

BERMUDA AIRPORT REDEVELOPMENT
PROJECT MANAGEMENT; TECHNICAL AND TRAFFIC ADVISOR

Introduction

The Bermuda Government; Ministry of Tourism Development and Transport; Department of Airport Operations (DAO) is seeking a firm of sound international standing with specific aviation expertise to provide capital project management for the Bermuda Airport Redevelopment. The firm will provide sharp insight and technical depth to support DAO and the coordination of the redevelopment project. The assignment will require swift mobilization to undertake management of the project team; direct involvement in detailed negotiations to financial close within 12 months; terminal design and construction phase with aggressive delivery targets; commissioning and oversight on a retained basis thereafter.

Background and General Objectives

L.F. Wade International Airport (the “Airport”) is the only airport serving Bermuda, handling around 800,000 passengers per year. The existing airport facilities do not provide for efficient airport operations and cannot support traffic growth potential with the appropriate level of service provided to passengers.

The Government of Bermuda (“Bermuda”) therefore entered into negotiations with the Canadian Commercial Corporation (CCC) and Aecon Concessions (collectively “the Concessionaire”) for the construction of a new terminal and other necessary extensions to accommodate the forecast growth in traffic, and for the concession of the operation and maintenance of the new terminal (the “Project”). In view of the investment costs and expertise required for the implementation of this project, Bermuda decided to develop the Airport based on Public Private Partnership (“PPP”) principles. Bermuda entered into an Airport Development Agreement (ADA) with CCC on 24 August 2015 setting out the obligations, tasks, and processes required to complete the PPP agreement in late 2016.

In accordance with the ADA, the Concessionaire undertakes principally to:

- Design, Finance, Build, Operate and Maintain the new passenger terminal to accommodate the forecast passenger demand
- Operate, maintain and undertake periodic lifecycle refurbishment and replacement of the Airport’s assets
- Undertake periodic lifecycle refurbishment and replacement of the new passenger terminal
- Complete works at the end of the concession to return the Airport to Bermuda in accordance with the hand back conditions
- Other undertakings as contained in the ADA

The Concessionaire is entitled to levy an infrastructure development charge and to collect all aeronautical and non-aeronautical revenue from the operation of the terminal and associated infrastructure. Under the ADA, Bermuda will retain certain services (the “Retained Services”) including air traffic control and meteorological services, wildlife control and habitat management, ground electronic services, rescue and firefighting services, policing, immigration, and customs services. Bermuda and the Concessionaire have established a number of “working groups” to fulfill their respective obligations under the ADA. The working groups include the following:

1. Commercial
2. Finance

3. Environmental
4. Legal
5. Operations
6. Technical
7. Traffic
8. Others including Communications, Insurance, HR Transition, etc.

Support will include analysis and advice relating to the remit of each working work (to be determined as the groups commence activity) and ensuring necessary exchange of knowledge between Bermuda and its other advisors across all groups.

Evaluation Criteria

See the attached tables (**Appendix 2**).

Bid

In addition to the specific criteria in **Appendix 1**, please note:

- The costs involved in preparing the proposal and negotiating a contract are not reimbursable
- Bermuda is not bound to accept any of the proposals submitted
- Bids shall be valid until 31 December 2015.
- The submission shall be limited to 20 pages excluding front and back cover pages, contents page(s), and CVs. All other information, including evidence of the track record shall be contained within the 20 pages. Should a submission exceed 20 pages, only the first 20, excluding covers and contents page(s), will be used in the assessment.
- The bids will be in the form of Task Order for each similar services on a capped fee basis and billable on actual time. Daily rates shall be valid until 31 March 2017. The submissions will cover the period 1 December 2015 to 30 November 2016, defining scheduling; daily rates; and number of days per individual. The submissions shall demonstrate the calculation of the proposed capped fee.
- All bidders must sign the standard, non-collusion document supplied (**Appendix 3**).
- A Consulting Services Agreement is included below (**Appendix 4**).
- Questions will be answered by email within 2 working days. Deadline for questions and answers will be no later than 1700 hours (AST) on October 26th, 2015.
- The RFP will close at 1700 hours (AST) on 2 November 2015.
- Email submissions cannot exceed 8Mb in size.
- Email submissions must be sent to the Attention of the General Manager; atadderley@gov.bm and copied to tfurbert@gov.bm

Appendix 1

TERMS OF REFERENCE

The proponent will be based full-time in Bermuda for a period of time to be agreed to by the DAO and the Advisor; and will coordinate delivery across all working groups and Bermuda's team of advisors (i.e. Legal, Financial, Technical and Engineering) leading to completion of the PPP agreement and financial close.

