



**Ministry of Public Works  
Department of Works and Engineering**

**Request for Proposals  
For  
Independent Emissions Testing and Reporting**

**Request for Proposals No.: 2024-001-TB**

**Issued: Wednesday May 15, 2024**

**Submission Deadline: Wednesday June 14, 2024 03:00:00 PM Bermuda Local Time**

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## PART 1 – INVITATION AND SUBMISSION INSTRUCTIONS

### 1.1 Invitation to Proponents

This Request for Proposals (the “RFP”) is an invitation by the Government of Bermuda (the “Government”) to prospective proponents to submit proposals for **Independent Emissions Testing and Reporting** as further described in Section A of the RFP Particulars (Appendix D) (the “Deliverables”).

The Government of Bermuda’s Tynes Bay Waste-to-Energy Facility would like to enter into an agreement with a service provider to provide independent flue gas monitoring testing and reporting to meet the requirements of their Environmental Operating License.

The service provider will be required to manually collect, test and report on the following items in the gases: particulate matter, particulate size distribution, trace metals, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, dioxins/furans, poly-aromatic hydrocarbons, volatile organic compounds, and opacity.

As per the operating license requirements the testing and reporting will be conducted on one stream annually. The contract will be for a three (3) year term with an option to extend for an additional two (2) years.

### 1.2 RFP Contact

For the purposes of this procurement process, the “RFP Contact” will be:

Mr. Nasir Wade at email [nrwade@gov.bm](mailto:nrwade@gov.bm)

Proponents and their representatives are not permitted to contact any employees, officers, agents, elected or appointed officials or other representatives of the Government, other than the RFP Contact, concerning matters regarding this RFP. Failure to adhere to this rule may result in the disqualification of the proponent and the rejection of the proponent’s proposal.

Prior to the Submission Deadline noted in the RFP timetable below, proponents that download this file and intend to respond to this RFP are required to register their interest with the RFP contact by emailing their company name and contact information to

Mr. Nasir Wade at email [nrwade@gov.bm](mailto:nrwade@gov.bm)

Amendment/addenda (if any) will be posted at <https://www.gov.bm/procurement-notices>. Proponents should visit the Government Portal on a regular basis during the procurement process.

### 1.3 Type of Contract for Deliverables

The selected proponent will be requested to enter into direct contract negotiations to finalize an agreement with the Government for the provision of the Deliverables. The terms and conditions found in the Form of Agreement (Appendix A) are to form the basis for commencing negotiations between the Government and the selected proponent. It is the Government’s intention to enter into an agreement with only one (1) legal entity.

The term of the agreement is to be for a period of 3 years, with an option in favour of the Government to extend the agreement terms and conditions acceptable to the Government and the selected proponent for an additional term of up to 2 years. An Agreement is subject to change until fully executed.

Joint submissions are acceptable however, if a joint submission is made, the submission must clearly indicate which party will act as the prime contractor.

## 1.4 RFP Timetable

### 1.4.1 Key Dates

Issue Date of RFP	Wednesday May 15, 2024
Pre-Bid / Site Meeting	Thursday May 30, 2024 11:00 AM
Deadline for Questions	Wednesday June 05, 2024
Deadline for Issuing Addenda	Monday June 10, 2024
Submission Deadline	Friday June 14, 2024 03:00:00 PM
Rectification Period	5 business days
Anticipated Ranking of Proponents	Friday July 05, 2024
Contract Negotiation Period	40 calendar days
Anticipated Execution of Agreement	Monday September 30, 2024

All times listed are Bermuda local time. The RFP timetable is tentative only and may be changed by the Government at any time. For greater clarity, business days means all days that the Government is open for business.

### 1.4.2 Site Visit / Pre-Bid Meeting

#### Pre- Bid meeting and Site Visit

The proponent's designated representative is invited to attend a pre-bid meeting to clarify issues and to answer questions on any matter that may be raised at that stage of the procurement. The Government will organize a site visit.

The proponent is requested, as far as possible, to submit any questions in writing, to reach the RFP Contact not later than one week before the meeting.

Non-attendance at the pre-bid meeting will not be a cause for disqualification of a proponent.

The Pre-bid meeting will take place

Date: Wednesday May 30, 2024

Time: 11:00am

Place: Tynes Bay Waste to Energy Facility, Conference Room, or via video conference

A site visit will be conducted by the Government's Project Manager if requested.

