

[Insert Contract Name & Number]

BETWEEN



THE GOVERNMENT OF BERMUDA

(acting by and through the Ministry of Public Works & Environment)

AND

Insert Contractor's Logo]

[Insert Contractor's Name]

[Insert Date of Contract]

Table of Contents

CONTRACT AGREEMENT.....	3
PARTICULAR CONDITIONS	5
GENERAL CONDITIONS	6
1. DEFINITIONS:	6
1.1. APPLICABLE LAW.....	7
1.2. LANGUAGE.....	7
1.3. NOTICES.....	7
1.4. COMMUNICATIONS	7
2. SERVICE PROVIDER OBLIGATIONS.....	7
3. COMPLETION DATE.	8
4. CONFLICT OF INTEREST	8
5. BRIBERY, FRAUD & CORRUPTION.....	9
6. SERVICE PROVIDER’S PERSONNEL	9
7. REMOVAL AND/OR REPLACEMENT OF PERSONNEL	9
8. INSPECTION AND AUDIT BY THE PROCURING ENTITY	10
9. TAXES AND DUTIES.....	10
10. PROGRAM	10
11. PROGRESS REPORT.....	11
12. MODIFICATION.....	11
13. FLUCTUATIONS AND VARIATIONS.....	11
14. FORCE MAJEURE.....	11
15. TERMINATION	12
16. INDEMNITY	13
17. INSURANCE	13
18. PROCURING ENTITY’S APPROVAL REQUIRED	14
19. INTELLECTUAL PROPERTY RIGHTS	14
20. LIQUIDATED DAMAGES.....	14
21. CHANGE IN THE APPLICABLE LAW.....	15
22. PAYMENTS	15
23. IDENTIFYING DEFECTS.....	16
24. CORRECTION OF DEFECTS.....	16
25. CONFIDENTIALITY	17
26. ASSIGNMENT AND SUBCONTRACTING.	17
27. SERVICE PROVIDERS RISKS.....	17
28. EXTENSION OF TIME.....	17
29. DISPUTES RESOLUTION.....	18
30. GENERAL	20
SCHEDULES	21
SCHEDULE I LETTER OF ACCEPTANCE	22
SCHEDULE II THE SERVICE PROVIDERS PROPOSAL.....	23
SCHEDULE III THE REQUEST FOR PROPOSAL.....	24
SCHEDULE IV THE SPECIFICATIONS.....	25

SCHEDULE V PRICED ACTIVITY SCHEDULE.....	26
THE APPENDICES.....	28
APPENDIX A: DESCRIPTION OF THE SERVICES	29
APPENDIX B: SCHEDULE OF PAYMENTS	30
APPENDIX C: KEY PERSONNEL AND SUBCONTRACTORS	31
APPENDIX D: BREAKDOWN OF CONTRACT PRICE	32

CONTRACT AGREEMENT

THIS AGREEMENT is made on the _____ day of _____, 2025

BETWEEN the **GOVERNMENT OF BERMUDA** acting by and through the Ministry of Public Works having its main office at 56 Church Street, City of Hamilton, HM 12, Bermuda (hereinafter called “the Procuring Entity”) of the ONE PART and *[Insert Contractor’s Name, address & place of Incorporation]* (hereinafter called “the Service Provider”) of the other part.

WHEREAS

- (a) the Procuring Entity has requested the Service Provider to provide *[Insert brief description of the service to be provided]* as detailed in **Schedule V., the Priced Activity Schedule** attached to this Agreement (hereinafter called the “services”);
- (b) the Service Provider, having represented to the Procuring Entity that they have the required professional skills, personnel and technical resources and having agreed to provide the services on the terms and conditions set forth in this Agreement for the Contract Price of *[Insert Contract Price]*;

The Procuring Entity and the Service Provider hereby agree as follows:

- 1. In this Agreement, terms, words and expressions shall have the meanings as are respectively assigned to them in the General Conditions.
- 2. This Agreement shall prevail over all other documents and the documents forming this Agreement are to be taken as mutually explanatory of one another and shall hereinafter be collectively referred to as the “Contract Documents”. For the purposes of interpretation, the priority of the documents shall be in accordance with the following sequence:
 - (a) Contract Agreement,
 - (b) Particular Conditions,
 - (c) General Conditions,
 - (d) The Schedules, as follows:
 - i. Letter of Acceptance,
 - ii. the Service Provider’s Proposal,
 - iii. the Request for Proposal,
 - iv. the Specifications,
 - v. the Priced Activity Schedule
 - (e) The Appendices as follows
 - i. Appendix A: Description of the Services
 - ii. Appendix B: Schedule of Payments
 - iii. Appendix C: Key Personnel and Subcontractors
 - iv. Appendix D: Breakdown of Contract Price

3. The mutual rights and obligations of the Procuring Entity and the Service Provider shall be as set forth in this Contract, in particular:

- (a) the Service Provider shall carry out the services in accordance with the provisions of this Agreement; and
- (b) the Procuring Entity shall make payments to the Service Provider in accordance with the provisions of the Contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of Bermuda on the day, month and year indicated above.

