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**SERVICES AGREEMENT**

THIS SERVICES AGREEMENT is made the \_\_\_\_ day of \_\_\_\_\_ 20\_\_ (the “Effective Date”)

BY AND BETWEEN:

(1)

**Ministry:** PUBLIC WORKS

**Department:** WORKS AND ENGINEERING

**Address:** GOVERNMENT POST OFFICE BUILDING, 3<sup>rd</sup> Floor,

56 Church Street, Hamilton HM 12

(hereinafter called the “Government”) of the one part; and

(2) The supplier as identified and set out in Schedule A (hereinafter referred to as the “Supplier” or “you”) of the other part.

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

This Agreement including Schedule A and Appendix 1 sets out the terms and conditions upon which Supplier will provide services to the Government.

**SCHEDULE A**

**STATEMENT OF WORKS**

This Schedule is incorporated into the Agreement. Capitalized terms used but not defined in this Schedule will have the meanings given to them in the Agreement. If a term in this Schedule conflicts with a term in the Agreement, the provisions of this Schedule will prevail to the extent of such conflict. References in this Schedule to Sections and Exhibits will refer to the Sections and Exhibits of this Schedule unless otherwise noted.

**1 Supplier Name and Contact Information:**

**Supplier:**

**Address:**

**Tel:**

**Mobile no.:**

**Email:**

**2 Term and Termination**



2.1 This Agreement shall be effective on the Effective Date. The Services shall commence on the Commencement Date and continue until the Completion Date (“Term”), whereupon this Agreement shall end and expire unless terminated earlier in accordance with its terms.

**Commencement Date:** \_\_\_\_\_

**Completion Date:** \_\_\_\_\_

**Termination Notice Period:** 30 days prior written notice

2.2 In the event that Services are provided to the Government beyond the Completion Date of this Agreement, the terms and conditions of this Agreement shall continue on a day-to-day basis terminable without cause upon 24 hours prior written notice by either party to the other.

**3 Fee**

3.1 The Government will compensate you the Fee for the Services subject to this schedule, Appendix 1 and the General Terms and Conditions and all such amounts are to be paid in arrears, unless otherwise stated:

Rate	Fee
You will be paid the following for the Services:	<b>BMD\$_____ weekly/monthly (delete as appropriate) in arrears</b>
<b>Total Annual Value of Agreement</b>	<b>BMD\$</b>

3.2 The Fee will be subject to deductions by law in the event that you have not registered as a service provider with the relevant Government department.

3.3 The Fee will be subject to further deductions for the following reasons:

- (a) where there has been an overpayment to you for any reason;
- (b) if you have not delivered any part of a service to be provided under this Agreement;
- (c) where the Government has suffered loss by your failure to follow instructions or exercise due diligence;
- (d) if you cause damage to Government’s property (including software), the value of replacement or repair of the damaged property (including damage to any software or Government systems by intrusion of viruses or malware as a result of your errors or omissions) shall be deducted from the Fee;
- (e) if you leave or terminate this Agreement without giving the required notice, the value of the Fee for the notice period may be deducted;
- (f) when you no longer provide Services to the Government, there will be a deduction of any overpayments or advances of payment taken in excess of the Fee; and
- (g) where you have outstanding payroll taxes or social insurance contributions.

**4 Insurance coverage**

If required by the Government, you shall acquire an insurance policy in the amount as set out below, in accordance with and subject to the insurance section of the General Terms and Conditions of this Agreement:

Insurance Coverage	Minimum Coverage amount
Professional Liability	<b>BMD\$100,000</b>

**5 Expenses, Miscellaneous Charges and Taxes**

5.1 You, or any person engaged by you, are not allowed to incur charges and/or expenses (“Expenses”)



associated with the provision of the Services without having received prior written consent from the Government.

5.2 All requested Expenses (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 the Government in writing.

5.3 You shall be responsible to register with the appropriate Government Department and to pay for all taxes associated with the provision of Services, including but not limited to payroll tax or social insurance (“Taxes”) and you consent to the Government deducting due or outstanding Taxes from the Fee on your behalf, at the Government’s option.

5.4 Your tax information:

Payroll Tax No	Social Insurance No.

5.5 In the event that the Government has not made deductions on your behalf, you shall provide to the Government proof of payment of amounts due to the Government such as any Taxes and all other receivables to the Government, prior to you receiving your final payment.