1. Institutional strengthening

Bermuda has an immediate requirement to ensure that it is adequately set up to manage the procurement of the PPP and deliver its obligation under the ADA. Currently there is insufficient experience within the government or airport organization. The proponent will therefore support and co-ordinate the setting up of governance and organizational processes to prepare Bermuda as the PPP procuring authority. The proponent will be responsible for the day-to-day programming, scheduling, and achievement of Bermuda's obligations under the ADA to the timescales required by the ADA. To deliver Bermuda's obligations, the proponent will work closely with the DAO and its advisors reporting directly to Bermuda's Project Sponsor and the Project's Steering Committee. The proponent will coordinate Bermuda's activities with respect to the working groups and will manage the inputs from Bermuda's advisors.

The proponent shall deploy international good practice of project management and shall actively transfer such knowledge to Bermudian nationals employed by Bermuda. Bermuda specifically seeks a legacy of retained skills and capability from the Project.

- Understands and is able to fully define and articulate its needs
- Can deliver the PPP competitively and agree a fair agreement on incentivized terms
- Clearly demarcates Concessionaire and retained government responsibilities
- Builds trust with the Concessionaire and works jointly to support delivery
- Is able to assess value for money
- Is sufficiently informed to negotiate a competitive deal to deliver long term value
- Measures contract performance and has established tools to enforce the contract fairly
- Will work closely with Bermuda and its legal advisor to negotiate and complete the PPP agreement as required under the ADA.
- Will operate flexibly to suit the needs of the Project.

Programme and implementation

The remit and functioning of the working groups is to be agreed to by the working groups individually and collectively. It is anticipated that the working groups will "meet" regularly by telephone (or video) conference.

A monthly plenary meeting of Bermuda, the Concessionaire, and their respective advisors, will be held in Bermuda.

The proponent shall prepare a report for Bermuda, issued by the Friday of the week prior to the plenary session setting out progress on all tasks under consideration at the time, and overall progress to completion of Bermuda's obligations under the ADA.

The proponent will attend the meetings of the Project's steering committee. The proponent will support Bermuda's project sponsor and meet his duties and reporting requirements.

2. Technical Advisory Services

The key objective of the assignment is to obtain an independent opinion on the reasonableness and attainability of the traffic and technical assumptions that have been put forward as the basis for the proposed PPP, and supporting its revenues and expenditures profiles, together with any related risk analyses. Note that Bermuda's engineering advisor will be responsible for the assessment of engineering compliance with relevant standards, sufficiency of the proposed technical solutions, sufficiency of processing capacity provided, and the capital and maintenance expenditure estimates. Support will include analysis and advice relating to the remit of each working group (to be determined as the groups commence activity) and ensuring necessary exchange of knowledge between Bermuda and its other advisors across all groups and to provide support to its negotiations in the following working groups:

- Commercial
- Operations
- Traffic

The Advisor will be requested to provide an independent opinion with regards to:

- (1) The traffic forecasts and related assumptions
- (2) The proposed charges for the Airport
- (3) The charges regime applicable to the Project and possible improvements in the context of the Project
- (4) The forecasted revenues and operating expenditures profile
- (5) The proposed operational regimes
- (6) The ability of Bermuda to operate and finance the Retained Services
- (7) Appropriate requirements to be incorporated in the PPP Agreement within the areas of advice of the Advisor

Should any of the assumptions considered be viewed as unattainable or unreasonable, the Advisor will be requested to suggest alternative solutions in consultation with Bermuda and its other advisors.

The Advisor shall liaise with, and exchange information with, Bermuda and Bermuda's other advisors as required, for example with the legal advisor (Bennett Jones) with regard to the legal, contractual and regulation aspects of the Project, the financial advisor (CIBC) with regard to the financial model and accounting aspects of the Project, and with the engineering/design/architectural advisor (HNTB), with regard to the technical adequacy of the proposed terminal and its capital and maintenance costs.

Scope of work

The key areas of the scope of work shall include but are not limited to:

a. Traffic Forecast

Review and analyse future traffic forecasts and underlying assumptions, including an assessment of how factors that may have arisen since the forecasts were produced might now impact upon them.

The Advisor is not expected to prepare independent traffic forecasts. It is expected that this task will be primarily completed by a review of the forecasts prepared by the Concessionaire and its advisors.

The review and analysis should consider busy day and busy hour volumes, broken down as required by departures/arrivals, types of carrier, etc. to be able to: (a) provide inputs for the review of the proposed facility sizing and capital investment programmes by the separate engineering/design/architectural advisor; and (b) underpin reasonably detailed revenues and operational expenditure assessments.

b. Review of operational plan and operational costs

Review the operation plan, contractual arrangements, and associated costs of the Concessionaire's proposal including any other relevant contracts likely to be taken over by the Concessionaire with a special focus on the following aspects:

- Compliance with relevant Bermudian requirements and international standards
- Terminal operations
- Landside and airside operations
- Communication systems
- Fuel supply system and procedures to minimize risks of accidents from storing and handling fuel
- Safety and security operating plan inside the terminal and on the air side facility

- Emergency plan, emergency equipment provided including the firefighting equipment, spill clean-up equipment, and training provided to personnel

Advise on any deficiency in the operation plan and propose corrective action with associated estimated costs, if deemed necessary.

Evaluate and comment on the proposed handover of operations and transition phase arrangements after privatization; and identify key associated operational risks and suggest mitigation measures to minimise these risks. Consider the risks to the effective, continuous operation of the Retained Services. Support Bermuda to establish efficient processes for the continued operation of the Retained Services during handover to the Concessionaire, and for the operation of the Retained Services after privatization, including consideration of the infrastructure and staff required for the provision of the Retained Services.

Comment on annual operating costs and overhead cost projections by the Concessionaire, and the assumptions that underpin those costs in particular the historic cost structures, the assumed impact of the investment program and the forecast traffic growth.

Provide benchmarking evidence from relevant, comparative airports to demonstrate that the cost assumptions are reasonable and appropriate.

Comment on the proposed staff organizational structure, the Concessionaire's proposed arrangements for the transfer of staff to the Concessionaire's organisation, and, in particular, the appropriate employment of Bermudian nationals.

Identify and comment on any staffing risks and propose appropriate mitigation measures.

Support Bermuda to develop and agree an appropriate set of operational performance metrics, measures, and rebate system to be incorporated into the PPP agreement. Such indicators and rebate system shall be based on international standard good practice and cover all aspects of operation under the control of the Concessionaire.

Advise on the financial and operational consequences for Bermuda of the Retained Services.

The above should be conducted in reference to the technical design and solution of the Concessionaire, the level of services as specified in the ADA and reflected in the PPP Agreement and to any international standard and good practice of relevance to the Advisor.

c. Review of aeronautical revenues

In support of the financial advisor, review the assumptions for the aeronautical revenues within the Concessionaire's proposal. Indicate the extent to which additional commitments need to be sought from Bermuda to support the traffic development plan.

Comment on whether forecasted revenues are aligned with the traffic development plans and reflect foreseeable potential changes in the regulatory environment and multilateral agreements (i.e. WTO accession, "Open Skies" agreement, others).

Evaluate potential risks associated with the forecasted aeronautical charges and recommend alternative scenarios if appropriate.

Review and comment on the historic revenue streams and structure of aeronautical income.

Comment on the exposure to key customers and review their operational / financial strengths.

Review the Bermudian regulatory framework for the aeronautical levies. If relevant, suggest possible improvement as appropriate.

d. Review of non-aeronautical revenues

Review and comment on the forecasted revenue streams and structure of non-aeronautical income and the assumptions within the Concessionaire's proposal.

Review and comment on the new terminal plan and auxiliary infrastructure plan proposed by the Concessionaire and advise if any amendments can be made to improve non-aeronautical revenues. Provide benchmarking evidence from relevant, comparative airports to demonstrate that the cost and revenue assumptions are reasonable and appropriate.

Review and comment on the historic revenue streams and structure of non-aeronautical income.

Advise on any market or regulatory constraint or likely development that would impact the non-aeronautical revenue stream over the life of the concession.

e. Review of the risk of the Project

Working with the legal advisor in particular, the Advisor shall prepare a qualitative risk assessment indicating the allocation of key financial, technical, and operational risks between Bermuda and the Concessionaire. The Advisor shall support Bermuda and the legal advisor to reflect an appropriate approach to risk sharing in the PPP agreement.

Programme and implementation

As discussed above, within the boundaries of the working groups supported by the Advisor, and in conjunction with Bermuda's other advisor, the Advisor shall in general:

- Provide technical inputs and supporting evidence to assist Bermuda in negotiating the terms of PPP agreement

- Support the legal advisor to prepare the PPP agreement and annexes
- Assist Bermuda with its evaluation of the Concessionaire's proposal, preparing one final due diligence report per working group supported
- Prepare other due diligence reports and briefing notes as required to support Bermuda's negotiations
- Provide ongoing support as required to financial close

The remit and functioning of the working groups is to be agreed by the working groups individually and collectively. The working groups are to be attended by appropriate representatives of Bermuda, the Concessionaire, and their respective advisors. It is anticipated that the working groups will "meet" regularly by telephone (or video) conference.

A monthly plenary meeting of Bermuda, the Concessionaire, and their respective advisors, will be held in Bermuda. To keep the number of attendees manageable, strictly one representative from the Advisor shall attend this meeting. The submission shall clearly state who would be proposed to attend the meeting and their competence to discuss all aspects of the Advisor's appointment. The Advisor should allow one working week per month in Bermuda to attend this plenary meeting and the other internal to Bermuda meetings that will be arranged around the plenary session dates. No other visits to Bermuda are anticipated. Should further visits be considered necessary, these will be discussed and agreed to with Bermuda as required.

The Advisor shall prepare a report for Bermuda, issued by the Wednesday of the week prior to the plenary session setting out progress on tasks under consideration at the time, and overall progress to completion of Bermuda's obligations under the ADA.

The Advisor shall provide other updates, materials, and results of analyses as required by Bermuda to support its negotiations across all working groups. In addition, the Advisor shall support Bermuda in addressing the issues set out in the Entrustment Letter from the UK Foreign and Commonwealth Office to Bermuda, dated 17 July 2015. The Advisor shall support Bermuda and its other advisors to determine the level of value for money of the Project.

Financial close is planned for 1 November 2016. The Advisor should therefore limit the tender to that date. Should financial close be delayed, additional input from the Advisor will be discussed and agreed with Bermuda as required.

The ADA requires the Concessionaire to re-issue the financial model at least quarterly. The Advisor should assume receipt of an updated financial model in December 2015, and March, June and, September 2016.

Appendix 3

Certificate of Confirmation of Non-Collusion

CERTIFICATE OF CONFIRMATION OF NON-COLLUSION

Notes for the tenderer/bidder

The essence of Open Tendering is that the Government of Bermuda shall receive bona fide competitive Tenders from all persons Tendering. In recognition of this principle, all companies submitting a tender will be required, by way of the signature of the Company Principle, state their agreement to the statements below, which indicates that the tender has been submitted without any form of collusion.

The Certificate of Confirmation of Non-Collusion is a mandatory requirement from all bidders. Any bids submitted which do not include a signed copy of the Certificate will be wholly rejected and will not be included in the evaluation process.

If it is later found that the undertakings made below have been breached at any stage of the process, the bidder will be expelled from the process immediately. In the event that this is discovered after a contract award, legal action may be taken against the bidder and/or any party involved in the matter.

False submissions may also exclude the bidder, and any other person or company involved in collusion, from bidding for future contracts tendered by the Government of Bermuda.

Confirmation of non-collusion

I/We certify that this is a bona fide Tender, intended to be competitive and that I/We have not fixed or adjusted the amount of the Tender or the rates and prices quoted by or under or in accordance with any agreement or arrangement with any other person.

I/We confirm that we have not received any additional information, other than that contained within the tender pack, or supplementary information provided to all bidders.

I/We also certify that I/We have not done and undertake that I/We will not do at any time any of the following acts:

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- (a) communicating to a person other than the tender administrator the amount or approximate amount of my/our proposed Tender (other than in confidence in order to obtain quotations necessary for the preparation of the Tender for insurance) or
- (b) entering into any agreement or arrangement with any other person that he shall refrain from tendering or as to the amount of any Tender to be submitted; or
- (c) offering or agreeing to pay or give or paying any sum of money, inducement, gift /hospitality or valuable consideration directly or indirectly to any person in relation to this tender.

Signed

(1) _____ Status _____

(2) _____ Status _____

for and on behalf of

Date _____

Appendix 4 Draft Consulting Services Agreement

CONSULTING SERVICES AGREEMENT

THIS AGREEMENT is entered into as of, and effective, November 1, 2015.

BETWEEN:

BERMUDA GOVERNMENT,
as represented by the Ministry of Tourism Development and
Transportation, Government Administration Building
2nd Floor, 20 Parliament Building, Hamilton HM 12. Bermuda

("Client")

- and -

("Consultant")

WHEREAS the Client requires professional consultative and advisory assistance concerning the redevelopment of the Client's national airport through a public-private sector partnership ("**Project**"), and Consultant has internationally recognized professional services and extensive experience in providing consulting service and advice on airport project to governments in Europe, North America, the Caribbean and Latin America;

AND WHEREAS the Client wishes to retain Consultant to provide the consulting and advisory services that are more particularly described, and on the terms and conditions set out, herein;

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereto hereby agree as follows:

ARTICLE 1 – DEFINITIONS AND INTERPRETATION

1.1 Definitions

For the purposes of this Agreement, unless the context otherwise requires, the following terms shall have the respective meanings set out below and grammatical variations of such terms shall have corresponding meanings:

- (a) "**Agreement**" means, this Consulting Services Agreement, and all schedules attached hereto;
- (b) "**Client**" is the party who is retaining Consultant to perform this Agreement, including the provision of the Work Product and the Services;

- (c) "**Liability Cap**" has the meaning ascribed to it in Article 6 hereto;
- (d) "**Losses**" has the meaning ascribed to it in Article 5 hereto;
- (e) "**Maximum Compensation**" has the meaning ascribed to it in Article 4 hereto;
- (f) "**Maximum Compensation**" has the meaning ascribed to it in Article 4 hereto;
- (g) "**Consultant**" **Residual Rights**" means Consultant proprietary methods, processes, tools, computer software, systems, frameworks, and analytical knowhow that Consultant may use to perform this Agreement but that are not conveyed, transferred, assigned or licensed to the Client herein, as same may be described and set out more particularly in Schedule 1 attached hereto;
- (h) "**Terms and Conditions**" means the terms and conditions expressly set forth in this Agreement.
- (i) "**Waiver of Consequential And Related Damages**" has the meaning ascribed to it in Article 6 hereto.
- (j) "**Work Product**" means any and all reports or studies, written advice or opinions, materials, presentations, correspondence and other tangible products or deliverables prepared by Consultant and provided to Client in connection with Consultant's performance of the Services, as well as any opinions, analysis, data, calculations, evaluations, estimates, forecasts, projections, assumptions, advice, recommendations or information contained in the applicable Work Product. Work Product furnished or provided to Client by Consultant pursuant to this Agreement shall not include Consultant Residual Rights, and shall be subject to the Terms and Conditions.

1.2 Headings

The division of this Agreement into Articles, Sections and Exhibits and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. Except as expressly set out herein, references to an Article, Section or Exhibit refer to the applicable Article, Section or Exhibit to this Agreement and not to any Article, Section or any Exhibit of any Schedule attached to the main body of this Agreement.

1.3 Extended Meanings

The Parties agree to the following interpretive terms and conditions:

- (a) words importing the singular number include the plural and vice versa and words importing gender include all genders in this Agreement;

- (b) use of the words "includes" or "including" or the abbreviation "e.g." means "including, without limitation", and the term "such as" will mean "such as without limitation";
- (c) reference to any agreement, indenture or other instrument in writing means such agreement, indenture or other instrument in writing as amended, modified, replaced or supplemented from time to time, unless otherwise agreed to herein;
- (d) reference to any statute or regulation or bylaw shall be deemed to be a reference to such statute or regulation or bylaw as amended, re-enacted or replaced from time to time, unless otherwise agreed to herein; and,
- (e) time periods within which a payment is to be made or any other action is to be taken hereunder shall be calculated excluding the day on which the period commences, but including the day on which the period ends.

1.4 Entire Agreement

This Agreement, and the Terms and Conditions, shall take precedence and priority over any inconsistent, conflicting or previously agreed upon proposals, arrangements, agreements and other terms. This Agreement constitutes the only and entire agreement between the parties relating to the subject matter hereof, including the Services and Work Product, and shall supersede, replace and prevail over all other terms, conditions, agreements or understandings, whether oral or in writing concerning the subject matter hereof. Any additional or different terms and conditions proposed by Client that are not expressly included in this Agreement shall not form any part of this Agreement. Any terms that are additional to the terms set forth in the Agreement (including any term(s) in any purchase order, proposal, acknowledgment, invoice, or other document of Client) will not be binding on either party unless specifically and expressly incorporated into the Agreement in writing.

1.5 Currency

All dollar amounts in this Agreement are expressed in the currency of United States of America.

1.6 Time of the Essence

Time shall be of the essence in the performance of the obligations under this Agreement.

1.7 Schedules

The following Schedules are attached to, and form part of, this Agreement:

- Schedule 1 - Services & Work Products
- Schedule 2 - Service Fees and Expenses

ARTICLE 2 – COOPERATION BY CLIENT

Client will, in a timely fashion and in the form and manner requested, provide Consultant with all data, documentation and other information reasonably required by Consultant for the provision of Services. Client will use its reasonable efforts to provide all such information in a form that is accurate, complete and reliable but Client expressly disclaims and denies that such information will be error free or without quality deficiencies. Such information may not be complete, without defects, deficiencies or omissions (in part) because the Client may not have created or managed such information. Client shall not have any duty, responsibility or liability for any use or reliance that Consultant may place in any such information. Client will promptly inform Consultant of any facts or circumstances, including instructions, decisions and approvals that might be relevant to the timely and proper performance of the Services. Client is responsible for obtaining any necessary licenses, permits or authorizations required for the conduct of its business. Client will grant Consultant such access to property and use of facilities as is reasonably necessary for the performance of the Services. Client warrants that Client's workplace and facilities will comply with all applicable health, safety and environmental regulations, including Client's own company policies and regulations.

ARTICLE 3 – STANDARD OF CARE

Consultant shall perform this Agreement, including concerning the Services and the delivery of all Work Product, diligently, skillfully, safely, prudently and with a standard of care and quality that is reasonably consistent with professional practices and relevant service standards in xxx for the performance of such services. Consultant represents and warrants to Client that the Work Product, when complete and delivered in its entirety and in final form, will conform to the requirements of this Agreement and that the Services will meet the professional standards set out herein. Other than the express limited warranty set forth herein, Consultant makes no other guarantees, warranties or representations whatsoever with respect to the Work Product and Services, express or implied, including any warranties that the Work Product will produce a desired purpose, warranties relating to merchantability/satisfactory quality, and any such warranties are expressly excluded. Consultant shall have no obligation to update any information in the Work Product for events or changes in circumstances after the date of submission of the Work Product. With respect to Article 2 and this Article 3, Consultant shall be excused and relieved of any breach of this Agreement or any other failure to perform the Services as required herein to the extent that any fault, mistake, deficiency, error, or lack of accuracy or completeness in any information that Client provides to Consultant pursuant to Article 2 has either caused or contributed to such breach or failure of Consultant.

ARTICLE 4 – FEES, ESTIMATES, FORECASTS AND COSTS

As full and complete remuneration for Consultant's performance of this Agreement, the Client shall pay the fees and expenses that are more particularly described and set out in Schedule 2 attached hereto. If Consultant or its personnel provides any indication of any other costs associated with Consultant's work, such indication shall not constitute any amendment to Schedule 2 hereof. With respect to any possible or potential future costs associated with this Agreement, Client agrees and acknowledges that Consultant is solely required to use

commercially reasonable efforts to prepare realistic estimates as indications of any such possible future costs. The upper limit of compensation to be paid by the Client to Consultant in any connection with this Agreement shall be, in the aggregate as remuneration for all work, services and undertakings, [**\$1,000,000 US**] ("**Maximum Compensation**"). All compensation and remuneration that is paid to Consultant in any connection with this Agreement shall not exceed the Maximum Compensation.

ARTICLE 5 –INDEMNITY

Consultant agrees to defend and indemnify Client from and against any and all damages, liens, fines, penalties, liabilities, losses, costs and expenses (including, without limitation, reasonable attorneys' fees) (collectively, "**Losses**") to the extent such Losses arise out of or relating to the personal injury of any person caused or contributed to by Consultant's negligence, violation of law, or willful misconduct while in Client's offices or on property which Client owns or which is under Client's control; and (ii) any actual or alleged infringement or violation of any patent, trademark, copyright or other intellectual property or proprietary right relating to the Services and Work Product.

ARTICLE 6 – LIMITATION ON LIABILITY

Neither party, nor its affiliates, nor their officers, directors, agents, or employees shall be liable to the other party or any third party (and each party hereby waives any claim) for incidental, indirect, special, collateral, consequential, exemplary or punitive damages and from loss of financing, loss of bonding, loss of reputation, and delay damages whether characterized as consequential or direct damages, whether same are based on contract, tort (including negligence), or strict liability, statutory or otherwise (collectively, "**Waiver of Consequential and Related Damages**"). This Waiver of Consequential and Related Damages shall apply to all claims arising out of or related to this Agreement, the Services or the Work Product. The only exception where this Article 6 shall be of no force and effect; shall be for fraud or willful misconduct, provided that mistakes or unintentional omissions in the Services or Work Product shall not in any event constitute fraud for purposes of this Agreement. Consultant is providing consulting Services, and disclaims any fiduciary relationship, and Client hereby irrevocably confirms that there is no fiduciary relationship between Client and Consultant. To the extent not waived or released by the foregoing Waiver of Consequential and Related Damages, each party's total liability (per occurrence and in the aggregate for all occurrences) to the other party arising out of or related to this Agreement, including the Work Product or the Services, shall not exceed \$1 million, regardless of whether the loss or damage is a result of breach of contract, warranty, tort (including negligence), strict liability or otherwise ("**Liability Cap**"). In the event judgments, losses, damages or expenses are caused by the contributive, joint or concurrent negligence of each party, they shall be borne by each party in proportion to its own negligence. The parties agree and confirm that the Liability Cap is fair and reasonable in the commercial and public policy circumstances of this Agreement. Except for disclosure to the Client's advisors on a "need to know" basis, the Services and Work Product shall not be disclosed by the Client to any other person without the prior written consent of Consultant.

ARTICLE 7 – CHANGE IN SERVICES

All changes to the Services, Work Product, or to this Agreement otherwise, shall be subject to each party executing and delivering a written amendment to this Agreement setting out all such changes, additions or revisions, including all associated terms and conditions related thereto.

ARTICLE 8 – TERMINATION

The Client may unilaterally terminate the Agreement on twenty (20) days prior written notice to Consultant, subject to cure, at any time if the Client reasonably believes that the Work Product or Services cannot be delivered or completed in accordance with the terms of the Agreement. Upon any termination of this Agreement, Consultant shall be entitled to payment for Services rendered up to the date of termination.

ARTICLE 9 – WORK PRODUCT NOTICE

The parties agree that all Work Product delivered to the Client pursuant to this Agreement shall prominently bear the following notice, which shall not, in any manner or extent whatsoever, amend, revise or otherwise alter the professional duties and obligations of Consultant to the Client pursuant to this Agreement:

"This document, and the opinions, analysis, evaluations, or recommendations contained (collectively the "**Work Product**") was prepared by Consultant. ("**Consultant**") under contract with the Government of Bermuda, and is for the sole use and benefit of the contracting parties and designated beneficiaries, as permitted by the Agreement. There are no other intended third party beneficiaries, and Consultant, (and its affiliates) shall have no liability whatsoever to third parties for any defect, deficiency, error, omission in any statement contained in or in any way related to this document or the services provided. Any forecasts, estimates, projections, opinions or conclusions reached in the Work Product are dependent upon numerous technical and economic conditions over which Consultant has no control, and which are or may not occur. Reliance upon such opinions or conclusions by any third party is at the sole risk of such person relying thereon. The data, information and assumptions used to develop the Work Product were obtained or derived from documents or information furnished by others. Consultant did not independently verify or confirm such information and does not assume responsibility for its accuracy or completeness. Any forecasts, or costs or pricing estimates in the Work Product are considered forward-looking statements and represent Consultant's current opinion and expectation of a likely outcome. Work Product does not anticipate possible changes in governmental policies, governmental regulations, military action, embargoes, or production cutbacks, regional conflicts, or other events or factors that could cause the forecast or estimates to differ materially from what is contained in the forward-looking statements. The information contained in the Work Product or this document or otherwise provided by Consultant is dated as of the date Consultant completed its work. Consultant has no obligation to update or revise the Work Product or to revise any opinions, forecasts, estimates or assumptions in the Work Product because of events, circumstances or transactions occurring after that date."

ARTICLE 10 – FORCE MAJEURE

A "**Force Majeure**" event means any act, event, non-occurrence, omission or accident beyond either party's reasonable control which by its nature could not have been foreseen, or if it could have been foreseen, was unavoidable, and prevents a party from carrying out its obligations under this Agreement and renders performance either impossible or impracticable. A Force Majeure event would include, but is not limited to, war, insurrection, acts of terror, chemical or nuclear contamination, epidemics, riots, civil disturbance or political unrest, labour disruptions, walk-outs, strikes, lockouts, governmental actions or inactions, and acts of God, including but not limited to, earthquake, flood, inclement weather, storms, fire or any other natural physical disasters; the unavailability of any means of public transport; actions, inactions, changes in law, orders, restraints, restrictions, embargo or prohibitions by any governmental authority; or the refusal or delay by any regulatory body in issuing any required licence or permit (each a "**Force Majeure**" event), or any other event beyond the reasonable control of the affected party, then, that party shall be excused from performing such obligation for the duration of the Force Majeure event (other than the obligation to pay monies due), and that party shall not be liable to the other for any failure to perform such obligations, to the extent that performance is delayed or prevented by Force Majeure. Neither party will be considered to be in breach of this Agreement and shall be exempted from any liability, except the obligation to make payment, to the extent performance is delayed by Force Majeure. Each party will use reasonable efforts to overcome the impact and consequences of any Force Majeure event. Any increase in the price for the Services of Work Product caused by a Force Majeure shall be paid by the Client, subject to the prior notification to, and agreement with, the Client.

ARTICLE 11 – ASSIGNMENT AND SUB-LETTING

Consultant shall not assign, transfer, or subcontract their interests and obligations in this Agreement without the prior written consent of the Client. This Agreement automatically terminates upon any purported assignment, transfer or novation by Consultant without the prior written approval of the Client.

ARTICLE 12 – INTELLECTUAL PROPERTY

Consultant has and will retain all right, title and interest, including all intellectual property rights, in and to all analysis, methods, documents, data, software, know-how and other intellectual property which may be used or relied upon to create the Work Product and to perform the Services ("**Consultant Residual Rights**"). Subject to the foregoing, all Work Product shall become Client's sole and exclusive property immediately upon its creation (including all drafts and preliminary versions, provided that any disclosure to third parties shall be subject to the terms and conditions of this Agreement. Consultant shall not have any lien, encumbrance or proprietary right or interest in, or to, such Work Product other than to any associated Consultant Residual Rights.

ARTICLE 13 – PAYMENT TERMS; COSTS; TAXES

Without limiting Article 4 hereof, all payments for the Services, Work Product and reimbursable expenses shall be due, and paid in full by Client net 30 days after the invoice date in accordance with the terms of payment and fee Schedule 2 attached hereto. If the Services or Work Product of Consultant are changed as described in Article 7, Consultant's payments shall be adjusted in conformity with the agreement between the parties. Past due invoices shall bear interest at a rate of 5% per annum. All payments shall be made free and clear of, and without reduction for or on account of, any present or future income taxes, value added taxes (VAT), stamp, consumption, or other taxes, levies, imports, duties, charges, fees, deductions, withholdings, restrictions or conditions of any nature whatsoever now or hereafter imposed, levied, collected, withheld or assessed by any governmental entity or authority. Consultant shall not perform any services for which the remuneration and compensation has not been agreed to in writing between the parties.

ARTICLE 14 – SEVERABILITY

If any provision of these Terms and Conditions is held to be unenforceable by a court of competent jurisdiction, Client and Consultant agree to negotiate a reasonable adjustment to such provision to restore the provision. In any event, the enforceability of the remaining provisions shall not be affected.

ARTICLE 15 – GOVERNING LAW & JURISDICTION

This Agreement shall be interpreted and governed in all respects solely by the laws of Bermuda, regardless of its conflicts of laws principles. Disputes that are not resolved through settlement discussions between the parties shall be resolved by recourse to the exclusive jurisdiction of the courts of Bermuda.

ARTICLE 16 – ANTI-BRIBERY AND ANTI-CORRUPTION

Each party agrees to adhere to and comply with any and all applicable international anti-corruption laws and regulations, including, but not limited to those in Bermuda, the *UK Anti-Bribery Act*, the *Canadian Corruption of Foreign Public Officials Act*, the *Prevention of Corruption Act, 1988*, and any amendments and regulations relating to such laws, in addition to Client's internal corporate ethics policies. No Client or Consultant employee, or any individual or entity acting on behalf of either party, shall offer or give anything of value, or that may be perceived as valuable, to a public official or any other individual for the purpose of influencing any act, securing any improper advantage, or obtaining/retaining business. No Client or Consultant employee may receive or accept anything of value, or that may be perceived as valuable, for the purpose of influencing any act, securing an improper advantage, or obtaining/retaining business. Either party may immediately terminate this Agreement at any time if it has a good faith basis to believe that the other party failed to comply with the provisions of this Article, including any non-compliance prior to the effective date of this Agreement.

ARTICLE 17 – GENERAL

17.1 Notices

- (a) All notices, communications and statements (“**Notices**”) required, permitted or contemplated hereunder or hereby, must be given in writing and will be sufficiently given and received if:
- (i) personally delivered prior to 4:00 p.m. local time during normal business hours of the addressee at the address set forth below (personally delivered Notices will be deemed received by the addressee when actually delivered), or
 - (ii) sent by facsimile transmission, on the date of dispatch, provided that the sender’s facsimile machine produces a printed confirmation of successful transmission and further provided that if the transmission is not completed prior to 4:00 p.m., local time, at the recipient’s address, the Notice will be deemed received at the commencement of normal business hours at the recipient’s address on the Business Day next following the completion of such transmission,
- (b) The addresses of the parties for receipt of Notices are as set forth below:
- (i) Bermuda Government

General Manager, L.F. Wade International Airport, Department of Airport Operations
Tel: (441) 299-4850
Fax: (441) 293-5677
Email: atadderley@gov.bm

Address:
3 Cahow Way
St. George’s GE CX
Bermuda
 - (ii) Consultant.

Attention:
Telephone:

Email:

Address:

17.2 Waivers and Consents in Writing

- (a) no waiver of any provision of this Agreement; and,
- (b) no consent required pursuant to the terms of this Agreement, is binding or effective unless it is in writing and signed by the party providing such waiver or consent.

17.3 Survival

Notwithstanding any other provision of this Agreement, the provisions of Article 3, Article 5, Article 6, Article 12, Article 15 and this Section 17.3 will survive the expiry or any earlier termination of this Agreement.

17.4 Insurance

During the term of this Agreement, Consultant shall maintain the following insurance:

- (a) Commercial General Liability Insurance, with a limit of \$1,000,000 per occurrence and \$2,000,000 annual aggregate;
- (b) Business Automobile Liability Insurance, with a combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident;
- (c) Workers' Compensation Insurance in accordance with statutory requirements and Employer's Liability Insurance, with a limit of \$500,000 for each occurrence; and,
- (d) Professional Liability Insurance, with a limit of \$1,000,000 per claim and annual aggregate.

IN WITNESS WHEREOF the Parties have executed this Airport Development Agreement as of the date first above written.

BERMUDA GOVERNMENT

CONSULTANT

By: _____
Name: xx
Title: xx

By: _____
Name: _____
Title: _____

BERMUDA AIRPORT REDEVELOPMENT
PROJECT MANAGEMENT; TECHNICAL AND TRAFFIC ADVISOR

Request for Quotations (RFQ)
Airport Redevelopment Project Manager and Technical and Traffic Due Diligence Advisor

SCHEDULE 1

SERVICES & WORK PRODUCTS

Request for Quotations (RFQ)
Airport Redevelopment Project Manager and Technical and Traffic Due Diligence Advisor

SCHEDULE 2

SERVICE FEES AND EXPENSES