**FOR THE PROCURING ENTITY
THE GOVERNMENT OF BERMUDA
ACTING BY AND THROUGH
THE MINISTRY OF PUBLIC WORKS
& ENVIRONMENT**

By: _____
**The Minister of Public Works
& Environment**

WITNESS SIGNATURE: _____

WITNESS NAME: _____

WITNESS ADDRESS: _____

FOR THE SERVICE PROVIDER
EXECUTED for and on behalf of
[Insert Service Provider's Name]

by Director) _____
and) _____
Director/ Company Secretary) _____

In the presence of:-

WITNESS SIGNATURE: _____

WITNESS NAME: _____

WITNESS ADDRESS: _____

PARTICULAR CONDITIONS

Contract Data

The following Particular Conditions shall supplement the General Conditions and wherever there is a conflict the provisions in the Particular Conditions shall prevail over those in the General Conditions.

Sub-Clause	Item	Data
1.b.	Authorized Representatives	[insert]
1.b. & 1.n.	Service Provider	[insert]
	Address	[insert]
	E-mail Address	[insert]
	Telephone No.	[insert]
	Service Provider Authorized Rep	[insert]
1.b.	Procuring Entity Authorized Rep	[insert]
	Address & Contact Information	[insert]
		[insert]
	E-mail Address	[insert]
	Telephone No.	[insert]
1.c.	Completion Date	[insert]
1.e.	Contract Price	[insert]
1.h.	Defects Liability Period	[insert]
1.t.	The Start Date	[insert]
17	Insurance	[insert]
18	Approval Required	[insert]
20.	Liquidated Damages	The liquidated damages rate is _____ per day The maximum amount of liquidated damages for the whole contract is _____ percent of the final Contract Price. Mobilization Payment of [insert] upon signing of the contract
22.	Payment	
23.	Identifying Defects	

GENERAL CONDITIONS

1. DEFINITIONS:

Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:

- a. **Activity Schedule** is the priced and completed list of items of services to be performed by the Service Provider in Schedule V;
- b. **Authorized Representatives** are the officers or officials of the respective parties stated in the Particular Conditions who are authorized to take any action required or permitted to be taken and to execute any document required or permitted to be executed under this Contract.
- c. **Completion Date** means the date by which the Service Provider must complete the services as is stated in the Particular Conditions unless otherwise agreed in writing by the Procuring Entity.
- d. **Contract** means this Contract signed by the Parties, to which these General Conditions are attached, together with all the documents listed in the Contract Agreement.
- e. **Contract Price** is the Bermudian Dollar sum stated in the Particular Conditions.
- f. **Days** means working days from Monday to Friday and does not include public holidays.
- g. **Defect** services performed by the Service Provider that does not meet the standard required in this contract.
- h. **Defects Liability Period** is the period counted from the Completion Date as stated in the Particular Conditions.
- i. **Effective Date** means the date first written in the Contract Agreement. This Contract shall come into effect and be dated on the date the Contract is signed by both parties.
- j. **Electronic communications** means the transfer of information using electronic or similar media and the recording of information using electronic media.
- k. **"in writing"** means a communication in hand or machine written type and includes messages by facsimile, e-mail and other electronic forms of communications with proof of receipt.
- l. **Personnel** means persons hired by the Service Provider or by any Subcontractor as employees and assigned to the performance of the services or any part thereof.
- m. **Procuring Entity** is the Government of Bermuda.
- n. **Service Provider** is the person or company named in the Particular Conditions whose quotation, offer or proposal to carry out the services has been accepted by the Procuring Entity.
- o. **Party:** means the Procuring Entity or the Service Provider as the case maybe and Parties means both of them.
- p. **Particular Conditions** means the Particular Conditions of this Contract by which the General Conditions may be amended or supplemented.
- q. **Services** means the work to be performed by the Service Provider pursuant to this Contract, as outlined in detail in Schedule V: The Priced Activity Schedule and described in Appendix A: Description of the Services.
- r. **Service Providers Proposal** is the completed document (Invitation to Bid together with attachments) submitted by the Service Provider to the Procuring Entity.

