
SERVICE AGREEMENT

THIS SERVICE AGREEMENT (“**Agreement**”) is made the ____ day of _____ 20__ (the “**Effective Date**”)

BY AND BETWEEN:

- (1) The Government of Bermuda as described in Appendix 1, hereinafter referred to as the “**Government**”, “**we**”, “**our**” or “**us**”; and
- (2) The supplier of services under this Agreement, whose name and contact details are fully set out in Appendix 1 to this Agreement and is hereinafter referred to as the “**Supplier**” or “**you**”.

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

This Agreement, consisting of Appendix 1, Appendix 2 and these General Terms and Conditions, sets out the terms and conditions upon which you will provide services to the Government.

GENERAL TERMS AND CONDITIONS

IN CONSIDERATION of the premises and mutual promises in this Agreement, including Appendix 1 and Appendix 2, the parties, intending to be legally bound, agree as follows:

That in this Agreement, capitalised terms have the respective meanings referred to in this Agreement, words by their context importing the plural shall include the singular and vice versa, references to either gender includes any other gender or a neutral entity where appropriate, and a reference to any statute or regulation or law means as amended from time to time. In the event of inconsistency between Appendix 1, Appendix 2 and these General Terms and Conditions, the order of precedence to resolve any such inconsistency shall be as follows: (i) General Terms and Conditions; (ii) Appendix 1; and (iii) Appendix 2.

1. Provision of Services

- 1.1 You shall perform the service as described in Appendix 1, for us (“**Service**”) promptly in accordance with and subject to, this Agreement which consists of Appendix 1 and these General Terms and Conditions and we shall accept the Service subject to, and in accordance with, the obligations set out in this Agreement. The Service and the specific conditions are detailed in Appendix 1. There is no guarantee of any volume of Service provided to you whatsoever. The Statement of Work provides specific details of the Service will be provided (“**SOW**”) is set out in Appendix 2.
- 1.2 You are responsible for the overall management, oversight and administration of the Service and you are responsible for managing time in order to complete your obligations under this Agreement rather than providing service for a specified amount of time and you recognize that providing service outside of regular business hours may be necessary in order to fulfill your obligations and responsibilities without additional compensation of any kind.
- 1.3 Your obligations under this Agreement are not exclusive and shall not in any way prevent you from performing similar types of service for others, subject to Section 11 of the Agreement.
- 1.4 While on our premises you will comply with all our policies, procedures, rules or other instructions (“**Rules**”), including Rules for security for information technology (“**IT**”); health and safety, as notified and you and will conduct yourself in a professional and safe manner. You shall notify us if you become aware of any breaches in IT security or health and safety violations. We may require personnel with access to premises or IT systems to sign a confidentiality undertaking.
- 1.5 You agree to abide by any written instructions or information as may be provided to you, from us.

2. Representation and Warranty

- 2.1 You represent and warrant that:
 - (a) you shall perform all activities relating to the Service in strict accordance with the terms and conditions as set out in Appendix 1, free of errors, omissions or faults in order to meet your



obligations;

- (b) you are appropriately skilled, experienced, willing and able to provide the Service;
- (c) you have the right to license all intellectual property rights in any software used to provide Service;
- (d) all qualifications, rights, permits, licenses, immigration approvals or other authorisations (“Consent”) necessary for the provision of Service have been obtained and such Consent shall be maintained at all times while providing the Service;
- (e) the Service is to be provided in accordance with all applicable laws, rules, regulations, policies and instructions of the Government, including but not limited to, binding us in any agreement or arrangement with a third party, without our prior written consent and you will not hold yourself out as being able to bind us with any third party; and
- (f) you are fully satisfied as to the scope and nature of your obligations under this Agreement.

3. Remedies and sub-contractors

- 3.1 **Remedies:** If the Service does not conform to the warranty as set out in this Agreement, we may, at your cost and expense, use all reasonably commercial efforts to correct any such non-conformance or non-availability of Service promptly, or you shall, at your cost and expense, provide us with an alternative means of accomplishing the desired outcome or performance.
- 3.2 **Sub-contractors:** You may not subcontract, outsource or otherwise engage a person (“**sub-contractor**”), to provide for your obligations under this Agreement, without our prior written consent. All your potential sub-contractors are subject to our prior due diligence and written approval. You are responsible for all acts, errors or omissions of any sub-contractor providing a Service and for ensuring their compliance with the requirements and obligations under this Agreement and you are responsible and liable to pay any sub-contractor.