## 1.5 Submission of Proposals

### 1.5.1 Proposals to be Submitted at Prescribed Location

Proposals must be submitted to:

Electronic mail (E-Mail) submissions are accepted at (insert email address). If documents are larger than ten (10) MB please send them within a zip file. In the subject line of the email, please state the RFP title. Please ensure to send a copy of your proposal in MS Word and/or Adobe PDF format.

### **1.5.2 Proposals to be Submitted on Time**

Proposals must be submitted at the location set out above on or before the Submission Deadline. Proposals submitted after the deadline will be rejected.

### **1.5.3 Proposals to be Submitted in Prescribed Format**

Proponents shall submit at minimum 1 original signed hard copies of their proposal or one (1) electronic copy (e-copy) in Microsoft Word or Adobe PDF format. If both a hard copy and an e-copy of the proposal are submitted and there is a conflict or inconsistency between the hard copy and the e-copy of the proposal, the hard copy of the proposal will prevail.

The original and all copies of the proposal shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Proponent. This authorization shall consist of a written authorization and shall be attached to the Submission Form included in (Appendix B). The name and position held by each person signing the authorization must be typed or printed below the signature. An Electronic Record of Signature will be accepted in the submission only in accordance with the requirements laid out in the Electronic Transactions Act 1999. Any interlineation, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the proposal.

Proposals should be submitted in a sealed package and prominently marked with the RFP title and number (see RFP cover) and do not be opened until Wednesday June 14, 2024 03:00:00 PM. The full legal name and return address of the proponent should be marked on the package as well.

### **1.5.4 Amendment of Proposals**

Proponents may amend their proposals prior to the Submission Deadline by submitting the amendment in a sealed package prominently marked with the RFP title and number and the full legal name and return address of the proponent to the location set out above. Any amendment should clearly indicate which part of the proposal the amendment is intended to amend or replace.

### **1.5.5 Withdrawal of Proposals**

At any time throughout the RFP process until the execution of a written agreement for the provision of the Deliverables, a proponent may withdraw a submitted proposal. To withdraw a proposal, a notice of withdrawal must be sent to the RFP Contact and must be signed by an authorized representative of the proponent. The Government is under no obligation to return withdrawn proposals.

[End of Part 1]

## **PART 2 – EVALUATION, NEGOTIATION AND AWARD**

### **2.1 Stages of Evaluation and Negotiation**

The Government will conduct the evaluation of proposals and negotiations in the following stages:

#### **2.2 Stage I – Mandatory Submission Requirements**

Stage I will consist of a review to determine which proposals comply with all of the mandatory submission requirements. If a proposal fails to satisfy all of the mandatory submission requirements, the Government will issue the proponent a rectification notice identifying the deficiencies and providing the proponent an opportunity to rectify the deficiencies. If the proponent fails to satisfy the mandatory submission requirements within the Rectification Period, its proposal will be rejected. The Rectification Period will begin to run from the date and time that the Government issues a rectification notice to the proponent. The mandatory submission requirements are set out in Section C of the RFP Particulars (Appendix D).

#### **2.3 Stage II – Evaluation**

Stage II will consist of the following two sub-stages:

##### **2.3.1 Mandatory Technical Requirements**

The Government will review the proposals to determine whether the mandatory technical requirements, as set out in Section D of the RFP Particulars (Appendix D), have been met. Questions or queries on the part of the Government as to whether a proposal has met the mandatory technical requirements will be subject to the verification and clarification process set out in Part 3.

##### **2.3.2 Rated Criteria**

The Government will evaluate each qualified proposal on the basis of the non-price rated criteria as set out in Section F of the RFP Particulars (Appendix D).

#### **2.4 Stage III – Pricing**

Stage III will consist of a scoring of the submitted pricing of each qualified proposal in accordance with the price evaluation method set out in Pricing (Appendix C). The evaluation of the price will be undertaken after the evaluation of mandatory requirements, and rated criteria has been completed.

#### **2.5 Stage IV – Ranking and Contract Negotiations**

##### **2.5.1 Ranking of Proponents**

After the completion of Stage III, all scores from Stage II and Stage III will be added together, and the proponents will be ranked based on their total scores. The top-ranked proponent will receive a written invitation to enter into direct contract negotiations to finalize the agreement with the Government. In the event of a tie, the selected proponent will be the proponent selected by way of the lowest price.

