

Annex A

Swing Bridge and Longbird Bridge Replacement

Independent check

2023

Sample Form of Agreement



GOVERNMENT OF BERMUDA

Ministry of Public Works

Department of Works and Engineering

**Client / Consultant
Model Services Agreement**

For

**Independent Check for Swing Bridge
and Longbird Bridge Replacement
Bridges**

MAY 2023

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AGREEMENT

The Employer is the Ministry of Public Works,
PO Box HM 525, Hamilton, HM CX, Bermuda

The Contractor is _____

The Employer desires the execution of certain Works known as _____
Independent Check for Swing Bridge and Longbird Bridge Replacement Bridges

OFFER

The Contractor has examined the documents listed in the Appendix which forms part of this Agreement and offers to execute the Works in conformity with the Contract for the sum of
(in words) _____

(in figures) _____

Or such other sum as may be ascertained under the Contract.

This offer, of which the Contractor has submitted two signed originals, may be accepted by the Employer by signing and returning one original of this document to the Contractor before
(insert date) _____

The Contractor understands that the Employer is not bound to accept the lowest or any offer received for the Works.

Signature: _____ Authorized to sign on behalf of the Contractor

Name: _____ Date: _____

Capacity: _____

ACCEPTANCE

The Employer has by signing below, accepted the Contractor's offer and agrees that in consideration for the execution of the Works by the Contractor, the Employer shall pay the Contractor in accordance with the Contract. This Agreement comes into effect on the date when the Contractor receives one original of this document signed by the Employer.

Signature: _____ Authorized to sign on behalf of the Ministry of Public Works

Name: Austin Kenny Date: _____

Capacity: Principal Structural Engineer

CONDITIONS OF CONTRACT

1.0 Client/Consultant Model Services Agreement GENERAL CONDITIONS

The Conditions of Contract are the **Client/Consultant Model Services Agreement, General Conditions, Fourth Edition, 2006**, published by the Federation Internationale des Ingenieurs-Conseils (FIDIC), attached under separate cover.

The General Conditions of Contract are amended by the Particular Conditions of Contract.

2.0 Client/Consultant Model Services Agreement PARTICULAR CONDITIONS

Preamble

These Particular Conditions supplement the General Conditions, and shall modify, delete and/or add to the General Conditions.

Where any clause, paragraph, or sub-paragraph in the General Conditions is supplemented by one of the following paragraphs, the provisions of such clause, paragraph, or sub-paragraph shall remain in effect and the supplemental provisions shall be considered as added thereto.

Where any clause, paragraph, or sub-paragraph in the General Conditions is amended, deleted or superseded by any of the following paragraphs, the provisions of such clause, paragraph, or sub-paragraph, not so amended, deleted or superseded shall remain in effect.

Clause numbers herein refer to the same clause numbers as in the General Conditions.

A. References from Clauses in the GENERAL CONDITIONS

1.0 General Provisions

1.1 Definitions

1.1.2. Add the following:

Project Name: Independent Check for Swing Bridge and Longbird Bridge Replacement Bridges

1.2.3 Interpretation

1.2.3 This clause is deleted in its entirety and replaced with the following;

If there is a conflict between provisions of the Agreement Documents, the following shall apply:

1. Agreement
2. Letter of Acceptance
3. Client's Request for Proposal
4. Particular Conditions
5. General Conditions
6. Consultant's Proposal

1.4 Law and Language

1.4.1 Add the following:

Language of the Agreement: English
Ruling language: English
Law to which Agreement is subject: Law of Bermuda

Add the following clause:

1.4.2

The Agreement shall in all respects be construed and operated in conformity with the Laws of Bermuda and the respective rights and liabilities of the parties shall be in accordance with the Laws for the time being in force.

