively from that date. Each of the parties represents that this Agreement is executed by its duly authorized signatories and that it has all required authorizations and capacity to perform its obligations.
- 23.3 This Agreement together with any Materials referred to in it supersedes, extinguishes and replaces all previous agreements, promises, assurances, warranties, representations and understandings, whether written or oral including whether in invoices, emails or otherwise between the parties relating to a Service and is the complete agreement between the parties.
- 23.4 Any amendments to this Agreement shall be made in writing and signed by each party.
- 23.5 You and the Representative(s) will all be considered independent contractors and nothing in this Agreement shall render you or the Representative(s) our employees,



agent's or partners and neither you nor the Representative(s) shall hold yourself out as such.

- 23.6 You may not assign or transfer any rights or obligations under this Agreement (for example assigning or factoring invoices) without our prior written consent. Any such transfer by you in breach of this section shall be void and be an irremediable material breach of this Agreement. We may transfer our rights and obligations under this Agreement with your prior written consent.
- 23.7 No one other than a party to this Agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.
- 23.8 The doctrine of *Contra Proferentem* shall not be applicable in this Agreement.
- 23.9 Waiver of any breach of this Agreement must be in writing to be effective and shall not be a waiver of any subsequent breach, nor shall it be a waiver of the underlying obligation.
- 23.10 Neither the presentation nor payment or non-payment of an invoice shall constitute a settlement of a dispute, an accord and satisfaction, a remedy of account stated, or otherwise waive or affect the rights of the parties hereunder
- 23.11 Should any court determine that any provision of this Agreement is not enforceable, such provision shall be modified, rewritten or interpreted to include as much of its nature and scope as will render it enforceable.
- 23.12 Expiry or Termination of this Agreement in any manner shall not release a party from any liability or responsibility with respect to any representation or warranty. Sections related to indemnification, limitation of liability, non-disclosure of information and intellectual property shall survive termination of this Agreement.
- 23.13 We may disclose any information relating to this Agreement to a regulator, auditor or in accordance with PATI.
- 23.14 You consent to us processing data relating

to you for legal, administrative and management purposes. We may make such information available to those who provide a service to us (such as advisers and payroll administrators), regulatory authorities and governmental or quasi-governmental organizations including those outside of Bermuda.

24. Governance

- 24.1 You shall inform us promptly of all known or anticipated material problems relevant to delivery of the Service.
- 24.2 You agree to provide us (and, if we request in writing, our auditors and competent regulatory authorities) with full information on the provision and delivery of a Service in an open and cooperative way and attend our meetings to discuss the Service and this Agreement. We may disclose any information relating to this Agreement to a regulator or auditor or in accordance with any Law.
- 24.3 You shall provide details of all persons with an ownership stake in the Supplier, which shall include persons who are your direct shareholders as well as person who are shareholders of other companies in which you hold an ownership stake.
- 24.4 Such statement shall be provided at least annually or if there is any change in your interests.

25. Anti-Corruption

- 25.1 You represent, warrant and covenant that, in connection with activities performed under this Agreement or on our behalf, you have not and will not offer, promise, authorise, pay, or act in furtherance of an offer, promise, authorization, or payment of anything of value, directly or indirectly, to a Government Official (as hereinafter defined), political party or party official, candidate for political office, or official of a public international organisation, in order to obtain or retain business, to secure an improper advantage or benefit of any kind or nature to person(s) related, associated or linked to the Government Official, or to secure or influence discretionary action, inaction or a decision of a Government



