

**BERMUDA STANDARD FORM OF
CONTRACT FOR CONSTRUCTION
STIPULATED SUM
2009 EDITION**

Project

**HORSESHOE BAY TRANSPORTATION HUB DEVELOPMENT
IN SOUTHAMPTON PARISH**

Table of Contents

STANDARD FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR

A101-2007

1. The Contract Documents
2. The Work of this Contract
3. Date of Commencement and Substantial Completion
4. Contract Sum
5. Payments
6. Termination or Suspension
7. Miscellaneous Provisions
8. Enumeration of Contract Documents

GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

A201-2007

1. General Provisions
2. Owner
3. Contractor
4. Architect
5. Subcontractors
6. Construction by Owner or by Separate Contractors
7. Changes in the Work
8. Time
9. Payments and Completion
10. Protection of Persons and Property
11. Insurance and Bonds
12. Uncovering and Correction of Work
13. Miscellaneous Provisions
14. Termination or Suspension of the Contract
15. Claims and Disputes

BERMUDA SUPPLEMENTARY CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

CCC201-2009

16. Modification of the General Conditions
17. Additional Conditions
18. Appendices
19. Special Conditions (if applicable)

CONSTRUCTION CONTRACTS COMMITTEE 2009

Comprising:

THE CONSTRUCTION ASSOCIATION OF BERMUDA
THE INSTITUTE OF BERMUDA ARCHITECTS
THE CHARTERED INSTITUTE OF ARBITRATORS (BERMUDA)

***Bermuda Supplementary Conditions
of the Contract for Construction
2009 EDITION***

*This document has important
legal consequences: legal advice is
encouraged with respect to its
completion or modification*

TABLE OF ARTICLES

ARTICLE 16 MODIFICATIONS OF THE GENERAL CONDITIONS (A20I-2007)

| | | |
|-------|--|--------|
| 16.1 | Modification of Paragraph 1.6, Ownership and Use of Drawings, Specifications and Other Instruments of Service | Page 2 |
| 16.2 | Modification of Paragraph 2.2, Owner | 2 |
| 16.3 | Modification of Paragraph 3.6, Taxes | 2 |
| 16.4 | Modification of Paragraph 3.7, Permits, Fees and Notices | 2 |
| 16.5 | Modification of Paragraph 3.9, Superintendent | 2 |
| 16.6 | Modification of Paragraph 3.10, Schedules | 2 |
| 16.7 | Modification of Paragraph 4, Architect | 2 |
| 16.8 | Modification of Paragraph 9.6, Progress Payments | 3 |
| 16.9 | Modification of Paragraph 11.1, Contractor s Liability Insurance | 4 |
| 16.10 | Modification of Paragraph 11.4, Property Insurance | 4 |
| 16.11 | Modification of Paragraph 15.3, Mediation | 6 |
| 16.12 | Modification of Paragraph 15.4, Arbitration | 6 |

ARTICLE 17 ADDITIONAL CONDITIONS

| | | |
|------|---------------------------------------|---|
| 17.1 | Definitions | 6 |
| 17.2 | Nominated Subcontractors | 7 |
| 17.3 | Nominated Suppliers | 7 |
| 17.4 | Materials supplied by Owner | 7 |
| 17.5 | Payment advances | 8 |
| 17.6 | Fluctuations in cost | 8 |
| 17.7 | Liquidated Damages and Bonus Payments | 8 |

ARTICLE 18 APPENDICES

| | | |
|-------|--|----|
| 18.1 | Initial Decision Maker | |
| 18.2 | Contract Administration | 8 |
| 18.3 | Mediation | 8 |
| 18.4 | Arbitration | 8 |
| 18.5 | Insurance liability | 9 |
| 18.6 | Warranty period | 9 |
| 18.7 | Allowances | 9 |
| 18.8 | Work to be carried out by Owner or by separate contractors | 10 |
| 18.9 | Nominated Subcontractors | 10 |
| 18.10 | Nominated Suppliers | 10 |
| 18.11 | Materials to be supplied by Owner | 11 |
| 18.12 | Payment advances | 11 |

ARTICLE 19 SPECIAL CONDITIONS (*List herein Special Conditions if any*)

1.