1.5 Change in Legislation

Add the following:

Consultant's principal place of business: _____

1.8 Notices

1.8.1 Delete from the end of the last sentence:

“or by telex subsequently confirmed by letter”

Add the following clauses;

1.8.2

Client's address:

Ministry of Public Works
Department of Works and Engineering
P. O. Box HM 525
3rd Floor Post Office Building
56 Church Street, Hamilton HM12, Bermuda

Attention:

Contact Name: Austin Kenny

Phone: (441) 501-3153

E-mail: avkenny@gov.bm

1.8.3

Consultant's address:

Attention: _____
Contact Name: _____
Phone: _____
E-mail: _____

1.9 Publication

1.9.1 This clause is deleted in its entirety and replaced with the following clause;

The Consultant shall obtain the written consent of the Client before publishing or issuing any information or speaking to the public or media regarding any aspect of the Project.

2.0 The Client

2.7 Client's Representative

2.7.1 This clause is deleted in its entirety and replaced with the following clause;

For the administration of the Agreement the Client shall designate an official or individual to be his representative.

Client's Representative: Austin Kenny

2.7.2 Add the following;

The Client's Representative may delegate any duties to another and may at any such time revoke such delegation. Any such delegation or revocation of delegation shall be made in writing.

3.0 The Consultant

3.6 Representatives

3.6.1 Add the following:

Consultant's Representative: _____

The Consultant's Representative shall be approved by the Client in writing

4.0 Commencement, Completion, Variation & Termination

4.2 Commencement and Completion

4.2.1 Add the following:

Commencement Date: _____
Completion Date: _____

4.8 Exceptional Circumstances

4.8.2 Add the following sentence to the end of the clause:

“The extent of time is to be agreed by both parties and be evidenced in writing.”

5.0 Payment

5.1 Payment to the Consultant

5.1.2 In line 1 delete “Unless otherwise” and insert with

“Where previously”
and;
add the following sub-clause:

(c) or alternatively to sub clauses (a) and (b) where agreed by both parties in writing, a negotiated fixed fee.

5.2 Time and Payment

5.2.1 This clause is deleted in its entirety and replaced with the following clause;

The amount due to the Consultant shall be paid by the Client to the Consultant within 45 days of receipt of the request for payment.

5.3 Currencies of Payment

5.3.1 Add the following:

Currency of Agreement: Bermuda Dollars.

5.4 Third Party Charges on the Consultant

5.4.1 This clause is deleted in its entirety and replaced with the following clause;

The Consultant shall be required to pay Bermuda Taxes on all Equipment (except as described in the Fifth Schedule, Section 2 of the Bermuda Customs Tariff) materials and other things of whatsoever nature brought into Bermuda for the purposes of the Agreement.

5.6 Independent Audits

5.6.2 Delete the following from the second paragraph:

“... require that a reputable firm of accountants nominated by him, audit any amount ..”

Replace with

“... require that the Accountant General or his designated person audit any amount ...”

6.0 Liabilities

6.1 Liability and Compensation between the Parties

Add the following clause;

6.1.4

Neither the members nor the staff of the Client shall be in any way personally bound or liable for the acts or obligations of the Consultant under the Agreement or answerable for any default or omission in the observance or performance of any of the acts, matters or things which are herein contained.

6.2 Duration of Liability

Add the following clause;

6.2.2

Consultant's Professional Liability Insurance;
12 years reckoned from: Receipt of Final Report.

6.3 Limit of Compensation

Add the following clause;

6.3.4

Limit of Compensation;
One Million Bermuda Dollars (BD\$1,000,000)

6.4 Indemnity

This clause is deleted in its entirety and replaced with the following clauses;

6.4.1

The Consultant shall be liable for and shall indemnify the Client against any expense, liability, loss, claim or proceedings in respect of any loss of or injury or damage to any property, real or personal insofar as such loss injury or damage arises out of or in the course of or by reason of the negligent performance of the Services hereunder and to the extent that the same is due to any negligent breach of legal duty, omission or default of the Consultant, his employees or agents or of any person employed or engaged by the Consultant upon or in connection with the performance of the said Services or any part thereof by his employees or agents.

6.4.2

The Consultant warrants that they have fully satisfied themselves as to the scope and nature of the Services and of the obligations under this Agreement.

