



ANNEX A – FORM OF AGREEMENT

SUPPLY OF GOODS AND SERVICE TO GOVERNMENT OF BERMUDA

THIS CONTRACT FOR SUPPLY OF GOODS AND SERVICE TO THE GOVERNMENT OF BERMUDA is made the ____ day of _____ 20__, (the “**Effective Date**”)

BY AND BETWEEN:

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

The Government and the Supplier are collectively referred to herein the “**Parties**” and each individually as a “**Party**”.

WHEREAS, the Supplier specializes in and provides certain goods and related service in Bermuda;

WHEREAS, the Government wishes to procure the service of the Supplier to supply certain goods and related service to the Government in accordance with the requirements and such other terms and conditions as are provided in this Agreement.

NOW THEREFORE, in consideration of the mutual agreements below and intending to be legally bound, the Parties hereby agree as follows:

1. DEFINITIONS

“**Appendix 1**” contains the SOW for the Goods and related Service being provided;

“**Agreement**” means this agreement for the Supply of Goods and Service to the Government of Bermuda and includes Schedule 1, Schedule 2 and Appendix 1 attached in accordance with the obligations and deliverables provided under this Agreement;

“**Best Industry Practice**” means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector that provides such Goods or Service, in the jurisdiction from where the Goods are being provided;

“**Business Days**” means Monday to Friday, when not a public holiday, between 9am – 5pm in Bermuda;

“**Claims**” means any written or oral claims, actions or demands for money (including taxes or penalties) or service or for any allegation of a breach in rendering or failure to render any Service performed or which ought to have been performed. Claims also includes patent, trade secret, copyright, or other intellectual property right claims, claims connected to Equipment including infringement of Software, costs, penalties, fees and expenses (including legal and professional fees, charges or expenses);

“**Confidential Information**” means the terms of this Agreement as well as any information or data disclosed by one party to the other party which (i) if in tangible form, is marked clearly as proprietary or confidential, (ii) if oral, is identified as proprietary, confidential, or private on disclosure or (iii)



any other information relating to proprietary information, business and operational affairs (including Ministerial and Departmental affairs), whether tangible or oral, which upon receipt by the non-disclosing party should reasonably be understood to be confidential and any personal data for which the Government is the data controller, provided, however, that such information or data is provided under or in contemplation of this Agreement;

“Default” means any breach of the obligations of the Supplier (including but not limited to abandonment of this Agreement) or any other default (including material Default), act, omission, negligence or willful misconduct of the Supplier or any Representative;

“Delivery” means the date and time that the Goods are actually received by the Government as set out in Schedule 1;

“Delivery Date” means the date that the Goods are due to be delivered to the Government;

“Delivery Location” means the address for delivery of the Goods, as set out in the Contract Details;

“Documents” means written advice, project specifications, designs, drawings, plans, reports, tenders, proposals, technical specifications or other information or materials related to the Goods, Software or Service provided by the Supplier or the Representative;

“Fee” means the fee or charge to be paid to the Supplier for the supply and/or installation of Goods and related Services provided under this Agreement;

“Goods” means the goods as set out in Schedule 2 that will be provided by the Supplier or a Representative;

“Guarantor” means the person providing the Performance Bond as set out in Schedule 1;

“in writing” shall mean any fax, letter or purchase order on the Government’s letterhead bearing the signature of an authorised person or an e-mail emanating from the personal e-mail address of an authorised person;

“Insurance Policies” means an amount of not less than the minimum level of insurance required by law or regulatory body or that is required to cover for similar goods or services as are provided in this Agreement or the amount as set out in Schedule 1, whichever is greater, covering the Supplier, or its directors, officers, employees, agents, or subcontractors with insurance coverage which shall be on an “*occurrence*” basis. “*The Government of Bermuda*” shall be endorsed as an additional insured on the required policy or policies and the insurances afforded to the Government of Bermuda shall be the primary insurance;

“Loss” means all loss, Claims, damages, costs, Fees, charges, Expenses, disbursements, costs of investigation, litigation, settlement, judgment and interest, lost revenue, loss of opportunity to make money, loss of contracts or for the inability to fulfill customer contracts, lost or damaged data or other commercial or economic loss, whether based in contract, tort (including negligence) or any other theory of liability or other loss not limited to those contemplated at the time of entering into this Agreement and whether such loss or liabilities are direct, indirect, incidental, special, consequential whether foreseen, foreseeable, unforeseen or unforeseeable;

“Order” means the order for the Goods and related service submitted by the Government;



“**Performance Bond**” means a performance bond provided by the Supplier to the Government in the amount as set out in Schedule 1, as a guarantee against the Supplier's failure to meet its obligations under this Agreement, or to delivery on the level of performance specified in the Agreement;

“**Representative(s)**” means, the person(s) providing the Goods or Services on Supplier's behalf and includes any person engaged by the Supplier;

“**Service**” means the provision of service to support the delivery, installation and use of the Goods according to the Standards;

“**Schedule 1**” means the schedule which forms a part of this Agreement and contains details of the Supplier, Insurance Policies coverage, the Guarantor, Performance Bond amount, and contact details of the Government;

“**Schedule 2**” means the schedule which forms a part of this Agreement and contains special instructions related to the Goods being ordered, related Service, Warranty Period and Fee;

“**Software**” means all Supplier provided software including third-party software, configured software or any parts thereof, provided or licensed to Government in machine readable object code form and any subsequent updates, upgrades, releases or enhancements in-bedded in the Goods;

“**SOW**” means the statement of work provided by the Supplier and set out in Appendix 1;

“**Specifications**” means the specification for the Goods, including any related plans and drawings or other technical data that is agreed in writing between the Government and the Supplier as set out in this Agreement;

“**Standards**” means any:

- (a) standards published by BSI British Standards, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with;
- (b) standards detailed by the Government in the Order or agreed between the Parties from time to time; and
- (c) relevant Government codes of practice and guidance applicable from time to time.

“**Termination Date**” means the date that this Agreement terminates as set out in Schedule 1;

“**Term**” means the period of this Agreement commencing from the Effective Date and ending on the Completion Date as set out in Schedule 1 and includes any Warranty Period or extensions; and

“**Warranty Period**” means the warranty period in relation to any Goods received by the Government which begins when the Goods have been accepted by the Government.

2. INTERPRETATION AND CONSTRUCTION

- 2.1 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.



- 2.2 Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 2.3 Any reference to currency is to Bermuda currency.
- 2.4 Every right or remedy conferred by this Agreement upon or reserved to the Parties shall be cumulative and shall be in addition to every right or remedy now or hereafter existing at law or in equity, and the pursuit of any right or remedy shall not be construed as an election.
- 2.5 The failure of a Party to insist upon the performance of any provision of this Agreement or an attachment hereto, or to exercise any right or privilege granted hereunder, shall not be construed as waiving any such provision and the same shall continue in force.
- 2.6 The rights and obligations of this Agreement which be their nature extend beyond its expiration or termination shall remain in full force and effect and shall bind the Parties and their legal representatives, successors, heirs, and assigns.
- 2.7 In the event of conflict between these terms and conditions, Schedule 1, Schedule 2 and Appendix 1, the order of precedence to resolve any such conflict shall be as follows: (i) General Terms and Conditions, (ii) Schedule 1; (iii) Schedule 2; and (iv) Appendix 1.

3. COMMENCEMENT AND TERM

This Agreement shall commence on the Effective Date and shall continue during the Term, unless terminated earlier in accordance with its terms, subject to the sections which continue beyond the termination or expiry of this Agreement.

4. ORDERS AND SCOPE OF SERVICE

- 4.1 The Government may submit an Order for Goods at any time.
- 4.2 The Supplier shall use its best endeavours to supply Goods and Service in accordance with the Good Industry Practise, the Standard's, an Order, Schedule 1, Schedule 2 and Appendix 1, during the Term, or, if none is specified, within Twenty (20) Business Days of submitting an Order.
- 4.3 The Government may amend or cancel an Order in whole or in part at any time before Delivery by giving the Supplier written notice. The Government shall pay the Supplier fair and reasonable compensation for any work in progress on the Goods and Service at the time of termination, but such compensation shall not include any Claims or Loss.
- 4.4 The Supplier and any Representative shall perform all duties hereunder in accordance with Good Industry Practice and in accordance with the terms and conditions provided herein.

5. REPRESENTATIONS AND WARRANTY

- 5.1 Each Party represents and warrants that:
 - (a) it has full capacity and authority to enter into and to perform this Agreement;
 - (b) this Agreement is executed by its duly authorised Representative;
 - (c) there are no actions, claims or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it



(or, in the case of the Supplier, any of its Affiliates) that might affect its ability to perform its obligations under this Agreement;

- (d) its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable (as the case may be for each Party) bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law); and
- (e) it will remain compliant with the *Bribery Act 2016* and will not, and will not attempt to, bribe, corrupt or offer any improper inducement or bribe to any person at any time.