CONSTRUCTION CONTRACTS COMMITTEE

Comprising:

THE CONSTRUCTION ASSOCIATION OF BERMUDA
THE INSTITUTE OF BERMUDA ARCHITECTS
THE CHARTERED INSTITUTE OF ARBITRATORS (BERMUDA)

ARTICLE 16 MODIFICATIONS OF THE GENERAL CONDITIONS (A201-2007)

16.1 MODIFICATION OF PARAGRAPH 1.5.1, OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

Delete from Subparagraph 1.5.1 and where appearing thereafter throughout the Contract Documents, the words the Architects consultants and substitute in lieu thereof the words consultants, if any.

16.2 MODIFICATION OF PARAGRAPH 2, OWNER

2.2.2 After the word **approvals**, ADD **building permit**.,

2.2.5 After the word **one**, ADD **printed**.,

16.3 MODIFICATION OF PARAGRAPH 3.6, TAXES

Delete Subparagraph 3.6.1 entirely and substitute the following:

3.6.1 The Contractor shall pay all taxes imposed by the Government of the Islands of Bermuda for the Work or portions thereof provided by the Contractor which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

16.4 MODIFICATION OF PARAGRAPH 3.7, PERMITS, FEES AND NOTICES

Delete Subparagraph 3.7.1 entirely and substitute the following:

3.7.1 Unless otherwise provided for in the Contract Documents, the Contractor shall secure and pay for all government fees, licenses and inspections and all permits other than the building permit necessary for the proper execution and completion of the Work.

16.5 MODIFICATION OF PARAGRAPH 3.9.3

Delete Paragraph 3.9.3 entirely.

16.6 MODIFICATION OF PARAGRAPH 3.10.2

Delete Paragraph 3.10.2 entirely and substitute the following:

3.10.2 Where a Submittal Schedule is required, the Architect shall list in summary form all items for which a submittal schedule is required, in both the tender and contract documents. The Contractor shall prepare a submittal schedule based on this list, after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals.

16.7 MODIFICATION OF PARAGRAPH 4, ARCHITECT

Delete Subparagraph 4.1.1 entirely and substitute the following:

Contracts administered by Architects

4.1.1 The Architect is a person registered as an Architect under the provisions of the Architects Registration Act 1969, identified as such in the Agreement between the Owner and Contractor, and is referred to throughout the Contract Documents as if singular in number. The term Architect means the Architect or the authorized representative of the Architect.

- OR -

Substitute one of the following for Subparagraph 4.1.1 by selection within Paragraph 17.1.1:

Contracts administered by Professional Engineers

4.1.1 The term Architect shall be read as Contract Administrator throughout the Contract Documents. The Contract Administrator is a person registered as a Professional Engineer under the provisions of the Professional Engineers Registration Act 1972, identified as such in the Agreement between the Owner and Contractor, and is referred to throughout the Contract Documents as if singular in number. The term Contract Administrator means the Contract Administrator or the authorized representative of the Contract Administrator.

- OR -

Contracts administered by Professional Surveyors

4.1.1 The term Architect shall be read as Contract Administrator throughout the Contract Documents. The Contract Administrator is a Professional Surveyor under the provisions of the Professional Surveyors Registration Act 1997, identified as such in the Agreement between the Owner and Contractor, and is referred to throughout the Contract Document as if singular in number. The term Contract Administrator means the Contract Administrator or the authorized representative of the Contract Administrator.

Delete Subparagraph 4.2.7 entirely and substitute the following:

4.2.7 The Architect will review and approve, or take other appropriate actions upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken with such reasonable promptness as to cause no delay to the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

Add the following to the end of Subparagraph 4.2.11:

4.2.11 If no agreement is made concerning the time within which interpretations required by the Architect shall be furnished in compliance with this Section 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until 15 days after written request is made from them.

16.8 MODIFICATION OF PARAGRAPH 9.6, PROGRESS PAYMENTS

Delete Paragraph 9.6 entirely and substitute the following:

9.6 PROGRESS PAYMENTS

9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

9.6.2 The Contractor shall pay each Subcontractor within seven (7) days of receipt of payment from the Owner, out of the amount paid to the Contractor on account of that Subcontractor's portion of the Work, the amount to which that Subcontractor is entitled, reflecting

- .1 the percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work, and
- .2 other deductions which may be withheld from the Subcontractor for any of the reasons specified in Subparagraphs 9.5.1.1 to 9.5.1.7 inclusive substituting in those Subparagraphs the words Contractor, Subcontractor and Sub-subcontractor, respectively.

The Contractor, by appropriate agreement with each Subcontractor, shall require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

9.6.3 The Architect shall, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work performed by that Subcontractor.

9.6.4 Neither the Owner nor the Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor except as provided for in Subparagraph 9.6.7 or as may be otherwise required by law.

9.6.5 Neither the Owner nor the Architect shall have an obligation to pay or to see to the payment of money to a material supplier except as may be required by law.

9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

9.6.7 If the Subcontractor does not receive full payment of the due amount from the Contractor pursuant to Subparagraph 9.6.2 the Subcontractor may give written notice thereof to the Contractor stating the Subcontractor's intention to seek recovery of the amount due (the Unpaid Sum) as hereinafter provided. If the Subcontractor does not receive the Unpaid Sum from the Contractor within seven (7) days of service of that notice then the Subcontractor may forthwith notify the Architect in writing of such non-payment supported by evidence that the Unpaid Sum is due and that the said notice period has expired and, if the Subcontractor does so, then the Subcontractor shall copy that notification to the Contractor.

9.6.7.1 Upon receipt of notice from the Subcontractor under Subparagraph 9.6.7 the Architect shall, by written notification to the Contractor, require the Contractor to provide within seven (7) days a written explanation for non-payment.

9.6.7.2 In the event that the Contractor provides proof of payment or a written explanation in accordance with 9.6.7.1 which in the Architects opinion is adequate then neither the Owner nor the Architect shall take any further action in respect of the non-payment except to copy such explanation to the Subcontractor.

9.6.7.3 In the event that the Contractor either fails to provide proof of payment or a written explanation as required by 9.6.7.1, or provides an explanation thereunder which in the Architects opinion is inadequate, then the Architect shall (without prejudice to the more general powers set out in this Agreement) reduce the amount(s) payable pursuant to the next following Certificate(s) for Payment, if any, issued-in accordance with Subparagraph 9.4.1 to the extent of the Unpaid Sum and certify payment(s) of equivalent amount(s) by the Owner to either the Special Account or to the Trust Account as hereinafter defined. A copy of such last-mentioned certificate shall be delivered to both the Contractor and the Subcontractor.

9.6.7.4 Upon receipt of the Architects certification under Sub-subparagraph 9.6.7.3, the Owner shall make payment of an amount equivalent to the Unpaid Sum within the time provided in the Contract Documents into either

- .1 a separate interest-bearing bank account (the Special Account) opened specifically for this purpose and designated as a co-signatory bank account in the joint names of the Contractor and Subcontractor, or
- .2 a separate interest bearing trust account (the Trust Account) opened specifically for this purpose.

If the Contractor or the Subcontractor shall obstruct the creation of the Special Account (whether by refusal to counter-sign or otherwise) then the Architect shall thereupon cancel the Certificate for Payment under 9.6.7.3 and replace it with a Certificate for Payment of the Unpaid Sum to whichever party shall not so obstruct the creation of the Special Account. The Special Account or the Trust Account and the amount equivalent to the Unpaid Sum (together with any interest arising but less bank or trustee charges and less compensation for the Architects services provided in the administration of the provisions contained within this Paragraph) deposited therein shall, for such a time as the Special Account subsists, constitute a security for the due performance of this Contract by the Contractor and/or the Subcontractor.

9.6.7.5 No payment or payments shall be made from either the Special Account or the Trust Account except in the following instances:

- .1 with the joint agreement of the Contractor and the Subcontractor (including by mediation), or
- .2 upon proof of full payment of the Unpaid Sum by the Contractor to the Subcontractor, or
- .3 in the event of the Contractor and the Subcontractor failing to reach agreement, upon delivery of the written award of an arbitrator appointed pursuant to Paragraph 4.6 (as modified by Paragraph 15.6).

9.6.7.6 Payment of the Unpaid Sum by the Owner into the Special Account, into the Trust Account or to the non-obstructing party as provided by Sub-subparagraph 9.6.7.5 shall be good and valid discharge of the Owner s obligations to the Contractor pursuant to the terms of this Contract.

16.9 MODIFICATION OF PARAGRAPH 11.1, CONTRACTOR'S LIABILITY INSURANCE

Delete Sub-subparagraph 11.1 .1 .4 entirely and substitute the following:

11.1.1.4 Claims for damages, other than to the Work, because of injury to or destruction of tangible property including loss of use resulting therefrom caused by negligence, omission or default of the Contractor, or of any Subcontractor.

Delete Sub-subparagraph 11.1 .1.5 entirely and substitute the following:

11.1.1.5 Claims for damages, other than to the Work, because of injury to or destruction of tangible property, caused by collapse, subsidence, vibration, weakening or removal of support or lowering of ground water arising out of, or in the course of, or by reason of the carrying out of the Work excepting damage shall only be provided at the explicit request of the Owner prior to the date of bid or conclusion of negotiation or by issue of a Change Order in accordance with Article 7. Such insurance shall be in the joint names of the Owner and the Contractor and shall provide indemnity to the Owner only.

Delete from line 3 of Subparagraph 11.1.2 the words
whether written on an occurrence or a claims-made basis

16.10 MODIFICATION OF PARAGRAPH 11.3, PROPERTY INSURANCE

Delete Paragraph 11.3 entirely and substitute the following:

11.3 PROPERTY INSURANCE

11.3.1 The Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in Bermuda, property insurance in the amount of the initial Contract Sum as well as subsequent modifications thereto for the entire Work at the site on an indemnity basis without voluntary deductibles. Such property insurance shall be maintained, unless otherwise provided for in the Contract Documents, or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Paragraph 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Paragraph 11.4 to be covered, whichever is earlier. Notwithstanding the above, such property insurance shall be maintained until the expiry of the warranty period stated in Paragraph 17.6. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Work. The form of policy for this coverage shall be Completed Value. If the Owner is damaged by the failure of the Contractor to maintain such insurance, then the Contractor shall bear all reasonable costs properly attributed thereto.

11.3.2 Property insurance shall be on an all-risk policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, false-work, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architects services and expenses required as a result of such insured loss. Coverage for other perils shall not be required unless otherwise provided in the Contract Documents.

11.3.2.1 Unless otherwise provided in the Contract Documents, this property insurance shall cover portions of the Work stored off the site after written approval of the Owner at the value established in the approval, and also portions of the Work in transit.

11.3.3 Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insured.

11.3.4 Loss of Use Insurance. The Owner waives all rights of action against the Contractor for loss of use of the Owner property, including consequential losses due to fire or other hazards however caused. The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazard, however caused.

11.3.5 Before an exposure to loss may occur, the Contractor shall file with the Owner two certified copies of the policy or policies providing this property insurance coverage, each containing those endorsements specifically related to the Project. Each policy shall contain a provision that the policy will not be cancelled or allowed to expire until at least 30 days prior written notice has been given to the Contractor.

11.3.6 Waivers of Subrogation. The Owner and Contractor waive all rights against

- .1 each other and any of their Subcontractors, Sub-subcontractors and employees, each of the other, and
- .2 the Architect, consultants if any, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees

for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this Paragraph 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Contractor as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, consultants and separate contractors, if any, and the subcontractors, sub-subcontractors, agents and employees, if any, of them, by appropriate agreements, written where legally required for validity, similar waivers each in favour of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

11.3.7 A loss insured under this property insurance shall be adjusted by the Contractor as fiduciary and made payable to the Contractor as fiduciary for the insureds, as their interests may appear, subject to the requirements of any applicable mortgagee clause and Subparagraph 11.3.9. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

11.3.8 If required in writing by a party in interest, the Contractor as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Contractor's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Contractor shall deposit in a separate account proceeds so received, which the Contractor shall distribute in accordance with such agreement as the parties in interest may reach including by mediation, or in accordance with an arbitration award in which case the procedure shall be as provided by Paragraph 4.6. If after such loss no other special agreement is made, replacement of damaged property shall be covered by appropriate Change Order issued in accordance with Article 7.