6.4.3

Without prejudice to the previous Clause, the Consultant shall at all times during the project maintain in force such policies of insurance with reputable insurers or underwriters approved by the Client and shall fully insure and indemnify the Client against all insurable liabilities which may be incurred under the said previous clause.

7.0 Insurance

7.1 Insurance for Liability and Indemnity

This clause is deleted in its entirety and replaced with the following clause;

7.1.1

The Consultant shall provide the following insurances;

- (i) Professional Liability Insurance.
- (ii) Public / Third Party Insurance to the value of:
One Million Dollars (\$1,000,000)

The Public / Third Party insurance policy shall include a cross liability clause such that the insurance shall apply to the Consultant and to the Client as separate insured.

7.1.2

The Consultant shall provide evidence to the Client prior to the commencement of the Services that the insurances required under the Agreement have been affected and shall provide copies of the broker's certificates to the Client within 28 days of the Commencement Date.

7.1.3

The Consultant shall ensure that coverage provided by all insurances required under the Agreement will not be changed or amended in any way nor cancelled by the Consultant until sixty (60) days after written notice of such change or cancellations has been personally delivered to the Client.

8.0 Disputes and Arbitration

8.3 Arbitration

This clause is deleted in its entirety and replaced with the following clauses;

8.3.2

Rules for Arbitration:

To be held in Bermuda as per the requirements of the Bermuda International Arbitration and Conciliation Act 1993.

8.3.3

No person shall be appointed to act as an arbitrator who is in any way interested, financially or otherwise, in the conduct of the Services on the Project or in the business or other affairs of either the Client or the Consultant.

B. Additional Clauses to be added to the GENERAL CONDITIONS

9.0 Strikes and Lockouts

9.1

The Consultant shall forthwith notify the Client of the commencing of any strike or lock-out and the Client on account of any delay caused thereby may grant such extension of time as he considers reasonable without prejudice to the right of the Client to exercise after the expiration of such reasonable extension of time the rights and powers under these Conditions in case of default by the Consultant.

10.0 Law, Regulations and Orders

10.1

The Consultant shall make himself fully acquainted with the Laws, Regulations and Orders of Bermuda and of any competent/statutory Authority and shall conform in all respects therewith during the continuance of the Agreement. He shall conform similarly with any such Laws, Regulations and Orders, which may come in to force after the proposal submission date.

11.0 Arithmetical Accuracy of Proposal

11.1

The Client accepts no responsibility for the arithmetical or other accuracy of the Consultant's Proposal should it transpire after the Agreement has been executed that there are arithmetical mistakes in the accepted Proposal which would have increased or decreased the total amount of the Proposal had such mistakes not been made, the items affected will be paid for in accordance with the actual measurements of Services performed and with the unit prices inserted against the said items.

12.0 Continuity of Supply and Connections to Existing Work

12.1

The Consultant shall carry out the Services so that there is the minimum of interruption to the supply of water, telephone, electricity and other services through existing mains and services. Services involving interference with existing works of any kind shall only be carried out with the permission of and during such times and in such a manner as are agreed in writing by the Client or competent Authority.

13.0 Consultants Offices, Yards, Stores, Etc.

13.1

The Consultant shall make his own arrangements for all local accommodation he may require for offices, yards, stores, labour, etc., all buildings and all services in connection therewith which are required for the efficient execution of the Services. The Consultant shall pay proper regard to the prevention of obstruction and the avoidance of nuisance to the public and to residents.

14.0 Approval by Other Authorities

14.1

Where the work of the Consultant is subject to the approval or review of an authority, department of Government, or agency other than the Client, such applications for approval or review shall be the responsibility of the Consultant, but shall be submitted through the offices of the Client and unless authorised by the Client in writing, such applications for approval or review shall not be obtained by direct contact by the Consultant with such other authority, department of Government or agency.

14.2

The consultant shall ensure that a valid work permit is in place for all non-Bermudian staff working in Bermuda.