5.2 The Supplier represents and warrants that:

- (a) the Goods and Service shall comply with the Documents and Specifications and in accordance with Best Industry Practise;
- (b) it is validly incorporated, organised and subsisting in accordance with the laws of its place of incorporation;
- (c) it and its Representatives, have all necessary consents (including, where its procedures so require, the consent of its parent company) and regulatory approvals to enter into this Agreement;
- (d) its execution, delivery and performance of its obligations under this Agreement does not and will not constitute a breach of any law or obligation applicable to it;
- (e) as at the Effective Date, all written statements and representations in any written submissions made by the Supplier as part of the procurement process, its tender, its response to a request for proposal and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Agreement;
- (f) it shall take all commercially reasonable steps, in accordance with Best Industry Practice, to prevent the introduction, creation or propagation of any disruptive elements (including any virus, worms and/or trojans, spyware or other malware) into systems, data, software or the Government's Confidential Information (held in electronic form) owned by or under the control of, or used by, the Government;
- (g) it has the right to license, assign and transfer all intellectual property rights in the Goods, Service and all related documents or technical specifications, to the Government;
- (h) the Software and Service will be compatible with existing equipment and software on Government systems and upon installation of the Goods, the Software and Service will meet all the Objectives and that when used, the Goods will perform substantially as described in the Documents and this Agreement;
- (i) it shall procure the benefit of any warranties or guarantees in respect of Goods and Services and provide copies of such warranties or guarantees to the Government;
- (j) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Agreement;



- (k) that all payments to the 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 it under this Agreement;
 - (l) it will inform Government promptly of all known or anticipated material problems relevant to the delivery of Goods or Service;
 - (m) it will notify the Government immediately if it has any actual or potential conflict of interest which might affect its ability to provide the Goods or Service;
 - (n) it is not affected by an insolvency event and no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue; and
 - (o) for the Term and for a period of twelve (12) months after the termination or expiry of this Agreement, the Supplier shall not employ or offer employment to any staff of the Government which have been associated with the provision of the Goods and delivery of purchased Goods without written approval or the prior written consent of the Government which shall not be unreasonably withheld.
- 5.3 Each of the representations and warranties set out in Section 5(e) shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any undertaking in this Agreement.
- 5.4 If at any time a Party becomes aware that any representation or warranty given by it under Section 5(e) has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
- 5.5 For the avoidance of doubt, the fact that any provision within this Agreement is expressed as a warranty shall not preclude any right of termination the Government may have in respect of breach of that provision by the Supplier which constitutes a material Default.
- 5.6 The Supplier acknowledges that:
- (a) the Government has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this Agreement;
 - (b) it has undertaken all necessary due diligence and has entered into this Agreement in reliance on its own due diligence alone;
 - (c) it acknowledges and warrants that it is fully satisfied as to the scope and nature of the duties and obligations under this Agreement; and
 - (d) it shall not be excused from the performance of any of its obligations under this Agreement on the grounds of, nor shall the Supplier be entitled to recover any additional costs or charges, arising as a result of any:



- (i) misinterpretation of the requirements of the Government in the Order or elsewhere in this Agreement;
- (ii) failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the due diligence information; and/or
- (iii) failure by the Supplier to undertake its own due diligence.

6. GOODS

6.1 The Supplier shall ensure that the Goods:

- (a) correspond with their description, Documents and any applicable Specifications;
- (b) be of satisfactory quality (within the meaning of the *Sale of Goods Act 1978, Supply of Goods and Services (Implied Terms) Act 2003*, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by the Government expressly or by implication, and in this respect the Government relies on the Supplier's skill and judgement;
- (c) where they are manufactured products, be free from defects in design, material and workmanship and remain so for twelve (12) months after Government receives the Goods; and
- (d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

6.2 The Government has the right to inspect and test the Goods at any time before receipt of the Goods.

6.3 If following such inspection or testing the Government considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings in this Section 6, the Government shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

6.4 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under this Agreement and the Government shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

7. LICENSE GRANT

7.1 Supplier grants the Government a non-exclusive royalty free right to use the Software and Documents exclusively for the operation of the Goods intended or supplied therefore. In particular, the right to use the Software shall not include the right to translate, lease, lend, sublicense, distribute or publicly reproduce the Software or make it available online to third parties. Furthermore, the right to use the Software shall not include the right to reproduce the Software unless such reproduction is necessary for the operation of the Goods intended or supplied therefore or to produce a backup copy. Unless provided otherwise by mandatory law or written contractual regulations, the Government shall not be authorized to modify, decompile, disassemble or otherwise reverse-engineer the Software, whether in whole or in part, in order to acquire the source code.

7.2 In the event you are not able to support any Software update, upgrade, version or new release that changes major functionality and is not compatible with the Equipment or a Service, you shall use your best efforts to resolve such issues and to provide optimal functionality of the Goods or the Service.



- 7.3 The Government will not acquire title to any Software incorporated in, accompanying, or delivered with or without Goods.
- 7.4 Supplier grants the Government the right, which may be revoked in case of good cause, to transfer to third parties the right to use the Software granted to the Government. The Government may transfer the right to use the Software to third parties only together with the Goods which the Government acquired together with the Software from Supplier or for which the Software of Supplier is intended. In that case, the Government will impose the above obligations and restrictions on the third party.
- 7.5 The Software will be provided solely in machine-readable form (object code) and without source code or source code documentation.

8. WARRANTY OF THE GOODS

- 8.1 The Supplier hereby guarantees the Goods for the Warranty Period as set out in Schedule 2 against faulty Goods and workmanship and any errors, omissions or wilful misconduct during installation of the Goods or Service.
- 8.2 If the Government shall within the Warranty Period give notice in writing to the Supplier of any defect in any of the Goods as may have arisen during such Warranty Period under proper and normal use, the Supplier shall (without prejudice to any other rights and remedies of the Government howsoever arising) promptly remedy such faults or defects (whether by repair or replacement as the Government shall elect) at its own Expense.

9. OBLIGATION TO REMEDY DEFAULT IN THE SUPPLY OF THE GOODS

Subject to the Indemnity Section and without prejudice to any other rights and remedies of the Government howsoever arising in this Agreement, the Supplier shall remedy any breach of its obligations in this Agreement within three (3) Business Days of becoming aware of the relevant Default or being notified of the Default by the Government or within such other time period as may be agreed with the Government (taking into account the nature of the breach that has occurred) and the Supplier shall meet all the Expenses in the performance of such remedial work.

10. ADDITIONAL GOODS

- 10.1 Additional goods or service, if any, may be required after the date of execution of this Agreement and may be performed upon prior written approval of the Government. Such written approval shall be evidenced by an authorization for changes in the service ("**Change Order**") or such other written authorization as approved by the Government. In such case, a Change Order shall be issued within a reasonable time thereafter.
- 10.2 All Change Orders are subject to the terms and conditions of this Agreement.
- 10.3 Fees for additional goods or service shall be agreed by the Parties in writing prior to any additional goods or services being provided.

11. DELIVERY

- 11.1 Time is of the essence in connection with the delivery of the Goods. The Supplier shall perform expeditiously to meet the requirements hereunder and shall deliver the Goods to the Government during the Delivery Date or such other time as specified by the Government. In the event that the



- Supplier is unable to provide the Goods within the required time, the Supplier shall notify the Government the time the request is made or promptly thereafter to allow the Government sufficient time to purchase from an alternative supplier.
- 11.2 The Supplier shall ensure that:
- (a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition and in accordance with the Documents and Specifications;
 - (b) each delivery of Goods is accompanied by a delivery note which shows the order number, the type and quantity of Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the relevant Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
 - (c) if the Supplier requires the Government to return any packaging material to the Supplier, that fact is to be clearly stated on the delivery note. Any such packaging material shall be returned to the Supplier at the Supplier's Expense.
- 11.3 The Supplier shall deliver the Goods specified in each Order:
- (a) on or before its relevant Delivery Date;
 - (b) at the Delivery Location; and
 - (c) during the Government's normal business hours, or as instructed by the Government.
- 11.4 Delivery of Goods is completed on the completion of unloading of those Goods at the Delivery Location.
- 11.5 If the Supplier delivers more or less than the quantity of Goods ordered, and the Government accepts the delivery, a pro rata adjustment shall be made to the invoice for the Goods.
- 11.6 If the Supplier:
- (a) delivers less than 50% of the quantity of Goods ordered, the Government may reject the Goods; and
 - (b) delivers more than 105% of the quantity of Goods ordered, the Government may at its discretion reject the Goods or the excess Goods.
- 11.7 If the Government rejects any Goods they are returnable at the Supplier's Expense. If the Supplier fails to collect rejected Goods within a reasonable period after notification of the rejection, the Government may charge the Supplier storage costs and sell or dispose of the rejected Goods. The Government will account to the Supplier for the proceeds of sale (if any) after deducting the purchase price paid for the Goods, storage costs and its reasonable costs and expenses in connection with the sale.
- 11.8 The Supplier shall not deliver Orders in instalments without the Government prior written consent.
- 11.9 Where it is agreed that Orders may be delivered by instalments, such instalments shall be invoiced separately. However, failure by the Supplier to deliver any one instalment on time or at all, or any defect in an instalment, shall entitle the Government to use any of its remedies as set out in Section

**11.10 Continuing Obligation to Provide the Goods:**

- (a) The Supplier shall continue to perform all of its obligations under this Agreement and shall not suspend the provision of the Goods, notwithstanding:
- (i) any withholding or deduction by the Government of any sum due to the Supplier pursuant to the exercise of a right of the Customer to such withholding or deduction under this Agreement;
 - (ii) the existence of an unresolved dispute; and/or
 - (iii) any failure by the Government to pay any Fees or Expenses,

unless the Supplier is entitled to terminate this Agreement as a result of the Government's failure to pay undisputed Fees.

12. INSPECTION AND ACCEPTANCE

- 12.1 The Government shall at all times retain the right to inspect the Goods provided by the Supplier and shall have the right to review, require correction or additional follow up, if necessary, and accept the Goods or Service.
- 12.2 The Government will notify the Supplier of its contact who shall be responsible for reviewing, inspecting and approving Delivery of the Goods and Service.
- 12.3 The Government shall have the right to reject the Goods or refuse acceptance of the Goods if:
- (a) the Goods, or any portion thereof, are not in conformance with this Agreement;
 - (b) the Goods, or any portion thereof, are not in conformance with the Specifications provided to the Supplier at the time the order for the Goods was placed; or
 - (c) the Goods, or any portion thereof, are not in conformance with the Documents; or
 - (d) the Supplier fails to deliver the Goods within the time specified by Government following receipt of the Order or such other time as specified by the Government.
- 12.4 Upon such rejection of the Goods, the Supplier shall arrange for return of the Goods to the Supplier, at the Supplier's risk and Expense, and the Supplier shall promptly reimburse the Government for any payments made in connection with the delivery and return of the rejected Goods or any part of the Goods.
- 12.5 Following rejection of any Goods in accordance with this Section, the Government shall have the right to require the Supplier to make another delivery of Goods which conform to this Agreement, Documents and/or the Specifications provided or, to purchase the Goods and Service or substitutes thereof from alternative sources. The Supplier shall reimburse the Government, upon demand, all additional Expense incurred by the Government, if any, in obtaining the Goods and Service or substitutes thereof.
- 12.6 The Government may confirm, in writing, acceptance of the Goods at the time of Delivery or at any time thereafter.
- 12.7 Written acceptance of the Goods by the Government shall release the Supplier from any obligation to remedy any nonconformity of the accepted Goods or reimburse the Government for any additional



costs incurred in obtaining other Goods or substitutes thereof but does not relieve Supplier from any warranty, guarantees or service obligations. The Government shall have the right to inspect the Goods prior to, or at the time of Delivery or within thirty (30) days following Delivery for compliance with this Agreement and other Specifications required by the Government.

- 12.8 Supplier's failure to proceed with reasonable promptness to make necessary corrections shall be a Default. If Supplier fails to provide corrected Goods or Supplier fails to correct performance of Service within a timeframe as set by Government, 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 Goods and Service received.

13. OWNERSHIP AND RISK OF GOODS

- 13.1 Without prejudice to any other rights or remedies of the Government howsoever arising title to the Goods shall pass to the Government upon Delivery to the Government at the Delivery Location.
- 13.2 In the event that an advance payment is made, title to the Goods shall not pass to the Government and all risk in the Goods remain with the Supplier until Government has accepted the Goods in writing.
- 13.3 Risk of loss or damage to the Goods shall only pass to the Government at the time of acceptance of the Goods by the Government.

14. PAYMENT FOR THE GOODS AND INVOICING

- 14.1 The Government shall pay a Fee you the Goods and related Service, within sixty (60) days of receiving a valid invoice, subject to Schedule 2. Invoices for each Order shall be submitted to the Government's representative.
- 14.2 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. The Fee is not payable during public holidays.
- 14.3 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.
- 14.4 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) where there has been a mistake of payment made to you;
 - (c) if you have not delivered the Goods, a Service, or any part of the Goods or Service, as required;
 - (d) where the Government has suffered loss by your failure to follow instructions, error, omission, wilful misconduct or to exercise due diligence;
 - (e) if you cause damage to Government property, the value of replacement or repair of the damaged property;
 - (f) if you leave or terminate this Agreement without giving the required notice, the value of the Fee for the notice period; and
 - (g) overpayments or advances of payment taken in excess of the Fee.
- 14.5 A proper and correct invoice and supporting documentation must include:



- (a) the Supplier's name and address;
 - (b) invoice date and invoice number;
 - (c) Government's name and address where the Goods were delivered;
 - (d) total amount payable and cost per unit;
 - (e) a description of the Goods supplied including specific quantities consistent with the Agreement requirements and orders placed;
 - (f) a description of a Service provided related to the Goods;
 - (g) mailing address and the person to whom payment is to be sent or the banking institution and account information for a payment by wire transfer (unless such information has previously been provided and processing has been confirmed by the Government); and
 - (h) contact telephone number, fax number and e-mail address.
- 14.6 Invoices must be submitted within sixty (60) days of Delivery of the Goods. Advance payments will not be made unless specifically authorized in writing by the Accountant General.
- 14.7 The Supplier's failure to timely submit a proper invoice as set forth in this Section may result in a delay in payment by the Government. The Government shall not pay interest on any late payment to the Supplier resulting from the Supplier's failure to submit a proper or timely invoice or otherwise comply with the terms of this Section. The Supplier agrees that the Government is not responsible, nor will it be liable to the Supplier under law or equity for any and all Expenses that the Supplier may incur resulting from any delays in payment caused by the Supplier's failure to comply with the terms of this Section.
- 14.8 Proper invoices remaining unpaid for more than sixty (60) days following the due date shall bear interest at the rate of 12% per annum. The Supplier shall have the right to suspend or terminate delivery of Goods for non-payment of such invoices upon fourteen (14) Business Days' written notice delivered to the Government at the address provided herein for notices.
- 14.9 No additional expenses shall be allowed for reimbursement under this Agreement. The Supplier shall deliver the Goods at its own expense.
- 15. GOVERNMENT REMEDIES**
- 15.1 If the Goods are not delivered on the relevant Delivery Date at the Delivery Location, or do not comply with the undertakings set out in the Representation and Warranty section then, without limiting any of its other rights or remedies, and whether or not it has accepted the Goods, the Government may exercise any one or more of the following remedies:
- (a) terminate the Agreement;
 - (b) reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;
 - (c) require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
 - (d) refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;



- (e) recover from the Supplier any costs incurred by the Customer in obtaining substitute goods from a third party; and
 - (f) claim damages for any other Loss suffered or incurred by the Government which are in any way attributable to the Supplier's failure to carry out its obligations under this Agreement.
- 15.2 If the Goods are not delivered on the Delivery Date, the Government may at its option claim or deduct 20% per cent of the price of the Goods for each week's delay in delivery by way of liquidated damages, up to a maximum of 50% per cent of the total price of the Goods.
- 15.3 This Agreement shall apply to any repaired or replacement Goods supplied by the Supplier.
- 15.4 The Government's rights and remedies under this Agreement are in addition to its rights and remedies implied by statute and common law.
- 16. INDEMNITY AND LIMITATION OF LIABILITY**
- 16.1 Indemnity: Supplier shall indemnify, keep indemnified and defend the Government against:
- (a) any Claim or Loss arising from any breach by the Supplier or a Representative; or
 - (b) any Claim or Loss arising from a third party as a result of negligent act, errors, omission or wilful misconduct by the Supplier or anyone engaged by the Supplier; or
 - (c) any Claim or Loss in connection with:
 - (i) any claim made against the Government for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the supply or use of the Goods, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
 - (ii) any claim made against the Government by a third party for death, personal injury or damage to property arising out of or in connection with defects in Goods or defects occurring during the installation of the Goods, to the extent that the defects in the Goods or occurring during installation of the Goods are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and
 - (iii) any claim made against the Government by a third party arising out of or in connection with the supply of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Agreement by the Supplier or Representatives or sub-contractors.
- 16.2 The Government may satisfy such indemnity (in whole or in part) by way of deduction from any payment due to the Supplier.
- 16.3 The Guarantor hereby indemnifies, defend and keep harmless, the Government, from and against all Loss that we may incur or suffer as a result of either any non-performance or breach of the Agreement or other cause whatsoever, whether due to tort, negligence, misrepresentation or otherwise, to the extent that same is, directly or indirectly, caused or contributed to, by the Supplier.
- 16.4 Limitation of Liability: Without limiting the provisions of this Section, either party's maximum aggregate liability to the other party, for all Claims or Loss 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 six (6) months immediately preceding the date the on which the latest Claim or Loss first arose, or the coverage limits of any insurance policy that may be required to respond to a Claim or Loss, whichever is the greater.

- 16.5 Nothing in this Agreement shall exclude or limit any liability which cannot be limited or excluded by law and you shall accordingly maintain the Insurance Policy in full force and effect during the Term.
- 16.6 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.

17. INSURANCE AND PERFORMANCE BOND

- 17.1 The Supplier shall maintain at its sole expense, on a primary basis, and an “*occurrence basis*”, at all times during the Term, the Insurance Policies. The Insurance Policies shall be evidenced by delivery to the Government of certificate(s) of insurance executed by the insurer(s) listing coverages and limits, expiration dates and terms of the policy or policies and all endorsements, and upon request a certified copy of each policy including all endorsements. Failure to provide acceptable proof of insurance as required by the Government shall entitle the Government to either obtain or maintain the Insurance Policies on your behalf at your sole cost and expense, or to terminate this Agreement without prejudice to any other of the Governments rights or remedies in connection with this Agreement. Amounts of Insurance Policies are set out in Schedule 1.
- 17.2 The Supplier shall be responsible for the payment of all deductible amounts on the Insurance Policies and shall on request supply to the Government copies of the Insurance Policies and evidence that the relevant premiums have been paid.
- 17.3 The Supplier shall notify the Government forthwith of any changes to any of the Insurance Policies, or of any claims or potential claims which have arisen to which the insurer(s) of the Insurance Policies may be required to respond.
- 17.4 The Supplier shall ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as voided in whole or part. The Supplier shall use all reasonable endeavours to notify the Government (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or void any insurance, or any cover or claim under any insurance in whole or in part.
- 17.5 The policy clause “*Other Insurance*” or “*Excess Insurance*” shall not apply to any insurance coverage currently held by The Government of Bermuda, or to the Government of Bermuda’s Self-Insured Retentions of whatever nature.
- 17.6 If the Supplier subcontracts any work under this Agreement, Supplier shall ensure that each subcontractor maintains insurance coverage with policy limits of at least the amounts stated in the Insurance Policies.
- 17.7 The insurance requirements set forth above do not in any way limit the amount or scope of Suppliers 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.

17.8 Performance Bond:

- (a) You hereby guarantee to us the full and prompt performance and observance by you of each and every covenant, agreement, undertaking and obligation contained in this Agreement and you shall use your best efforts to facilitate, promote and ensure the full performance of your obligations, including all of your remedial and compensatory duties and obligations that may arise in connection with the Agreement.
- (b) In the event of your failure or deficiency to perform the Service, or any part of the Service, the Guarantor shall promptly direct and cause you to fully perform, and comply with, the Agreement. All demand for claims, compensation, remedies, or other relief hereunder (including with respect to any Loss) shall be provided to the Guarantor by us, in writing as a notice to the Guarantor and to you.
- (c) In the event that Guarantor becomes aware of the occurrence of any failure to perform, or of any breach of the Agreement, the Guarantor shall provide us with prompt written notice of same, which shall include reasonably accurate and complete information concerning such occurrence.
- (d) We shall not be required to exhaust any remedy, right or recourse we may have against you before being entitled to demand the full compensation or remediation from the Guarantor.
- (e) The Performance Bond shall not limit, and shall be in addition to and without prejudice to, any other rights, dispute resolution processes, remedies, causes of action, recourse, or other security (including, without limitation, insurance, any performance bond(s), labour and material payment bond(s), letter of credit or other guarantees) by whomsoever given, that are available to, or that are held at any time by, the Government, in connection with the Agreement.

17.9 Guarantor Obligations:

- (a) Guarantor agrees that, upon our request, it shall (at the Guarantor's expense) participate in any dispute resolution activities between Supplier and the Government concerning, or pursuant to, the Agreement.
- (b) Guarantor shall promptly respond to, comply with and perform any claim, demand and direction by the Government to perform the Performance Bond and to expeditiously, in good faith and on a full indemnity basis (including legal costs), fully compensate the Government, relieve, remedy or otherwise rectify any breach of the Agreement by the Supplier, including to financially compensate the Government (as claimed by Government) in accordance with, and subject to, the terms and conditions of the Agreement.

18. NON DISCLOSURE OF CONFIDENTIAL INFORMATION

- 18.1 The Parties shall only use Confidential Information disclosed under the terms of this Agreement for the purpose of this Agreement, subject to privilege of the Legislature.
- 18.2 The Parties shall receive and hold any Confidential Information in confidence, and shall take all reasonable and necessary care to maintain the confidentiality of such information.



- 18.3 The Parties may disclosure Confidential Information to their legal or professional advisors on a need to know basis under non-disclosure obligations at least as protective as under this Agreement. Each Party shall remain responsible for the use of Confidential Information by its Representatives and in the event of discovery of unauthorized disclosure, either Party must promptly notify the other Party.
- 18.4 Neither Party shall disclose to any third party, publish or otherwise use for its own benefit or the benefit of a third party any Confidential Information without the prior written consent of the other Party.
- 18.5 Any disclosure of Confidential Information to a third party, after written approval from the other Party, shall be done only under an agreement that fully protects the rights of the Government.
- 18.6 Notwithstanding the foregoing, either Party may, upon written notice to the other Party, disclose Confidential Information revealed pursuant to the Agreement to the extent required by a judicial order or other legal obligation.
- 18.7 Within thirty (30) days of either expiration or termination of this Agreement, the Supplier shall collect all Confidential Information applicable thereto and received and/or created under this Agreement and shall either return the Confidential Information to the Government (without retaining copies thereof) or destroy the Confidential Information, as commercially reasonable as possible, in accordance with the written direction of the Government.
- 18.8 Any violation of this Section by the Supplier shall constitute a material breach of this Agreement and shall be a basis for termination of this Agreement for Default.

19. TERMINATION AND SUSPENSION

- 19.1 The Government may terminate this Agreement and the service hereunder in whole, or in part, without cause upon sixty (60) days' prior written notice to the Supplier. Upon receipt of such notice, the Supplier shall: (1) immediately take the necessary actions to discontinue all service affected as of the effective date of termination unless and to the extent that the notice directs otherwise, and (2) deliver to the Government all Goods and Service which have been ordered and are deliverable hereunder.
- 19.2 In the event that termination by the Government is based upon the lack of available funding, the notice requirement for termination shall be reduced to thirty (30) days' notice.
- 19.3 The Government may terminate this Agreement immediately, if the Supplier:
- (a) if the Supplier shall be guilty of any error, omission to act, failure to follow instructions, misrepresentation or willful misconduct in the discharge of duties hereunder; or
 - (b) commits an irremediable breach; or
 - (c) is subject to a change of control or chooses to discontinue its business; or
 - (d) if you or your parent entity ceases or threatens to cease to trade (either in whole, or as to any part or division involved in the performance of your obligations under this Agreement), or becomes or is deemed insolvent, is unable to pay your debts as they fall due, has a receiver, administrative received, administrator or manager appointed of the whole or any part of your assets or business, makes any composition or arrangement with your creditors or an order or resolution is made for its dissolution or liquidation (other than for the purpose of solvent



amalgamation or reconstruction), or you take or suffers any similar or analogous procedure, action or event in consequence of debt in any jurisdiction; or

- (e) if the other party's performance is affected by a force majeure event which lasts seven (7) days or more.

19.4 The following articles shall survive termination of this Agreement:

- (a) Confidential Information;
- (b) Indemnification;
- (c) Insurance;
- (d) Limitation of Liability;
- (e) Governing Law; and
- (f) Jurisdiction.

19.5 The Government may temporarily suspend the duties of the Supplier hereunder and shall confirm such instruction in writing to the Supplier. Upon any such suspension, the Government shall make payments to the Supplier up to the time of such suspension. If, following suspension of the Supplier's duties, there is no resumption within six (6) months, this Agreement may be terminated by the Supplier, and the Government shall make such payments as may be due under this Agreement.

19.6 If the duties of the Supplier cannot be discharged for reasons outside the control of the Government or the Supplier, the Agreement shall be treated as terminated by mutual agreement, and the Supplier shall be entitled to appropriate payment for Services or Goods provided under this Agreement, up to to the time of termination.

19.7 The Government may terminate this Agreement at any time based upon a Default. The Government, in its sole discretion may provide the Supplier with a notice to cure the Default ("**Cure Notice**") any conditions that would otherwise amount to a basis to terminate this Agreement as a result of the Supplier's failure to fulfill its obligations hereunder. The Supplier shall respond to any such Cure Notice within a reasonable time or within such time as provided therein and the Supplier shall either cure the specified conditions or provide assurances to cure the same which the Government, in its sole discretion, deems adequate.

19.8 Any dispute with regard to this Article are expressly made subject to the terms and conditions of this Agreement.

20. PAYMENT FOLLOWING TERMINATION AND SUSPENSION

20.1 Following termination or suspension of the Suppliers obligations under this Agreement by the Government or as otherwise specifically stated herein, the Government shall pay to the Supplier, upon receipt of a proper invoice and subject to the terms and conditions herein, all amounts payable for Goods provided or ordered prior to the effective date of termination or suspension as calculated in accordance with Schedule 1.

20.2 The Government may issue a written order to resume the order of Goods or Service hereunder within six (6) months of suspension in which case the pricing shall be as provided in Schedule 1.

21. DISPUTE RESOLUTION



- 21.1 If a dispute arises out of this Agreement, the Government and the Supplier shall attempt to agree to a settlement in good faith.
- 21.2 If a dispute is not resolved by the Parties, either the Government or the Supplier may at any time give notice to the other in writing that they wish to refer the dispute to mediation. The mediation shall be conducted by a mediator appointed upon mutual agreement of the Parties, or if no agreement can be reached, then by the President of the Chartered Institute of Arbitrators (Bermuda Branch).
- 21.3 If agreement cannot be reached through the Mediator or if the Parties otherwise agree, then the dispute may be determined, upon mutual agreement between the Parties, by arbitration.
- 21.4 The arbitration shall be by a single arbitrator appointed upon mutual agreement of the Parties or by the President of the Chartered Institute of Arbitrators (Bermuda Branch). The provisions of the *Arbitration Act 1986*, as amended from time to time, shall apply.
- 21.5 Notwithstanding the foregoing, no person shall be appointed to act as a mediator or arbitrator who is in any way interested, financially or otherwise, in the performance of duties hereunder or the business affairs of the Supplier.
- 21.6 The decision and award of the arbitrator shall be delivered within three (3) months of his or her appointment, unless otherwise agreed between the parties, and shall be final and binding on the Parties and enforceable in any court of competent jurisdiction. Nothing in this Section prevents or in any way restricts either party from seeking specific performance, injunctive relief or any other form of equitable remedy. The Parties shall continue to perform their respective obligations during the dispute resolution process set out in this Section, unless and until this Agreement is terminated in accordance with its terms.
- 21.7 The costs of the arbitration, including administrative and arbitrators' fees, shall be shared equally by the Parties and each Party shall bear its own costs and attorneys' and witness' fees incurred in connection with the arbitration unless the arbitrator determines that it is equitable to allocate such costs and fees differently and so orders in rendering judgment.
- 21.8 In rendering judgment, the arbitrators may not provide for punitive or similar exemplary damages.
- 21.9 The arbitration proceedings and the decision shall not be made public without the joint consent of the Parties and each Party shall maintain the confidentiality of such proceedings and decision unless otherwise permitted by the other Party, except as otherwise required by applicable law or statutes.
- 22. FORCE MAJEURE**
- 22.1 Notwithstanding any other provision in this Agreement, no default, delay or failure to perform on the part of either party shall be considered a breach of this Agreement if such default, delay failure to perform is shown to be due entirely to causes beyond the reasonable control of the party charged with such default including, but not limited to causes such as strikes, lock-outs or other labour disputes, riots, civil disturbances, actions of Governmental authorities or suppliers, epidemics, wars, embargoes, storms, floods, fires, earthquakes, acts of God, of the public enemy, computer downtime or the default of a common carrier (hereinafter called the Force Majeure Event).
- 22.2 If the Supplier is prevented from delivering the Goods due to the Force Majeure Event, the Supplier shall notify the Government's representative of the fact in writing promptly after discovery of the Force Majeure Event.



- 22.3 If the circumstances preventing Delivery are still continuing fourteen (14) days from and including the date when the Supplier sends such notice, then either Party may give written notice to the other cancelling the Agreement. Such written notice must be received while the Force Majeure Event is still continuing.
- 22.4 Notwithstanding the forgoing, each Party shall forthwith notify the other Party of the commencing of any strike or lock-out and either Party, based upon any delay caused thereby, may grant such extension of time as it considers reasonable without prejudice to the right of the other Party to exercise any other right or power hereunder.
- 22.5 If the Agreement is cancelled as a result of a Force Majeure Event, the Supplier shall refund any payment which the Government has already made, if any, for Goods which have not yet been delivered.

23. GOVERNANCE

- 23.1 You shall inform us promptly of all known or anticipated material problems relevant to delivery of the Service.
- 23.2 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 a Service in an open and cooperative way and attend our meetings to discuss the Service and this Agreement. We may disclose any information relating to this Agreement to a regulator or auditor.
- 23.3 You shall provide details of all persons with an ownership stake in the Supplier, 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.
- 23.4 Such statement shall be provided at least annually or if there is any change in your interests.

24. ANTI-CORRUPTION

- 24.1 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.
- 24.2 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.



24.3 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

25. AUDIT RIGHTS AND RETENTION OF RECORDS

25.1 The Supplier shall retain all records pertinent to this Agreement for a period of three (3) years following expiration or termination hereof. The Supplier shall establish and maintain books, records and documents (including electronic storage media) in accordance with Canadian Accepted Accounting Principles and practices which sufficiently and properly reflect all revenues and expenditures of funds provided by the Government, including all receipts, invoices, payroll records and/or other documentation used to substantiate requests for payment hereunder. At any time or times before final payment and for three (3) years thereafter, the Government may cause the Supplier's records to be audited by authorised Public Officer. Records required to resolve an audit shall be maintained for a period of not less than three (3) years following resolution of the audit or any arbitration or litigation arising hereunder.

25.2 Any payment or payment request may be reduced by amounts found by the Government not to constitute allowable Expense. In the event that all payments have been made to the Supplier by the Government and an overpayment is found, the Supplier shall reimburse the Government for such overpayment within thirty (30) days following receipt of written notification thereof.

25.3 Duly authorized Government employees shall have full access to and the right to examine any of the records including financial records, pertinent to this Agreement at all reasonable times for as long as such records are required to be retained hereunder.

25.4 The Supplier shall include the aforementioned audit and record keeping requirements in all subcontracts and assignments, if any, made in accordance with this Agreement.

26. ELECTRONIC COMMUNICATIONS

Government may communicate with the Supplier by email. The internet is not secure and messages sent by email can be intercepted. Supplier shall use its best efforts to keep its security procedures current and all communications by email secure.

27. NOTICES

27.1 Any notice required or permitted hereunder shall be in writing, and service thereof shall take effect by one of the following methods:

- (a) delivering copies personally;
- (b) by prepaid mail;
- (c) by facsimile transmission; or
- (d) by electronic mail to the party with read receipt requested.

27.2 Notices shall be deemed to have been duly given:

- (a) if by personal delivery, on the date of such delivery;
- (b) if by prepaid mail, seven (7) days after the date of posting; or



(c) if by facsimile or electronic mail, one (1) day after the date of transmission to the facsimile number or electronic mail address provided in writing by the party receiving the notice.

27.3 Notices shall be delivered to the addresses and persons as set out in Schedule 1.

28. GENERAL

28.1 This Agreement together with any documents referred to in it supersedes 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 Goods and Service and is the complete agreement between the Parties.

28.2 All Supplier written statements and representations in any written submissions made by the Supplier as part of the procurement process, its tender or response to a request for proposal or any other documents submitted, remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Agreement.

28.3 This Agreement shall not be modified or amended in any way except by mutual agreement of the Parties evidenced in writing and signed by the Parties.

28.4 Nothing in this Agreement is intended or shall have the effect of creating any relationship between the Parties hereto other than that of the Government and independent contractor. Neither the Supplier nor the Supplier's employees, subcontractors, agents or other representatives are employees, agents, representatives or partners of the Government. As such, they have no authority to legally bind the Government by contract or otherwise with respect to any third party.

28.5 This Agreement may not be assigned by either Party without the express written consent of the non-assigning Party. The doctrine of *Contra Proferentem* shall not be applicable to this Agreement. In the event that we assign or transfer the Agreement (or any part thereof) to any person or entity whatsoever, then all of the duties, obligations, responsibilities and liabilities of the Guarantor with respect to the Agreement and Supplier hereunder shall, as at the effective date of such assignment and transfer, thereafter apply for the unrestricted and irrevocable benefit of such assignee and transferee performance and observance of the Agreement as the Supplier thereunder, and the Performance Bond shall thereupon be deemed to be amended and revised accordingly, *mutatis mutandis*.

28.6 All terms and conditions of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the Parties hereto and their respective legal representatives, successors, assigns and the Guarantor.

28.7 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.

28.8 Neither the presentation nor payment or non-payment of an invoice shall constitute a settlement of a dispute, an accord and satisfaction, a remedy of account stated, or otherwise waive or affect the rights of the parties hereunder.

28.9 If any provision of this Agreement shall be declared invalid, unenforceable or illegal, the remaining provisions shall continue in full force and effect and such invalid, unenforceable or illegal provision shall be deemed as no longer a part of this Agreement.



28.10 This Agreement may be executed in counterparts, each separately and together constituting one and the same document. Execution and delivery of this Agreement by facsimile or email shall be sufficient for all purposes and shall be binding on any Party to the Agreement.

29. GOVERNANCE AND AGREEMENT ADMINISTRATION

29.1 The Government's representative and contact details for this Agreement are set out in Schedule 1. All deliverables, invoices and inquiries regarding Goods supplied hereunder shall be submitted to the Government's representative.

29.2 The Supplier shall appoint a Representative for administration of this Agreement and the duties and obligations hereunder who shall have full authority to act on behalf of the Supplier. The Government may request, by notice in writing to the Supplier, the replacement of the appointed person, and agreement with such request shall not be unreasonably withheld. The Supplier shall use its best endeavors to replace the individual with another qualified individual employed by the Supplier and approved by the Government.

29.3 The Supplier will secure at its own Expense all Representatives required for performing the Supplier's obligations under this Agreement. The Representatives shall not be employees of or have any contractual relationship with the Government. All duties required of the Supplier hereunder shall be performed by the Supplier or Representatives and all Representatives engaged in the work shall be fully qualified to perform such duties.

29.4 Supplier agrees 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 a Service in an open and cooperative way and attend meetings with the Government to discuss a Service and this Agreement. The Government may disclose any information relating to this Agreement to a regulator or auditor.

[signature page follows]



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.

| | |
|---|-------------|
| SIGNED by a duly authorised officer for and on behalf of the Government | Signature: |
| | Print Name: |
| | Title: |
| SIGNED by the Supplier or a duly authorised officer/representative for and on behalf of the Supplier | Signature: |
| | Print Name: |
| | Title: |
| SIGNED by the Guarantor or a duly authorised officer/representative for and on behalf of the Guarantor | Signature: |
| | Print Name: |
| | Title: |



SCHEDULE 1

Capitalized terms used but not defined in this schedule will have the meanings given to them in the Agreement.

- Objective:** The Government requires the Supplier to provide the Goods and Service as detailed below in an efficient and cost effective manner.

- The Government**

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

- Supplier and Service conditions:**

| | | | |
|---|--|------------------------------|--|
| Supplier Name: | | | |
| Address: | | | |
| Home Tel: | | Mobile No.: | |
| Email address: | | | |
| Commencement Date: | | | |
| Completion Date: | | | |
| Delivery Date: | | | |
| Termination Notice Period: | | 60 days | |
| Payroll Tax #: | | Social Insurance No.: | |
| INSURANCE COVERAGE | | | |
| Professional Liability: | | BMD\$2,000,000 | |
| Commercial General Liability: | | BMD\$2,000,000 | |
| Technology Errors and Omissions for damages arising from the use of software required in order to enable the use of the Goods: | | BMD\$2,000,000 | |
| Performance Bond: | | BMD\$ | |

- The Guarantor**



| | | | |
|-----------------------|--|--------------------|--|
| Name: | | | |
| Address: | | | |
| Contact name: | | | |
| Tel No.: | | Mobile No.: | |
| Email address: | | | |

5. **SUPPLIER Representative and Contact Details:**

| Name | Email | Telephone Number |
|------|-------|------------------|
| | | |
| | | |
| | | |
| | | |
| | | |

GOVERNMENT Representative and Contact Details:

| Name | Email | Telephone Number |
|------|-------|------------------|
| | | |
| | | |
| | | |
| | | |



S C H E D U L E 2

Special Instructions

1. **List and cost of Goods:** The Supplier will provide the following goods, tasks and ancillary services which support the provision of the Goods in order to achieve the Objective.

| Description of Goods to be supplied | Delivery Date | Fee | Warranty Period – start date and end date |
|-------------------------------------|---------------|-----|---|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

2. **Tasks and ancillary Service for the Goods:** The Supplier will provide the following, tasks and ancillary services which support the provision of the Goods.

- (a) Technical Support: Provide free technical support regarding the Goods to Government workers as required.
- (b) Training: Train Government workers on how to install/maintain/use the Goods and update the applicable software for the Goods.
- (c) Unloading: Provide free unloading of the Goods to the Government as required
- (d) Storage: Provide free storage of Goods for and on behalf of the Government as required.
- (e) Special Service: Provide free special services to the Government as required.



A P P E N D I X 1
Statement of Work



ANNEX A - SERVICE AGREEMENT

THIS SERVICE AGREEMENT (“**Agreement**”) is made the ___ day of _____ 20 ___

BY AND BETWEEN:

- (3) The Government of Bermuda as described in Schedule 1, hereinafter referred to as the “**Government**”, “**we**”, “**our**” or “**us**”; and
- (4) The supplier of service under this Agreement, whose name and contact details are set out in Schedule 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, which consists of the General Terms and Conditions, Schedule 1 and Schedule 2, sets out the terms and conditions upon which you will provide service to us.

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, capitalised terms have the respective meanings referred to in this Agreement and shall include any derivatives, 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, regulation or law means as amended from time to time and includes any successor legislation, regulations or laws. Where the context requires, the word “**Supplier**” shall include the word “**you**” and vice versa.

1. **Definitions**

In this Agreement unless the context otherwise requires, the expressions set forth below have the following meanings in Schedule 1 or Schedule 2 hereto:

“**Agreement**” means this Service Agreement and includes these General Terms and Conditions, Schedule 1 and Schedule 2;

“**Business Days**” means Monday to Friday between 9am – 5pm in Bermuda;

“**Claims**” means any written or oral actions, claims or demands for money including taxes or penalties

or service or for any allegation of a breach in rendering or failure to render any Service performed or which ought to have been performed, patents, trade secrets, copyright, or other intellectual property rights connected to any Equipment including infringement of Software, costs, penalties, fees and expenses including legal and professional fees, charges or expenses;

“**Commencement Date**” means the date of the commencement of the use of the Service as set out in Schedule 1;

“**Completion Date**” means the date of the completion of the use of the Service as set out in Schedule 1;

“**Confidential Information**” means the terms and conditions of this Agreement as well as any information or Data disclosed or which you may learn, prior to, during or after the Effective Date, which: (i) if in tangible form, is marked clearly as proprietary or confidential; (ii) if oral, is identified as proprietary, confidential, or private on disclosure; or (iii) any other information, which is not in the public domain, which upon receipt should reasonably be understood to be confidential;



“Contact” means the Public Officer or other person appointed as our person to initially communicate with;

“Consent(s)” means any qualifications, rights, permits, licenses, immigration approvals, authorisations or other consents;

“Data” means logbooks, records or data files, including, but not limited to: electronic storage media, Software, Source Code, any data base and data base rights, personal or personally identifiable information relating to an identified or identifiable individual, voice and data transmissions, including the originating and destination numbers and internet protocol address, date, time and duration, created, used or connected with the Service;

“Documents” means written advice, project specifications, designs, drawings, plans, specifications, reports, tenders, proposals or other information and documents, technical specifications created for or related to, the Software or Service provided by the Supplier or the Representative;

“Effective Date” means the date first written above or the date when the Supplier commences provision of the Service;

“Equipment” means the Supplier provided equipment including any mobile devices, hardware, Software or cables used to provide a Service;

