

## SERVICES AGREEMENT

THIS SERVICES AGREEMENT ("**Agreement**") is made the \_\_\_\_ day of \_\_\_\_\_ 20\_\_ (the "**Effective Date**")

BY AND BETWEEN:

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

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

This Agreement, which consists of the General Terms and Conditions, Schedule 1 and Appendix 1, sets out the terms and conditions upon which you will provide services to the Government.

## GENERAL TERMS AND CONDITIONS

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

That in this Agreement, capitalized terms have the respective meanings referred to in this Agreement, words by their context importing the plural shall include the singular and vice versa, references to either gender includes any other gender or a neutral entity where appropriate, and a reference to any statute or regulation or law means as amended from time to time and include any successor legislation, regulations or laws. Where the contexts requires, the word "**Supplier**" shall include the word "**you**" and vice versa.

### **1 Definitions**

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

"**Agreement**" means this Services Agreement and includes these General Terms and Conditions, Schedule 1 and Appendix 1;

"**Appendix 1**" contains the statement of work or "**SOW**" as provided by the Supplier;

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

"**Claims**" means any written or oral claims, actions or demands for money (including taxes

or penalties) or services or for any allegation of a breach in rendering or failure to render any Services performed or which ought to have been performed. Claims also includes patent, trade secret, copyright, or other intellectual property right claims, claims connected to Equipment including infringement of Software, costs, penalties, fees and expenses (including legal and professional fees, charges or expenses);

"**Commencement Date**" means the date of the commencement of the Services as set out in Schedule 1;

"**Completion Date**" means the date of the completion of the Services as set out in Schedule 1;

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

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

"**Consents**" means any qualifications, rights,



permits, licenses, immigration approvals, authorizations or other consents;

**“Data”** means logbooks, records or data files used or created pursuant to the Services (including electronic storage media, Software, Source Code, any data base and data base rights, personal or personally identifiable information relating to an identified or identifiable individual voice and data transmissions including the originating and destination numbers and internet protocol addresses, date, time, duration), and other relevant data connected with the Services;

**“Documents”** means written advice, project specifications, designs, drawings, plans, specifications, reports, tenders, proposals or other information and documents, technical specifications related to the Software or Services provided by the Supplier or the Representative;

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

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

**“Fee(s)”** means the gross fees to be paid to you for the Services provided in accordance with the terms of this Agreement;

**“Good Industry Practice”** means the exercise of that degree of skill, care, accuracy, quality, prudence, efficiency, foresight and adherence to timeliness as would be expected from a professional individual or leading company within the relevant industry or business sector in Bermuda or in England;

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

**“Insurance Policies”** means an amount of not less than the minimum level of insurance required by law or regulatory body or that is required to cover for similar services as are provided in this Agreement or the amount as set out in Schedule 1, whichever is greater, covering

you, or your officers, directors, employees, agents, or subcontractors, professional negligence and errors and omissions, and shall be on an “occurrence” basis. “The Government of Bermuda” shall be endorsed as an additional insured on the required policy or policies and the insurances afforded to the Government of Bermuda shall be primary insurance;

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

**“Objective”** means the targets, results or goals to be achieved as specified in Schedule 1;

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

**“PIPA”** means the *Personal Information Protection Act 2016*;

**“Representative(s)”** means, the person(s) providing the Services on the Supplier’s behalf and includes any person engaged by the Supplier;

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

**“Services”** means the provision of all services and deliverables and includes the use of any Equipment and Software;

**“Security Procedures”** means rules and regulations governing access to, and health and safety procedures while on, Government premises; and information technology security protocols;

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



“**Source Code**” means the source code within the Software, in the language in which the Software was written, together with all Documents, all of a level sufficient to enable the Government's personnel to understand, develop and maintain that Software.

“**Term**” means the term of this Agreement as set out in Schedule 1.

