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**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, 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) Appendix 1; (i) Appendix 2; and (ii) these General Terms and Conditions.

**1. Provision of Services**

- a. You shall perform a service for us (“**Service**”) promptly in accordance with and subject to this Agreement, which consist of Appendix 1, Appendix 2 and these General Terms and Conditions and we shall pay a gross fee, in Bermuda Dollars, in arrears (the “**Fee**”), for the Service, subject to and in accordance with, this Agreement. The Service, the Fee and other specific conditions are set out in Appendix 1. If applicable, the Statement of Work (“**SOW**”) is set out in Appendix 2. There is no guarantee of any volume of Service whatsoever.
- b. You are responsible for the overall management, oversight and administration of the Services including the provision of any and all instructions in order to complete your obligations under this Agreement rather than providing a Service for a specified amount of time and you recognize that providing the Service outside of regular business hours may be necessary in order to fulfill your obligations and responsibilities without additional compensation of any kind.
- c. This Agreement shall not in any way prevent you from performing similar types of services for others.
- d. 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**”); and Rules for 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.
- e. You agree to abide by any other written instructions or information as we may provide to you.

**2. Representation and Warranty**

You represent and warrant that:



- a. you and any other person engaged by you, will perform all activities relating to the Services in strict accordance with the terms and conditions of this Agreement, free of errors, omissions or faults in order to meet our needs;
- b. you are appropriately skilled and experienced and, if appropriate, you will use appropriately skilled and experienced personnel in the provision of a Service;
- c. all qualifications, rights, permits, licenses, immigration approvals or authorizations (“**Consents**”) necessary for the provision of a Service have been obtained and such Consents shall be maintained at all times while providing a Service;
- d. the Service is to be provided in accordance with all applicable laws, rules, regulations, policies and our instructions, including but not limited to, not binding us in any agreement or arrangement with a third party, without our prior written approval from and you will not hold yourself out as being able to bind us with any third party; and
- e. you have the right to license all intellectual property rights in any software used to provide Services;
- f. you are fully satisfied as to the scope and nature of your obligations under this Agreement and you have the corporate power and authority to enter into, and perform your obligations, under this Agreement.

3. **Remedies, consents and sub-contractors**

- a. **Remedies**: If a Service does not conform to the warranty as set out in this Agreement, we may, at your cost and expense, including reasonable legal expenses, use all reasonably commercial efforts to correct any such non-conformance or non-availability of a Service promptly, or you shall, at your cost and expense including reasonable legal expenses, provide us with an alternative means of accomplishing the desired outcome or performance.
- b. **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 Services**

- a. We shall at all times retain the right to inspect and accept or reject the work 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.
- b. Our contact shall inform you whom you shall be reporting to and who will accept, reject or require changes to, a Service. Our contact is set out Appendix 1, unless you have been otherwise informed.
- c. Your failure to proceed with reasonable promptness to make necessary corrections to a Service shall be a default. If your corrected performance or written product remains unacceptable, we may terminate this Agreement, reduce the Fee and/or reject the hours submitted in connection with such services to reflect the reduced value of services received.

5. **Fee and Invoicing Terms**

- a. The Fee has been calculated to take account of payroll tax and social insurance contributions that, as a non-employee, you are required to pay in full.
- b. You shall provide a monthly invoice to us, itemizing the time spent and details involved in providing the Service.
- c. The Fee will be subject to deductions by law in the event that you have not registered as a



consultant with the relevant Government department.

- d. The Fee will be subject to further deductions for the following reasons:
- (i) if you have not delivered the Service or any part of the Service, in a prompt or satisfactory manner. In the event that the unsatisfactory performance continues for at least five (5) days, we may suspend a Service or reduce payment of the Fee or may seek performance from another supplier of similar service at your Expense, at no liability to us;
  - (ii) where we have suffered loss by your failure to follow instructions or exercise due diligence;
  - (iii) if you cause damage to Government property, the value of replacement or repair of the damaged property shall be deducted from the Fee;
  - (iv) if you leave or terminate this Agreement without giving the required notice, the value of the Fee for the notice period may be deducted;
  - (v) overpayments or advances of payment taken in excess of the Fee.
- e. 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 services and you will not be paid for public holidays.
- f. We shall pay the Fee and/or undisputed invoices 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 it suspects fraud or willful misconduct on your part (“**Faults**”). In the event that any Faults are discovered in relation to payments made to you, 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.
- g. Your failure to timely submit a proper invoice in a timely manner may result in a delay in payment to you. 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.
- h. 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.
- i. 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.
- j. Without prejudice to section 5a., 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