“Expense” means all expenses including legal expense, charges and costs including all costs, fees, charges, fines and penalties related to travel, accommodation, penalties and fines;

“Fee” means the gross fee to be paid for the Service provided in accordance with the terms of this Agreement;

“Best Industry Practice” means the exercise of that degree of skill, care, accuracy, quality, prudence, efficiency, foresight and adherence to timeliness as would be expected from a professional individual or leading company within the relevant industry or business sector in Bermuda or in the U.K.;

“in writing” shall mean any fax, letter or purchase order on the Government’s letterhead bearing the signature of an authorised person or an e-mail emanating from the personal e-mail address of an authorised person;

“Insurance Policy” means an amount of not less than the minimum level of insurance required by law or a regulatory body or that is required to cover for similar service as provided in this Agreement or the amount as set out in Schedule 1, whichever is greater, covering you and your officers, directors, employees, agents, or subcontractors for professional negligence, errors and omissions which shall be on an “occurrence basis”. “The Government of Bermuda” shall be endorsed as an additional insured on the required policy and the insurances afforded to the Government of Bermuda shall be the primary insurance;

“Loss” means all Claims, damages, Expenses, disbursements, costs of investigation, litigation, settlement, judgment and interest, lost revenue, loss of opportunity to make money, loss of contracts or for the inability to fulfill customer contracts, lost or damaged data or other commercial or economic loss, whether based in contract, tort (including negligence) or any other theory of liability or other loss not limited to those contemplated at the time of entering into this Agreement and whether such loss or liabilities are direct, indirect, incidental, special or



consequential, whether foreseen, foreseeable, unforeseen or unforeseeable;

“License” means the non-exclusive, unlimited, royalty-free right granted by the Supplier to us;

“Objective” means the plan and effort necessary in order to successfully achieve the result desired by the Government;

“PATI” means the Public Access to Information Act 2010;

“PIPA” means the Personal Information Protection Act 2016;

“Public Officer” means the authorized person employed by, or acting as an agent for, the Government;

“Representative” means the person providing a Service on the Supplier’s behalf;

“Rules” means policies, procedures or other instructions, including policies related to bullying, harassment and sexual harassment; and health and safety rules, procedures and protocols;

“Service” means the provision of any of the deliverables contemplated under this Agreement and includes the use of any Equipment and Software;

“Security Procedures” means rules and regulations governing health and safety procedures and information technology security protocols;

“Schedule 1” contains details of the parties, the Fee, Term, Insurance Policy and other special conditions;

“Schedule 2” contains the statement of work or **“SOW”**;

“Software” means the Supplier provided software including modified software, third party software and bespoke software used for the Equipment and

the Service;

“Source Code” means the programming statements that are created by a programmer with a text editor or a visual programming tool and then saved in a file, in the language in which the software was written for the Software Platform, together with all Documents, all of a level sufficient to enable the Government's personnel to understand, develop and maintain that Software Platform; and

“Taxes” means payroll tax, social insurance contributions and other taxes payable by you for your Representatives;

“Term” means from the Commencement Date to the Completion Date, as set out in Schedule 1.

2. Provision of Service

- 2.1 You shall perform the Service in order to complete the Objective, in accordance with and subject to, these General Terms and Conditions, Schedule 1 and Schedule 2 and we agree to pay the Fee.
- 2.2 In the event of conflict between Schedule 1, Schedule 2 and these General Terms and Conditions, the order of precedence to resolve any such conflict shall be as follows: (i) these General Terms and Conditions; (ii) Schedule 1; and (iii) Schedule 2.
- 2.3 In the event that it is required and with our prior due diligence and written approval, you may appoint a Representative who shall have full authority to act and provide the Service on your behalf. Details of the Representative shall be set out in Schedule 1.
- 2.4 You are responsible for all acts or omissions of a Representative relating to a Service and for ensuring their compliance with the requirements of this Agreement.
- 2.5 You may not subcontract or outsource your obligations under this Agreement beyond using the Representative, without our prior



- written consent and you shall ensure that, the Representative co-operates with our employees to effectively carry out the obligations under this Agreement.
- 2.6 We may request, by notice in writing to you, the replacement of the Representative, and agreement with such request shall not be unreasonably withheld. You shall use your best endeavors to replace the Representative with another qualified individual and such replacement shall be subject to approval by us.
- 2.7 Documents: You shall provide Documents as requested or by the date as agreed between the parties and we shall have the right to take possession of and use any portions of the Documents notwithstanding any provisions expressed or implied to the contrary.
- 2.8 You acknowledge that we will be:
- (a) relying on the Documents on the basis that they are accurate and complete in all material respects and are not misleading;
 - (b) relying on your and the Representative's skills, expertise and experience concerning the provision of the Service; and
 - (c) relying on any other advice and assistance provided under this Agreement.
- 2.9 Security Procedures: The Service shall be provided in such place and location as instructed by us.
- 2.10 If the Service is required to be provided on our premises or to use Government IT systems, you and the Representative will conduct yourselves in a professional and safe manner and you and the Representative shall at all times comply with and be subject to Security Procedures.
- 2.11 Failure to adhere to the Security Procedures and the requirements of this section may be considered a material breach of this Agreement and may result in termination for default.
- 2.12 We shall inform you of the Contact, i.e. whom you or the Representative shall be reporting to and who will accept the Service.
- 2.13 The Service is provided on a non-exclusive basis to us, unless otherwise informed in writing.
- 3. Government Responsibilities**
- We shall disclose all information and provide reasonable and agreed computer facilities and access necessary for you to provide the Service, unless otherwise informed in writing.
- 4. Additional Service**
- 4.1 Additional service or variations in the Service may be required after the date of execution of this Agreement and may be performed upon our prior written approval. Such written approval shall be evidenced by a change authorisation order ("**Change Order**") or such other written authorisation as approved and signed by the Contact the Public Officer. In such case, a Change Order shall be issued within a reasonable time thereafter.
- 4.2 All Change Orders are subject to the terms and conditions of this Agreement.
- 4.3 The Fee for additional service shall be agreed by us in writing prior to any additional service being performed.
- 5. Fee, Invoicing and Payment**
- 5.1 We shall pay the Fee and/or undisputed invoices thirty (30) days in arrears. The Fee shall be set out in Schedule 1 and paid in Bermuda Dollars.
- 5.2 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 for you and your Representatives.



- 5.3 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 suspects 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 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 Fee Deductions: 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.
- 5.6 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) where there has been a mistake of payment made to you;
 - (c) if you have not delivered the Service or any part of the Service, as required;
 - (d) where we have suffered loss by your failure to follow instructions or exercise due diligence;
 - (e) if you cause damage to Government property, the value of replacement or repair of the damaged property;
 - (f) if you leave or terminate this Agreement without giving the required notice, the value of the Fee for the notice period; and
 - (g) any overpayments or advances of payment taken in excess of the Fee.
- 5.7 Invoicing: You shall provide a monthly invoice for the Service as set forth herein, with supporting documentation and itemising the following:
- (a) Your name, invoice date and invoice number;
 - (b) Change Order number, if applicable;
 - (c) Details of Service performed;
 - (d) Time and service rendered in hourly (or less than daily) increments with sufficient detail to determine appropriate expenditure of hourly efforts;
 - (e) Other supporting documentation including copies of any invoices or receipts for reimbursable expenditures as provided for herein;
 - (f) 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 us; and
 - (g) Your telephone number, fax number and e-mail address.
- 5.8 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 have not been prior approved in writing from the 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.
- 5.9 You shall be responsible to pay the Representative for the provision of the



Service.

6. Expenses

- 6.1 Neither you, nor the Representative, are allowed to incur Expenses associated with the provision of the Service without having received our prior written consent. You shall be liable for all Expenses not prior approved.
- 6.2 If prior approved, all air travel shall be at economy class, unless otherwise agreed in writing.
- 6.3 While performing the Service in or from Bermuda, the Representative may require accommodation. In the event that accommodation is required, we may assist you or the Representative in acquiring accommodation but we shall not be liable to pay for such accommodation. You shall be liable for all Expenses and utility fees including but not limited to: water; internet or other communication access; access to use a telephone; and other charges incurred by residing or otherwise staying at a property of your own choosing. You agree to abide by the rules and regulations of the property owner and you shall indemnify us against any loss the property owner may suffer as a result of your or the Representative, residing or staying at that property.
- 6.4 Except for the Fee and any approved Expenses, no other amounts are payable to you. We may set off any amounts owed by you to us against any Fees or Expenses.
- 6.5 We shall pay the Fee and approved Expenses 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.
- 6.6 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.

7. Taxes

- 7.1 You shall be responsible to register with the appropriate department of the Government in order to pay for all 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 out in Schedule 1.
- 7.2 In the event that we have not made deductions on your behalf, you shall provide us with proof of payment of amounts due to us such as any Taxes and all other receivables to us, prior to you receiving your final payment. In the event that you do not provide proof in writing, we shall have the right to deduct any outstanding amounts owed, including any Taxes, from final payment of the Fee.

8. Representations and Warranty

- 8.1 You represent and warrant that you and the Representative, will perform all activities relating to the Service:
- (a) in accordance with Best Industry Practice and in a professional and lawful manner;
 - (b) if applicable, using appropriately skilled and experienced Representatives whose identity, address and right to live and work in Bermuda and to the maximum extent permissible, whose absence of relevant criminal records has been verified;
 - (c) in strict accordance with the standards and timelines set out in Schedule 1 or Schedule 2, free of defects, errors or faults, in order to meet the Objective; and
 - (d) in accordance with applicable laws including PIPA; and the Rules.
- 8.2 You represent and warrant that:
- (a) upon installation, the Equipment will be compatible with existing equipment



- and software on our systems and the Equipment will meet all the technical documentation and requirements required to operate the Service in accordance with our requirements and objectives; and
- (b) you have the right to license all intellectual property rights in the Service, Software and Documents, to us.
- 8.3 You represent and warrant that you are not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on your ability to provide the Service and you will notify us immediately if you have any actual or potential conflict of interest which might affect your ability to provide the Service.
- 8.4 You represent and warrant that this Agreement is executed by you or by your duly authorized Representative and that you have obtained all required authorizations and capacity in order that you can fulfill your obligations.
- 8.5 You declare that you are in possession of all Consents necessary for the provision of a Service and you will maintain such Consents at all times while providing the Service.
- 8.6 You shall procure the benefit of any warranties or guarantees in respect of goods and materials you supply to us and provide copies of such warranties or guarantees.
- 8.7 You declare that all payments to us, including Taxes, are current.
- 8.8 You shall provide information or sign any other agreements necessary or as requested by us, in order that either you or us can fulfill their obligations under this Agreement.
- 8.9 You represent and warrant that the Service does not infringe or misappropriate any patent, copyright, trade secret or other intellectual property right of a third party or breach of any applicable law.
- 8.10 You represent and warrant that you are fully satisfied as to the scope and nature of the Service and of your obligations under this Agreement and that you have the corporate power and authority to enter into, and perform your obligations under, the Agreement.
- 9. Remedies**
- 9.1 If the Service does not conform to the representation and warranty as set out in this Agreement, you shall, at your Expense, use your best efforts to correct any such non-conformance or non-availability promptly, or provide us with an alternative means of accomplishing the desired performance.
- 9.2 Without prejudice to any other rights available to us, you shall, at your Expense:
- (a) repair or replace Equipment where the Equipment is damaged as a result of your, or the Representative's negligence, error, omission or willful misconduct in providing the Service.
- (b) if the Documents are inaccurate or misleading or the Service are not performed in accordance with this Agreement, then we, in our sole discretion, may:
- (i) require correct Documents;
- (ii) require, in whole or in part, the Service to be re-performed during the Term or within six (6) months of the Completion Date;
- (iii) carry out an assessment of the value of the defective Documents or defective Service and deduct that from the; or
- (iv) obtain Documents or the Service from another service provider and you will be required to pay all amounts paid by us in obtaining alternative Documents or the Service from another service



provider to make good the defective Documents or defective Service.

- 9.3 Without prejudice to any other rights available to us, we may, at your Expense:
- (a) repair, replace or otherwise fix the Service where the Equipment is damaged as a result of your, or the Representative's negligence, error, omission or willful misconduct; or
 - (b) obtain the Service from another service provider and terminate this Agreement.

10. Progress Report

- 10.1 If required, you shall submit progress reports in connection with the Service ("**Report**") on at least a monthly basis, or as we may require. The Report shall include a summary of the activities and accomplishments during the previous reporting period.
- 10.2 The Report will also include year-to-date totals for payments received and work completed expressed in Bermuda Dollars.
- 10.3 Any decisions and/or actions required of us during the upcoming reporting period(s) should be included in the Report. The specified date for submission of the Report for the reporting period shall be determined by us.

11. Inspection and Approval of Service

- 11.1 We shall at all times retain the right to inspect the Service provided by you or the Representative and you consent to visits to your premises in order to inspect a Service or Documents and we shall have the right to review, require correction or additional follow up, if necessary, and accept or reject the Service and any Documents submitted by you or the Representative.
- 11.2 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. In the event that you are required to implement changes with respect to your performance of the Service, such change shall be implemented within a reasonable time, as determined by us, in consultation with you.

- 11.3 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 the Service, to reflect the reduced value of Service received.

12. Time of the Essence

- 12.1 You are responsible for managing time in order to complete your obligations under this Agreement and shall complete any portion or portions of the Service in such order as we may require rather than providing the Service during a specified amount of time. You recognise that providing the Service outside of Business Days may be necessary in order to fulfil your obligations and responsibilities without additional compensation of any kind.
- 12.2 We shall give due consideration to all Documents submitted by you or the Representative, and shall make any decisions which are required to be made in connection therewith within a reasonable time so as not to delay the progress of the Service.

13. Grant of License

- 13.1 You grant us a License for the Software and Documents, to enable us to use Equipment and a Service.
- 13.2 You retain title and property rights to the Software. Unless specifically stated in the Agreement, we neither own nor will acquire any right of ownership to any Software or Equipment, including, but not limited to,



- copies, and any related patents, copyrights, trademarks, or IP addresses assigned to you.
- 13.3 The License granted herein includes all major releases, updates or upgrades of Software.
- 13.4 You shall ensure the continued compatibility of the Equipment with all major releases, updates, or upgrades of any Software.
- 13.5 In the event you are not able to support Software update, upgrade, version or new release that changes major functionality and is not compatible with the Equipment or a Service, you shall use your best efforts to resolve such issues and to provide optimal functionality of the Equipment or the Service.
- 13.6 If required by us, you shall maintain and keep current human and computer readable copies of the Source Code and you shall provide us with copies of all Source Code.
- 14. Indemnity, Limitation of Liability, Insurance, Force Majeure and Business Continuity**
- 14.1 Indemnity: You shall indemnify, keep indemnified and defend us against:
- (a) any Claim or Loss arising from any breach of this Agreement by you or the Representative; or
 - (b) any Claim or Loss arising from a third party as a result of negligent act, errors, omission or willful misconduct by you or a Representative.
- 14.2 We may satisfy such indemnity (in whole or in part) by way of deduction from any payment due to you.
- 14.3 If the use of a Service is enjoined as a result of a Claim or Loss, in addition to the indemnity set forth above, you shall (at your Expense): (i) obtain for us the right to use the infringing Service; (ii) modify such Service or Software in a manner that does not infringe any third party intellectual property rights; or (iii) substitute equivalent software or a service that are acceptable to us and does not infringe any third party intellectual property rights.
- 14.4 No Liability: In no event shall we or a public officer be liable to you for any Loss.
- 14.5 Limitation of Liability: Without limiting the provisions of this Section, either party's proven maximum aggregate liability to the other party, for all Claims or Loss in connection with this Agreement or the performance thereof arising during the Term shall be limited to the Fee paid to you under this Agreement for the three (3) months immediately preceding the date the on which the latest Claim or Loss first arose, or the coverage limits of any insurance policy that may be required to respond to a Claim or Loss, whichever is the greater.
- 14.6 Nothing in this Agreement shall exclude or limit any liability which cannot be limited or excluded by law and you shall accordingly maintain the Insurance Policy in full force and effect during the Term.
- 14.7 All Claims against us 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.
- 14.8 Insurance: If required, you shall maintain an Insurance Policy in the minimum amounts set forth in Schedule 1. The Insurance Policy shall be evidenced by delivery to us of certificate(s) of insurance executed by the insurer(s) listing coverages and limits, expiration dates and terms of the policy or policies and all endorsements, and upon request a certified copy of each policy including all endorsements. Failure to provide us with acceptable proof of insurance shall entitle us to either obtain or maintain the Insurance Policy on your



- behalf at your sole cost and expense, or to terminate this Agreement without prejudice to any other rights or remedies in connection we have under this Agreement.
- 14.9 You shall be responsible for the payment of all deductible amounts on the Insurance Policy and upon our request, you supply us with copies of such Insurance Policy and evidence that the relevant premiums have been paid.
- 14.10 In the event that you have not paid Insurance Policy premiums, upon signing this Agreement, you consent to the Government either deducting the Insurance Policy premium from the Fee, or otherwise making such Insurance Policy premium payment, on your behalf and recouping such payment from you, at our sole discretion.
- 14.11 At our sole option, all monies payable under the Insurance Policy shall be applied in making good or recouping Loss suffered or incurred by us as a result of you or a Representative providing the Service.
- 14.12 You shall notify us forthwith of any changes to any of the Insurance Policy, or of any claims or potential claims which have arisen to which the insurer(s) of the Insurance Policy may be required to respond.
- 14.13 The policy clause "*Other Insurance*" or "*Excess Insurance*" shall not apply to any insurance coverage currently held by The Government of Bermuda, or to our self-insured retentions of whatever nature.
- 14.14 If you subcontract any Service, you shall ensure that each subcontractor maintains insurance coverage with policy limits of at least the amounts stated in this Agreement.
- 14.15 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 Insurance Policy amount only indicates the minimum amount of insurance coverage that we are willing to accept to help ensure full performance of all terms and conditions of this Agreement.
- 14.16 Waiver of Rights of Recovery: You hereby waive all rights of recovery against us which you may have or acquire because of deductible clauses in or inadequacy of limits of the Insurance Policy or any policies of insurance that are secured and maintained by you.
- 14.17 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, epidemic, pandemic, labour dispute, act of terrorism, war, embargo, government order or other event beyond either parties' 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.
- 14.18 Business Continuity: You shall maintain, test and where appropriate implement business continuity procedures to reduce the risk of force majeure impacting the provision of the Service and upon request, provide such evidence to us.
- 15. Non-Solicitation**
- During the Term and for a period of twelve (12) months after expiration or termination of this Agreement, you shall not solicit, whether directly or indirectly any of our employees or non-employees who were involved in the provision or receipt of the Service, unless otherwise agreed to in writing by us.
- 16. Non-Disclosure of Confidential Information**
- 16.1 Each party must ensure that all Confidential Information is protected against unauthorized access, use, copying or disclosure. Each party acknowledges that the improper use, copying or disclosure of any Confidential Information could be



- unlawful.
- 16.2 Each party will comply with either party's instructions if it has access to personal data as a result of providing the Service.
- 16.3 Each party may disclose information related to this Agreement to its personnel, contractors, consultants and professional advisors, on a 'need to know' basis as required for the performance of the Service.
- 16.4 A breach or anticipated breach of the confidentiality provisions of this Agreement, 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 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 together with all other remedies as may be available in law or equity.
- 16.5 If either you or a Representative fail 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 for the three (3) month period immediately preceding the date of the disclosure of Confidential Information, as liquidated damages, in addition to any attorney's fees and costs of enforcement. You and the Representative shall be jointly and severally liable to us under this section.
- 16.6 You and anyone acting on your behalf shall be jointly and severally liable to the Government under this section.
- 17. Ownership, Intellectual Property and Copyright**
- 17.1 We shall own all Documents provided in accordance with this Agreement.
- 17.2 Intellectual Property: You represent and warrant to us that you or the Representative have created the Documents for and on our behalf or have obtained a written and valid Consent and assignment of all existing and future intellectual property rights in the Documents.
- 17.3 Documents created under this Agreement shall be original works created by you or the Representative and shall:
- (a) 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
- (b) not subject us to any claim for infringement of any intellectual property rights of a third party.
- 17.4 You shall do all things necessary to assign to us all existing and future intellectual property rights in the Documents embodying such rights to the fullest extent permitted by law. Insofar as they do not so vest automatically by operation of law or under this Agreement, you shall hold legal title in such rights on trust for us.
- 17.5 You agree that all Documents and other works created in full or in part by you or a Representative for the Service may be maintained, changed, modified and/or adapted by us without the consent of either you or the Representative. Notwithstanding the foregoing, you and us may agree in writing that certain identified Document's or designated intellectual property rights will remain with you.
- 17.6 Copyright: Documents, the Service and corresponding copyright and other intellectual property in the Documents and the Service shall belong us and we may utilise the Documents and the Service freely including by adapting, publishing and licensing.
- 17.7 Documents or Confidential Information may not be used or copied for direct or



indirect use by you or a Representative after expiry or termination of this Agreement without our express written consent.

- 17.8 We acknowledge that you and the Representative possess knowledge and expertise relating to the subject matter of a Service (“**Supplier Know-How**”), which may include intellectual property rights in certain pre-existing tools and materials used by you in performing a Service. Nothing in this Agreement is intended to transfer us any rights in the Supplier Know-How, which shall remain your property.
- 17.9 To the extent that any Supplier Know-How is included in any Documents and you hereby grant to us a perpetual, unlimited, royalty-free, non-exclusive right and license to use and reproduce the Supplier Know-How to the extent reasonably necessary to achieve the Objective.
- 17.10 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.

18. Term, Termination and Suspension

- 18.1 This Agreement shall be effective from the Effective Date for the Term.
- 18.2 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.
- 18.3 You shall not commence any additional service after the Completion Date or in the event of notification of termination of this Agreement, however, in the event that 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.
- 18.4 Either party may terminate the 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 1.

- 18.5 We may terminate this Agreement at any time based upon your default of your obligations under this Agreement. We, in our sole discretion, may provide you with a notice to cure (“**Cure Notice**”) the breach that would otherwise amount to a basis to terminate this Agreement as a result of your failure to fulfill your obligations hereunder. You shall respond to any such Cure Notice within a reasonable time or within such time as provided therein, and you shall either cure the specified breach or provide assurances to cure the same which we, in our sole discretion, deem adequate.
- 18.6 Either party may terminate this Agreement immediately, if the other party:
- (a) commits an irremediable breach; or
 - (b) is subject to a change of control or chooses to discontinue its business; or
 - (c) or its parent or holding entity becomes or is deemed insolvent, is unable to pay its debts as they fall due, has a receiver, administrative receiver, administrator or manager appointed of the whole or any part of its assets or business, makes any composition or arrangement with its creditors or an order or resolution is made for its dissolution or liquidation other than for the purpose of solvent amalgamation or reconstruction, or it takes or suffers any similar or analogous procedure, action or event in consequence of debt in any jurisdiction; or
 - (d) is affected by a force majeure event which lasts Ten (10) Business Days or more.
- 18.7 In the event of termination of this Agreement, all Fees then due and payable shall be paid to you.



- 18.8 Upon expiry or termination of this Agreement, you shall promptly return all our property or information or you shall irretrievably delete, as commercially practicable as possible, all Confidential Information, stored in any way using any device or application and all matter derived from such sources which is in your possession, custody or power and provide a signed statement that you have fully complied with your obligations under this section, save for any back-up required by law or as required in accordance with your record retention policy.
- 18.9 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.
- 18.10 We may temporarily suspend the Service hereunder and shall confirm such instruction in writing to you.
- 18.11 Upon any such suspension, we shall pay all Fees and Expenses up until the time of such suspension of the Service. If, following suspension of the Service, there is no resumption within six (6) months, this Agreement may be terminated by you, and us shall make a payment of all outstanding Fees and Expenses in accordance with this Agreement if such amounts are due.
- 18.12 We may issue a written order to resume the provision of the Service within six (6) months of suspension in accordance with the terms and conditions of this Agreement.
- 18.13 The rights arising under this termination section represent your sole remedy and excludes common law rights to terminate and claim damages for any Loss you may suffer under this Agreement.
- 19. Data use and Transfer**
- 19.1 Upon our request and prior to or within sixty (60) days after the effective date of termination, you will make available to us a complete and secure i.e. encrypted and appropriately authenticated files of 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.
- 19.2 You will be available throughout this transfer of Data period to answer questions about all elements of the Data transfer process so that we may fully access and utilize the transferred Data.
- 19.3 If required, you shall manage the transfer of all Data and technical assets to a service provider of our choice, at your Expense.
- 19.4 You shall guarantee that the Source Code shall be fully source controlled with a complete history of all changes. The Source Code shall adhere to professional standards in terms of quality and organisation where necessary to allow our personnel to access and use the Source Code.
- 20. General**
- 20.1 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).



- 20.2 Where this Agreement refers to past or current obligations, this Agreement applies retrospectively from the Effective Date.
- 20.3 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 a Service and is the complete agreement between the parties.
- 20.4 Any amendments to this Agreement shall be made in writing and signed by each party.
- 20.5 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 our rights and obligations under this Agreement.
- 20.6 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.
- 20.7 No one other than a party to this Agreement, their successors and permitted assigns, shall have any right to enforce any of its terms.
- 20.8 The doctrine of *Contra Proferentem* shall not be applicable in this Agreement.
- 20.9 Expiry or termination of this Agreement in any manner shall not release you or a Representative 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.
- 20.10 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.
- 20.11 Neither the presentation nor payment or non-payment of an invoice shall constitute a settlement of a dispute, an accord and satisfaction, a remedy of account stated, or otherwise waive or affect the rights of the parties hereunder.
- 20.12 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.
- 20.13 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 our meetings to discuss the Service and this Agreement.
- 20.14 We may disclose any information relating to this Agreement to a regulator, auditor or in accordance with PATI.
- 20.15 You consent to us processing data relating to you for legal, administrative and management purposes. We may make such information available to those who provide a service to us (such as advisers and payroll administrators), regulatory authorities and governmental or quasi-governmental organizations including those outside of Bermuda.
- 21. Governance**
- 21.1 You shall inform us promptly of all known or anticipated material problems relevant to delivery of the Service.



- 21.2 You shall provide details of all persons with an ownership stake in the Supplier, 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.
- 21.3 Such statement shall be provided at least annually or if there is any change in your interests.
22. **Anti-Corruption**
- 22.1 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.
- 22.2 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.
- 22.3 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.
23. **Retention of Confidential Information, Records and Audit**
- 23.1 You will retain any part of, or all, Confidential Information during the Term and following expiry or termination of this Agreement until all appeals processes are complete in the event of any litigation in connection with the Service. We will have full access to and the right to examine any Documents, at any time during the Term. We must be notified, in writing, prior to any of the Documents being destroyed.
- 23.2 You shall retain all records pertinent to this Agreement for a period of three (3) years following expiration or termination hereof.
- 23.3 You shall establish and maintain books, records, and documents (including electronic storage media) in accordance with Bermuda accepted accounting principles and practices which sufficiently and properly reflect all revenues and expenditures of funds provided by the Government, including all receipts, invoices, payroll records and/or other documentation used to substantiate requests for payment hereunder. At any time or times before final payment and for three (3) years thereafter, we may cause your records to be audited by a Public Officer. Records required to resolve an audit shall be maintained for a period of not less than three (3) years following resolution



of the audit or any arbitration or litigation arising hereunder.

- 23.4 We reserve the right to conduct periodic visit your premises to perform audits after the Effective Date to ensure continued compliance.
- 23.5 Public Officers shall have full access to and the right to examine any Documents and any of the records pertinent to this Agreement, at all reasonable times for as long as such records are required to be retained hereunder.
- 23.6 You shall include the aforementioned audit and record keeping requirements in all subcontracts and assignments, if any, made in accordance with this Agreement.

24. Electronic Communication

Communications may take place by email. The internet is not secure and messages sent by email can be intercepted. Each party shall use best efforts to keep its security procedures current and all communications by email secure.

25. Governing law

This Agreement is subject to Bermuda law and you and us submit to the exclusive jurisdiction of the Bermuda courts in relation to this Agreement.

26. Dispute Resolution

- 26.1 Where the parties are unable to resolve a dispute in accordance with this Agreement the parties, upon agreement, may submit such dispute for resolution by arbitration. The tribunal shall consist of a sole arbitrator appointed by agreement between the parties or failing such agreement by the Appointments Committee of the Chartered Institute of Arbitrators, Bermuda Branch. The procedure to be followed shall be that as laid down in the *Bermuda International*

Conciliation and Arbitration Act 1993 and the UNCITRAL Arbitration Rules presently in force. The place of arbitration shall be Bermuda and Bermuda law shall apply. The language of the arbitration shall be English.

- 26.2 The decision and award of the arbitrator shall be delivered within three (3) months of his or her appointment, unless otherwise agreed between the parties, and shall be final and binding on the Parties and enforceable in any court of competent jurisdiction. Nothing in this section prevents or in any way restricts either party from seeking specific performance, injunctive relief or any other form of equitable remedy. The parties shall continue to perform their respective obligations during the dispute resolution process set out in this section, unless and until this Agreement is terminated in accordance with its terms.
- 26.3 The costs of the arbitration, including administrative and arbitrators' fees, shall be shared equally by the parties and each party shall bear its own costs and attorneys' and witness' fees incurred in connection with the arbitration unless the arbitrator determines that it is equitable to allocate such costs and fees differently and so orders in rendering judgment.
- 26.4 In rendering judgment, the arbitrator may not provide for punitive or similar exemplary damages.
- 26.5 The arbitration proceedings and the decision shall not be made public without the joint consent of the parties and each party shall maintain the confidentiality of such proceedings and decision unless otherwise permitted by the other party, except as otherwise required by applicable law or statutes.

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



GOVERNMENT
OF BERMUDA

| | |
|--|-------------|
| SIGNED by a Public Officer for and on behalf of the Government | Signature: |
| | Print Name: |
| | Title: |
| SIGNED by the Supplier or a duly authorised officer for and on behalf of the Supplier | Signature: |
| | Print Name: |
| | Title: |

**SCHEDULE 1**

This schedule 1 and schedule 2 are incorporated into the Agreement. Capitalised terms used but not defined in these schedules will have the meanings given to them in the Agreement.

6. The Government

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

7. Supplier and Service 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\$300,000 Professional Liability | |

8. Service provided by the Supplier



SCHEDULE 2
Statement of Work