15.0 Patents

15.1

All concepts, products or processes produced by or resulting from the Services rendered by the Consultant in connection with the Project, or which are otherwise developed or first reduced to practice by the Consultant in the performance of his Services, and which are patentable, capable of trademark or otherwise, shall be and remain the property of the Consultant.

15.2

The Client shall have permanent non-exclusive royalty-free license to use any concept, product or process, which is patentable, capable of trademark or otherwise produced by or resulting from the Services by the Consultant in connection with the Project and for no other purpose or project.

16.0 Inspection

16.1

The Client, or persons authorized by the Client, shall have the right, at all reasonable times, to inspect or otherwise review the Services performed, or being performed, under the Project and the premises where they are being performed.

17.0 Confidential Data

17.1

The Consultant shall not divulge any specific information identified as confidential, communicated to or acquired by him or disclosed by the Client in the course of carrying out Services provided for herein. No such information shall be used by the Consultant on any other project without the approval in writing of the Client.

18.0 Debt Recovery

18.1

The Employer shall be entitled upon a certificate in writing of the Engineer to deduct the amounts so certified from any monies or otherwise due to the Contractor under this or any other contract or to recover the said amounts as a debt due or partly the one and partly the other as the Employer shall deem advisable.

19.0 Taxation

19.1

The Contractor shall be required to pay Bermudian Taxes on all Contractor's Equipment (except as described in the Fifth Schedule, Section 2 of the Bermuda Customs Tariff) materials and other things of whatsoever nature brought into Bermuda for the purpose of Contract.

20.0 Bribery

20.1

Any commission, advantage, gift, gratuity, reward, or bribe given, promised, or offered by or on behalf of the Contractor or his agent or servant or any person on his or their behalf to any officer, servant, representative, or agent of the Employer or of the Engineer or to any person on their behalf or on behalf of any of them in relation to the obtaining or to the execution of this or of any other Contract with the Employer shall in addition to any criminal liability which may be thereby incurred subject the Contractor to the cancellation of this and of all other contracts which he may have entered into with the Employer and also to the payment of any loss or damage resulting from such cancellation.

21.0 Construction of contract

21.1

The Contract shall in all respects be constructed and operated in conformity with the Laws of Bermuda and the respective rights and liabilities of the parties shall be in accordance with the Laws for the time being in force.

22.0 Members and Staff of Employer and Engineer not Personally Liable

22.1

Neither the members nor the staff of the Employer or the Engineer shall be in any way personally bound or liable for the acts or obligations of the Contractor under the Contract or answerable for any default or omission in the observance or performance of any of the acts, matters or things which are herein contained.

23.0 Rights and Remedies Not Waived

23.1

In no event shall the making by the Employer of any payment to the Consultant constitute or be construed as a waiver by the Employer of any breach of covenant, or any default which may then exist, on the part of the Consultant, and the making of any such payment by the Employer while any such breach or default exists shall in no way impair or prejudice any right or remedy available to the Employer in respect of such breach or default.

APPENDICES

These Appendices form part of the Agreement.

1 Scope of Services

The scope of services shall be as described in the Request for Proposals invitation document, unless otherwise agreed before the commencement date.

2 Personnel, Equipment, Facilities and Services of Others to be Provided by the Client

No personnel, equipment or facilities are to be provided by the Client. The Client will provide all information necessary to conduct the review services, and will expeditiously respond to requests for further relevant information.

3 Remuneration and Payment

The agreed remuneration shall be as stated in the Offer. The payments shall be due upon satisfactory completion of Pricing Form line items.

Variations shall be agreed in both scope and cost prior to undertaking. The costs shall be determined using the rates contained in the RFP Unit Rate Schedule.

Invoices for payment should be submitted to Austin Kenny at avkenny@gov.bm, and should clearly identify the project, services rendered, and purchase order number. Payment will be by electronic fund transfer, unless otherwise agreed.

Please be advised that the Government's payment system may take between two and four weeks to process an invoice.