## **2.5.2 Contract Negotiation Process**

Any negotiations will be subject to the process rules contained in the Terms and Conditions of the RFP Process (Part 3) and will not constitute a legally binding offer to enter into a contract on the part of the Government or the proponent and there will be no legally binding relationship created with any proponent prior to the execution of a written agreement. The terms and conditions found in the Form of Agreement (Appendix A) intended to provide the proponent advance notice of some of the key contractual provisions including indemnities, limitation of liabilities, service requirements, etc. that would be contained in the form of contract and are to form the basis for commencing negotiations between the Government and the selected proponent. Negotiations may include requests by the Government for supplementary information from the proponent to verify, clarify or supplement the information provided in its proposal or to confirm the conclusions reached in the evaluation, and may include requests by the Government for improved pricing or performance terms from the proponent.

## **2.5.3 Time Period for Negotiations**

The Government intends to conclude negotiations and finalize the agreement with the top-ranked proponent during the Contract Negotiation Period, commencing from the date the Government invites the top-ranked proponent to enter negotiations. A proponent invited to enter into direct contract negotiations should therefore be prepared to satisfy the pre-conditions of award listed in Section E of the RFP Particulars (Appendix D), provide requested information in a timely fashion and conduct its negotiations expeditiously.

## **2.5.4 Failure to Enter into Agreement**

If the pre-conditions of award listed in Section E of the RFP Particulars (Appendix D) are not satisfied or if the parties cannot conclude negotiations and finalize the agreement for the Deliverables within the Contract Negotiation Period, the Government may discontinue negotiations with the top-ranked proponent and may invite the next-best-ranked proponent to enter into negotiations. This process will continue until an agreement is finalized, until there are no more proponents remaining that are eligible for negotiations or until the Government elects to cancel the RFP process.

## **2.5.5 Notification of Negotiation Status**

Other proponents that may become eligible for contract negotiations may be notified at the commencement of the negotiation process with the top-ranked proponent.

[End of Part 2]

## **PART 3 – TERMS AND CONDITIONS OF THE RFP PROCESS**

### **3.1 General Information and Instructions**

#### **3.1.1 Proponents to Follow Instructions**

Proponents should structure their proposals in accordance with the instructions in this RFP. Where information is requested in this RFP, any response made in a proposal should reference the applicable section numbers of this RFP.

#### **3.1.2 Proposals in English**

All proposals must be written in the English language only.

#### **3.1.3 No Incorporation by Reference**

The entire content of the proponent's proposal should be submitted in a fixed form, and the content of websites or other external documents referred to in the proponent's proposal but not attached will not be considered to form part of its proposal.

#### **3.1.4 References and Past Performance**

In the evaluation process, the Government may include information provided by the proponent's referees and may also consider the proponent's past performance or conduct on previous contracts with the Government or other institutions.

#### **3.1.5 Information in RFP Only an Estimate**

The Government and its advisers make no representation, warranty or guarantee as to the accuracy of the information or empirical data contained in this RFP or issued by way of addenda. Any quantities shown or data contained in this RFP or provided by way of addenda are estimates only, and are for the sole purpose of indicating to proponents the general scale and scope of the Deliverables. It is the proponent's responsibility to obtain all the information necessary to prepare a proposal in response to this RFP.

#### **3.1.6 Proponents to Bear Their Own Costs**

The proponent will bear all costs associated with or incurred in the preparation and presentation of its proposal, including, if applicable, costs incurred for interviews, travel or demonstrations.

#### **3.1.7 Proposal to be Retained by the Government**

The Government will not return the proposal or any accompanying documentation submitted by a proponent.

#### **3.1.8 No Guarantee of Volume of Work or Exclusivity of Contract**

The Government makes no guarantee of the value or volume of work to be assigned to the successful proponent. The agreement to be negotiated with the selected proponent will not be an exclusive contract for the provision of the described Deliverables. The Government may contract



with others for goods and services the same as or similar to the Deliverables or may obtain such goods and services internally.