- s. **Specifications** means the specifications of the service included in the bidding document submitted by the Service Provider to the Procuring Entity.
- t. **Start Date** is the date stated in the Particular Conditions. It is the latest date when the Service Provider shall commence the execution of the works.
- u. **Subcontractor** means any entity to which the Service Provider subcontracts any part of the services in accordance with clause 24.

1.1. APPLICABLE LAW

This Contract shall be interpreted in accordance with the laws of Bermuda. The Service Provider shall comply with all applicable Laws of Bermuda in the performance of the services.

1.2. LANGUAGE

This Contract has been executed in English, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.

1.3. NOTICES

Any notice, request, or consent made pursuant to this Contract shall be in writing and shall be deemed to have been made when delivered to an Authorized Representative of the Party to whom the communication is addressed, or when sent by registered mail to such Party at the address specified for the party in the Particular Conditions.

1.4. COMMUNICATIONS

Communications between the Procuring Entity and the Service Provider as are referred to in these Conditions shall be effective only when made in writing. A notice shall be effective only when it is hand delivered or delivered by registered post. Where a notice is posted it shall be deemed received five (5) days after the date of posting.

2. SERVICE PROVIDER OBLIGATIONS

2.1. The Service Provider shall perform the services in accordance with **Schedule V: The Priced Activity Schedule** and **Appendix A: Description of the Services** and shall carry out its obligations with all due diligence, efficiency, and economy, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, and employ appropriate advanced technology and safe methods. The Service Provider shall always act, in respect of any matter relating to this Contract or to the services, as faithful adviser to the Procuring Entity, and shall at all times support and safeguard the Procuring Entity's legitimate interests in any dealings with Subcontractors or third parties.

2.2. The Service Provider shall comply with all instructions given by the Procuring Entity

in respect of the services including but not limited to the suspension of all or part of the services and the removal and or replacement of the Authorized Representative of the Service Provider.

3. COMPLETION DATE.

The Service Provider shall commence execution of the works on the Start Date and shall carry out the works in accordance with the Program submitted by the Service Provider, as updated with the approval of the Authorized Representative of the Procuring Entity, and complete them by the Completion Date. If the Service Provider fails to complete the services within the time stated or within any time as extended by the Procuring Entity, Liquidated and Ascertained Damages as specified in the Particular Conditions will be payable upon demand.

4. CONFLICT OF INTEREST

- 4.1.** The Contract Price shall constitute the Service Provider's sole remuneration in connection with this Contract or the services, and the Service Provider shall not accept for their own benefit, any trade commission, discount, or similar payment in connection with activities pursuant to this Contract or to the services or in the discharge of their obligations under this Contract, and the Service Provider shall use their best efforts to ensure that the Personnel, any Subcontractors, and agents of either of them similarly shall not receive any such additional remuneration.
- 4.2.** The Service Provider agrees that, during the term of this Contract and after its termination, the Service Provider and its affiliates, as well as any Subcontractor and any of its affiliates, shall be disqualified from providing goods, works, or services (other than the services and any continuation thereof) for any project resulting from or closely related to the services unless otherwise agreed in writing by the Procuring Entity.
- 4.3.** Neither the Service Provider nor its Subcontractors nor their Personnel shall engage, either directly or indirectly, in any of the following activities:
- a. during the term of this Contract, any business or professional activities in Bermuda which would conflict with the activities assigned to them under this Contract;
 - b. during the term of this Contract and for six (6) months thereafter, neither the Service Provider nor their Subcontractors shall hire public employees in active duty or on any type of leave, to perform any activity under this Contract;

5. BRIBERY, FRAUD & CORRUPTION

5.1. The Procuring Entity requires that all parties involved in the procurement proceedings and execution of such contracts observe the highest standard of ethics.

5.2. For the purposes of this provision, the offences of Bribery, Fraud and Corruption are defined in the Bribery Act 2016 and the Criminal Code Act 1907 respectively and any other Act relating to corrupt activities in Bermuda (these Acts are hereinafter collectively referred to as “the Acts”) and the offences include but are not limited to any commission, advantage, gift, gratuity, reward, or bribe given, promised, or offered by or on behalf of the Service Provider or his agent or servant or any person on his or their behalf to any officer, servant, representative, or agent of the Procuring Entity or of the Authorized Representative of the Procuring Entity 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 Procuring Entity.