11.3.9 The Contractor as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five (5) days after occurrence of loss to the Contractor's exercise of this power. If such objection be made the parties shall mediate in accordance with Paragraph 4.5, and in the event that the parties fail to reach agreement by mediation, arbitrators shall be chosen as provided in Paragraph 4.6. The Contractor as fiduciary shall, in that case, make settlement with the insurers in accordance with such mediation agreement or as directed by arbitration decision.

11.3.10 Partial occupancy or use in accordance with Paragraph 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

16.11 MODIFICATION OF PARAGRAPH 15.3, MEDIATION

Delete Subparagraph 15.3.2 entirely and substitute the following:

15.3.2 Controversies and claims Subject to Mediation. The parties shall endeavour to resolve their claims arising out of or in connection with this Contract, including any question regarding its existence, validity, termination or breach thereof by mediation in accordance with the current rules of the mediator selected within Paragraph 18.3. Any request for mediation shall be filed in writing with the other party to the Contract and with the selected mediator. This request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of thirty (30) days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

16.12 MODIFICATION OF PARAGRAPH 15.4, ARBITRATION

Delete Subparagraph 15.4.1 entirely and substitute the following:

15.4.1 Controversies and Claims Subject to Arbitration. If the parties have selected Arbitration as the method for binding dispute resolution in the Agreement, any controversy or claim arising out of or in connection with this Contract, including any question regarding its existence, validity, termination or breach thereof, not settled by mediation as provided by Paragraph 15 shall be sealed by arbitration in accordance with the provisions of the Bermuda Arbitration Act 1986 and the current rules of the arbitrator or arbitrators selected within Paragraph 18.4. Judgment upon the award rendered by the arbitrator or arbitrators may be entered in any court having jurisdiction thereof, except controversies or Claims relating to aesthetic effect and those Claims waived as provided for in Subparagraph 9.10.4. Such controversies or Claims upon which the Architect has given notice and rendered a decision as provided in Subparagraph 15.2 and which have not been settled by mediation shall be subject to arbitration upon written demand of either party. Rules and Notices for Arbitration. Notice of demand for arbitration shall be filed in writing with the other party to the Agreement between the Owner and Contractor and a copy shall be filed with the Architect. Failing agreement to a single arbitrator within fourteen (14) days of serving such notice, and unless both parties agree to the contrary, the dispute shall be determined by three arbitrators, one of whom shall be appointed by the Owner, another of whom shall be appointed by the Contractor, and the third of whom shall be appointed jointly by the two arbitrators appointed as aforesaid, as umpire or chairman.

ARTICLE 17 ADDITIONAL CONDITIONS

17.1 DEFINITIONS

17.1.1 Bermuda Standard Form of Contract for Construction. The Bermuda Standard Form of Contract for Construction shall consist of the Standard Form of Agreement between Owner and Contractor A101-2007 or A111-2007; the General Conditions of the Contract for Construction A201-2007, and these Bermuda Supplementary Conditions of the Contract for Construction CCC201-2009.

17.1.2 Nominated Subcontractors. Where:

- .1 in the Specifications; or
- .2 in any instruction of the Architect under Paragraph 3.8 in the expenditure of an Allowance included in the Specifications; or
- .3 in any instruction of the Architect under Article 7; or
- .4 by agreement between the Contractor and the Architect or Owner

the Architect or Owner has, whether by the use of an Allowance or by naming a Subcontractor, reserved the final selection and approval of a Subcontractor to perform a portion of the Work at the site, the Subcontractor so nominated shall be a Nominated Subcontractor for all the purposes of this Contract.