4. Inspection and Acceptance of Service

- 4.1 We shall at all times retain the right to inspect and accept or reject the Service provided by you. You shall make any required corrections promptly at no additional charge and return a revised copy of the written work product to us within seven (7) days of notification or a later date if extended by us.
- 4.2 We shall contact shall inform you of who you shall be reporting to and who will accept, reject or require changes to the Service. Our contact is set out Appendix 1, unless you have been otherwise informed.
- 4.3 Your failure to proceed with reasonable promptness to make necessary corrections shall be a default. If your corrected performance or written work product remains unacceptable, we may terminate this Agreement, reduce the Fee and/or reject the hours submitted in connection with such work to reflect the reduced value of services received.

5. Fee and Invoicing Terms

- 5.1 We shall compensate you the gross fee for the Service (“**Fee**”) in arrears during the Term, subject to Appendix 1 and the General Terms and Conditions. The Fee shall be paid in BMD\$. The Fee has been calculated to take account of payroll tax and social insurance contributions that, as a non-employee, you are required to pay.
- 5.2 You will only be paid the Fee for the time that you provide a Service. For the avoidance of doubt, you will not be paid during any time that you do not provide Service or if you provide additional service which has not been prior approved in writing from an authorised public officer. In addition, you will not be paid for public holidays and in the event that you provide Service on a public holiday or provide additional service without prior written approval, such amounts will not be paid or if paid, will be deducted from the Fee, unless otherwise agreed in writing.
- 5.3 We shall pay the Fee subject to an undisputed invoice thirty (30) days in arrears. We may dispute an invoice within thirty (30) days of receipt, however, we reserve the right to dispute payments, made on an



invoice at any time if we suspect fraud or willful misconduct on your part (“**Fault**”). In the event that any Fault is discovered in relation to payments made to you, we reserve the right to recover such payments from you, at your cost (which shall include all legal and collection fees and expenses) or to set off any disputed amounts against unpaid invoices.

- 5.4 Your failure to timely submit a proper invoice in a timely manner may result in a delay in payment by us. You agree that we are not responsible, nor will we be liable to you or under law or equity for any interest or expenses that you may incur resulting from any delays in payment caused by your failure to comply with your obligations under this Agreement.
- 5.5 You shall provide a monthly invoice to our contact set forth herein, itemizing the hours and the service provided.
- 5.6 The Fee will be subject to deductions by law in the event that you have not registered as a Supplier with the relevant Government department.
- 5.7 The Fee will be subject to further deductions for the following reasons:
 - (a) if you have not delivered the Service or any part of the Service, in a prompt or satisfactory manner or at all. In the event that the unsatisfactory performance continues for at least 5 days, we may suspend the Service or reduce payment of the Fee or we may seek performance from another supplier of similar services at your Expense, at no liability to us;
 - (b) where we have suffered loss by your failure to follow instructions or exercise due diligence;
 - (c) if you cause damage to our property, the value of replacement or repair of the damaged property shall be deducted from the Fee; and
 - (d) if you leave or terminate this Agreement without giving the required notice, the value of the Fee for the notice period may be deducted.
- 5.8 Except for the Fee and any approved Expenses, no other amounts are payable by us to you. We may set off any amounts owed by you to us against any Fees or Expenses.
- 5.9 We shall pay by direct transfer into your bank account. It is your responsibility to inform us of your current contact and bank details in order that we can contact and make payment to you.
- 5.10 Without prejudice to section 5.1., we reserve the right to refuse to pay an invoice in the event that the invoice is presented six (6) months after the time when it should have been presented for payment.

6. Expenses and Taxes

- 6.1 You or any person engaged by you, are not allowed to incur charges and/or expenses (“**Expenses**”) associated with the provision of the Service without having received our prior written consent.
- 6.2 All requested Expense (including air travel which shall be at economy class and accommodation which shall be at the equivalent of a 3 star hotel, if applicable) shall be provided to us in writing.
- 6.3 You shall be responsible to register with the appropriate department of the Government in order to pay for all taxes associated with the provision of Service, including but not limited to, payroll tax and social insurance contributions (“**Taxes**”) and you consent to us deducting due or outstanding Taxes from the Fee on your behalf, at our option. Your tax numbers shall be as set out in Appendix 1.
- 6.4 In the event that we have not made deductions on your behalf, you shall provide us with written proof of payment of amounts due such as any Taxes and all other receivables, prior to you receiving your final payment. In the event that you do not provide written proof, we shall have the right to deduct any outstanding amounts owed to us, including any Taxes, from final payment of the Fee.