5.3. A person who commits an offence under the Acts relating Bribery, Fraud and/or Corrupt activities in Bermuda shall:-

- (a) be liable for conviction under the provisions of the Acts;
- (b) have this Contract and any other such contracts with the Procuring Entity be subject to cancellation and will be liable to the Procuring Entity for any loss or damage resulting from such cancellation;
- (c) risk other fines, sanctions and/or penalties provided for in the Acts.

6. SERVICE PROVIDER’S PERSONNEL

The titles, agreed job descriptions, minimum qualifications, and estimated periods of engagement in the carrying out of the services by the Service Provider’s Key Personnel are described in Appendix C. The Key Personnel and Subcontractors listed by title as well as by name in Appendix C are hereby approved by the Procuring Entity.

7. REMOVAL AND/OR REPLACEMENT OF PERSONNEL

7.1. Except as the Procuring Entity may otherwise agree, no changes shall be made in the Key Personnel. If, for any reason beyond the reasonable control of the Service Provider, it becomes necessary to replace any of the Key Personnel, the Service Provider shall provide as a replacement a person of equivalent or better qualifications.

7.2. If the Procuring Entity finds that any of the Personnel have

- (i) committed serious misconduct or have been charged with having committed a criminal action, or
- (ii) have reasonable cause to be dissatisfied with the performance of any of the Personnel,

then the Service Provider shall, at the Procuring Entity's written request specifying the grounds thereof, provide as a replacement a person with qualifications and experience acceptable to the Procuring Entity.

7.3. The Service Provider shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of Personnel.

8. INSPECTION AND AUDIT BY THE PROCURING ENTITY

The Service Provider shall permit the Procuring Entity to inspect its accounts and records relating to the performance of the services and to have them audited by auditors appointed by the Procuring Entity, if so required.

9. TAXES AND DUTIES

9.1. The Service Provider, Subcontractors and their Personnel shall pay such taxes, duties, fees, and other impositions as may be levied under the applicable Law, the amount of which is deemed to have been included in the Contract Price which may include Payroll taxes for persons engaged by the Service Provider, taxes associated with the provision of the services and the Service Provider consents to the Procuring Entity deducting due or outstanding Taxes from the Contract Price.

9.2. In the event that the Procuring Entity has not made deductions on behalf of the Service Provider, the Service Provider shall provide the Procuring Entity with proof of payment of such Taxes and all other receivables due to the Procuring Entity, prior to the Service Provider receiving final payment. In the event that the Service Provider does not provide proof in writing, the Procuring Entity shall have the right to deduct any outstanding amounts owed, including any Taxes, from final payment of the Contract Price.

9.3. The Service Provider shall be required to pay Bermudian Taxes on all the Service Provider's Equipment imported into the island save and except in so far as the Service Provider applies for and is granted relief in respect of the end-use of the goods in accordance with the Section 5(1) of the Fifth Schedule of the Customs Tariff Act 1970).

10. PROGRAM

10.1. Before commencement of the services, the Service Provider shall submit to the Procuring Entity for approval a Program showing the general methods, arrangements, order and timing for all activities. The services shall be carried out in accordance with the approved Program.

10.2. The Service Provider may revise the Program and submit it to the Authorized Representative of the Procuring Entity again at any time during the contract. The Service Provider shall review the Program throughout the contract and modify it as

appropriate to achieve the services. Any modification to the Program shall be submitted to the Authorized Representative of the Procuring Entity for acceptance and a revised Program must show the effect of all variations, if any.

11. PROGRESS REPORT

- 11.1.** If required by the Procuring Entity, the Service Provider shall submit progress reports in connection with the services ("The Report") periodically as required by the Procuring Entity. The Report shall include a summary of the activities and accomplishments during the previous reporting period.
- 11.2.** The Report will also include year-to-date totals for payments received and services completed expressed in Bermuda Dollars.
- 11.3.** Any decisions and/or actions required of the Procuring Entity during the upcoming reporting period(s) should be included in the Report. The specified date for submission of the Report for the reporting period shall be determined by the Procuring Entity.

12. MODIFICATION

Modification of the terms and conditions of this Contract, including any modification of the scope of the services or of the Contract Price, may only be made by written agreement between the Parties and shall not be effective until the consent of the Procuring Entity has been obtained.