4 Programme

The contract commencement date shall be as stated in the Conditions of Contract clause 4.2.1. The Government of Bermuda shall act expeditiously to provide all documents and information contained in the scope description, and any other relevant information requested by the Consultant.

The Completion date shall be as stated in the Conditions of Contract clause 4.2.1 at which time the deliverables will be due, unless an extension of time is agreed. Following completion, both parties shall act in good faith to resolve any outstanding queries and clarifications in a timely manner.

NON-DISCLOSURE AGREEMENT

THIS NON-DISCLOSURE AGREEMENT (“NDA”) is effective on the date of the last signature below
BY AND BETWEEN:

(1)

Ministry: **Ministry of Public Works**

Department: **Works and Engineering**

Address: **3rd Floor, Post Office Building, 56 Church Street, Hamilton HM12, Bermuda**

(hereinafter called the “**Government**”) of the one part; and

(2)

Receiver:

**Receiver
Address:**

Tel:

Email:

(hereinafter called the “**you**”) of the other part.

This NDA is entered into for the purpose of preventing the unauthorized disclosure of Confidential Information as defined below. The parties agree to enter into a confidential relationship with respect to the disclosure of certain proprietary and Confidential Information. The Government and you are sometimes collectively referred to herein as the “**Parties**” and individually as a “**Party**”.

The Party disclosing information shall be referred to as the DISCLOSER and the Party receiving information shall be referred to as the RECEIVER.

IN CONSIDERATION of the premises and mutual promises in this NDA, the Parties agree as follows:

1. Definitions

In this NDA, including the Recitals:

“**Affiliate**” of the Parties means any corporation, partnership, or other entity, whether incorporated or unincorporated and wheresoever established, which is from time to time owned or controlled by either of the Parties or under common ownership or control with a Party;

“**Confidential Information**” means confidential, non-public or proprietary information (including, without limitation, all Copies) relating to the Purpose or a Party and its business and operations of whatever nature, however recorded or preserved, that when disclosed or made accessible (including without limitation, directly or indirectly, in written or other tangible form, such as computer data, or by oral, visual or other means) by or on behalf of the DISCLOSER to the RECEIVER is designated as confidential or proprietary or which should reasonably be understood to be confidential given the nature of the information and the manner of its disclosure, before, on or after the Effective Date of this NDA.

“**Copies**” means copies of Confidential Information, including any document, electronic file, note, extract, analysis or any other way of representing or recording and recalling information that contains, reflects or derives from the Confidential Information;

“**Effective Date**” means the date that the last person signs this NDA;

“**Purpose**” means the introduction, evaluation, negotiation and/or administration by the Parties and/or their respective Affiliates as to whether or not to enter into a transaction or other arrangement; and

“**Representative**” means a representative of a Party and/or its Affiliates’ respective public officers, shareholders, directors, managers, employees, independent contractors, advisors (including but not limited to accountants or attorneys) and any other persons that receive Confidential Information from such Party or at such Party’s request.

2. Purpose

The Purpose means as follows:

Obtaining advice and review of M&E documents related to the Longbird and Swing

Bridge replacements, Bermuda.

3. Obligations

3.1 The RECEIVER will unless otherwise authorised in writing by the DISCLOSER:

- (a) not use the Confidential Information other than in connection with the purpose or as otherwise permitted hereunder;
- (b) not disclose such Confidential Information of the DISCLOSER to any third party except as permitted hereunder and only disclose such Confidential Information to its Representative as such Party deems reasonably necessary for the Purpose, provided such Representative are informed of the obligations of confidentiality and use in respect of such Confidential Information and are directed to comply therewith;
- (c) not make or allow or cause to be made Copies of the DISCLOSER’S Confidential Information, except to the extent such Party deems reasonably necessary for the Purpose;
- (d) not reverse engineer, disassemble or decompile any Confidential Information of the DISCLOSER; and

(e) hold such Confidential Information of the DISCLOSER in confidence and take reasonable precautions to prevent unauthorised access to such Confidential Information to the same extent it protects its own confidential or proprietary information.