7. Indemnity, Limitation of Liability, Insurance and Force Majeure

- 7.1 Both you and us shall defend and indemnify each other against all costs (including reasonable legal costs), claims, damage (including damage to software and equipment), loss or expenses arising from any breach by you, or any person engaged by you, of the terms of this Agreement, including any negligent or willful



misconduct, errors or omission to act, in the performance of the Service. We may satisfy such indemnity (in whole or in part) by way of deduction from any payment due to you.

- 7.2 Without prejudice to our obligation to pay the Fee, neither you nor us shall be liable under this Agreement for any loss of profits, loss of business or other losses of opportunity to make a profit, whether foreseeable, unforeseeable, foreseen or unforeseen. Nothing in this Agreement shall exclude or limit liability against, among other matters, wrongful use of Information (as defined below); fraud; willful misconduct or any liability which cannot be lawfully limited or excluded.
- 7.3 Without limiting the provisions of this Section, each party's maximum aggregate liability, for all claims in connection with this Agreement or the performance thereof arising during the entire term of this Agreement shall be limited to the Fees paid to you under this Agreement for up to the month immediately preceding the date on which the latest claim(s) first arose, save for any claims by us against the Insurance Policies.
- 7.4 If required by us, you shall ensure that you have in place insurance policies which have full and comprehensive insurance including professional liability ("Insurance Policies") in respect of the provision of the Service in the minimum amounts and on the terms set forth in Appendix 1 or such other amounts as may be required by us.
- 7.5 If required:
- (a) you shall ensure that the Insurance Policies are taken out with reputable insurers acceptable to us and that the level of cover and other terms of insurance are acceptable to and agreed by us;
 - (b) you shall supply to us on request copies of such Insurance Policies and evidence that the relevant premiums have been paid;
 - (c) you shall promptly notify the insurers of our interest and shall cause such interest to be noted on the Insurance Policies together with a provision to the effect that, if any claim is brought or made by us against the Consultant in respect of which the Consultant would be entitled to receive indemnity under any of the Insurance Policies, the relevant insurer will indemnify the Government directly against such claim and any charges, costs and expenses in respect of such claim. If the relevant insurer does not so indemnify the Government, you shall use all insurance monies received by you to indemnify the Government in respect of any claim and shall make good any deficiency from your own resources; and
 - (d) if cover under the Insurance Policies shall lapse or not be renewed or be changed in any material way or if you are aware of any reason why the cover under the Insurance Policies may lapse or not be renewed or be changed in any material way, you shall notify us immediately.
- 7.6 Neither of the parties shall be liable to the other for failure or delay to perform obligations under this Agreement to the extent that this is caused by flood, fire, epidemic or pandemic and other event beyond either parties reasonable control (not caused by either parties own act or negligent omission) ("**force majeure**") but each party shall use its best efforts to perform either parties obligations notwithstanding the force majeure event.

8. Confidentiality, License, Intellectual Property and Non-Publicity

- 8.1 Each party must ensure that all information or data (including this Contract, documents, plans, technical or financial data or other materials and each of their corresponding copyright or intellectual property in the course of providing the Work) and other information provided to either party, where you, and any person providing Work on your behalf, should reasonably understand the confidential nature of that information not in the public domain ("**Information**") is protected against unauthorized access, use, storage, copying or disclosure. Information is strictly confidential and you shall only use Information as required for providing the Work and for no other purpose. Each parties acknowledge that the improper use or disclosure of Information could be unlawful. You must comply with our instructions in relation to Information.