13. FLUCTUATIONS AND VARIATIONS

- 13.1.** There shall be no adjustments to the Contract Price in respect of any increases or decreases in the cost of labour, equipment or materials.
- 13.2.** The Service Provider shall not make any variations to the services or the Contract. Any expense incurred by the addition, modification, omission, substitution, alteration, change in the form, character, kind, position, mode, dimensions, specified sequence, method or timing of the services or otherwise as may be the case, shall be borne by the Service Provider unless otherwise approved in writing by the Procuring Entity prior to the Service Provider undertaking the variation to the services or the Contract
- 13.3.** Any and all Variations are subject to the approval of Cabinet.

14. FORCE MAJEURE

- 14.1.** For the purposes of this Contract, "Force Majeure" means an event which is beyond

the reasonable control of a Party and which makes a Party's performance of its obligations under the Contract impossible or so impractical as to be considered impossible under the circumstances.

- 14.2.** Force Majeure includes but is not limited to war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action (except where such strikes, lockouts or other industrial action are within the power of the Party invoking Force Majeure to prevent), confiscation or any other action by government agencies. Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.

14.3. No Breach of Contract

The failure of a Party to fulfil any of its obligations under the contract shall not be considered to be a breach of, or default under this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has:

- (a) taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, and
- (b) informed the other Party as soon as possible about the occurrence of such an event.

14.4. Extension of Time

Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

15. TERMINATION

15.1. By the Procuring Entity

The Procuring Entity may terminate this Contract, by not less than thirty (30) days' written notice of termination to the Service Provider, to be given after the occurrence of any of the following events:

- (a) if the Service Provider does not remedy a failure in the performance of its obligations under the Contract, within thirty (30) days after being notified or within any further period as the Procuring Entity may have subsequently approved in writing;
- (b) if the Service Provider become insolvent or bankrupt;
- (c) if, as the result of Force Majeure, the Service Provider is unable to perform a material portion of the services for a period of not less than sixty (60) days; or

- (d) if the Service Provider, under the laws of Bermuda has engaged in bribery, fraud or corruption.

Notwithstanding the above, the Procuring Entity may terminate this Agreement for its convenience by giving the Service Provider a Thirty (30) day notice in writing.

15.2. By the Service Provider

The Service Provider may terminate this Contract, by not less than thirty (30) days' written notice to the Procuring Entity, such notice to be given after the occurrence of any of the following events :

- (a) if the Procuring Entity fails to pay any monies due to the Service Provider pursuant to this Contract that is not subject to a dispute within Forty-Five (45) days after receiving written notice from the Service Provider that such payment is overdue; or
- (b) if, as the result of Force Majeure, the Service Provider is unable to perform a material portion of the services for a period of not less than sixty (60) days.

15.3. Payment Upon Termination

Upon termination of this Contract pursuant to this clause the Procuring Entity shall make the following payments to the Service Provider:

- (a) remuneration for services satisfactorily performed prior to the date of termination;
- (b) except in the case of termination pursuant to paragraphs (a), (b), (d) of Sub-Clause 13.1., reimbursement of any reasonable cost incident to the prompt and orderly termination of the Contract, including the cost of the return travel of the Personnel.

16. INDEMNITY

The Service Provider shall indemnify the Procuring Entity against all claims and actions for injuries, death or damage to property suffered by any person or entity which is attributable to any negligence, willful act or breach of this Contract by the Service Provider or anyone directly or indirectly engaged and/or employed by him.

17. INSURANCE

The Service Provider shall:

- i. take out and maintain, and shall cause any Subcontractors to take out and maintain, at its (or the Subcontractors', as the case may be) own cost but on terms

and conditions approved by the Procuring Entity, insurance against the risks, and for the coverage, as shall be specified in the Particular Conditions; and

- ii. at the Procuring Entity's request, shall provide evidence to the Procuring Entity showing that such insurance has been taken out and maintained and that the current premiums have been paid.

18. PROCURING ENTITY'S APPROVAL REQUIRED

The Service Provider shall obtain the Procuring Entity's prior approval in writing before taking any of the following actions:

- a) entering into a subcontract for the performance of any part of the services,
- b) appointing such members of the Personnel not listed by name in Appendix C ("Key Personnel and Subcontractors"),
- c) changing the Program of activities;
- d) fluctuations, variations and/or modifications;
- e) any other action that may be specified in the Particular Conditions.

19. INTELLECTUAL PROPERTY RIGHTS

All plans, drawings, specifications, designs, reports, and other documents and software submitted by the Service Provider in providing the services shall become and remain the property of the Procuring Entity, and the Service Provider shall, not later than upon termination or expiration of this Contract, deliver all such documents and software to the Procuring Entity, together with a detailed inventory thereof. The Service Provider may retain a copy of such documents and software. Restrictions about the future use of these documents, if any, shall be specified in the Particular Conditions

20. LIQUIDATED DAMAGES

- 20.1.** The Service Provider shall complete the services by the Completion Date, as is specified in the Particular Conditions. If the Service Provider does not complete the services by the Completion Date, the Service Provider shall be liable to pay liquidated damage upon demand by the Procuring Entity.
- 20.2.** The Service Provider shall pay liquidated damages to the Procuring Entity at the rate per day stated in the Particular Conditions for each additional day after the Completion Date for which the services remain incomplete. The total amount of liquidated damages shall not exceed the amount defined in the Particular Conditions. The Procuring Entity may deduct liquidated damages from payments due to the Service Provider.

21. CHANGE IN THE APPLICABLE LAW

If, after the date of this Contract, there is any change in the Applicable Law with respect to taxes and duties which increases or decreases the cost of the services rendered by the Service Provider, then the remuneration and reimbursable expenses otherwise payable to the Service Provider under this Contract shall be increased or decreased accordingly by agreement between the Parties, and corresponding adjustments shall be made to the Contract Price.

22. PAYMENTS

- 22.1.** Payments will be made to the Service Provider according to Appendix B, the Schedule of Payments.
- 22.2.** No Mobilization or Advance Payment shall be made unless otherwise stated in the Particular Conditions. In the event of a Mobilization Payment, the Procuring Entity may make a mobilization payment to the Service Provider in the amount of no more than ten (10%) percent of the Contract Price.
- 22.3.** Unless otherwise stated in the Particular Conditions, the advance payment (Advance for Mobilization, Materials and Supplies) shall be made against the provision by the Service Provider of a bank guarantee for the same amount, and shall be valid for the period stated in the Particular Conditions. Any other payment shall be made after the conditions listed in the Particular Conditions for such payment have been met, and the Service Provider have submitted an invoice to the Procuring Entity specifying the amount due.
- 22.4.** After the Service Provider has provided any Mobilization Payment Bank Guarantee for an equal amount. The Mobilization Payment shall be repaid by deducting proportionate amounts from payments otherwise due to the Service Provider.
- 22.5.** All payments will be made in Bermudian Dollars. The Procuring Entity will make its best efforts to pay the Service Provider the amounts certified by the Procuring Entity's Authorized Representative within thirty (30) days of the date of each certificate. Payments may also be subject to deductions for the following reasons:
- i. Recovery of any advance or mobilization payments made,
 - ii. where there has been an overpayment to the Service Provider for any reason;
 - iii. where a payment was made to the Service Provider in error;
 - iv. if the Service Provider has not completed the services or any part of the services as required;
 - v. where the Procuring Entity has suffered loss by the Service Providers failure to follow instructions or exercise due diligence;
 - vi. if the Service Provider cause damage to the Procuring Entity's property, the value of replacement or repair of the damaged property.

22.6. Lump-Sum Remuneration

The Service Provider's remuneration shall not exceed the Contract Price and shall be a fixed lump-sum including all Subcontractors' costs, and all other costs incurred by the Service Provider in carrying out the services described in Appendix A and outlined in Schedule V The Priced Activity Schedule.

22.7. Daywork

22.7.1. If applicable, the Daywork rates in the Service Provider's bid shall be used for small additional amounts of services only when the Procuring Entity has given written instructions in advance for additional services to be paid in that way.

22.7.2. All work to be paid for as Dayworks shall be recorded by the Service Provider on forms approved by the Procuring Entity. Each completed form shall be verified and signed by the Authorized Representative of the Procuring Entity.

22.7.3. The Service Provider shall be paid for Dayworks subject to obtaining signed Dayworks forms as indicated in Sub-Clause 10.7.2.

23. IDENTIFYING DEFECTS

The principle and modalities of Inspection of the services by the Procuring Entity shall be as indicated in the Particular Conditions. The Procuring Entity shall check the Service Provider's performance and notify him of any Defects that are found. Such checking shall not affect the Service Provider's Obligations or responsibilities under this contract. The Procuring Entity may instruct the Service Provider to search for a Defect and to uncover and test any service that the Procuring Entity considers may have a Defect. Defect Liability Period is as defined in the Particular Conditions.

24. CORRECTION OF DEFECTS

24.1. The Procuring Entity shall give notice to the Service Provider of any Defects before the end of the Contract. The Defects Liability period shall be extended for as long as Defects remain to be corrected.