### **3.1.9 Equivalency**

When proprietary names, brands, catalogues or reference numbers are specified in the Deliverables, they are intended to set a minimum standard, and preference for any particular material or equipment is not intended. The proponent may offer material or equipment of similar characteristics, type, quality, appearance, finish, method of construction and performance and if doing so must disclose any difference in the characteristics, type, quality, appearance, finish, method of construction or performance of the material or equipment.

## **3.2 Communication after Issuance of RFP**

### **3.2.1 Proponents to Review RFP**

Proponents should promptly examine all of the documents comprising this RFP, and may direct questions or seek additional information in writing by email to the RFP Contact on or before the Deadline for Questions. No such communications are to be directed to anyone other than the RFP Contact. The Government is under no obligation to provide additional information, and the Government is not responsible for any information provided by or obtained from any source other than the RFP Contact. It is the responsibility of the proponent to seek clarification from the RFP Contact on any matter it considers to be unclear. The Government is not responsible for any misunderstanding on the part of the proponent concerning this RFP or its process.

### **3.2.2 All New Information to Proponents by Way of Addenda**

This RFP may be amended only by addendum in accordance with this section. If the Government, for any reason, determines that it is necessary to provide additional information relating to this RFP, such information will be communicated to all proponents by addendum. All addenda will be published online at <https://www.gov.bm/procurement-notice>. Each addendum forms an integral part of this RFP and may contain important information, including significant changes to this RFP. Proponents are responsible for obtaining all addenda issued by the Government. In the Submission Form (Appendix B), proponents must confirm their receipt of all addenda by setting out the number of each addendum in the space provided.

### **3.2.3 Post-Deadline Addenda and Extension of Submission Deadline**

If the Government determines that it is necessary to issue an addendum after the Deadline for Issuing Addenda, the Government may extend the Submission Deadline.

### **3.2.4 Verify, Clarify and Supplement**

When evaluating proposals, the Government may request further information from the proponent or third parties in order to verify, clarify or supplement the information provided in the proponent's proposal. The information may include, without limitation, clarification with respect to whether a proposal meets the mandatory technical requirements set out in Section D of the RFP Particulars (Appendix D). The Government may revisit, re-evaluate and rescore the proponent's response or ranking on the basis of any such information.

### **3.3 Notification and Debriefing**

#### **3.3.1 Notification to Other Proponents**

Once the Agreement is executed by the Government and a proponent, the other proponents may be notified directly in writing of the outcome of the procurement process.

#### **3.3.2 Debriefing**

Proponents may request a debriefing after receipt of a notification of the outcome of the procurement process. All requests must be in writing to the RFP Contact and must be made within sixty (60) days of such notification.

#### **3.3.3 Procurement Protest Procedure**

If a proponent wishes to challenge the RFP process, it should provide written notice to the RFP Contact in accordance with the Government's Complaints and Disputes procedures. The notice must provide a detailed explanation of the proponent's concern with the procurement process or its outcome.

### **3.4 Conflict of Interest and Prohibited Conduct**

#### **3.4.1 Conflict of Interest**

For the purposes of this RFP, the term "Conflict of Interest" includes, but is not limited to, any situation or circumstance where:

- (a) in relation to the RFP process, the proponent has an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage, including but not limited to (i) having, or having access to, confidential information of the Government in the preparation of its proposal that is not available to other proponents, (ii) communicating with any person with a view to influencing preferred treatment in the RFP process (including but not limited to the lobbying of decision makers involved in the RFP process), or (iii) engaging in conduct that compromises, or could be seen to compromise, the integrity of the open and competitive RFP process or render that process non-competitive or unfair; or
- (b) in relation to the performance of its contractual obligations under a contract for the Deliverables, the proponent's other commitments, relationships or financial interests (i) could, or could be seen to, exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgement, or (ii) could, or could be seen to, compromise, impair or be incompatible with the effective performance of its contractual obligations.

#### **3.4.2 Disqualification for Conflict of Interest**

The Government may disqualify a proponent for any conduct, situation or circumstances, determined by the Government, in its sole and absolute discretion, to constitute a Conflict of Interest as defined above.

### **3.4.3 Disqualification for Prohibited Conduct**

The Government may disqualify a proponent, rescind an invitation to negotiate or terminate a contract subsequently entered into if the Government determines that the proponent has engaged in any conduct prohibited by this RFP.