## 2 Provision of Services

- 2.1 You and the Representative agree to perform and complete the Services in accordance with and subject to Schedule 1, Appendix 1 and these General Terms and Conditions and the Government agree to pay the Fee for the Services.
- 2.2 In the event of inconsistency between Schedule 1, Appendix 1 and these General Terms and Conditions, then the order of precedence to resolve any such inconsistency shall be as follows: (i) the SOW; (ii) Schedule 1; and (iii) these General Terms and Conditions.
- 2.3 In the event that it is required and with Government prior due diligence and written approval, you may appoint a Representative who shall have full authority to act and provide Services on your behalf. Details of the Representative shall be set out in Appendix 1.
- 2.4 You are responsible for all acts or omissions of a Representative relating to the Services and for ensuring their compliance with the requirements of this Agreement.
- 2.5 You may not subcontract your obligations under this Agreement beyond using the Representative, without Government's prior written consent and you, and you shall ensure that, the Representative co-operates with the Government's employees to effectively carry out your obligations under this Agreement.
- 2.6 The Government may request, by notice in writing to you, the replacement of the Representative, and agreement with such request shall not be unreasonably withheld. You shall use your best endeavors to replace the Representative with another qualified individual and such replacement shall be subject to approval by the Government.
- 2.7 You will seek permission from the Government prior to outsourcing any service. In the event of any outsourcing, you will be responsible for all outsourced services or personnel.
- 2.8 Documents: You shall provide Documents as requested or by the date as agreed between the parties and the Government shall have the right to take possession of and use any completed or partially portions of the Documents notwithstanding any provisions expressed or implied to the contrary.
- 2.9 You acknowledge that the Government will be:
  - a) relying on the accuracy of the contents of the Documents on the basis that they are accurate and complete in all material respects and are not misleading;
  - b) relying on your and the Representative's skills, expertise and experience concerning the provision of the Services; and
  - c) using your reports and any other advice and assistance provided under this Agreement.
- 2.10 Security Procedures: The Services shall be provided in such place and location as instructed by the Government.
- 2.11 If the Services are required to be provided on the Governments' premises or use Government IT systems, you and the Representative will conduct yourselves in a professional and safe manner and you and the Representative shall at all times comply with and be subject to Security Procedures.
- 2.12 Failure to adhere to the Security Procedures and the requirements of this section may be considered a material breach of this Agreement and may result in termination for default.
- 2.13 The Government shall inform you of the Contact, i.e. whom you or the



Representative shall be reporting to and who will accept the Services.

- 2.14 Services are provided on a **non-exclusive** basis to the Government in Bermuda.

### 3 Government Responsibilities

The Government shall disclose all information and provide reasonable and agreed computer facilities and access necessary for you to provide the Services.

### 4 Additional Services

- 4.1 Additional services or variations in the Services may be required after the date of execution of this Agreement and may be performed upon written approval of the Government. Such written approval shall be evidenced by a change authorization order (“**Change Order**”) or such other written authorization as approved and signed by the Contact or a duly authorised Public Officer. In such case, a Change Order shall be issued within a reasonable time thereafter.

- 4.2 All Change Orders are subject to the terms and conditions of this Agreement.

- 4.3 Fees for additional services shall be agreed by the Government in writing prior to any additional services being performed.

### 5 Fees, Invoicing and Payment

- 5.1 The Government shall compensate you the Fee for the Services in arrears during the Term. The Fee shall be set out in Schedule 1 and paid in BMD\$. The Fee has been calculated to take account of payroll tax and social insurance contributions that, as a non-employee, you are required to pay in full.

- 5.2 The Fee will be subject to deductions by law in the event that you have not registered as a service provider with the relevant Government department.

- 5.3 The Fee will be subject to further deductions for the following reasons:

a) where there has been an overpayment to you for any reason;

b) if you have not delivered the Services or any part of the Services, as required;

c) where the Government has suffered loss by your failure to follow instructions or exercise due diligence;

d) if you cause damage to Government property, the value of replacement or repair of the damaged property shall be deducted from the Fee;

e) if you leave or terminate this Agreement without giving the required notice, the value of the Fee for the notice period may be deducted; and

f) when you no longer provide Services to the Government, there will be a deduction of any overpayments or advances of payment taken in excess of the Fee.

- 5.4 You will only be paid the Fee for the hours that you provide services. For the avoidance of doubt, you will not be paid during any time that you do not provide Services and you will not be paid for public holidays.

- 5.5 Invoicing: You shall provide a monthly invoice for the Services as set forth herein, with supporting documentation and itemizing the following:

a) Your name, invoice date and invoice number;

b) Change Order number, if applicable;

c) Details of Services performed;

d) Time and services rendered in hourly (or less than daily) increments with sufficient detail to determine appropriate expenditure of hourly efforts;

e) Other supporting documentation (including copies of any invoices or receipts for reimbursable expenditures as provided for herein);

f) Mailing address and the person to whom payment is to be sent or the banking institution and full account information for payment by wire



transfer (unless such information has previously been provided to the Government); and

g) Telephone number, fax number and e-mail address.

5.6 Government shall pay the Fee and/or undisputed invoices 30 days in arrears. The Government may dispute an invoice within 30 days of receipt, however, the Government reserves the right to dispute payments, made on an invoice at any time if it suspects fraud or willful misconduct on your part (“Faults”). In the event that any Faults are discovered in relation to payments made to you, the Government reserves the right to recover such payments from you, at your cost (which shall include all legal and collection fees and expenses) or to set off any disputed amounts against unpaid invoices.

