

## CONTRACT AGREEMENT

**This Agreement** made the XX day of XXXX 2021

Between The **Department of Public Transportation of The Government of Bermuda** (hereinafter called "the Employer") of the one part,

And .....of .....(hereinafter called "the Contractor") of the other part

**Whereas** the Employer desires that the Works known as **The DPT Electric Bus Charging Facility** should be executed by the Contractor, and has accepted a Tender by the Contractor for the execution and completion of these Works and the remedying of any defects therein,

**The Employer and the Contractor agree** as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement:
  - (a) The Electric Bus Charging Facility RFP submission annexed hereto (which includes a breakdown of the Contract Price)
  - (b) The Addenda nos ..... - .....
  - (c) The Conditions of Contract
  - (d) The Employer's Requirements, as detailed in the RFP documents and any addenda and
  - (e) The Contractor's Tender.
3. In consideration of the payments to be made by the Employer to the Contractor as hereinafter mentioned, the Contractor hereby covenants with the Employer to design, execute and complete the Works and remedy any defects therein in conformity with the provisions of the Contract.
4. The Employer hereby covenants to pay the Contractor, in consideration of the design, execution and completion of the Works and the remedying of defects therein, the final Contract Price at the times and in the manner prescribed by the Contract.
5. The Contract shall come into full force and effect on the date when the following conditions are satisfied:
  1. All the requirements of the **Electric Bus Charging Facility RFP** have been demonstrated to have been met,
  2. A detailed schedule of costs including unit price rates have been confirmed and submitted by the Contractor,
  3. All **Government of Bermuda Financial** checks have been satisfied,
  4. Any conditions of a **Letter of Intent** to enter into a contract have been satisfied .

The Employer shall promptly confirm to the Contractor the date on which all these conditions have been satisfied. If any of these conditions has not been satisfied within 30 days of the above-mentioned date on which this Agreement is made, this Agreement shall be void and ineffective and any securities issued in relation to the above Works shall be returned.

6. The Commencement Date shall be .....

**In Witness** whereof the parties hereto have caused this Agreement to be executed the day and year first before written in accordance with their respective laws.

**ANNEX A: CONTRACT FORMS**  
DPT2021-02 ELECTRIC BUS CHARGING FACILITY RFP

SIGNED by:

SIGNED by:

**for and on behalf of the Employer** in the presence of

**for and on behalf of the Contractor** in the presence of

Witness:

Witness:

Name:

Name:

Address:

Address:

Date:

Date:

DRAFT

**ANNEX A: CONTRACT FORMS**  
DPT2021-02 ELECTRIC BUS CHARGING FACILITY RFP  
**EXAMPLE FORM OF PARENT COMPANY GUARANTEE**

[See page 4, and the comments on Sub-Clause 1.14]

Brief description of Contract

Name and address of Employer

(together with successors and assigns).

We have been informed that \_\_\_\_\_ (hereinafter called the "Contractor") is submitting an offer for such Contract in response to your invitation, and that the conditions of your invitation require his offer to be supported by a parent company guarantee.

In consideration of you, the Employer, awarding the Contract to the Contractor, we (*name of parent company*) \_\_\_\_\_ irrevocably and unconditionally guarantee to you, as a primary obligation, the due performance of all the Contractor's obligations and liabilities under the Contract, including the Contractor's compliance with all its terms and conditions according to their true intent and meaning.

If the Contractor fails to so perform his obligations and liabilities and comply with the Contract, we will indemnify the Employer against and from all damages, losses and expenses (including legal fees and expenses) which arise from any such failure for which the Contractor is liable to the Employer under the Contract.

This guarantee shall come into full force and effect when the Contract comes into full force and effect. If the Contract does not come into full force and effect within a year of the date of this guarantee, or if you demonstrate that you do not intend to enter into the Contract with the Contractor, this guarantee shall be void and ineffective. This guarantee shall continue in full force and effect until all the Contractor's obligations and liabilities under the Contract have been discharged, when this guarantee shall expire and shall be returned to us, and our liability hereunder shall be discharged absolutely.