**6 Invoicing Terms**

6.1 You shall provide an invoice for the Services on a monthly basis as set forth herein, with supporting documentation and itemizing the following:

- (a) Your name, invoice date and invoice number;
- (b) Details of Services performed;
- (c) Time and services rendered in hourly (or less than daily) increments with sufficient detail to determine appropriate expenditure of hourly efforts;
- (d) Other supporting documentation (including copies of any invoices or receipts for reimbursable expenditures as provided for herein);
- (e) Mailing address and the person to whom payment is to be sent or the banking institution and full account information for payment by wire transfer (unless such information has previously been provided to the Government); and
- (f) Telephone number, fax number and e-mail address.

6.2 Government shall pay all fees and/or undisputed invoices **60 days in arrears**. The Government may dispute an invoice within **60 days of receipt**, however, the Government reserves 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, the Government reserves 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.

6.3 Your failure to timely submit a proper invoice as set forth in this section may result in a delay in payment by Government. You agree that the Government is not responsible, nor will it 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 the terms of this Agreement.

6.4 Government reserves the right to refuse to pay an invoice in the event that the invoice is presented 6 months after the time when it should have been presented for payment.

**7 Additional Services**

Additional services or variations in the Services may be required after the date of execution of this Agreement and may be performed upon written approval of the Government.



**IN WITNESS WHEREOF**, the parties, or their authorized representatives, 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:



## GENERAL TERMS AND CONDITIONS

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

That 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.

### **2 Provision of Services**

- 2.1 You agree to perform the services including the use of any equipment, including any mobile devices, ("**Services**"), promptly in accordance with and subject to Schedule A, Appendix 1 and these General Terms and Conditions and the Government agrees to pay you the fee for the Services ("**Fee**"). The Fee is confined to a 5 day work week when there is no unscheduled or urgent work involved.
- 2.2 You agree to abide by any other instructions or information as may be provided by the Government.
- 2.3 Progress Report: You shall submit progress reports in connection with the Services including YTD totals for payments received and work completed ("**Report**") on at least a monthly basis, or as otherwise required and in a form acceptable to the Government. Any decisions and/or actions required of the Government during the upcoming reporting period(s) should be included in the Report.
- 2.4 The Government will notify you of the contact who shall be responsible for reviewing and approving all work produced by you.
- 2.5 If the Services are required to be provided on the Governments' premises, you shall comply with all 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 the Government if you become aware of any breaches in IT security or health and safety violations.
- 2.6 You may not subcontract your obligations under this Agreement without the Government's prior written consent, which consent may be unreasonably withheld or

delayed. All your potential sub-contractors are subject to the Governments prior due diligence and written approval. You are responsible for all acts or omissions of any person engaged by you or on your behalf relating to the Services and for ensuring their compliance with the requirements and obligations of this Agreement.

### **3 Representations and Warranties**

You represent and warrant that:

- 3.1 you and any other person engaged by you, will perform all activities relating to the Services:
  - a) in strict accordance with the standards and timelines as may be set out in Appendix 1, free of defects, errors or faults, in order to meet the needs of the Government;
  - b) using appropriately skilled and experienced personnel; and
  - c) in accordance with applicable law; rules, regulations and policies of the Government.
- 3.2 you are and shall remain responsible for all acts, errors or omissions of any person engaged by you or providing Services on your behalf and for ensuring their compliance with the requirements and obligations of this Agreement;
- 3.3 you and any person engaged by you, are in possession of all qualifications, rights, permits, licenses or authorizations ("**Consents**") necessary for the provision of Services and you will maintain such Consents at all times while providing the Services;
- 3.4 you shall procure the benefit of any warranties or guarantees in respect of equipment, goods or materials you use or supply to Government and provide copies of such warranties or guarantees;
- 3.5 all payments to Government, including but not limited to, taxes and social insurance, are current. In the event that any payments are delinquent, the Government may deduct, in part or in full, any payments made to you under this Agreement; and
- 3.6 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.

#### **4 Fee and Taxes**

4.1 The Government shall pay you the undisputed Fee within 60 days of receiving a valid invoice setting out information required with the invoice in accordance with and subject to Schedule A.

4.2 The Government may withhold payment of any Fee or Expenses in respect of which it has queries or where the Contact reports unsatisfactory performance of Services. You will cooperate promptly and fully to resolve any such queries. Where the unsatisfactory performance continues for at least 30 days, the Government may suspend payment of the Fee related to that unsatisfactory performance, at no liability to the Government.

4.3 Except as set out in Schedule A, no other amounts are payable by the Government to you. Government may set off any amounts owed by you to the Government against any fees.