- 8.2 You may disclose Information to your advisors on a “*need to know*” basis as required for the performance of Work.
- 8.3 A breach or anticipated breach of the confidentiality provisions of this Contract, will cause either party irreparable harm and each party agrees that monetary damages alone may not be an adequate remedy and, accordingly, either party may, without prejudice to any other rights or remedies that either party may have, be entitled, without proof of special damages and without the necessity of giving an undertaking in damages, seek an injunction or specific performance, at the other party’s cost on a full indemnity basis, together with all other remedies as may be available in law or equity.
- 8.4 If either party fails to abide by the confidentiality provisions at any time, then such failure shall constitute a material breach of this Contract and either party shall pay the other party the equivalent of the Fee paid to you for a three (3) month period as liquidated damages, in addition to any attorney’s fees and costs of enforcement. You, and anyone acting on your behalf, shall be jointly and severally liable to us under this section.
- 8.5 Each party grants to the other and the other party accepts, a non-exclusive, non-transferable, royalty-free license for either party to use all proprietary rights, including intellectual property or copyright, whether registered or unregistered, and any third party licences of such rights, whether created before or after this Agreement only to the extent necessary to provide the Service.
- 8.6 In signing this Agreement, you assign and transfer all rights and interest in any intellectual property created for us, to us (including any intellectual property created in the future) and you will execute such further documents as we may reasonably request to give full effect to this section.
- 8.7 You may not use the Government’s name or logo for any publicity or marketing purposes, without our prior written consent.

9. Term and Termination

- 9.1 The term of this Agreement shall be as set out in the Appendix 1. This Agreement shall be effective on the Effective Date. The Service shall commence on the Commencement Date and continue until the Completion Date, whereupon this Agreement shall expire unless terminated earlier in accordance with its terms.
- 9.2 You shall not provide any additional service in the event of notification of termination of this Agreement, however, in the event that a Service is provided to us beyond the Completion Date, the terms and conditions of this Agreement shall continue on a day-to-day basis terminable without cause upon twenty-four 24 hours’ prior written notice by either party to the other.
- 9.3 Either party may terminate a Service or this Agreement, in part or in whole, during the Term upon prior written notice without cause in accordance with the termination notice period as set out in Appendix 1.
- 9.4 Either party may immediately terminate this Agreement if the other party commits a material breach of this Agreement, which is not remedied within thirty (30) days of notice by the other party informing them of breach, or an irremediable breach, if the other party becomes insolvent or if the other party’s performance is affected by a force majeure event which lasts thirty (30) days or more.
- 9.5 Either party may terminate this Agreement by giving the other party prior written notice in accordance with Appendix 1 or immediately if, where applicable, either party becomes insolvent or chooses to discontinue its business or loses its Consent. In the event of immediate termination of this Agreement, all Fees due and payable shall be paid promptly to you, subject to this Agreement.
- 9.6 Upon expiry or termination of this Agreement, each party shall provide the other with such assistance as may be reasonably necessary in order to end the relationship in a manner which causes the least inconvenience to each other, including assisting with the transfer of data in an accessible and readable format to be agreed prior to any such transfer and returning all Government property.



9.7 The expiry or termination of this Agreement in any manner shall not release either party from any liability or responsibility with respect to any representation or warranty. Sections related to limitation of liability, indemnification, non-disclosure of confidential information and intellectual property shall survive the expiry or termination of this Agreement.

10. General

10.1 This Agreement is effective on the Effective Date. Where this Agreement refers to past or current obligations, this Agreement applies retrospectively from that date. Each party represents that this Agreement is executed by its duly authorized signatories and that each party has all required authorizations and capacity to perform its obligations. Amendments to this Agreement shall be made in writing and signed by each party.

10.2 This Agreement supersedes, extinguishes and replaces all previous agreements, promises, assurances, warranties, representations and understandings, whether written or oral including whether in invoices, emails or otherwise between the parties relating to the Service and is the complete agreement between the parties.

10.3 You will be an independent contractor and nothing in this Agreement shall render you an employee, worker, agent or partner of the Government and you shall not hold yourself out as such. As a result of providing the Service, you shall not be entitled to additional compensation other than the Fee, including, but not limited to: unemployment insurance or benefits, health or dental insurance, pension benefits, disability benefits and professional liability insurance and/or deductibles.

10.4 You may not assign or transfer any rights or obligations under this Agreement (for example assigning or factoring invoices) without our prior written consent. Any such transfer by you in breach of this section shall be void and be an irremediable material breach of this Agreement. We may transfer all rights and obligations under this Agreement without notice or consent.