17.1.3 Nominated Suppliers. Where:

- .1 in the Specifications; or
- .2 in any instruction of the Architect under Paragraph 3.8 on the expenditure of an Allowance included in the Specifications; or
- .3 in any instruction of the Architect under Article 7; or
- .4 by agreement between the Contractor and the Architect or Owner

the Architect or Owner has reserved the final selection of a supplier of materials or goods to the Contractor, whether by the use of an Allowance, or by naming a supplier, or by specifying materials or goods for which there is a sole source of supply (in that there is only one supplier from whom the Contractor can obtain them), the supplier of such materials or goods shall be a Nominated Supplier for all the purposes of this Contract.

17.2 NOMINATED SUBCONTRACTORS

The following provisions shall apply where a Subcontractor is nominated by the Architect as defined in Subparagraph 17.1.2.

17.2.1 Unless the Architect and Contractor shall otherwise agree, the Architect or Owner shall only nominate a person as a Subcontractor who will enter into a subcontract which provides (*inter alia*):

- .1 that the Nominated Subcontractor shall be bound by the provisions of Article 5;
- .2 that payment in respect of any work, materials or goods comprised in the subcontract shall be made in accordance with Article 9, and
- .3 that the employment of the Nominated Subcontractor under the subcontract shall terminate immediately upon termination of the Contractor's employment for any reason under this Contract.

17.2.2 If the Owner desires to secure final payment to any Nominated Subcontractor before final payment is due to the Contractor, and if such Nominated Subcontractor has satisfactorily indemnified the Contractor against any latent defects, then the Architect may in a progress Certificate include an amount to cover the said final payment, and thereupon the Contractor shall pay to such Nominated Subcontractor the amount so certified. Upon such final payment the Contractor shall, save for latent defects, be discharged from all liability for the work, materials or goods executed or supplied by such Nominated Subcontractor under the subcontract to which the payment relates.

17.2.3 Neither the existence nor the exercise of the foregoing powers nor anything else contained in these Conditions shall render the Owner in any way liable to any Nominated Subcontractor.

17.2.4 In the event of the termination of a Nominated Subcontractor for cause as listed in Paragraph 14.2, as applicable between the Contractor and Nominated Subcontractor resulting from Paragraph 5.3, the Contractor shall immediately notify the Architect of such termination. The Architect shall immediately upon receipt of such notification instruct the Contractor to

- .1 omit from the Contract the Work to be carried out by the Nominated Subcontractor, or
- .2 if mutually agreeable, instruct the Contractor to proceed with the Work, or
- .3 nominate an alternative Subcontractor.

Any adjustments to the Contract duration or value which result directly from the above shall be adjusted by Change Order in accordance with Article 7.

17.3 NOMINATED SUPPLIERS

The following provisions shall apply where the supplier of materials or goods to be installed by the Contractor is nominated by the Architect or Owner and is a Nominated Supplier as defined in Subparagraph 17.1.3.

17.3.1 Unless the Architect and Contractor shall otherwise agree, the Architect or Owner shall only nominate any person as a supplier who will enter into a contract of sale which is in accordance with the terms and conditions of this Agreement insofar as they apply to the supply of such item(s).

17.3.2 Where the said contract of sale between the Contractor and the Nominated Supplier in any way restricts, limits or excludes the liability of the Nominated Supplier to the Contractor in respect of materials or goods supplied or to be supplied, and the Architect has specifically approved in writing the said restrictions, limitations or exclusions, the liability of the Contractor to the Owner in respect of the said materials or goods shall be restricted, limited or excluded to the same extent. The Contractor shall not be obliged to enter into a contract with, nor expend Allowances in favour of, the Nominated Supplier until the Architect has specifically approved in writing the said restrictions, limitations or exclusions.

17.3.3 The Contractor shall have the right to require the Nominated Suppliers to furnish bonds covering faithful performance of the supply contract and the payment of all obligations arising thereunder in accordance with the percentage stated in the Appendices and at no cost to the Contractor.

17.3.4 In the event of the termination of a Nominated Supplier for cause as listed in Paragraph 14.2 as applicable between the Contractor and Nominated Supplier, the Contractor shall immediately notify the Architect of such termination. The Architect shall immediately upon receipt of such notification instruct the Contractor to

- .1 omit from the Contract the supply of material or goods to be carried out by the Nominated Supplier and the related fixing, or
- .2 if mutually agreeable instruct the Contractor to proceed with the supply of the material or goods, or
- .3 nominate an alternative supplier.