2.2 RECEIVER shall promptly inform the DISCLOSER of any unauthorised disclosure or use of the Confidential Information by any other person of which the RECEIVER becomes aware.

2.3 During the term of this NDA and the period of twelve (12) months from the Effective Date of this NDA, neither Party shall, and shall procure that its Representatives shall not, without the other Party's prior written consent, directly or indirectly, initiate or accept or engage in any discussions or interfere with the employment or contractor relationship or make any approach or contact of any kind with any employee, agent, representative or sub-contractor of the other Party other than those with whom a Party is in contact in the normal course of its ordinary business activities unconnected with the Purpose.

4. Reservation of Rights and Acknowledgement

4.1 The DISCLOSER reserves all rights in its Confidential Information. No rights in respect of the DISCLOSER's Confidential Information are granted to the RECEIVER and no obligations are imposed on the DISCLOSER other than those expressly stated in this NDA. In particular, nothing in this NDA shall be construed or implied as obliging the DISCLOSER to disclose any specific type of information under this agreement, whether Confidential Information or not.

4.2 Except as expressly stated in this Agreement, the DISCLOSER does not make any express or implied warranty or representation concerning its Confidential Information, or the accuracy or completeness of the Confidential Information.

4.3 The disclosure of Confidential Information by the DISCLOSER shall not form any offer by, or representation or warranty on the part of, the DISCLOSER to enter into any further agreement in relation to the Purpose or the development or supply of any product or service to which the Confidential Information relates.

4.4 The RECEIVER acknowledges that damages alone would not be an adequate remedy for the breach of any of the provisions of this NDA. Accordingly, without prejudice to any other rights and remedies it may have, the DISCLOSER shall be entitled to the granting of equitable relief (including without limitation injunctive relief) concerning any threatened or actual breach of any of the provisions of this NDA.

5. Indemnity and Limitation of Liability

The RECEIVER shall indemnify, keep fully indemnified and defend the DISCLOSER, its employees and consultants, at all times against all liabilities, costs (including legal costs on an indemnity basis), expenses, damages and losses including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and other costs and expenses suffered or incurred by the DISCLOSER, its employees and consultants, arising from any breach of this NDA by the RECEIVER or from the actions or omissions of the RECEIVER's Representatives. In no event will either Party be liable to the other under or in connection with this NDA for any lost profits and/or indirect, incidental, consequential, special, exemplary and/or punitive damages.

6. Disclosure of Confidential Information

The restrictions of this NDA on use and disclosure of Confidential Information shall not apply to, and Confidential Information shall not include, information that:

6.1 was generally available to the public at the time of the DISCLOSER'S communication or disclosure thereof to the RECEIVER;