### **3.4.4 Prohibited Proponent Communications**

Proponents must not engage in any communications that could constitute a Conflict of Interest and should take note of the Conflict of Interest declaration set out in the Submission Form (Appendix B).

### **3.4.5 Proponent Not to Communicate with Media**

Proponents must not at any time directly or indirectly communicate with the media in relation to this RFP or any agreement entered into pursuant to this RFP without first obtaining the written permission of the RFP Contact.

### **3.4.6 No Lobbying**

Proponents shall not in relation to this RFP or the evaluation and selection process, engage directly or indirectly in any form of political action or other activity whatsoever to influence or attempt to influence Parliament, the Government, or to influence or attempt to influence any legislative or regulatory action, in the selection or evaluation of any proponent.

### **3.4.7 Illegal or Unethical Conduct**

The proponent represents, warrants, and covenants that, in connection with activities performed under this Agreement or on behalf of the Government, the proponent has 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 proposal, 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 for the Government, or any immediate family member of such persons. The proponent represents, warrants, and covenants that it has complied and will comply with *The Bribery Act 2016* and all other applicable laws of any relevant jurisdiction in connection with the performance of this Agreement. Without limiting the generality of the foregoing, the proponent represents, warrants, and covenants that it has not and will not take any action that would cause the Government or anyone acting on their behalf to violate or be subjected to penalties under *The Bribery Act 2016*, or the applicable anti-corruption laws of other countries.

The proponent acknowledges and agrees that in the event that the Government believes, in good faith, that the proponent has breached this section, the Government shall have the right to immediately withdraw and terminate this opportunity and terminate any or all other agreements with the proponent.

### **3.4.8 Past Performance or Past Conduct**

The Government may prohibit a supplier from participating in a procurement process based on past performance or based on inappropriate conduct in a prior procurement process, including but not limited to the following:

- (a) illegal or unethical conduct as described above;
- (b) the refusal of the supplier to honour its submitted pricing or other commitments; or
- (c) any conduct, situation or circumstance determined by the Government, in its sole and absolute discretion, to have constituted an undisclosed Conflict of Interest.

### **3.4.9 No Collusion**

Proponents must not engage in any collusion and must sign the certificate as set out in the Certificate of Confirmation of Non-Collusion (Appendix E).

## **3.5 Confidential Information**

### **3.5.1 Confidential Information of the Government**

All information provided by or obtained from the Government in any form in connection with this RFP either before or after the issuance of this RFP

- (a) is the sole property of the Government and must be treated as confidential;
- (b) is not to be used for any purpose other than replying to this RFP and the performance of any subsequent contract for the Deliverables;
- (c) must not be disclosed without prior written authorization from the Government; and
- (d) must be returned by the proponent to the Government immediately upon the request of the Government.

### **3.5.2 Confidential Information of Proponent**

- (a) A proponent should identify any information in its proposal or any accompanying documentation supplied in confidence for which confidentiality is to be maintained by the Government. The confidentiality of such information will be maintained by the Government, except as otherwise required by the Public Access to Information Act 2010 or by order of a court or tribunal.
- (b) Proponents are advised that their proposals will, as necessary, be disclosed, on a confidential basis, to advisers retained by the Government to advise or assist with the RFP process, including the evaluation of proposals. If a proponent has any questions about the collection and use of personal information pursuant to this RFP, questions are to be submitted to the RFP Contact.
- (c) The Proponent is responsible to ensure that they comply with the *Personal Information Protection Act 2016* ("PIPA"), related to any information in the proponent's custody, care or control.

### **3.6 Procurement Process Non-Binding**

#### **3.6.1 No Process Contract and No Claims**

This RFP is a request for proposals only and participation in this RFP is not intended to create legal obligations between the Government and any of the proponents or their representatives. For greater certainty and without limitation:

- (a) Participation in this RFP will not give rise to any preliminary contract or collateral contract;
- (b) No proponent shall have any claim for any compensation of any kind whatsoever (whether in contract, tort, law, equity or otherwise), as a result of participating in this RFP, and by submitting a proposal each proponent shall be deemed to have agreed that it has no claim against the Government;
- (c) The decision to award or not to award a contract to any proponent is at the discretion of the Government. The Government shall have no liability to any proponent with respect to the awarding of a contract or the failure to award a contract to any proponent. Proponents acknowledge that the proponent that submits the proposal with the lowest price might not be awarded a contract.