- a. You or any person engaged by you, are not allowed to incur charges and/or expenses, including legal expenses, (“**Expenses**”) associated with the provision of a Service without having received prior written consent from us.
- b. All requested Expense (including air travel which shall be at economy class and accommodation which shall be at the equivalent of a three (3) star hotel, if applicable) shall be provided to you in writing.
- c. 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 a 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 sole option. Your payroll tax and social insurance numbers shall be as set out in Appendix 1.
- d. 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**

- a. You shall indemnify, keep indemnified and defend us, 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, including any negligent or willful misconduct, bad faith, errors or omission to act, as a result of the provision of a Service. We may satisfy such indemnity (in whole or in part) by way of deduction from any payment due to you.
- b. Without prejudice to our obligation to pay the Fee, we shall not be liable to you 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.
- c. 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 its entire term shall be limited to the Fee paid to you under this Agreement for the three (3) month period immediately preceding the date on which the latest claim first arose.
- d. 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 Services in the minimum amounts and on the terms set forth in Appendix 1 or such other amounts as may be required by us.
- e. If required:
  - (i) 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;
  - (ii) you shall supply to us on request copies of such Insurance Policies and evidence that the relevant premiums have been paid;
  - (iii) you shall promptly notify our 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 you in respect of which you would be entitled to receive indemnity under any of the Insurance Policies, the relevant insurer will indemnify us directly against such claim and any charges, costs and expenses in respect of such claim. If the relevant insurer does not so indemnify us, you shall use all insurance monies received by you to indemnify us in respect of any claim and shall make good any deficiency from your own resources; and
  - (iv) 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.
- f. 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 and other event beyond its reasonable control (not caused by its own act or negligent omission) ("**force majeure**") but each party shall use its best endeavours to perform its obligations notwithstanding the *force majeure* event.

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

- a. You must ensure that all information or data (including this Agreement, documents, plans, technical or financial data or other materials and each of their corresponding copyright or intellectual property in work produced by you in the course of providing the Service) and other



information provided to you where you should reasonably understand the confidential nature of that information or any other Government information not in the public domain (“**Information**”) is protected against unauthorized access, use, copying or disclosure. Information is strictly confidential and you shall only use Information as required for providing the Services (and no other purpose). You acknowledge that the improper use or disclosure of Information could be unlawful. You must comply with our instructions in relation to Information.

- b. You may disclose Information to your advisors on a “*need to know*” basis as required for the performance of a Service.
- c. A breach or anticipated breach of the confidentiality provisions of this Agreement, will cause the us irreparable harm and you agree that monetary damages alone may not be an adequate remedy and, accordingly, we will, without prejudice to any other rights or remedies that it may have, be entitled, without proof of special damages and without the necessity of giving an undertaking in damages, to seek an injunction or specific performance, at your cost on a full indemnity basis, together with all other remedies as may be available in law or equity.
- d. If you or anyone acting on your behalf fails to abide by the confidentiality provisions at any time, then such failure shall constitute a material breach of this Agreement and you shall pay us 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.
- e. You agree that all documents and other works, including their respective intellectual property rights created in full or in part by you or anyone engaged by you for a Service (“**Documents**”), shall be owned by us and we may change the Documents without your consent. Notwithstanding the foregoing, you and us may agree in writing that certain identified Document’s or designated intellectual property rights will remain with you. You shall execute further agreements or documents as we may request to give full effect to this section.
- f. You may not use the Government’s name or logo for any publicity or marketing purposes.

## **9. Term and Termination**

- a. This Agreement shall be effective on the Effective Date. The term for the provision of a Service shall start from the Commencement Date and end on the Completion Date (“**Term**”), as set out in the Appendix 1, whereupon this Agreement shall expire unless terminated earlier in accordance with its terms.
- b. You shall not provide additional Service in the event of notification of termination of this Agreement, however, in the event that a Services is being 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 (24) hours prior written notice by either party to the other.
- c. 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.
- d. 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.
- e. 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.



- f. The rights arising under this termination clause represent your sole remedy and excludes common law rights to terminate and claim damages for loss under this Agreement.
- g. Upon expiry or termination of this Agreement, you shall provide us with all such assistance as may be reasonably necessary in order to end the relationship in a manner which causes the least inconvenience to us 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.
- h. The expiry or termination of this Agreement in any manner shall not release you 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**

- a. 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.
- b. 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.
- c. 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 a Service under this Agreement, you shall not be entitled to additional compensation other than the Fee, including, but not limited to: unemployment insurance or benefits, pension benefits, disability benefits and professional liability insurance and/or deductibles.
- d. 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 its rights and obligations under this Agreement without notice or consent.
- e. 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.
- f. All actions, claims or demands against us 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.
- g. 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 those who provide products or services to it (such as advisers and payroll administrators), regulatory authorities, potential or future employers and governmental or quasi-governmental organizations including those outside of Bermuda.