Any adjustments to the Contract Time or Contract Sum which result directly from the above shall be made by Change Order in accordance with Article 7.

17.4 MATERIALS SUPPLIED BY OWNER

The following provisions shall apply where the Owner elects to supply materials to be installed by the Contractor.

17.4.1 The Owner reserves the right to supply materials as set out in Paragraph 18.10 for installation by the Contractor

17.4.2 Unless otherwise provided in the Contract Documents, materials supplied by the Owner shall be delivered and unloaded at the site by the Owner at a time mutually acceptable to the Owner and Contractor and with reasonable promptness to avoid delay in the

Work. Quantities of materials so delivered shall be verified against material invoices or other delivery documentation by the Contractor and shall become the Contractor's responsibility for protection and storage. Materials damaged, destroyed or removed from the site without authorization shall be replaced or repaired by the Contractor without cost to the Owner.

17.4.3 Prior to proceeding with the installation of any materials supplied by the Owner the Contractor shall report to the Architect any apparent discrepancies or defects that would render the materials unsuitable for proper installation or use. Notwithstanding the foregoing the Contractor shall have no liability for its failure to detect and report any patent discrepancies or defects of Owner provided materials.

17.4.4 Any claims arising out of delays, discrepancies or defects in materials supplied by the Owner shall be made as provided by Paragraph 15

17.4.5 Excess materials supplied by the Owner not incorporated in the Work shall remain the property of the Owner, and shall be stored in an approved location on the site unless otherwise directed. The Contractor's responsibility for such materials shall cease upon the certified Substantial Completion of the Work.

17.5 PAYMENT ADVANCES

17.5.1 Where payment advances are to be made by the Owner to the Contractor in respect of the Work, the conditions of payment and repayment, if applicable, shall be as set out in Paragraph 18.11 and it shall be stated therein whether the payment is to be made to the Contractor upon proof of expenditure.

17.6 FLUCTUATIONS IN COST

17.6.1 In addition to the provisions elsewhere in this Agreement, fluctuations in cost, resulting from one or more of the following causes, shall occasion the adjustment of the Contract Sum:

- .1 changes in the laws of Bermuda, and
- .2 fluctuations in cost caused by changes in the exchange rate between the Bermuda and United States Dollar.

Such adjustments to the Contract Sum shall be administered by way of a Change Order in accordance with Article 7.

17.7 LIQUIDATED DAMAGES AND BONUS PAYMENTS

17.7.1 Subject to any extension(s) of time as provided by Paragraph 8.3, should the Contractor fail to substantially complete the Work of this Contract within the specified Contract Time, then upon the Architects certification the Contractor shall pay or allow to the Owner a sum calculated at the rate stated in the Agreement between the Owner and the Contractor as Liquidated Damages for the period during which the Work so remained substantially incomplete.

17.7.2 Subject also to any extension(s) of time as provided by Paragraph 8.3, should the Contractor Substantially Complete the Work of this Contract in advance of the specified Contract Time, then upon the Architects certification the Owner shall pay or allow to the Contractor a sum calculated at the rate stated in the Agreement between the Owner and the Contractor as a bonus payment for the early completion of the Work.

ARTICLE 18 APPENDICES

18.1 INITIAL DECISION MAKER

18.1 The Initial Decision Maker shall be the Architect unless otherwise named herein:

- .1 Initial Decision Maker:

The Owner and the Contractor agree to split costs equally for the services, when required, of the Initial Decision Maker.