- Official(s). For purposes of this Agreement, the term "Government Official" shall mean and include any official, public officer or employee of the Government, as well as an official or employee in the judicial, legislative, or military, anyone acting in an official capacity of the Government, or any immediate family member of such persons.
- 25.2 You represent, warrant, and covenant that you have complied and will comply with The Bribery Act 2016 and all other applicable laws of any relevant jurisdiction in connection with the performance of your obligations under this Agreement. Without limiting the generality of the foregoing, you represent, warrant, and covenant that you have not and will not take any action that would cause the Government, or anyone acting on its behalf to violate or be subjected to penalties under The Bribery Act 2016, or the applicable anti-corruption laws of other countries.
- 25.3 You acknowledge and agree that in the event that we believe, in good faith, that you have breached this section, we shall have the right to immediately terminate this Agreement and any or all other agreements that we may have with you.
- 26. Retention of Confidential Information, Records and Audit**
- 26.1 You will retain any part of, or all, Confidential Information during the Term and following expiry or termination of this Agreement until all appeals processes are complete in the event of any litigation in connection with the Services. We will have full access to and the right to examine any Materials, at any time during this period. We must be notified, in writing, prior to any of the aforementioned Materials being destroyed.
- 26.2 You shall retain all records pertinent to this Agreement for a period of three (3) years following expiration or termination hereof, subject to applicable law including PIPA, data protection laws, rules, regulations and guidelines or policies.
- 26.3 You shall establish and maintain books, records, and documents (including electronic storage media) in accordance with Generally Accepted Accounting Principles and practices in Bermuda which sufficiently and properly reflect all revenues and expenditures of funds provided by us, including all receipts, invoices, payroll records and/or other documentation used to substantiate requests for payment hereunder. At any time or times before final payment and for three (3) years thereafter, we may cause your records to be audited by a duly authorized Public Officer. Records required to resolve an audit shall be maintained for a period of not less than three (3) years following resolution of the audit or any arbitration or litigation arising hereunder.
- 26.4 We reserve the right to conduct periodic visits to your premises and/or audits after the commencement of this Agreement to ensure continued compliance during Business Hours.
- 26.5 Any payment or payment request may be reduced by amounts found by the Government not to constitute allowable costs. In the event that all payments have been made to you and an overpayment is found, you shall reimburse us for such overpayment within thirty (30) days following receipt of written notification thereof.
- 26.6 You shall include the aforementioned audit and record keeping requirements in all subcontracts and assignments, if any, made in accordance with this Agreement.
- 27. Electronic Communication**
- We may communicate with you by email. The internet is not secure and messages sent by email can be intercepted. Each party shall use its best efforts to keep its security procedures current and all communications by email secure.
- 28. Dispute Resolution**
- 28.1 Where the parties are unable to resolve a dispute in accordance with this Agreement the parties, upon agreement, may submit such dispute for resolution by arbitration.



- The tribunal shall consist of a sole arbitrator appointed by agreement between the parties or failing such agreement by the Appointments Committee of the Chartered Institute of Arbitrators, Bermuda Branch. The procedure to be followed shall be that as laid down in the *Bermuda International Conciliation and Arbitration Act 1993* and the UNCITRAL Arbitration Rules presently in force. The place of arbitration shall be Bermuda and Bermuda law shall apply. The language of the arbitration shall be English.
- 28.2 The decision and award of the arbitrator shall be delivered within three (3) months of his or her appointment, unless otherwise agreed between the parties, and shall be final and binding on the Parties and enforceable in any court of competent jurisdiction. Nothing in this section prevents or in any way restricts either party from seeking specific performance, injunctive relief or any other form of equitable remedy. The parties shall continue to perform their respective obligations during the dispute resolution process set out in this section, unless and until this Agreement is terminated in accordance with its terms.
- 28.3 The costs of the arbitration, including administrative and arbitrators' fees, shall be shared equally by the parties and each party shall bear its own costs and attorneys' and witness' fees incurred in connection with the arbitration unless the arbitrator determines that it is equitable to allocate such costs and fees differently and so orders in rendering judgment.
- 28.4 In rendering judgment, the arbitrator may not provide for punitive or similar exemplary damages.
- 28.5 The arbitration proceedings and the decision shall not be made public without the joint consent of the parties and each party shall maintain the confidentiality of such proceedings and decision unless otherwise permitted by the other party, except as otherwise required by applicable law or statutes.
29. **Governing law**
- This Agreement is subject to Bermuda law and each party submits to the exclusive jurisdiction of the Bermuda courts in relation to this Agreement.

IN WITNESS WHEREOF, the parties, or their authorised representatives, have read and agree to the terms and conditions of this Agreement on the Effective Date.