5.7 Your failure to submit a proper invoice in a timely manner may result in a delay in payment by the Government. You agree that the Government is not responsible, nor will it be liable to you or under law or equity for any interest or expenses that you may incur resulting from any delays in payment caused by your failure to comply with your obligations under this Agreement.

## **6 Expenses**

6.1 Neither you, nor the Representative, are allowed to incur Expenses associated with the provision of the Services without having received prior written consent from the Government. You shall be liable for all Expenses not prior approved.

6.2 If prior approved, all air travel shall be at economy class, unless otherwise agreed in writing.

6.3 While performing the Services in or from Bermuda, the Representative may require accommodation in connection with the provision of Services. In the event that accommodation is required, the Government may assist you or the Representative in acquiring accommodation but the Government shall

not be liable to pay for such accommodation. You shall be liable for all Expenses and utility fees (including water, telephone and other charges) incurred by residing or otherwise staying at a property of your own choosing. You agree to abide by the rules and regulations of the property owner and you shall indemnify the Government against any losses the property owner may suffer as a result of your or the Representative, residing or staying at that property.

6.4 Except for the Fee and any approved Expenses, no other amounts are payable by the Government to you. Government may set off any amounts owed by you to the Government against any Fees or Expenses.

6.5 The Government shall pay by direct transfer into your bank account. It is your responsibility to inform the Government of your current contact and bank details in order that the Government can contact and make payment to you.

6.6 Without prejudice to section 4.1, the Government reserves the right to refuse to pay an invoice in the event that the invoice is presented 6 months after the time when it should have been presented for payment.

## **7 Taxes**

7.1 You shall be responsible to register with the appropriate department of the Government in order to pay for all taxes associated with the provision of Services, including but not limited to payroll tax and social insurance contributions (“Taxes”) and you consent to the Government deducting due or outstanding Taxes from the Fee on your behalf, at our option. Your Tax numbers shall be out in Schedule 1.

7.2 In the event that we have not made deductions on your behalf, you shall provide us with proof of payment of amounts due to the Government such as any Taxes and all other receivables to us, prior to you receiving your final payment.



## 8 Representations and Warranty

- 8.1 You represent and warrant that you and the Representative, will perform all activities relating to the Services:
- in accordance with Good Industry Practice and in a professional and lawful manner;
  - if applicable, using appropriately skilled and experienced Representatives whose identity, address and right to live and work in Bermuda and (to the maximum extent permissible) whose absence of relevant criminal records has been verified;
  - in strict accordance with the standards and timelines set out in Schedule 1 or Appendix 1, free of defects, errors or faults, in order to meet the objectives of this Agreement; and
  - in accordance with applicable law including PIPA; rules, regulations and guidelines or policies provided by the Government.
- 8.2 You represent and warrant that:
- you have the right to license all intellectual property rights in the Services, Software and Documents, to the Government.
  - upon installation, the Equipment will be compatible with existing equipment and software on Government systems and the Equipment will meet all the technical documentation and requirements required to operate the Services in accordance with Government requirements and objectives;
- 8.3 You represent and warrant that this Agreement is executed by you or by your duly authorized Representative and that you have obtained all required authorizations and capacity in order that you can fulfill your obligations.
- 8.4 You declare that you are in possession of all Consents necessary for the provision of Services and you will maintain such Consents at all times while providing

Services.

- 8.5 You shall procure the benefit of any warranties or guarantees in respect of goods and materials you supply to Government and provide copies of such warranties or guarantees.
- 8.6 You confirm that all payments to Government, including but not limited to, taxes and social insurance, are current. In the event that any payments are delinquent, the Government may deduct, in part or in full, any payments made to you under this Agreement.
- 8.7 You shall provide information or sign any other agreements necessary or as requested by the Government, in order that either you or the Government can fulfill their obligations under this Agreement.
- 8.8 You acknowledge and warrant that you are fully satisfied as to the scope and nature of the Services and of your obligations under this Agreement and that you have the corporate power and authority to enter into, and perform your obligations under, the Agreement.