This guarantee shall apply and be supplemental to the Contract as amended or varied by the Employer and the Contractor from time to time. We hereby authorise them to agree any such amendment or variation, the due performance of which and compliance with which by the Contractor are likewise guaranteed hereunder. Our obligations and liabilities under this guarantee shall not be discharged by any allowance of time or other indulgence whatsoever by the Employer to the Contractor, or by any variation or suspension of the works to be executed under the Contract, or by any amendments to the Contract or to the constitution of the Contractor or the Employer, or by any other matters, whether with or without our knowledge or consent.

This guarantee shall be governed by the law of the same country (or other jurisdiction) as that which governs the Contract and any dispute under this guarantee shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with such Rules. We confirm that the benefit of this guarantee may be assigned subject only to the provisions for assignment of the Contract.

Date      Signature(s)

**ANNEX A: CONTRACT FORMS**  
DPT2021-02 ELECTRIC BUS CHARGING FACILITY RFP  
EXAMPLE FORM OF TENDER SECURITY

[See page 4]

Brief description of Contract

Name and address of Beneficiary

— (whom the tender documents define as the Employer).

We have been informed that (hereinafter called the "Principal") is submitting an offer for such Contract in response to your invitation, and that the conditions of your invitation (the "conditions of invitation", which are set out in a document entitled Instructions to Tenderers) require his offer to be supported by a tender security.

At the request of the Principal, we (*name of bank*) hereby irrevocably undertake to pay you, the Beneficiary/Employer, any sum or sums not exceeding in total the amount of (say: ) upon receipt by us of your demand in writing and your written statement (in the demand) stating that:

- (a) the Principal has, without your agreement, withdrawn his offer after the latest time specified for its submission and before the expiry of its period of validity, or
- (b) the Principal has refused to accept the correction of errors in his offer in accordance with such conditions of invitation, or
- (c) you entered into the Contract with the Principal and he has failed to deliver a performance security complying with sub-clause 4.2 of the conditions of the Contract.

Any demand for payment must contain your signature(s) which must be authenticated by your bankers or by a notary public. The authenticated demand and statement must be received by us at this office on or before (*the date 35 days after the expiry of the validity of the Letter of Tender*) when this guarantee shall expire and shall be returned to us.

This guarantee is subject to the Uniform Rules for Demand Guarantees, published as number 458 by the International Chamber of Commerce, except as stated above.

Date      Signature(s)

## ANNEX A: CONTRACT FORMS

DPT2021-02 ELECTRIC BUS CHARGING FACILITY RFP

### EXAMPLE FORM OF PERFORMANCE SECURITY - DEMAND GUARANTEE

[See comments on Sub-Clause 4.2]

Brief description of Contract

Name and address of Beneficiary

(whom the Contract defines as the Employer).

We have been informed that \_ (hereinafter called the "Principal") is your contractor under such Contract, which requires him to obtain a performance security.

At the request of the Principal, we (*name of bank*) \_ hereby irrevocably undertake to pay you, the Beneficiary/Employer, any sum or sums not exceeding in total the amount of (the "guaranteed amount", say: ) upon receipt by us of your demand in writing and your written statement stating:

- (a) that the Principal is in breach of his obligation(s) under the Contract, and
- (a) the respect in which the Principal is in breach.

[Following the receipt by us of an authenticated copy of the taking-over certificate for the whole of the works under clause 10 of the conditions of the Contract, such guaranteed amount shall be reduced by \_ % and we shall promptly notify you that we have received such certificate and have reduced the guaranteed amount accordingly.]<sup>(1)</sup>

Any demand for payment must contain your [minister's/directors']<sup>(1)</sup> signature(s) which must be authenticated by your bankers or by a notary public. The authenticated demand and statement must be received by us at this office on or before (*the date 70 days after the expected expiry of the Defects Notification Period for the Works*) (the "expiry date"), when this guarantee shall expire and shall be returned to us.