24.2. Every time notice of a Defect is given, the Service Provider shall correct the notified Defect within the length of time specified by the Procuring Entity's notice.

24.3. If the Service Provider has not corrected a Defect within the time specified in the Procuring Entity's notice, the Procuring Entity will assess the cost of having the Defect corrected, the Service Provider will either pay this amount or same shall be deducted from the Contract Price.

25. CONFIDENTIALITY

The Service Provider shall treat the details of this Agreement as private and confidential except to the extent necessary to carry out the Service Provider's obligations under this Agreement or to comply with applicable Laws and shall not publish or disclose the details of same or any particulars thereof in any trade or technical paper or elsewhere without the previous consent in writing of the Procuring Entity. If any dispute arises as to the necessity to disclosure for the purpose of this Contract, the dispute shall be referred to the decision of the Procuring Entity who will have the right to assume conduct of any proceedings relating to the confidentiality of the details.

26. ASSIGNMENT AND SUBCONTRACTING.

Neither party may without the prior written consent of the other, transfer, assign or subcontract the whole, or part, or any rights or obligations under this Agreement to any third party.

27. SERVICE PROVIDERS RISKS.

- 27.1.** From the Start Date until the Completion Date, the risks of personal injury, death, and loss or damage to property and adjacent property (including, without limitation, materials and equipment) are the Service Provider's risks.
- 27.2.** The Service Provider shall, immediately on occurrence of any incident involving loss or injury in connection with the performance of the services report such incident to the Authorized Representative of the Procuring Entity. The Service Provider shall also report such incident to the appropriate Authority whenever such report is required by Law.

28. EXTENSION OF TIME

- 28.1.** The Service Provider shall be entitled to extensions of time for the completion of the services in respect of any delay in such completion which has been caused by any of the following circumstances:
 - (i) varied, modified or additional services as approved by the Procuring Entity in writing,
 - (ii) any operation of the forces of nature affecting the services which was unforeseeable or against which an experienced Service Provider could not reasonably have been expected to take precautions. Severe weather and heavy rainfall are not exceptional in Bermuda and claims for extension of time will only be considered when the weather event is shown to occur on average less frequently than once in ten (10) years and therefore are unforeseeable having regard to climatic data published by the Bermuda Weather Service as measured at the L.F Wade International Airport,

- (iii) strikes or lockouts of labourers or tradesmen employed on the Works provided any delay caused thereby is not attributable to any negligence or improper conduct on the part of the Service Provider,
 - (iv) delay ordered by the Authorized Representative of the Procuring Entity exceeding ten (10) days;
 - (v) any other circumstance which is wholly beyond the control of the Service Provider.
- 28.2.** Claims for extensions of time must be made in writing within seven (7) days after occurrence of the event giving rise to such claim. On receipt of a claim for an extension of time from the Service Provider, the Procuring Entity shall consider all supporting details and shall extend the Completion Date as appropriate.
- 28.3.** An extension of the contract time shall be the Service Providers sole right or remedy for any of the foregoing causes.

29. DISPUTES RESOLUTION

- 29.1.** If either party believes that a decision taken by the Project Supervisor was either outside his authority or that the decision was wrongly taken, the dispute shall be settled between the parties by negotiation. The Procuring Entity and the Service Provider shall make every effort to resolve amicably by direct negotiations any such disagreement or dispute arising between them under or in connection with this Agreement.
- 29.2.** If this negotiation is not successfully settled within fourteen (14) days after the date of initiation of negotiation or within such longer period as the parties may mutually agree, then the parties will jointly agree, within seven (7) days after the date of expiration of the period in which the parties should have successfully concluded their negotiations, to appoint a Mediator to assist in reaching an amicable resolution of the dispute. This procedure shall be private, confidential and without prejudice.
- 29.3.** If the parties fail to agree upon the appointment of a Mediator within the period, then, within seven (7) days of expiration of this period, the Procuring Entity shall request appointment of a Mediator and a date for Mediation by the Bermuda Conflict Resolution Institute. The Mediator shall not have the power to impose a settlement on the parties.
- 29.4.** If the dispute is not resolved between the parties within seven (7) days after the Mediation or after such longer period as the parties may mutually agree, the Mediator shall advise the parties of the failure of the Mediation.
- 29.5.** For the purposes of this clause, a negotiation is deemed to have been initiated as of the date of receipt of notice by one party of a request from the other party to negotiate the matter in dispute.