## 9 Remedies

- 9.1 If the Service does not conform to the warranty as set out in this Agreement, you shall, at your cost and Expense, use all reasonably commercial efforts to correct any such non-conformance or non-availability promptly, or provide the Government with an alternative means of accomplishing the desired performance.
- 9.2 Without prejudice to any other rights available to the Government, you shall, at your Expense:
- repair or replace Equipment where the Equipment is damaged as a result of your, or the Representative's negligence, error, omission or willful misconduct in providing the Service.
  - if the Documents are inaccurate or misleading or the Services are not performed in accordance with this Agreement, then the Government, in its sole discretion, may:



- i) require correct Documents;
- ii) require, in whole or in part, the Services to be re-performed during the Term or within 6 months of the Completion Date;
- iii) carry out an assessment of the value of the defective Documents or Services and deduct that value from amounts that Government is required to pay you; or
- iv) obtain the Documents or Services from another service provider and you will be required to pay all amounts payable by the Government in obtaining alternative documents or services from another service provider to make good the defective Documents or Services.

9.3 Without prejudice to any other rights available to it, the Government may, at your Expense:

- a) repair, replace or otherwise fix the Service where the Equipment is damaged as a result of your, or any person providing services on your behalf, negligence, error, omission or willful misconduct; or
- b) obtain Services from another service provider and terminate this Agreement.

## 10 Progress Report

- 10.1 If required, you shall submit progress reports in connection with the Services (“**Reports**”) on at least a monthly basis, or as otherwise required, to the Government. The Reports shall include a summary of the activities and accomplishments during the previous reporting period.
- 10.2 The Report will also include YTD totals for payments received and work completed (expressed in BMD\$).
- 10.3 Any decisions and/or actions required of the Government during the upcoming reporting period(s) should be included in the Report. The specified date for submission of the Reports for the reporting period shall be determined by

the Government.

## 11 Inspection and Approval of Services

- 11.1 The Government shall at all times retain the right to inspect the Services provided by you or the Representative and you consent to visits to your premises in order to inspect the Services or Documents and Government shall have the right to review, require correction or additional follow up, if necessary, and accept or reject the Services and any Documents submitted by you or the Representative.
- 11.2 You shall make any required corrections promptly at no additional charge and return a revised copy of the written work product to the Government within 7 days of notification or a later date if extended by the Government. In the event that you are required to implement changes with respect to your performance of Services, such change shall be implemented within a reasonable time, as determined by the Government in consultation with you.
- 11.3 Your failure to proceed with reasonable promptness to make necessary corrections shall be a default. If your corrected performance or written work product remains unacceptable, the Government may terminate this Agreement, reduce the Fee and/or reject the hours submitted in connection with such work to reflect the reduced value of services received.

## 12 Time of the Essence

- 12.1 You are responsible for managing time in order to complete your obligations under this Agreement and shall complete any portion or portions of the Services in such order as the Government may require rather than providing Services during a specified amount of time and you recognize that providing Services outside of Business Days may be necessary in order to fulfil your obligations and responsibilities without additional compensation of any kind.
- 12.2 The Government shall give due consideration to all Documents submitted by you or the Representative, and shall



make any decisions which are required to be made in connection therewith within a reasonable time so as not to delay the progress of the Services.

### **13 Licence**

13.1 You grant to Government a non-exclusive and royalty-free license to use Software and Documents, to enable Government to use Equipment and the Services.

13.2 You retain title and property rights to the Equipment under this Agreement. Unless specifically stated in the Agreement, Government neither owns nor will acquire any right of ownership to any Equipment, including, but not limited to, copies, and any related patents, copyrights, trademarks, or IP addresses assigned to you.

13.3 The Licence granted herein includes all major releases, updates or upgrades of Software.

13.4 You shall ensure the continued compatibility of the Equipment with all major releases, updates, or upgrades of any Software.

13.5 In the event you are not able to support any Software update, upgrade, version or new release that changes major functionality and is not compatible with the Equipment or a Service, you shall use your best efforts to resolve such issues and to provide optimal functionality of the Equipment or the Service.

13.6 If required by the Government, you shall maintain and keep current human and computer readable copies of the Source Code and you shall provide copies of all Source Code.

### **14 Indemnity, Limitation of Liability, Insurance, Force Majeure and Business Continuity**

14.1 Indemnity: You shall indemnify, keep indemnified and defend the Government against:

- a) any Claim or Loss arising from any breach by you or the Representative;
- or

b) any Claim or Loss arising from a third party as a result of negligent act, errors, omission or wilful misconduct by you or a Representative.

14.2 The Government may satisfy such indemnity (in whole or in part) by way of deduction from any payment due to you.

14.3 If the use of a Service is enjoined as a result of a Claim or Loss, in addition to the indemnity set forth above, you shall (at your Expense): (i) obtain for the Government the right to use the infringing Service; (ii) modify such Service or Software in a manner that does not infringe any third party intellectual property rights; or (iii) substitute equivalent software or services that are acceptable to the Government and does not infringe any third party intellectual property rights.