We have been informed that the Beneficiary may require the Principal to extend this guarantee if the performance certificate under the Contract has not been issued by the date 28 days prior to such expiry date. We undertake to pay you such guaranteed amount upon receipt by us, within such period of 28 days, of your demand in writing and your written statement that the performance certificate has not been issued, for reasons attributable to the Principal, and that this guarantee has not been extended.

This guarantee shall be governed by the laws of \_ and shall be subject to the Uniform Rules for Demand Guarantees, published as number 458 by the International Chamber of Commerce, except as stated above.

Date      Signature(s)

<sup>(1)</sup> *When writing the tender documents, the writer should ascertain whether to include the optional text, shown in parentheses [ ]*

## ANNEX A: CONTRACT FORMS

DPT2021-02 ELECTRIC BUS CHARGING FACILITY RFP

### EXAMPLE FORM OF PERFORMANCE SECURITY SURETY BOND

[See comments on Sub-Clause 4.2]

Brief description of Contract

Name and address of Beneficiary

(together with successors and assigns, all as defined in the Contract as the Employer).

By this Bond, (*name and address of contractor*)

(who is the contractor under such Contract) as Principal and (*name and address of guarantor*) as Guarantor are irrevocably held and firmly bound to the Beneficiary in the total amount of (the "Bond Amount", say: ) for the due performance of all such Principal's obligations and liabilities under the Contract. [Such Bond Amount shall be reduced by % upon the issue of the taking-over certificate for the whole of the works under clause 10 of the conditions of the Contract.]<sup>(1)</sup>

This Bond shall become effective on the Commencement Date defined in the Contract.

Upon Default by the Principal to perform any Contractual Obligation, or upon the occurrence of any of the events and circumstances listed in sub-clause 15.2 of the conditions of the Contract, the Guarantor shall satisfy and discharge the damages sustained by the Beneficiary due to such Default, event or circumstances,<sup>(2)</sup> However, the total liability of the Guarantor shall not exceed the Bond Amount.

The obligations and liabilities of the Guarantor shall not be discharged by any allowance of time or other indulgence whatsoever by the Beneficiary to the Principal, or by any variation or suspension of the works to be executed under the Contract, or by any amendments to the Contract or to the constitution of the Principal or the Beneficiary, or by any other matters, whether with or without the knowledge or consent of the Guarantor.

Any claim under this Bond must be received by the Guarantor on or before (*the date six months after the expected expiry of the Defects Notification Period for the Works*) (the "Expiry Date"), when this Bond shall expire and shall be returned to the Guarantor.

The benefit of this Bond may be assigned subject to the provisions for assignment of the Contract, and subject to the receipt by the Guarantor of evidence of full compliance with such provisions.

This Bond shall be governed by the law of the same country (or other jurisdiction) as that which governs the Contract. This Bond incorporates and shall be subject to the Uniform Rules for Contract Bonds, published as number 524 by the International Chamber of Commerce, and words used in this Bond shall bear the meanings set out in such Rules.

Wherefore this Bond has been issued by the Principal and the Guarantor on (*date*)

Signature(s) for and on behalf of the Principal

Signature(s) for and on behalf of the Guarantor

(1) *When writing the tender documents, the writer should ascertain whether to include the optional text, shown in parentheses[ ]*

(2) *Insert:* [and shall not be entitled to perform the Principal's obligations under the Contract.]  
Or: [or at the option of the Guarantor (to be exercised in writing within 42 days of receiving the claim specifying such Default) perform the Principal's obligations under the Contract.]

## ANNEX A: CONTRACT FORMS

DPT2021-02 ELECTRIC BUS CHARGING FACILITY RFP

### EXAMPLE FORM OF ADVANCE PAYMENT GUARANTEE

[See comments on Sub-Clause 14.2]

Brief description of Contract

Name and address of Beneficiary

(whom the Contract defines as the Employer).