#### **3.6.2 No Contract until Execution of Written Agreement**

This RFP process is intended to identify prospective suppliers for the purposes of negotiating potential agreements. No legal relationship or obligation regarding the procurement of any good or service will be created between the proponent and the Government by this RFP process until the successful negotiation and execution of a written agreement for the acquisition of such goods and/or services.

#### **3.6.3 Non-Binding Price Estimates**

While the pricing information provided in proposals will be non-binding prior to the execution of a written agreement, such information will be assessed during the evaluation of the proposals and the ranking of the proponents. Any inaccurate, misleading or incomplete information, including withdrawn or altered pricing, could adversely impact any such evaluation or ranking or the decision of the Government to enter into an agreement for the Deliverables.

#### **3.6.4 Cancellation**

The Government may cancel or amend the RFP process without liability at any time. Cancellation may occur, for example, if:

- (a) no qualitatively or financially worthwhile offer has been received or there has been no valid response at all;
- (b) the economic or technical parameters of the project have changed fundamentally;
- (c) exceptional circumstances or force majeure render normal implementation of the project impossible;
- (d) all offers exceed the financial resources available, or are otherwise inconsistent with the principles of economy, efficiency and effectiveness; or
- (e) irregularities require cancellation in the interest of fairness.

The publication of a procurement notice does not commit the Government to implement the programme or project announced.

### **3.7 Governing Law and Interpretation**

These Terms and Conditions of the RFP Process (Part 3):

- (f) are intended to be interpreted broadly and independently (with no particular provision intended to limit the scope of any other provision);
- (g) are non-exhaustive and will not be construed as intending to limit the pre-existing rights of the parties to engage in pre-contractual discussions in accordance with the common law governing direct commercial negotiations; and
- (h) are to be governed by and construed in accordance with the laws of Bermuda applicable therein.

[End of Part 3]

## **APPENDIX A - FORM OF AGREEMENT**

The terms and conditions found in the Form of Agreement (Appendix A) are intended to provide advance notice of some of the key contractual provisions of the Agreement, including indemnities, limitation of liabilities, service requirements, etc. that form the basis for commencing Agreement between the Government and the selected proponent.

See Annex A - Form of Agreement

## APPENDIX B – SUBMISSION FORM

### 1. Proponent Information

<p>Please fill out the following form, naming one person to be the proponent's contact for the RFP process and for any clarifications or communication that might be necessary.</p> <p>If the company is incorporated and registered, then a Certificate of Incorporation and a Certificate of Incumbency is required and must be submitted with the Submission Form.</p> <p><b><u>Declaration of Interest:</u></b> The proponent shall provide details of its ownership and/or managerial structure upon request from the Government. The proponent shall also provide a statement of whether or not it has any relevant and material interest relevant to the provision of the Goods and Services. Such statement shall be provided at least annually or if there is any change in the interest of the proponent.</p>	
Full Legal Name of Proponent or Personal/Given Name:	
Representative Name (Person with Signing Authority) / Title:	
Any Other Relevant Name under which Proponent Carries on Business:	
Street Address:	
City, Province/State:	
Country:	
Postal Code:	
Phone Number:	
Proponent's Social Insurance Number issued by the Government of Bermuda:	
Proponent's Tax Payroll Number issued by the Government of Bermuda:	
Proponent's Registration Number issued by the Bermuda Registrar of Companies (if incorporated):	
Company Website (if any):	
Proponent Contact Name and Title:	
Proponent Contact Phone:	
Proponent Contact Fax:	
Proponent Contact Email:	



## **2. Acknowledgment of Non-Binding Procurement Process**

The proponent acknowledges that the RFP process will be governed by the terms and conditions of the RFP, and that, among other things, such terms and conditions confirm that this procurement process does not constitute a formal, legally binding bidding process (and for greater certainty, does not give rise to a Process Contract bidding process), and that no legal relationship or obligation regarding the procurement of any good or service will be created between the Government and the proponent unless and until the Government and the proponent execute a written agreement for the Deliverables.

## **3. Ability to Provide Deliverables**

The proponent has carefully examined the RFP documents and has a clear and comprehensive knowledge of the Deliverables required. The proponent represents and warrants its ability to provide the Deliverables in accordance with the requirements of the RFP for the rates set out in its proposal.