14.4 No Liability: In no event shall the Government or a Public Officer be liable to you for Loss.

14.5 Limitation of Liability: Without limiting the provisions of this Section, Government's maximum aggregate liability, for all Claims or Loss in connection with this Agreement or the performance thereof arising during its entire term shall be limited to the Fees paid to you under this Agreement for the twelve (12) months immediately preceding the date the on which the latest Claim(s) or Loss first arose.

14.6 Your maximum liability to Government shall be the greater of any successful claims by Government against the Insurance Policies or 3 x annual Fees.

14.7 Nothing in this Agreement shall exclude or limit any liability for wrongful use of Confidential Information, misrepresentation, fraud, willful misconduct or any liability which cannot be lawfully limited or excluded and you shall accordingly maintain in full force and effect during the Term, the Insurance Policies.

14.8 All Claims against the Government must



- be commenced in court within one (1) year after the cause of action has accrued or the act, omission or event occurred from which the Claim arises, whichever is earlier, without judicial extension of time, or said Claim is barred, time being of the essence.
- 14.9 **Insurance:** If required by the Government, you shall maintain at your sole expense, on a primary basis, and an “occurrence basis”, at all times during the Term, the Insurance Policies in the minimum amounts set forth in Schedule 1. The Insurance Policies shall be evidenced by delivery to the Government of certificate(s) of insurance executed by the insurer(s) listing coverages and limits, expiration dates and terms of the policy or policies and all endorsements, and upon request a certified copy of each policy including all endorsements. Failure to provide acceptable proof of insurance as required by the Government shall entitle the Government to either obtain or maintain the Insurance Policies on your behalf at your sole cost and expense, or to terminate this Agreement without prejudice to any other of the Governments rights or remedies in connection with this Agreement.
- 14.10 You shall be responsible for the payment of all deductible amounts on such policy or policies and shall on request supply to the Government copies of such Insurance Policies and evidence that the relevant premiums have been paid.
- 14.11 In the event that you have not paid Insurance Policy premiums, upon signing this Agreement, you consent to the Government either deducting the Insurance Policy premium from the Fee, or otherwise making such Insurance Policy premium payment, on your behalf and recouping such payment from you, at the Government’s sole discretion.
- 14.12 At the Government’s sole option, all monies payable under the Insurance Policy shall be applied in making good or recouping expenditure, loss or damage suffered or incurred by the Government as a result of you or a Representative providing the Services.
- 14.13 You shall notify the Government forthwith of any changes to any of the policies, or of any claims or potential claims which have arisen to which the insurer(s) of the above policy or policies may be required to respond.
- 14.14 The policy clause “Other Insurance” or “Excess Insurance” shall not apply to any insurance coverage currently held by The Government of Bermuda, or to the Government of Bermuda’s Self-Insured Retentions of whatever nature.
- 14.15 If you subcontract any Services, you shall ensure that each subcontractor maintains insurance coverage with policy limits of at least the amounts stated above.
- 14.16 The insurance requirements set forth above do not in any way limit the amount or scope of your liability under this Agreement. The amounts listed indicate only the minimum amounts of insurance coverage that the Government is willing to accept to help ensure full performance of all terms and conditions of this Agreement.
- 14.17 **Waiver of Rights of Recovery.** You hereby waive all rights of recovery against the Government which you may have or acquire because of deductible clauses in or inadequacy of limits of the Insurance Policy or any policies of insurance that are secured and maintained by you.
- 14.18 **Force Majeure:** Neither of the parties shall be liable for failure or delay to perform obligations under this Agreement to the extent that this delay is caused by flood, fire and other event beyond its reasonable control (not caused by its own act or negligent omission) (“*force majeure*”) but each party shall use its best efforts to perform its obligations notwithstanding the *force majeure* event.
- 14.19 **Business Continuity:** Where applicable, you shall maintain, test and where appropriate implement business



continuity procedures to reduce the risk of force majeure impacting the provision of the Services and upon request, provide such evidence to the Government.

#### 15 Non-Solicitation

During the Term and for a period of 12 months after expiration or termination of this Agreement, you shall not solicit (whether directly or indirectly) any employee or consultant of the Government who was involved in the performance or receipt of the Services, unless otherwise agreed to in writing by the Government.

#### 16 Non-Disclosure of Confidential Information

16.1 You must ensure that all Confidential Information held by you is protected against unauthorized access, use, copying or disclosure. You acknowledge that the improper use, copying or disclosure of such information could be unlawful.

16.2 You will comply with Government's instructions if it has access to personal data as a result of providing the Services.