We have been informed that \_\_\_\_\_ (hereinafter called the "Principal") is your contractor under such Contract and wishes to receive an advance payment, for which the Contract requires him to obtain a guarantee.

At the request of the Principal, we (*name of bank*) hereby irrevocably undertake to pay you, the Beneficiary/Employer, any sum or sums not exceeding in total the amount of (the \_\_\_\_\_ "guaranteed amount", say: \_\_\_\_\_) upon receipt by us of your demand in writing and your written statement stating:

- (a) that the Principal has failed to repay the advance payment in accordance with the conditions of the Contract, and
- (b) the amount which the Principal has failed to repay.

This guarantee shall become effective upon receipt [of the first installment] of the advance payment by the Principal. Such guaranteed amount shall be reduced by the amounts of the advance payment repaid to you, as evidenced by your notices issued under sub-clause 14.6 of the conditions of the Contract. Following receipt (from the Principal) of a copy of each purported notice, we shall promptly notify you of the revised guaranteed amount accordingly.

Any demand for payment must contain your signature(s) which must be authenticated by your bankers or by a notary public. The authenticated demand and statement must be received by us at this office on or before (*the date 70 days after the expected expiry of the Time for Completion*) \_\_\_\_\_ (the "expiry date"), when this guarantee shall expire and shall be returned to us.

We have been informed that the Beneficiary may require the Principal to extend this guarantee if the advance payment has not been repaid by the date 28 days prior to such expiry date. We undertake to pay you such guaranteed amount upon receipt by us, within such period of 28 days, of your demand in writing and your written statement that the advance payment has not been repaid and that this guarantee has not been extended.

This guarantee shall be governed by the laws of \_\_\_\_\_ and shall be subject to the Uniform Rules for Demand Guarantees, published as number 458 by the International Chamber of Commerce, except as stated above.

Date      Signature(s)

**ANNEX A: CONTRACT FORMS**  
DPT2021-02 ELECTRIC BUS CHARGING FACILITY RFP  
**EXAMPLE FORM OF RETENTION MONEY GUARANTEE**

[See comments on Sub-Clause 14.9]

Brief description of Contract

Name and address of Beneficiary

(whom the Contract defines as the Employer).

We have been informed that \_ (hereinafter called the "Principal") is your contractor under such Contract and wishes to receive early payment of [part of] the retention money, for which the Contract requires him to obtain a guarantee.

At the request of the Principal, we (*name of bank*) hereby irrevocably undertake to pay you, the Beneficiary/Employer, any sum or sums not exceeding in total the amount of (the "guaranteed amount", say: ) upon receipt by us of your demand in writing and your written statement stating:

- (a) that the Principal has failed to carry out his obligation(s) to rectify certain defect(s) for which he is responsible under the Contract, and
- (b) the nature of such defect(s).

At any time, our liability under this guarantee shall not exceed the total amount of retention money released to the Principal by you, as evidenced by your notices issued under sub-clause 14.6 of the conditions of the Contract with a copy being passed to us.

Any demand for payment must contain your signature(s) which must be authenticated by your bankers or by a notary public. The authenticated demand and statement must be received by us at this office on or before (*the date 70 days after the expected expiry of the Defects Notification Period for the Works*) (the "expiry date"), when this guarantee shall expire and shall be returned to us.

We have been informed that the Beneficiary may require the Principal to extend this guarantee if the performance certificate under the Contract has not been issued by the date 28 days prior to such expiry date. We undertake to pay you such guaranteed amount upon receipt by us, within such period of 28 days, of your demand in writing and your written statement that the performance certificate has not been issued, for reasons attributable to the Principal, and that this guarantee has not been extended.