**11. Governance**

- a. You shall inform us promptly of all known or anticipated material problems relevant to providing a Service.
- b. You shall notify us immediately if you have any actual or potential conflict of interest which might



affect your ability to provide a Service.

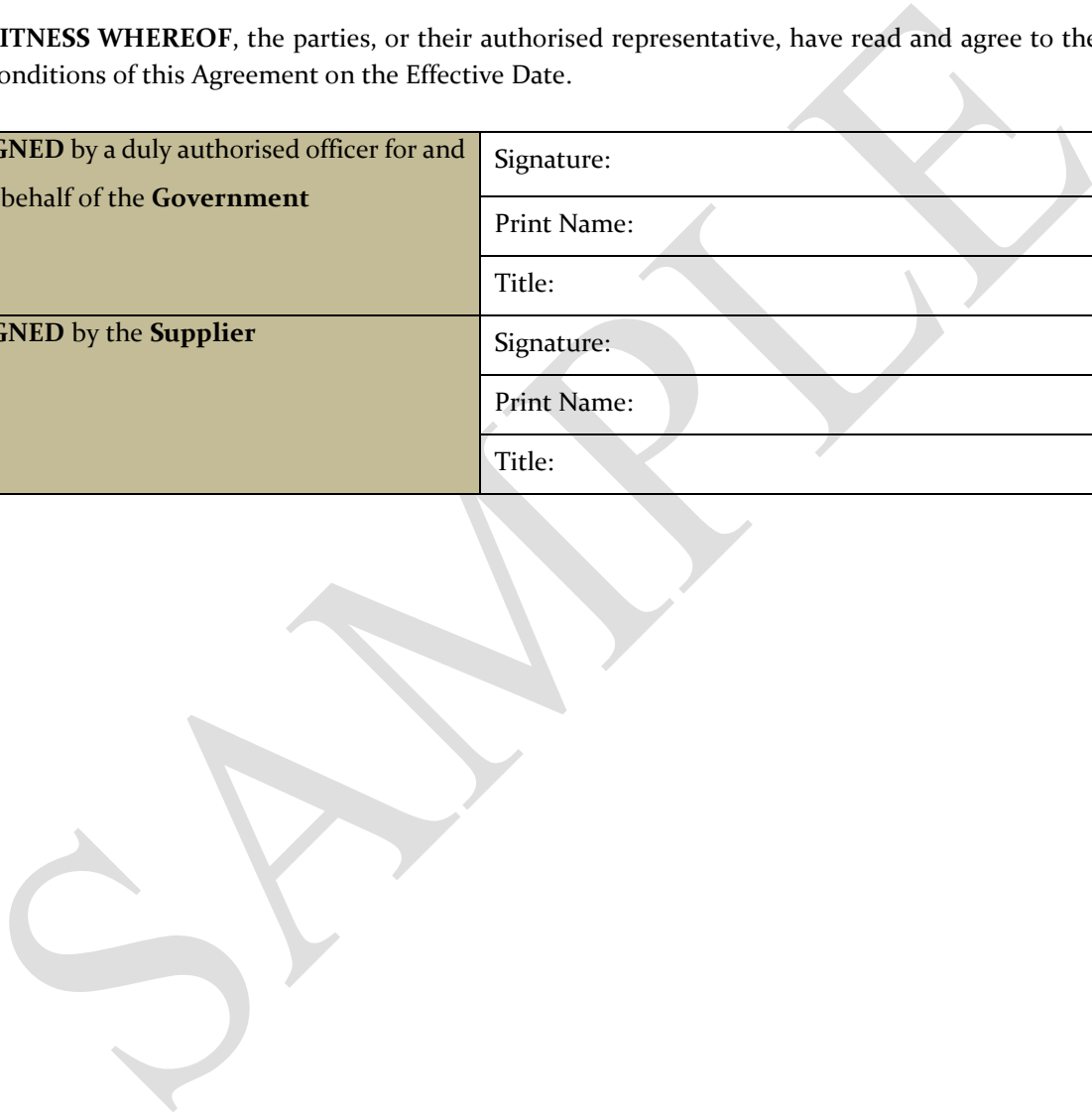
- c. You agree to provide us (and, if we request in writing, our auditors and competent regulatory authorities) with full information on the provision and delivery of a Service in an open and cooperative way and attend meetings with us to discuss a Service and this Agreement.

**12. Governing law and Dispute Resolution**

This Agreement is subject to and construed in accordance with, Bermuda law. You and the Government 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 in Appendix 1.

**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.

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

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

**2. Specific Conditions:**

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



3. **Services provided by the Supplier**

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

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

SAMPLE



**APPENDIX 2**  
**Statement of Work**

SAMPLE