16.3 You may disclose information related to this Agreement to your personnel on a 'need to know' basis as required for the performance of the Services. You will keep strictly confidential any other Confidential Information and you shall only use such Confidential Information as required for providing the Services (and no other purpose).

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

16.5 If either you or the Representative fail to abide by the confidentiality provisions at any time, then such failure shall constitute a material breach of this Agreement and you shall pay the Government the equivalent of the Fee paid to you for a 3 month period as liquidated damages, in addition to any attorney's fees and costs of enforcement. You and the Representative shall be jointly and severally liable to the Government under this section.

#### 17 Intellectual Property, Copyright and Ownership

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

17.2 Documents created under this Agreement shall be original works created by you or the Representative and shall:

- a) not include intellectual property owned by or licensed to a third party except for intellectual property which you have the right to use (including the right to use such intellectual property for the purposes of this Agreement); and
- b) not subject the Government to any claim for infringement of any intellectual property rights of a third party.

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

17.4 You agree that all Documents and other works created in full or in part by you or the Representative for the Services may be maintained, changed, modified and/or



- adapted by the Government without the consent of either you or the Representative. Notwithstanding the foregoing, you and the Government may agree in writing that certain identified Document's or designated intellectual property rights will remain with you.
- 17.5 **Copyright:** Documents and Services and corresponding copyright and other intellectual property in the Documents shall belong to Government, which may utilise those Documents freely (including by adapting, publishing and licensing).
- 17.6 Documents or Confidential Information may not be used or copied for direct or indirect use by you or a Representative after expiry or termination of this Agreement without the express written consent of the Government.
- 17.7 Government acknowledges that you and Representative possess knowledge and expertise relating to the subject matter of the Services ("**Supplier Know-How**"), which may include intellectual property rights in certain pre-existing tools and materials used by you in performing the Services. Nothing in this Agreement is intended to transfer to Government any rights in the Supplier Know-How, which shall remain your property.
- 17.8 To the extent that any Supplier Know-How is included in any Documents and you hereby grant to Government a perpetual, unlimited, royalty-free, non-exclusive right and license to use and reproduce the Supplier Know-How to the extent reasonably necessary to achieve the Objective.
- 17.9 **Government logo:** You may not use Government's name or logo for any publicity or marketing purposes, unless consent for such use is provided in writing.
- 18 Term, Termination and Suspension**
- 18.1 This Agreement shall be effective from the Effective Date for the Term. The Services shall commence on the Commencement Date and continue until the Completion Date, whereupon this Agreement shall expire unless terminated earlier in accordance with its terms.
- 18.2 You shall not commence any additional services in the event of notification of termination of this Agreement, however, in the event that services are provided to the Government beyond the Completion Date, the terms and conditions of this Agreement shall continue on a day-to-day basis terminable without cause upon 24 hours prior written notice by either party to the other.
- 18.3 Either party may terminate a Service or this Agreement, in part or in whole, during the Term upon prior written notice without cause in accordance with the termination notice period as set out in Schedule 1.
- 18.4 Government may terminate this Agreement at any time based upon your default of your obligations under this Agreement. The Government, in its sole discretion, may provide you with a notice to cure ("**Cure Notice**") the breach that would otherwise amount to a basis to terminate this Agreement as a result of your failure to fulfill your obligations hereunder. You shall respond to any such Cure Notice within a reasonable time or within such time as provided therein, and you shall either cure the specified breach or provide assurances to cure the same which the Government, in its sole discretion, deems adequate.
- 18.5 Either party may terminate this Agreement immediately, if the other party:
- commits an irremediable breach; or
  - is subject to a change of control or chooses to discontinue its business; or
  - if the other party has a lack of funding or becomes or is deemed insolvent; or
  - if the other party's performance is affected by a *force majeure* event which lasts 7 days or more.
- 18.6 In the event of termination of this Agreement, all Fees due and payable shall



be paid to you.

- 18.7 Upon expiry or termination of this Agreement, you shall return all Government property or information or you shall irretrievably delete, as commercially practicable as possible, all Confidential Information, stored in any way using any device or application and all matter derived from such sources which is in your possession, custody or power and provide a signed statement that you have fully complied with your obligations under this section, save for any back-up required by law or as required in accordance with your record retention policy.
- 18.8 Upon expiry or termination of this Agreement, you shall provide Government with all such assistance as may be reasonably necessary in order to end the relationship in a manner which causes the least inconvenience to the Government including assisting with the transfer of Data.
- 18.9 The Government may temporarily suspend the Services hereunder and shall confirm such instruction in writing to you.
- 18.10 Upon any such suspension, the Government shall pay all Fees and Expenses up until the time of such suspension of Services. If, following suspension of the Services, there is no resumption within 6 months, this Agreement may be terminated by you, and the Government shall make a payment of all outstanding Fees and Expenses in accordance with this Agreement if such amounts are due.
- 18.11 The Government may issue a written order to resume the provision of Services within 6 months of suspension in accordance with the terms and conditions of this Agreement.
- 18.12 The rights arising under this termination section represent your sole remedy and excludes common law rights to terminate and claim damages for Loss you may suffer under this Agreement.

## **19 Data use and Transfer**

- 19.1 Upon request by the Government prior to or within sixty (60) days after the effective date of termination, you will make available to Government a complete and secure (i.e. encrypted and appropriately authenticated) file of Data in a format to be agreed at the time including all schematics and transformation definitions and/or delimited text files with documented, detailed schematic definitions along with attachments in their native format.
- 19.2 You will be available throughout this transfer of Data period to answer questions about all elements of the Data transfer process so that Government may fully access and utilize the transferred Data.
- 19.3 If required, you shall manage the transfer of all Data and technical assets to a service provider of the Government's choice, at your Expense.
- 19.4 You shall guarantee that the Source Code shall be fully source controlled with a complete history of all changes. The Source Code shall adhere to professional standards in terms of quality and organisation where necessary to allow other Government to be able to access and use the Source Code.

## **20 General**

- 20.1 Any notice or other communication required to be given under this Agreement shall be duly given or served if it is in writing (for the purposes of this section, a notice shall be deemed to be in writing if it is in the form of a printed or hand-written letter or other document, or in the form of an e-mail message), signed and delivered by hand or sent by prepaid recorded post to the address of the party as first set out above (or such other address as is notified in writing to the other party from time to time); or sent by e-mail to the e-mail address of the party as provided by that party (or such other e-mail address as is notified in writing to the other party from time to time).



- 20.2 Where this Agreement refers to past or current obligations, this Agreement applies retrospectively from the Effective Date.
- 20.3 This Agreement together with any documents 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.
- 20.4 Any amendments to this Agreement shall be made in writing and signed by each party.
- 20.5 You may not assign or transfer any rights or obligations under this Agreement (for example assigning or factoring invoices) without the Government's written consent. Any such transfer by you in breach of this section shall be void and be an irremediable material breach of this Agreement. Government may transfer its rights and obligations under this Agreement.
- 20.6 You will be an independent contractor and nothing in this Agreement shall render you an employee, worker, agent or partner of the Government and you shall not hold yourself out as such.
- 20.7 No one other than a party to this Agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.
- 20.8 The doctrine of *Contra Proferentem* shall not be applicable in this Agreement.
- 20.9 Expiry or termination of this Agreement in any manner shall not release you or a Representative from any liability or responsibility with respect to any representation or warranty. Sections related to indemnification, limitation of liability, non-disclosure of information and intellectual property shall survive termination of this Agreement.
- 20.10 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. 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.

- 20.11 You consent to the Government processing data relating to you for legal, administrative and management purposes. The Government may make such information available to those who provide services to it (such as advisers and payroll administrators), regulatory authorities and governmental or quasi-governmental organizations including those outside of Bermuda.

## **21 Governance**

- 21.1 You will inform Government promptly of all known or anticipated material problems relevant to the delivery of Services.
- 21.2 You agree to provide the Government (and, if Government requests in writing, its auditors and competent regulatory authorities) with full information on the provision and delivery of the Services in an open and cooperative way and attend meetings with the Government to discuss the Services and this Agreement. The Government may disclose any information relating to this Agreement to a regulator or auditor.
- 21.3 You will notify the Government immediately if you have any actual or potential conflict of interest which might affect your ability to provide the Services.

## **22 Retention of Confidential Information, Records and Audit**

- 22.1 You will retain any part of, or all, Confidential Information during the Term and following expiry or termination of this Agreement until all appeals processes are complete in the event of any litigation in connection with the Services. The Government will have full access to and