## **4. Non-Binding Pricing**

The proponent has submitted its pricing in accordance with the instructions in the RFP and in Pricing (Appendix C) in particular. The proponent confirms that the pricing information provided is accurate. The proponent acknowledges that any inaccurate, misleading or incomplete information, including withdrawn or altered pricing, could adversely impact the acceptance of its proposal or its eligibility for future work.

## **5. Addenda**

The proponent is requested to confirm that it has received all addenda by listing the addenda numbers, \_\_\_\_\_ to \_\_\_\_\_ (if applicable) issued by the Government, or if no addenda were issued by the Government write the word "None". The onus is on proponents to make any necessary amendments to their proposals based on the addenda. The proponent confirms it has read, received and complied with these addenda. Proponents who fail to complete this section will be deemed to have received all posted addenda.

## **6. No Prohibited Conduct**

The proponent declares that it has not engaged in any conduct prohibited by this RFP.

## **7. Conflict of Interest**

Proponents must declare all potential Conflicts of Interest, as defined in section 3.4.1 of the RFP. This includes disclosing the names and all pertinent details of all individuals (employees, advisers, or individuals acting in any other capacity) who (a) participated in the preparation of the proposal; **AND** (b) were employees of the Government within twelve (12) months prior to the Submission Deadline.

If the box below is left blank, the proponent will be deemed to declare that (a) there was no Conflict of Interest in preparing its proposal; and (b) there is no foreseeable Conflict of Interest in performing the contractual obligations contemplated in the RFP.

Otherwise, if the statement below applies, check the box.

- The proponent declares that there is an actual or potential Conflict of Interest relating to the preparation of its proposal, and/or the proponent foresees an actual or potential Conflict of Interest in performing the contractual obligations contemplated in the RFP.

If the proponent declares an actual or potential Conflict of Interest by marking the box above, the proponent must set out below details of the actual or potential Conflict of Interest:

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**8. Disclosure of Information**

Any information collected or used by or on behalf of the Government under this solicitation document is subject to the Public Access to Information Act 2010 (“Act”). The information belongs to a class of information that might be made available to the general public unless it is contained in a record that is exempt from disclosure under the Act. Any questions regarding the collection, use, or disclosure of the information should be directed to the public authority that issued this solicitation document.

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of Proponent Representative

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Name of Proponent Representative

\_\_\_\_\_  
Title of Proponent Representative

\_\_\_\_\_  
Date

I have the authority to bind the proponent.

**End of Appendix B**

SAMPLE CERTIFICATE OF INCUMBENCY

The undersigned being the Secretary of the company as named below (the "Company"), a company duly organised and existing under the laws of the Islands of Bermuda and having its registered office as set out below **DO HEREBY CERTIFY** that the following is a true and correct listing of the Directors and Officers of the Company in full force and effect as of the date hereof.

DIRECTORS \_\_\_\_\_

List

ALTERNATE DIRECTORS

List

OFFICERS

List

IN WITNESS WHEREOF I have hereunto set my signature in accordance with the Bye-Laws of the Company.

Company Name: .....

Date: .....

\_\_\_\_\_

Secretary/Director

## APPENDIX C – PRICING

### 1. Instructions on How to Provide Pricing

- (a) Proponents should provide the information requested under section 3 below (“Required Pricing Information”) by reproducing and completing the table below in their proposals, or, if there is no table below, by completing the attached form and including it in their proposals.
- (b) Pricing must be provided in Bermuda funds, inclusive of all applicable duties and taxes, which should be itemized separately.
- (c) Pricing quoted by the proponent must be all-inclusive and must include all labour and material costs, all travel and carriage costs, all insurance costs, all costs of delivery, all costs of installation and set-up, including any pre-delivery inspection charges, and all other overhead, including any fees or other charges required by law.

### 2. Evaluation of Pricing

Pricing is worth 40 percent of the total score.

Pricing will be scored based the formula below. Each respondent will receive points of the total possible points allocated to price for the particular category it has bid on, which will be calculated in accordance with the following formula.

2.1 Price (include all cost) (non-construction – goods and services): 5 = lowest bid, 4 = next lowest, etc. until 0 = most expensive

2.2 The respondent is in a stable financial position

Following financial checks, i.e. checking a bank reference, the following scores should be awarded.