18.2 CONTRACT ADMINISTRATION

18.2.1 The Contract shall be administered (Paragraph 16.7) by an Architect unless selected otherwise herein:

- .1 Professional Engineer []
- .2 Professional Surveyor []

18.3 MEDIATION

18.3.1 Mediation (Paragraph 16.11) shall be by a mediator appointed with the mutual agreement of both parties unless selected otherwise herein:

- .1 The Bermuda Mediation and Arbitration Centre []
- .2 The Chartered Institute of Arbitrators (Bermuda Branch) [X]

18.4 ARBITRATION

18.4.1 Arbitration (Paragraph 16.12) shall be by an arbitrator or arbitrators appointed in accordance with Subparagraph 15.4.1 (as revised by Paragraph 16.12) unless selected otherwise herein:

- .1 The Bermuda Mediation and Arbitration Centre []
- .2 The Chartered Institute of Arbitrators (Bermuda Branch) [X]

18.4.2 If the Owner and Contractor do not select a method for Binding Dispute Resolution in the Agreement, claims will be resolved by Arbitration (Paragraph 16.12).

18.5 INSURANCE LIABILITY

18.5.1 Insurance coverages (Article 11, and as modified by Paragraph 16.10) shall be as follows:

- .1 Workmen s Compensation (Subparagraph 11.1.1.1) \$_____ (1)
- .2 Employers Liability (Subparagraph 11.1.1.2) \$_____ (2)
- .3 General Liability (Subparagraphs 11.1.1.3 & 11.1.1.7) \$_____ (3)
- .4 Collapse (Subparagraph 11.1.1.5) \$_____ (4)
- .5 Automotive Liability (Subparagraph 11.1.1.6)
 - .1 Bodily Injury \$_____ (5)
 - .2 Property Damage \$_____ (6)
- .6 Property Insurance (Paragraph 11.3) \$_____ (7)
 - including building contents, if any, of: \$_____
 - and including also the Replacement Cost Allowance of: \$_____ (8)

18.6 WARRANTY PERIOD

18.6.1 The Warranty period (Paragraph 12.2.2) shall be \$_____ (9)

18.7 ALLOWANCES

18.7.1 Allowances (Paragraph 3.8) shall be as follows:
(List herein Allowances if any)

- 1.

(1) shall be in accordance with Bermuda Law unless otherwise provided.
(2) shall be \$2,000,000.00 minimum unless otherwise provided.
(3) shall be \$2,000,000.00 unless otherwise provided.
(4) shall be nil unless otherwise provided.
(5) shall be \$1,000,000.00 unless otherwise provided.
(6) shall be \$250,000.00 unless otherwise provided.
(7) shall be in accordance with Article 11.3.1 unless otherwise provided.
(8) shall be 15% of the Contract Sum (to allow for demolition, fees, etc.) unless otherwise provided.
(9) shall be 12 months after Substantial Completion unless otherwise provided.

18.8 WORK TO BE CARRIED OUT BY OWNER OR BY SEPARATE CONTRACTORS

18.8.1 Work to be carried out by Owner or by separate contractors (Paragraph 6.1) shall be as follows:
(List herein work if any to be carried out by Owner or by separate contractors)

1.

18.9 NOMINATED SUBCONTRACTORS

18.9.1 Nominated Subcontractors (Paragraph 17.2) shall be as follows:
(List herein Nominated Subcontractors if any)

1.

18.10 NOMINATED SUPPLIERS

18.10.1 Nominated Suppliers (Paragraph 17.3) shall be as follows:
(List herein Nominated Suppliers if any)

1.

18.10.2 Percentage of sale value to be bonded (Paragraph 17.3.3) shall be as follows:

local _____ % (10)

overseas _____ % (11)

(10) shall be nil unless otherwise provided.

(11) shall be nil unless otherwise provided.

18.11 MATERIALS TO BE SUPPLIED BY OWNER

18.11.1 Materials to be supplied by Owner (Paragraph 17.4) shall be as follows:
(List herein materials any to be supplied by Owner)

1.

18.12 PAYMENT ADVANCES

18.12.1 Payment advances (Paragraph 17.5) and conditions of payment & repayment (including any required proof of Contractor s expenditure) shall be as follows: *(12)*
(List herein advance payments if any)

1.

ARTICLE 19 SPECIAL CONDITIONS

(List herein any Special Conditions forming part of the Contract for construction and modify the Table of Articles, page 1 accordingly)

1.

(12) payment shall be upon presentation of appropriate invoice unless otherwise provided.