- 6.2 is or becomes generally available to the public subsequent to the time of DISCLOSER's communication or disclosure thereof to RECEIVER through no breach of this NDA on the part of the RECEIVER;
- 6.3 was or becomes lawfully in the RECEIVER's possession or generally available to the RECEIVER at the time of the DISCLOSER's communication or disclosure thereof to the RECEIVER, or subsequent thereto, and it was not acquired directly or indirectly from the DISCLOSER;
- 6.4 is developed by the RECEIVER independently of and without reference to any of the DISCLOSER's Confidential Information as demonstrated by competent evidence; and
- 6.5 is required by applicable law, regulation or legal process or requested by a regulatory or self-regulatory authority having jurisdiction over the RECEIVER (or their respective Affiliates) (collectively, "**Law**") to be disclosed.
7. In the event the RECEIVER is required by Law to disclose any of the DISCLOSER's Confidential Information, the RECEIVER will, to the extent permitted by Law, promptly notify the DISCLOSER in writing prior to making any such disclosure so that the DISCLOSER may seek a protective order or other appropriate remedy from the proper authority. The RECEIVER agrees to reasonably cooperate with the DISCLOSER, at the DISCLOSER's expense, if the DISCLOSER seeks such a protective order or other remedy. In the absence of a protective order or a waiver of the terms of this NDA, the RECEIVER may disclose (without any liability hereunder) that portion of the Confidential Information that the RECEIVER is advised by counsel is required to be disclosed by Law.
8. The RECEIVER undertakes not to use any Confidential Information for any unlawful purpose.
9. All Confidential Information disclosed to the RECEIVER under this NDA (including information in computer software or other storage media) shall be and remain the property of the DISCLOSER.
10. Except as provided herein, on receiving a written request, the RECEIVER will, and will direct that its Affiliates and Representatives and any third party to whom the RECEIVER has disclosed Confidential Information of the DISCLOSER, return, destroy or permanently delete, all Confidential Information of the DISCLOSER and on receiving a written request provide written confirmation to the DISCLOSER that it has complied with this request.
11. Notwithstanding the forgoing, where the RECEIVER is required to retain Copies of the Confidential Information in order to comply with applicable Law or internal record retention policies for legal, compliance or regulatory purposes, and, to the extent the Confidential Information is "backed-up" on the RECEIVER'S electronic management systems or servers, the RECEIVER shall only be required to use commercial reasonable efforts to expunge such Confidential Information from its systems.
12. Neither this NDA nor the disclosure or receipt of Confidential Information will impose or create any obligation on the DISCLOSER to disclose any of its Confidential Information.
13. Except as set forth herein, each Party shall bear its own costs and expenses incurred by it under or in connection with this NDA. Neither execution nor any performance under this NDA shall be construed or deemed to have established any partnership, joint venture or have created any other type of relationship other than as set out in the NDA.
14. This NDA shall become effective on the Effective Date and shall remain in effect for as long as the RECEIVER retains any Confidential Information, provided that either Party may terminate this NDA at any time by written notice to the other Party.

15. Except as may be required by Law or otherwise provided for in this NDA, the RECEIVER shall not, in any way or in any form, disclose the existence or terms of this NDA, the discussions that gave rise to this NDA or the fact that there have been, or will be, discussions or negotiations covered by this NDA.
16. The RECEIVER agrees that any violation or threatened violation of this NDA may cause irreparable harm to the DISCLOSER and in such an event, the DISCLOSER will be entitled to seek to obtain injunctive or other equitable relief as a remedy for any such breach or anticipated breach. The provisions of this Section have been fully disclosed to each Party, and these provisions shall not be subject to exception. None of the Parties has agreed with or represented to the other that the provisions of this Section will not be fully enforced in all instances.
17. RECEIVER shall not assign, delegate or transfer (“**Transfer**”) or attempt to Transfer any of its rights or obligations hereunder, except to an Affiliate or successor in interest, without the prior, written consent of the DISCLOSER, which consent shall not be unreasonably withheld.
18. No failure or delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.
19. If any provision of this NDA is found to be unenforceable, the remainder shall be enforced as fully as possible and the unenforceable provision shall be deemed modified to the limited extent required to permit its enforcement in a manner most closely representing the intention of the Parties as expressed herein.
20. This NDA: (a) is the complete agreement of the Parties concerning the subject matter hereof and supersedes any prior such agreements with respect to further disclosures concerning such subject matter; (b) may not be amended or in any manner modified except by a written instrument signed by authorized representatives of both Parties; (c) may be executed in counterparts and exchanged by email with scanned copies of authorized signatures, each executed counterpart shall be deemed to be an original, and such counterparts shall together constitute one and the same document; and (d) shall be governed and construed in accordance with the laws of the islands of Bermuda.

IN WITNESS WHEREOF, each of the Parties hereto has caused this NDA to be executed by their duly authorized representatives.

Signed by a duly authorized officer for and on behalf of the DISCLOSURE	Signature:
	Printed Name: Austin Kenny
	Title: Principal Structural Engineer
	Date:
Signed by a duly authorized officer for and on behalf of the RECEIVER	Signature:
	Printed Name:
	Date: