

Annex A

[Insert Contract Name & Number]

BETWEEN



THE GOVERNMENT OF BERMUDA

(acting by and through the Ministry of Public Works)

AND

[Insert Contractor's Logo]

[Insert Contractor's Name]

[Insert Date of Contract]

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AGREEMENT

The Procuring Entity is The Government of Bermuda acting through the Ministry of Public Works, Department of Works & Engineering, General Post Office Building
3rd Floor, 56 Church Street, Hamilton HM 12, Bermuda

The Contractor is [Insert Contractor's name and address]

The Procuring Entity desires the execution of certain Works known as
[Insert name of the project or scope of work]

Cabinet Conclusion Number ()

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) [Insert amount in BM]

This is an upset price based on contracted unit rates for labour, materials and equipment, with estimated work durations based on the Plant suppliers experience and adjusted for the local conditions.

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 Procuring Entity by signing and returning one original of this document to the Contractor before
(insert date) _____

The Contractor understands that the Procuring Entity 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 Procuring Entity has by signing below, accepted the Contractor's offer and agrees that in consideration for the execution of the Works by the Contractor, the Procuring Entity 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 Procuring Entity.

Signature:	_____	Authorized to sign on behalf of the Ministry of Works and Engineering
Name:	_____	Date: _____
Capacity:	_____	

APPENDIX

This Appendix forms part of the Agreement.

[Note: with the exception of the items for which the Procuring Entity's requirements have been inserted, the Contractor shall complete the following information before submitting his offer.]

Sub-Clause	Item	Data
1.1.9	Time for Completion	<u>[Insert number of days]</u> If an ambiguity or discrepancy is found in the contract documents, the Procuring Entity's Representative shall issue any necessary clarification or instruction.
1.3	General Provisions	
	Documents forming the Contract listed in order of priority (delete if not applicable)	Document Identification
	(a) The Agreement	This document
	(b) Letter of Acceptance	None
	(c) Client's Request for Proposal	<u>[Insert Date]</u>
	(d) Addendum	
	(e) Particular Conditions	
	(f) General Conditions	FIDIC Short Form of Contract 1999
	(g) The Specification	Specification on Drawings
	(h) Drawings	Drawing per the Tender Documents and Supplemental Detailed Drawings Issued For Construction, list attached
	(i) The Bill of Quantities	Attached in BCM Construction's Proposal
	(j) The Contractor's Proposal	<u>[Insert Contractor's proposal date]</u>
Sub-Clause	Item	Data
1.4	Law of the Contract	Laws of Bermuda
1.5	Language	English
2	The Procuring Entity	

2.1	Provision of Site	On the Commencement Date
3	Procuring Entity's Representatives	
3.1	Authorised Person	Chief Engineer
3.2	Name and address of Procuring Entity's representative (if known)	To Be Assigned c/o Ministry of Public Works, Department of Works & Engineering, General Post Office Building, 3rd Floor, 56 Church Street, Hamilton, HM 12 BERMUDA
4	The Contractor	
4.4	Performance Security (if any):	[Insert]
4.4	Amount	[Insert]
4.4	Form	[Insert]
5	Design by Contractor	[Insert]
5.1	Requirements for Contractor's design (if any)	[Insert]
7	Programme	
7.2	Time for submission	[Insert Date]
7.2	Form of programme	[Insert Date]
7.4	Amount payable due to failure to complete	[Insert amount]
9	Remedying Defects	
9.1	Period for notifying defects	365 days calculated from the date stated in the notice under Sub-Clause 8.2
Sub-Clause	Item	Data
10	Variation Procedure	
10.2	Day work rates	As per the attached Schedule of Unit Rates
11	Valuation of the Works	
11.1	Lump sum price	[Insert]
11.1	Lump sum price with day work rates	[Insert]
11.1	Lump sum price with bill of quantities	[Insert]
11.1	Remeasurement with tender bill of quantities	[Insert]
11.1	Cost reimbursable	[Insert]
11.2	Percentage of value of Materials and Plant	[Insert Percentage]
11.3	Percentage of retention	[Insert Percentage]

11.5	Period for notifying defects	<u>180 days</u> calculated from the date stated in the notice under Sub-Clause 8.2
11.7	Currency of payment	<u>Bermuda Dollars</u>
11.8	Rate of interest	<u>[Insert rate of interest]</u>
14	Insurances	
14.1(a)	The Works, Materials, Plant and fees	<u>[Insert Sum]</u>
14.1(a)	Contractor's Equipment	<u>Full replacement cost</u>
14.1(b)	Third party injury to persons and damage to property	<u>[Insert amount]</u>
14.1(c)	Workers	<u>[Insert amount]</u>
	Other Cover	
	Exclusions	
15	Arbitration	
15.3	Rules	<u>Bermuda Arbitration Act 1986</u>
15.3	Appointing authority	<u>In accordance with the Bermuda Arbitration Act 1986</u>
15.3	Place of Arbitration	<u>Bermuda</u>

CONDITIONS OF CONTRACT

1.0 Short Form of Contract - GENERAL CONDITIONS

The conditions of contract are the **Conditions of Contract for the Short Form of Contract, First Edition 1999**, published by the Federation Internationale des Ingenieurs-Conseils (FIDIC).