This guarantee shall be governed by the laws of and shall be subject to the Uniform Rules for Demand Guarantees, published as number 458 by the International Chamber of Commerce, except as stated above.

Date      Signature(s)



## ANNEX A: CONTRACT FORMS

DPT2021-02 ELECTRIC BUS CHARGING FACILITY RFP

### EXAMPLE FORM OF PAYMENT GUARANTEE BY EMPLOYER

[See page 18: Contractor Finance]

Brief description of Contract

Name and address of Beneficiary

(whom the Contract defines as the Contractor).

We have been informed that (whom the Contract defines as the Employer and who is hereinafter called the "Principal") is required to obtain a bank guarantee.

At the request of the Principal, we (*name of bank*) hereby irrevocably undertake to pay you, the Beneficiary/Contractor, any sum or sums not exceeding in total the amount of (say: ) upon receipt by us of your demand in writing and your written statement stating:

- (a) that, in respect of a payment due under the Contract, the Principal has failed to make payment in full by the date fourteen days after the expiry of the period specified in the Contract as that within which such payment should have been made, and
- (b) the amount(s) which the Principal has failed to pay.

Any demand for payment must be accompanied by a copy of [*list of documents evidencing entitlement to payment*] , in respect of which the Principal has failed to make payment in full.

Any demand for payment must contain your signature(s) which must be authenticated by your bankers or by a notary public. The authenticated demand and statement must be received by us at this office on or before (*the date six months after the expected expiry of the Defects Notification Period for the Works*) , when this guarantee shall expire and shall be returned to us.

This guarantee shall be governed by the laws of and shall be subject to the Uniform Rules for Demand Guarantees, published as number 458 by the International Chamber of Commerce, except as stated above.

Date      Signatures(s)

**ANNEX A: CONTRACT FORMS**  
DPT2021-02 ELECTRIC BUS CHARGING FACILITY RFP

**LETTER OF TENDER**

NAME OF CONTRACT:

TO:

We have examined the Conditions of Contract, Employer's Requirements and Addenda Nos for the above-named Works. We have examined, understood and checked these documents and have ascertained that they contain no errors or other defects. We accordingly offer to design, execute and complete the Works and remedy any defects therein, in conformity with such documents and our enclosed Tender (including this letter) for the prices set out in our Tender.

We accept your suggestions for the appointment of the DAB, as set out in

*[We have included our suggestions for the other Member of the DAB in part of our Tender, entitled List of Potential Members of the DAB].\**

We agree to abide by this Tender until and it shall remain binding upon us and may be accepted at any time before that date.

If this offer is accepted, we will provide the specified Performance Security, commence the Works as soon as is reasonably practicable after the Commencement Date, and complete the Works in accordance with the above-named documents within the Time for Completion. We guarantee that the Works will then conform with the Performance Guarantees included in this Tender.

We understand that you are not bound to accept the lowest or any tender you may receive.

Signature in the capacity of

duly authorised to sign tenders for and on behalf of

Address:

Date:

\* If the Tenderer does not accept, this paragraph may be deleted and replaced by:

We do not accept your suggestions for the appointment of the DAB. We have included our suggestions in our Tender, in the list of potential members of the DAB. If these suggestions are not acceptable to you, we propose that the DAB be jointly appointed in accordance with Sub-Clause 20.2 of the Conditions of Contract, *[after a Party gives notice of its intention to refer a dispute to the DAB]*

**ANNEX A: CONTRACT FORMS**  
DPT2021-02 ELECTRIC BUS CHARGING FACILITY RFP  
**DISPUTE ADJUDICATION AGREEMENT**

[for a one-person DAB]

Name and details of Contract  
Name and address of Employer  
Name and address of Contractor  
Name and address of Member

**Whereas** the Employer and the Contractor have entered into the Contract and desire jointly to appoint the Member to act as sole adjudicator who is also called the "DAB" to adjudicate a dispute which has arisen in relation to \*