10.5 Waiver of any breach of this Agreement must be in writing to be effective and shall not be a waiver of any subsequent breach, nor shall it be a waiver of the underlying obligation. Should any court determine that any provision of this Agreement is not enforceable, such provision shall be modified, rewritten or interpreted to include as much of its nature and scope as will render it enforceable.

10.6 All actions, claims or demands against the Government must be commenced in court within one (1) year after the cause of action has accrued, or the action, claim or demand is barred, time being of the essence.

10.7 You consent to us processing data relating to you for legal, personal, administrative and management purposes and in particular to the processing of any sensitive personal data relating to you, as appropriate. We may make such information available to our advisers, payroll administrators, regulatory authorities, potential or future employers and governmental or quasi-governmental organizations including those outside of Bermuda.

11. Governance

11.1 You shall inform us promptly of all known or anticipated material problems relevant to delivery of the Service. You shall notify us immediately if you have any actual or potential conflict of interest which could give rise to a conflict of interest or a potential conflict of interest to us or which might affect your ability to provide the Service. If there is any doubt as to whether there is an actual or potential conflict of interest, we shall have sole discretion in this regard and any such decision related to a conflict of interest shall be final.

11.2 You agree to provide us (and, if we request in writing, our auditors and competent regulatory authorities) with full information on the provision and delivery of the Service in an open and cooperative way and attend meetings with us to discuss the Service and this Agreement.



11.3 You shall provide details of all persons with an ownership stake in the Consultant, which shall include persons who are your direct shareholders as well as person who are shareholders of other companies in which you hold an ownership stake.

11.4 Such statement shall be provided at least annually or if there is any change in your interests.

12. Anti-Corruption

12.1 You represent, warrant and covenant that, in connection with activities performed under this Agreement or on our behalf, you have not and will not offer, promise, authorise, pay, or act in furtherance of an offer, promise, authorization, or payment of anything of value, directly or indirectly, to a Government Official (as hereinafter defined), political party or party official, candidate for political office, or official of a public international organisation, in order to obtain or retain business, to secure an improper advantage or benefit of any kind or nature to person(s) related, associated or linked to the Government Official, or to secure or influence discretionary action, inaction or a decision of a Government Official(s). For purposes of this Agreement, the term “**Government Official**” shall mean and include any official, public officer or employee of the Government, as well as an official or employee in the judicial, legislative, or military, anyone acting in an official capacity of the Government, or any immediate family member of such persons.

12.2 You represent, warrant, and covenant that you have complied and will comply with The Bribery Act 2016 and all other applicable laws of any relevant jurisdiction in connection with the performance of your obligations under this Agreement. Without limiting the generality of the foregoing, you represent, warrant, and covenant that you have not and will not take any action that would cause the Government, or anyone acting on its behalf to violate or be subjected to penalties under The Bribery Act 2016, or the applicable anti-corruption laws of other countries.

12.3 You acknowledge and agree that in the event that we believe, in good faith, that you have breached this section, we shall have the right to immediately terminate this Agreement and any or all other agreements that we may have with you.

13. Governing law

This Agreement is subject to and construed in accordance with, Bermuda law. You and us submit to the exclusive jurisdiction of the Bermuda courts in relation to this Agreement. You must send any notices relating to this Agreement to us at the contact details as set out above.

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

SIGNED by a duly authorised officer for and on behalf of the Government	Signature:
	Print Name:
	Title:
SIGNED by the Supplier	Signature:
	Print Name:
	Title:

**APPENDIX 1**

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

1. The Government

Ministry:			
Department:			
Address:			
Government Contact:			
Tel No.:		Mobile No.:	
Email address:			

2. Specific Conditions:

Supplier Name:			
Address:			
Home Tel:		Mobile No.:	
Email address:			
Commencement Date:			
Completion Date:			
Termination Notice Period:		30 days	
Hourly Fee payable in arrears:		BMD\$	
Special Conditions related to the Fee:			
Payroll Tax #:		Social Insurance No.:	
Insurance Coverage:		BMD\$100,000 Professional Liability	



3. Service provided by the Supplier

- a.;
- b.;
- c.; and
- d.

4. You shall undertake any other supplementary services that may be delegated to you.



APPENDIX 2
Statement of Work