- 29.6.** For the purposes of this clause, a Mediator is deemed to have been appointed as of the date of notice of such appointment being given to both parties.
- 29.7.** In the event of the failure of the Mediation between parties, the Mediator will record those verifiable facts that the parties have agreed. Subsequently, the case will be handled by arbitration. The Mediator's role in the dispute resolution process shall cease upon appointment of the Arbitrator.
- 29.8.** The seat of the arbitration shall be Bermuda and disputes shall be settled in accordance with the Laws of Bermuda and in particular the Bermuda Arbitration Act of 1986 and the Bermuda International Conciliation and Arbitration Act 1993. If any matters arise where there are no applicable rules of procedure pursuant to the Laws of Bermuda, the rules of procedure to be adopted shall be those published by the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules of 1976.
- 29.9.** There shall be a sole arbitrator appointed by agreement between the parties in writing or, in default of agreement, the Procuring Entity shall request that an Arbitrator be appointed by the Branch Chair of the Bermuda Branch of the Chartered Institute of Arbitrators.
- 29.10.** The arbitrator shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Project Supervisor, relevant to the dispute. Nothing shall disqualify the Project Supervisor from being called as a witness and giving evidence before the arbitrator on any matter whatsoever relevant to the dispute however the Mediator shall not be called as a witness nor required to give evidence.
- 29.11.** Arbitration may be commenced prior to or after completion of the Works, by mutual agreement. The obligations of the Parties and the Project Supervisor shall not be altered by reason of any arbitration being conducted during the progress of the Works. During the dispute resolution process, the Service Provider shall continue to perform the work in accordance with this Agreement. Failure to do so shall be considered a breach of Agreement.
- 29.12.** In no event shall the making by The Procuring Entity of any payment to the Service Provider constitute or be construed as a waiver by The Procuring Entity of any breach of this Agreement, or any default which may then exist, on the part of the Service Provider, and the making of any such payment by The Procuring Entity while any such breach or default exists shall in no way impair or prejudice any right or remedy available to The Procuring Entity in respect of such breach or default.
- 29.13.** Each party shall be responsible for their own legal and administration costs related to any Mediation or Arbitration.

30. GENERAL

- 30.1.** 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 each party has all required authorizations and capacity to perform its obligations.
- 30.2.** 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 the services and is the complete agreement between the parties.
- 30.3.** Any amendments to this Agreement shall be made in writing and signed by each party.
- 30.4.** The Service Provider, the Service Provider's Authorized Representative and Subcontractors, if any, are independent Service Providers and nothing in this Agreement shall render the Service Provider the Service Provider's Authorized Representative and Subcontractors as employees of the Procuring Entity.
- 30.5.** The doctrine of *Contra Proferentem* shall not be applicable in this Agreement.
- 30.6.** No one other than a party to this Agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.
- 30.7.** 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.
- 30.8.** 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.
- 30.9.** Expiry or Termination of this Agreement in any manner shall not release a the parties party from any liability or responsibility with respect to any representation or warranty. Sections related to indemnification, limitation of liability, Confidentiality and intellectual property shall survive termination of this Agreement.
- 30.10.** The Procuring Entity may disclose any information relating to this Agreement to a regulator, auditor or in accordance with Public Access To Information Act 2010.
- 30.11.** The Service Provider consents to the Procuring Entity processing data relating to the Service Provider for legal, administrative and management purposes. The Procuring Entity may make such information available to those who provide a service to it (such as advisers and payroll administrators), regulatory authorities and governmental or quasi-governmental organizations including those outside of Bermuda.

THE SCHEDULES

Letter of Acceptance

THE CONTRACTOR'S PROPOSAL

THE REQUEST FOR PROPOSAL

THE SPECIFICATIONS

PRICED ACTIVITY SCHEDULE

Priced Activity Schedule

No.	Unit(s)	Service	Equipment	Origin	Destination	Cost
1						
2	2					
3	2					
4	2					
5	2					
6						
7						
8						
9						
10						
11						
12						

THE APPENDICES

APPENDIX A

Description of the Services

APPENDIX B: SCHEDULE OF PAYMENTS

APPENDIX C: KEY PERSONNEL AND SUBCONTRACTORS

APPENDIX D: BREAKDOWN OF CONTRACT PRICE

All prices are to be all inclusive of all other associated services as shown in the Contract Documents, materials, related accessories, storage, transport, assembly, placement, overhead and profit. These prices may be used for determining additions and deletions from the contract sum and for interim payment valuation.

<u>Item</u>	<u>Scope of Work Items for the Services</u>	<u>Lump Sum</u>
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
Fixed Price Total		