**The Employer, Contractor and Member jointly agree** as follows:

1. The conditions of this Dispute Adjudication Agreement comprise the "General Conditions of Dispute Adjudication Agreement", which is appended to the General Conditions of the "Conditions of Contract for EPC/Turnkey Projects" First Edition 1999 published by the Fédération Internationale des Ingénieurs-Conseils (FIDIC), and the following provisions. In these provisions, which include amendments and additions to the General Conditions of Dispute Adjudication Agreement, words and expressions shall have the same meanings as are assigned to them in the General Conditions of Dispute Adjudication Agreement.
2. [*Details of amendments to the General Conditions of Dispute Adjudication Agreement, if any.*]
3. In accordance with Clause 6 of the General Conditions of Dispute Adjudication Agreement, the Member shall be paid a daily fee of per day.
4. In consideration of these fees and other payments to be made by the Employer and the Contractor in accordance with Clause 6 of the General Conditions of Dispute Adjudication Agreement, the Member undertakes to act as the DAB (as adjudicator) in accordance with this Dispute Adjudication Agreement.
5. The Employer and the Contractor jointly and severally undertake to pay the Member, in consideration of the carrying out of these services, in accordance with Clause 6 of the General Conditions of Dispute Adjudication Agreement.
6. This Dispute Adjudication Agreement shall be governed by the law of

SIGNED by:

SIGNED by:

SIGNED by:

for and on behalf of the Employer in  
the presence of

for and on behalf of the Contractor in  
the presence of

the Member in the presence of

Witness:

Witness:

Witness:

Name:

Name:

Name:

Address:

Address:

Address:

Date:

Date:

Date:

[\* A brief description of name of dispute to be added]

**ANNEX A: CONTRACT FORMS**  
DPT2021-02 ELECTRIC BUS CHARGING FACILITY RFP  
**DISPUTE ADJUDICATION AGREEMENT**

[for each member of a three-person DAB]

Name and details of Contract  
Name and address of Employer  
Name and address of Contractor  
Name and address of Member

**Whereas** the Employer and the Contractor have entered into the Contract and desire jointly to appoint the Member to act as one of the three persons who are jointly called the "DAB" [*and desire the Member to act as chairman of the DAB*] to adjudicate a dispute which has arisen in relation to

\*

**The Employer, Contractor and Member jointly agree** as follows:

1. The conditions of this Dispute Adjudication Agreement comprise the "General Conditions of Dispute Adjudication Agreement", which is appended to the General Conditions of the "Conditions of Contract for EPC/Turnkey Projects" First Edition 1999 published by the Fédération Internationale des Ingénieurs-Conseils (FIDIC), and the following provisions. In these provisions, which include amendments and additions to the General Conditions of Dispute Adjudication Agreement, words and expressions shall have the same meanings as are assigned to them in the General Conditions of Dispute Adjudication Agreement.
2. [*Details of amendments to the General Conditions of Dispute Adjudication Agreement, if any.*]
3. In accordance with Clause 6 of the General Conditions of Dispute Adjudication Agreement, the Member shall be paid a daily fee of    per day.
4. In consideration of these fees and other payments to be made by the Employer and the Contractor in accordance with Clause 6 of the General Conditions of Dispute Adjudication Agreement, the Member undertakes to serve, as described in this Dispute Adjudication Agreement, as one of the three persons who are jointly to act as the DAB.
5. The Employer and the Contractor jointly and severally undertake to pay the Member, in consideration of the carrying out of these services, in accordance with Clause 6 of the General Conditions of Dispute Adjudication Agreement.

SIGNED by:

SIGNED by:

SIGNED by:

for and on behalf of the Employer in  
the presence of

for and on behalf of the Contractor in  
the presence of

the Member in the presence of

Witness:

Witness:

Witness:

Name:

Name:

Name:

Address:

Address:

Address:

Date:

Date:

Date:

[\* *A brief description of name of dispute to be added*]