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

2.0 Short Form of Contract - 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

General

The terms "The Employer" or "Employer" wherever used throughout the contract documents is amended by inserting in their place the term "The Procuring Entity" or "Procuring Entity" as the case maybe. This done for the avoidance of any doubt that the relationship created with "the Contractor" is an independent contractor relationship and not one of Employer and Employee.

2. The Procuring Entity

2.2 Permits and Licences

This clause is amended by adding the following paragraphs after the word "Appendix."

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

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

4.0 The Contractor

Add the following clauses;

4.5 Facilities

The Contractor 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 Works. The Contractor shall pay proper regard to the prevention of obstruction of public roads and walkways and the avoidance of nuisance to the public and to residents.

4.6 Electricity, Water and Gas

The Contractor shall be responsible for the provision of all, power water and other services that he may require for the Works and shall pay and bear all costs associated therewith.

4.7 Protection of Utilities

The Contractor shall carry out the Works so that there is the minimum of interruption to the supply of water, telephone, electricity and other services through existing mains and services. Work 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 Procuring Entity or competent Authority.

4.8 Reporting of Errors

The Contractor, before execution of the contract, shall examine and compare the Contract Documents and shall report any errors, inconsistencies, or omissions he may find to the Procuring Entity's Representative immediately.

4.9 Damage to Persons and Property

The Contractor shall, immediately on occurrence of any incident involving loss or injury at or about the Site, or in connection with the execution of the Works, report such incident to the Procuring Entity or the Procuring Entity's Representative. The Contractor shall also report such incident to the appropriate Authority whenever such report is required by Law.

4.10 Rates, Wages, Hours and Conditions of Labour

The Contractor shall pay to all Foremen, Craftsmen, and Labourers not less than the rates of wages for the various Foremen, Craftsmen, and Labourers that prevail in Bermuda, and comply with such requirements relating to hours of work and conditions of labour as are or may be laid down from time to time by the Laws of Bermuda.

4.11 Facilities for Staff and Labour

The Contractor shall provide such accommodation and amenities as he may consider necessary for all his expatriate staff and labour, employed for the purposes of or in connection with the Contract.

The Contractor shall comply with all local statutes and regulations and any amendments thereto with regard to the health and safety of his employees and others and shall provide adequate latrines for his workers on the Site to conform with the requirements of the Department of Health.

4.12 Display of Notices

The Contractor shall post notices to inform the workers of their conditions of work in conspicuous places at the establishments and workplaces concerned.

4.13 Alcohol, Liquor and Drugs

The Contractor shall not, otherwise than in accordance with the Statutes, Ordinance and Government Regulations or Orders for the time being in force, import, sell, give, barter, or otherwise distribute or dispose of any alcoholic beverage, liquor, or drugs, or permit, or suffer any such importation, sale, gift, barter, distribution or disposal by his sub-contractors, agents, or employees.

4.14 Arms and Ammunition

The Contractor shall not give, barter, or otherwise distribute to any person or persons, any arms or ammunition of any kind or permit or suffer the same to be done on the site or in connection with this contract.

4.15 Festivals and Religious Festivals

The Contractor shall in all dealings with labour in his employment have due regard to all recognised festivals, public holidays, days of rest, and religious or other customs.

4.16 Epidemics

In the event of any outbreak of illness of an epidemic nature, the Contractor shall comply with and carry out such regulations, orders, and requirements as may be made by the Government, or the local medical or sanitary authorities for the purpose of dealing with and overcoming the same.

4.17 Supply of Drinking Water

The Contractor shall so far as is reasonably practicable having regard to local conditions provide on the site, to the satisfaction of the Procuring Entity's Representative, an adequate supply of drinking water and other water for the use of the Contractor's staff and work people.

15.0 Resolution of Disputes

15.1 Adjudication

The heading "Adjudication" is replaced with the heading "Dispute Resolution" and this clause is deleted in its entirety and replaced by the following clause:

"If a dispute (of any kind whatsoever) arises between the Parties in connection with, or arising out of, the Contract or the execution of the Works, including any dispute as to any certificate, determination, instruction, opinion or valuation of the Procuring Entity's Representative or if either party believes that a decision taken by the Procuring Entity's Representative was either outside of his authority or that the decision was wrongly taken, the dispute shall be settled between the parties by negotiation. The Procuring Entity and the Contractor shall make every effort to resolve amicably by direct negotiations any such disagreement or dispute arising between them under or in connection with the contract.