- the right to examine any documents connected to the Services, at any time during this period. The Government must be notified, in writing, prior to any of the aforementioned documents being destroyed.
- 22.2 You shall retain all records pertinent to this Agreement for a period of 3 years following expiration or termination hereof.
- 22.3 You shall establish and maintain books, records, and documents (including electronic storage media) in accordance with Canadian Generally Accepted Accounting Principles and practices which sufficiently and properly reflect all revenues and expenditures of funds provided by the Government, including all receipts, invoices, payroll records and/or other documentation used to substantiate requests for payment hereunder. At any time or times before final payment and for 3 years thereafter, the Government may cause your records to be audited by a duly authorized Public Officer. Records required to resolve an audit shall be maintained for a period of not less than 3 years following resolution of the audit or any arbitration or litigation arising hereunder.
- 22.4 The Government reserves the right to conduct periodic visits to your premises and/or audits after the commencement of this Agreement to ensure continued compliance.
- 22.5 Any payment or payment request may be reduced by amounts found by the Government not to constitute allowable costs. In the event that all payments have been made to you by the Government and an overpayment is found, you shall reimburse the Government for such overpayment within thirty (30) days following receipt of written notification thereof.
- 22.6 Duly authorized Public Officers shall have full access to and the right to examine any of the records pertinent to this Agreement at all reasonable times for as long as such records are required to be retained hereunder.
- 22.7 You shall include the aforementioned audit and record keeping requirements in all subcontracts and assignments, if any, made in accordance with this Agreement.
- 23 Electronic Communication**
- Government may communicate with you by email. The internet is not secure and messages sent by email can be intercepted. You shall use your best efforts to keep your security procedures current and all communications by email secure.
- 24 Governing law**
- This Agreement is subject to Bermuda law and you and the Government submit to the exclusive jurisdiction of the Bermuda courts in relation to this Agreement.
- 25 Dispute Resolution**
- 25.1 Where the parties are unable to resolve a dispute in accordance with this Agreement the parties, upon agreement, may submit such dispute for resolution by arbitration. The tribunal shall consist of a sole arbitrator appointed by agreement between the parties or failing such agreement by the Appointments Committee of the Chartered Institute of Arbitrators, Bermuda Branch. The procedure to be followed shall be that as laid down in the Bermuda International Conciliation and Arbitration Act 1993 and the UNCITRAL Arbitration Rules presently in force. The place of arbitration shall be Bermuda and Bermuda law shall apply. The language of the arbitration shall be English.
- 25.2 The decision and award of the arbitrator shall be delivered within three (3) months of his or her appointment, unless otherwise agreed between the parties, and shall be final and binding on the Parties and enforceable in any court of competent jurisdiction. Nothing in this section prevents or in any way restricts either party from seeking specific performance, injunctive relief or any other form of equitable remedy. The parties shall



continue to perform their respective obligations during the dispute resolution process set out in this section, unless and until this Agreement is terminated in accordance with its terms.

- 25.3 The costs of the arbitration, including administrative and arbitrators' fees, shall be shared equally by the parties and each party shall bear its own costs and attorneys' and witness' fees incurred in connection with the arbitration unless the arbitrator determines that it is equitable to allocate such costs and fees differently and so orders in rendering judgment.
- 25.4 In rendering judgment, the arbitrators may not provide for punitive or similar exemplary damages.
- 25.5 The arbitration proceedings and the decision shall not be made public without the joint consent of the parties and each party shall maintain the confidentiality of such proceedings and decision unless otherwise permitted by the other party, except as otherwise required by applicable law or statutes.

SAMPLE



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

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

SAMPLE

**SCHEDULE 1**

This appendix is incorporated into the Agreement. Capitalized terms used but not defined in this appendix will have the meanings given to them in the Agreement. If a term in this appendix conflicts with a term in the Agreement, the provisions of this appendix will prevail to the extent of such conflict.

- Objective:** [please provide required objective here: e.g. Government requires the Supplier to provide the services as detailed below in an efficient and cost effective manner for and on behalf of the residents of Bermuda].

- The Government**

<b>Ministry:</b>			
<b>Department:</b>			
<b>Address:</b>			
<b>Tel No.:</b>		<b>Mobile No.:</b>	
<b>Email address:</b>			
<b>Government Contact:</b>			
<b>Tel No.:</b>		<b>Mobile No.:</b>	
<b>Email address:</b>			

- Supplier and Service specific conditions:**

<b>Supplier Name:</b>			
<b>Address:</b>			
<b>Home Tel:</b>		<b>Mobile No.:</b>	
<b>Email address:</b>			
<b>Commencement Date:</b>			
<b>Completion Date:</b>			
<b>Termination Notice Period:</b>		30 days	
<b>Hourly Fee payable in arrears:</b>		BMD\$	
<b>Special Conditions related to the Fee:</b>			
<b>Payroll Tax #:</b>		<b>Social Insurance No.:</b>	
<b>Insurance Coverage:</b>		BMD\$300,000 Professional Liability	



4. **Services provided by the Supplier**

SAMPLE



**APPENDIX 1**  
**Statement of Work**

SAMPLE