SIGNED by a duly authorised officer for and on behalf of the Government	Signature:
	Print Name:
	Title:
SIGNED by the Supplier or a duly authorised officer for and on behalf of the Supplier	Signature:
	Print Name:
	Title:

**SCHEDULE 1**

The schedules are incorporated into the Agreement. Capitalised terms used but not defined in a schedule will have the meanings given to them in the Agreement.

1. The Government

Ministry:			
Department:			
Address:			
Government Contact:			
Tel No.:		Mobile No.:	
Email address:			

2. Supplier and Service specific conditions:

Supplier Name:			
Address:			
Home Tel:		Mobile No.:	
Email address:			
Commencement Date:			
Completion Date:			
Termination Notice Period:		30 days	
Hourly Fee payable in arrears: (See Schedule		BMD\$	
Retention Money:		BMD\$	
Special Conditions related to the Fee:			
Payroll Tax #:		Social Insurance No.:	
Insurance Coverage:		BMD\$1,000,000 Professional Liability	



3. Service provided by the Supplier

- Supply and shipping of a proprietary Bus Wash System
- Installation of Bus Wash System
- Commissioning, testing, and re-commissioning of the Bus Wash System
- Provide as-built drawings
- Conduct training for operations and maintenance personnel
- Provide 12-month maintenance support and warranty on Bus Wash system and installation.
- Provide maintenance support at an agreed fee after the initial 12-month period.

4. Payment Terms

- 4.1 Evidence of Payments: Before payment of an invoice, which includes an amount payable to a nominated subcontractor, we may request that you to supply reasonable evidence that the nominated subcontractor has received all amounts due in accordance with previous payments, less applicable deductions for retention or otherwise.
- 4.2 Interim Payment: Within 30 days of delivery of each invoice related to a Service, we shall pay the amount shown in the invoice subject to actual construction progress made during the prior month and/or any supporting documents including prior written consent for materials purchased and securely stored on site and any deductions as set out in the Agreement. We may withhold interim payments until any performance security is provided, as requested.
- 4.3 Retention: Retention of monies shall be made related to payment of any invoice until the amount of Retention of Money has been achieved.
- 4.4 Payment of Retention Money: Retention of Money may be paid to you 12 months after the invoice has been issued subject to the final Certificate of Completion being fully executed.
5. Letter of Credit: At our sole option, on the Effective Date, you shall deliver to us a Letter of credit which (i) shall name us, as beneficiary, (ii) shall be in the amount of 10% of the total Fee until substantial completion at which time it shall be reduced to 5% of the total Fee, (iii) shall be in force until the expiry of 365 days calculated from the Commencement Date; and (iv) shall require that any drawdown on the Letter of Credit shall be made only upon receipt by the issuing bank of a written letter by us certifying that an event of default by you pursuant to the Agreement has occurred and is continuing.
6. Late Completion: If you fail to complete the Work within the required time for completion, **we may deduct BMD\$100 from the Fee on a daily basis, as a liquidated sum to be paid by way of compensation, until completion of the Work.**



SCHEDULE 2

Fee Structure



SCHEDULE 3
Special instructions

**EXHIBIT A****UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT**

NOTICE TO CLAIMANT: THIS DOCUMENT WAIVES AND RELEASES ANY LIEN OR STOP PAYMENT NOTICE AND ALLOWS FOR FINAL UNCONDITIONAL PAYMENT AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, COMPLETE THE CONDITIONAL WAIVER AND RELEASE FORM.

IDENTIFYING INFORMATION	
Name of Supplier:	
Name of Customer:	
Site Location:	
Owner:	

Unconditional Waiver and Release

This document waives and releases any lien or stop payment notice the claimant has for all labour and Service provided, and equipment and material delivered, to the Government on this job. Rights based upon labour or Service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an exception below.

EXCEPTIONS	
This document does not affect any of the following matters:	
Disputed claims in the amount of BMD\$:	



By signing this document, the Supplier confirms that it has been paid in full, subject to the exceptions, if any.

SUPPLIER SIGNATURE	
Signature:	
Title:	
Date of Signature:	