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.

If this negotiation is not successfully settled within Thirty (30) 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 Certified Mediator to conduct a mediation between the parties to aid in arriving at an amicable resolution of the dispute. This procedure shall be private, confidential and without prejudice. The parties will equally bear the cost of the Mediation.

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. 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. The Mediator shall not have the power to impose a settlement on the parties.

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 in writing of the failure of the Mediation.

Within three (3) days of being advised of the failure of the Mediation, the Procuring Entity shall propose in writing a list of not less than three (3) qualified persons to act as the arbitrator. The Contractor shall within seven (7) days of receipt of the said list from the Procuring Entity select from the said list one qualified person to act as the single arbitrator over the dispute. Within three (3) days of being notified of the Contractor's selection the Procuring Entity shall refer the dispute to the person selected by the Contractor as arbitrator for arbitration.

The mediator's role in the dispute resolution process shall cease upon appointment of the Arbitrator. The Mediator shall not be called as a witness in the arbitration proceedings.

During the dispute resolution process, the Contractor shall continue to perform the work in accordance with this contract. Failure to do so shall be considered a breach of contract.

15.2 Notice of Dissatisfaction

This clause is deleted in its entirety.

15.3 Arbitration

This clause is deleted in its entirety and replaced by:

Unless settled amicably, any dispute shall be finally settled by arbitration as follows:

- a. the dispute shall be finally settled in accordance with the Bermuda Arbitration Act 1986
- b. the dispute shall be settled by a sole arbitrator appointed in accordance with the said Act, and
- c. the arbitration shall be conducted in the English language.

The arbitrator shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Procuring Entity's Representative, relevant to the dispute. Nothing shall disqualify the Procuring Entity's Representative from being called as a witness and giving evidence before the arbitrator(s) on any matter whatsoever relevant to the dispute.

Arbitration may be commenced prior to or after completion of the Works, by mutual agreement. The obligations of the Parties and the Procuring Entity's Representative shall not be altered by reason of any arbitration being conducted during the progress of the Works.

B. Additional Clauses to be added to the GENERAL CONDITIONS

16.0 Arithmetical Accuracy of Proposal

The Procuring Entity accepts no responsibility for the arithmetical or other accuracy of the Contractor'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.

17.0 Taxation

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 Customs Tariff Act 1970) materials and other things of whatsoever nature brought into Bermuda for the purpose of Contract.

18.0 Bribery

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 Procuring Entity or of the Procuring Entity's Representative 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 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 Procuring Entity and also to the payment of any loss or damage resulting from such cancellation.

19.0 Debt Recovery

The Procuring Entity shall be entitled upon a certificate in writing of the Procuring Entity's Representative 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 Procuring Entity shall deem advisable.

20.0 Strikes and Lock-Outs

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

21.0 Members and Staff of Procuring Entity and Procuring Entity's Representative not Personally Liable

Neither the Procuring Entity nor the Procuring Entity's Representative or the Procuring Entity's employees, agents or assigns 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.

22.0 Details to be Confidential

The Contractor shall treat the details of the Contract as private and confidential, save in so far as may be necessary for the purposes thereof, and shall not publish or disclose the 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 or disclosure for the purpose of the Contract the same shall be referred to the decision of The Procuring Entity whose award shall be final.

23.0 Rights and Remedies Not Waived

In no event shall the making by The Procuring Entity of any payment to the Contractor constitute or be construed as a waiver by The Procuring Entity of any breach of Contract, or any default which may then exist, on the part of the Contractor, 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.

24.0 Contractor's Risks

From the Starting Date until the Procuring Entity's Representative has issued a certificate for the correction of any Defects, the risks of personal injury, death, and loss or damage to property and adjacent property (including, without limitation, the works, materials and equipment) are the Contractor's risks.

25.0 Laws, Regulations and Orders

The Contractor 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 Contract. He shall conform similarly with any such Laws, Regulations and Orders which may come in to force after the date of this Agreement.

26.0 Construction of Contract

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.

27.0 Details to be Confidential

The Contractor shall treat the details of the Contract as private and confidential, save in so far as may be necessary for the purposes thereof, and shall not publish or disclose the same or any particulars thereof in any trade or technical paper or elsewhere without the previous consent in writing of the Procuring Entity or the Procuring Entity's Representative. If any dispute arises as to the necessity or disclosure for the purpose of the Contract the same shall be referred to the decision of the Procuring Entity whose award shall be final.

28.0 Rights and Remedies Not Waived

In no event shall the making by the Procuring Entity of any payment to the Contractor constitute or be construed as a waiver by the Procuring Entity of any breach of Contract, or any default which may then exist, on the part of the Contractor, 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.

29.0 Continuity of Supply and Connections to Existing Work

The Contractor 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 Procuring Entity.