4.4 The Government shall pay by direct transfer into your bank account. It is your responsibility to inform the Government of your current bank details. It is your responsibility to inform the Government of your current contact details in order that the Government can contact you.

4.5 Taxes: You will be responsible for payment of payroll tax and social insurance contributions in accordance with Schedule A.

#### **5 Inspection, Acceptance of Service and Remedies**

5.1 The Government shall at all times retain the right to inspect and accept or reject the Services.

5.2 If the Service does not conform to the warranty as set out in this Agreement, you shall make any required corrections promptly at no additional charge. In the event that you do not make corrections promptly, the Government may, at its discretion and 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 the Government with an alternative means of accomplishing the desired outcome or performance.

5.3 Your failure to proceed with reasonable promptness to make necessary corrections shall be a default. If your corrected performance remains unacceptable, the Government 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.

#### **6 Indemnity, Limitation of Liability, Insurance and Force Majeure**

6.1 Indemnity: You shall indemnify, keep indemnified and defend the Government against:

a) any claims or loss arising from any breach by you or any person acting on your behalf; and

b) any claims or loss arising from a third party as a result of errors, duplication of work, omission to act or wilful misconduct by you or any person engaged by you.

6.2 The Government may satisfy such indemnity, in whole or in part, by way of deduction from any payment due to you.

6.3 No Liability: In no event shall the Government be liable to you for any loss or damage (including damage to your equipment), including the loss of actual or anticipated profits, use of money, forgone opportunities or for any other losses, whether foreseeable, unforeseeable, foreseen or unforeseen.

6.4 Limitation of Liability: Without limiting the provisions of this Section, Government's maximum aggregate liability, for all actions, claims and demands ("**Claims**") in connection with this Agreement or the performance thereof arising during its entire term shall be limited to the Fees paid to you under this Agreement for the month immediately preceding the date the on which the latest Claim(s) first arose.

6.5 Nothing in this Agreement shall exclude or



- limit any liability for wrongful use of confidential information, fraud, willful misconduct or any liability which cannot be lawfully limited or excluded and you shall accordingly maintain in force during the engagement, full and comprehensive insurance coverage.
- 6.6 All Claims against the Government must be commenced in court within one (1) year after the cause of action has accrued or the act, omission or event occurred from which the Claim arises, whichever is earlier, without judicial extension of time, or said Claim is barred, time being of the essence.
- 6.7 Insurance Coverage: If required by the Government, you shall, and will cause your approved subcontractors to, at their own cost and expense, obtain and maintain in full force and effect during the term of this Agreement, insurance coverage for the Services in the minimum amounts and on the terms set forth in Schedule A or such other amounts as may be required by Government.
- 6.8 The insurance requirements set forth in this Agreement do not in any way limit the amount or scope of your liability under this Agreement. The amounts listed indicate only the minimum amounts of insurance coverage that the Government is willing to accept to help ensure full performance of all terms and conditions of this Agreement.
- 6.9 Force Majeure: Neither of the parties shall be liable for failure or delay to perform obligations under this Agreement to the extent that this delay 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 efforts to perform its obligations notwithstanding the *force majeure* event.
- 7 Non-Disclosure of Confidential Information**
- 7.1 You must ensure that all confidential information held by you or which you have learned prior to or during the Term is protected against unauthorized access, use (including copying) or disclosure. You acknowledge that the improper use or disclosure of such confidential information could be unlawful.
- 7.2 You shall only use such confidential information as required for providing the Services (and no other purpose).
- 7.3 A breach or anticipated breach of the confidentiality provisions of this Agreement, will cause a Government irreparable harm and you agree that monetary damages alone may not be an adequate remedy and, accordingly, that the Government 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.
- 7.4 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 to the Government the equivalent of the Fee paid to you for a 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 the Government under this section.
- 8 Copyright, Intellectual Property, Ownership**
- 8.1 Documents, plans, technical or financial data or other materials and each of their corresponding copyright or other intellectual property in work produced by you in the course of providing the Services to the Government shall belong to Government, which may utilise those deliverables freely (including by adapting, copying, publishing and licensing).
- 8.2 Materials created by you shall be original works created by you and shall:
- not include intellectual property owned by or licensed to a third party except for intellectual property which you have the right to use (including the right to use such intellectual property for the purposes of this Agreement); and
  - not subject the Government to any claim for infringement of any





- intellectual property rights of a third party.
- 8.3 In the event that materials are obtained from a third party, you shall obtain all usage rights in any commissioned material as are deemed necessary at the time such material is selected or obtained on behalf of the Government.
- 8.4 Government Logo: You may not use Government's name or logo for any publicity or marketing purposes, unless consent for such use is provided in writing.
- 9 Term, Termination and Suspension**
- 9.1 The Term of this Agreement shall be as set out in Schedule A.
- 9.2 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 Schedule A.
- 9.3 Government may terminate a Service or this Agreement, in part or in whole, at any time at its sole discretion and require that you, or any other person acting on your behalf, cease to act under this Agreement.
- 9.4 Either party may terminate this Agreement immediately, if the other party:
- commits a material breach of this Agreement, which is not remedied within 30 days of notice by the other party informing them of the material breach; or
  - commits an irremediable breach; or
  - is subject to a change of control or chooses to discontinue its business; or
  - if the other party has a lack of funding or becomes or is deemed insolvent; or
- 9.5 In the event of termination of this Agreement, all fees due and payable shall be paid to you.
- 9.6 The rights arising under this termination clause represent your sole remedy and excludes common law rights to terminate and claim damages for loss of this Agreement.
- 9.7 Upon expiry or termination of this Agreement, you shall provide Government with all such assistance as may be reasonably necessary in order to end the relationship in a manner which causes the

least inconvenience to the Government including assisting with the transfer of data and returning all Government property.

**10 Transfer of Data**

- 10.1 If applicable, upon request by the Government prior to or after the effective date of termination, you will make available to Government a complete and secure (i.e. encrypted and appropriately authenticated) file of Government data in a format to be agreed at the time including all schematics and transformation definitions and/or delimited text files with documented, detailed schematic definitions along with attachments in their native format.
- 10.2 You will be available throughout this transfer of data period to answer questions and provide assistance in regards to this data transfer.

**11 General**

- 11.1 Any notice or other communication required to be given under this Agreement shall be duly given or served if it is in writing (for the purposes of this section, a notice shall be deemed to be in writing if it is in the form of a printed or hand-written letter or other document, or in the form of an e-mail message), signed and delivered by hand or sent by prepaid recorded post to the address of the party as first set out above (or such other address as is notified in writing to the other party from time to time); or sent by e-mail to the e-mail address of the party as provided by that party (or such other e-mail address as is notified in writing to the other party from time to time).
- 11.2 This Agreement is effective on the Effective Date. Where this Agreement refers to past or current obligations, this Agreement applies retrospectively from that date.
- 11.3 Any amendments to this Agreement shall be made in writing and signed by each party.
- 11.4 This Agreement together with any documents referred to in it 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 Services and is the complete agreement between the parties.
- 11.5 The parties' respective indemnification, limitation of liability and non-disclosure of confidential information obligations under this Agreement will survive any expiry or termination hereof.
- 11.6 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.
- 11.7 You may not assign or transfer any rights or obligations under this Agreement without the Government's written consent. Government may transfer its rights and obligations under this Agreement.
- 11.8 No one other than a party to this Agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.
- 11.9 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 indemnification, limitation of liability, non-disclosure of information and intellectual property shall survive termination of this Agreement.
- 11.10 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.
- 11.11 You consent to the Government processing data relating to you for legal, administrative and management purposes. The Government may make such information available to those who provide services to it (such as advisers and payroll administrators), regulatory authorities and governmental or quasi-governmental organizations including those outside of Bermuda.
- 12 Governance**
- 12.1 You will inform Government promptly of all known or anticipated material problems relevant to the delivery of Services.
- 12.2 You agree to provide the Government (and, if Government requests in writing, its auditors and competent regulatory authorities) with full information on the provision and delivery of the Services in an open and cooperative way and attend meetings with the Government to discuss the Services and this Agreement. The Government may disclose any information relating to this Agreement to a regulator or auditor.
- 13 Electronic Communication**
- Government may communicate with you by email or by teleconference. The internet is not secure and messages sent by email can be intercepted. You shall use your best efforts to keep your security procedures current and all communications by email secure.
- 14 Governing law**
- This Agreement is construed subject to Bermuda law and you and the Government submit to the exclusive jurisdiction of the Bermuda courts in relation to this Agreement.



**APPENDIX 1**

**Service Objective**

*[please provide brief summary of why services are required by a consultant- delete this once provided]*

**Specific hours of availability to  
provide Services:**

**Monday to Friday 9am – 5pm**

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**Services to be provided by Supplier**