5 = all financial checks sound, 3 = minor financial concerns, 1 = major financial concerns, 0 = no evidence provided / evidence of severe financial instability.

2.3 The respondent has no outstanding Government debt

Following financial checks with Social Insurance, the Accountant General's Department's Debt Collection Section, the Bermuda Health Council and the Tax Commissioner, the following scores should be awarded:

5 = all financial checks sound, 3 = minor financial concerns, 1 = major financial concerns, 0 = no evidence provided / evidence of severe financial instability.

In addition to any rectification processes, or rights to verify, clarify and supplement,

- (a) The Government will examine the responses to determine whether they are complete, whether any computational errors have been made, whether the documents have been properly signed, and whether the bids are generally in order.
- (b) Arithmetical errors will be rectified on the following basis:

- (i) Where there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected. If the Proponent does not accept the correction of errors, its Bid will be rejected. If there is a discrepancy between words and figures the amount in words will prevail;
- (ii) Where there is a discrepancy between the amounts in figures and in words, the amounts in words will govern; and
- (iii) Where there is a discrepancy between the individual lump sums and the total amounts derived for the sum of the individual lump sum, the individual lump sum as quoted will govern, and the total amount will be corrected.

### **3. Required Pricing Information**

See Annex B - Pricing Form

## **APPENDIX D – RFP PARTICULARS**

### **A. THE DELIVERABLES**

#### **Compliance testing and reporting**

See Annex C - Scope of Work

### **B. MATERIAL DISCLOSURES**

N/A

### **C. MANDATORY SUBMISSION REQUIREMENTS**

#### **1. Submission Form (Appendix B)**

Each proposal must include a Submission Form (Appendix B) completed and signed by an authorized representative of the proponent.

#### **2. Pricing (Appendix C)**

Each proposal must include pricing information that complies with the instructions contained in Pricing (Appendix C).

#### **3. Certificate of Confirmation of Non-Collusion (Appendix E)**

Each proposal must include a Certificate of Confirmation of Non-Collusion Form (Appendix E) completed and signed by an authorized representative of the Proponent.

#### **4. Company Certificate of Incorporation**

A signed copy of the Certificate of Incorporation must be included for proponents that are companies/corporations.

#### **5. Other Mandatory Submission Requirements Experience**

The service provider shall provide detailed information to confirm they are fully experienced with this type of independent flue gas testing and reporting.

See Annex D - Project Personnel Qualifications

### **D. MANDATORY TECHNICAL REQUIREMENTS**

#### **Technical Qualifications**

The service provider shall provide detailed information to confirm they are fully qualified with this type of independent flue gas testing and reporting including professional affiliations and training.

See Annex E - Specifications

## E. PRE-CONDITIONS OF AWARD

### 1. Financial Checks

Prior to awarding a contract to the selected proponent, the contracting department will perform financial checks to confirm whether the proponent is delinquent in making payments to the Government for Social Insurance contributions, Payroll Tax or any other debt recorded by the Accountant General's Debt Collection Section, and will perform a check with the Bermuda Registrar of Companies to confirm whether the proponent is a proper legal entity that is in good standing.

## F. RATED CRITERIA

The following sets out the categories, weightings and descriptions of the rated criteria of the RFP. Proponents who do not meet a minimum threshold score for a category will not proceed to the next stage of the evaluation process.

#	Category	Weighting (%)	Threshold
1	Pricing	40	N/A
2	Experience	30	20
3	Local Benefits	30	N/A
<b>Total Points</b>		100	

### 1. Pricing

See Appendix C - Pricing

### 2. Experience

#### Relevant Projects and References

Each proponent is requested to provide three (3) references from clients who have obtained goods or services similar to those requested in this RFP from the proponent in the last three (3) years.

The following questions will be considered when each proposal is evaluated: -

- Does the proponent have a previous relevant and positive experience in planning and completing projects of this type and scope?
- Does the proponent have prior experience in working with public sector organizations?

### 3. Local Benefits

The Government has established the minimum evaluation weight regarding Local Benefits for this procurement at 30% of the total points.

The local benefit considerations will be given to each of the following factors when proposals are evaluated:

- Is the proponent a local specified business? (See the Code of Practice for Project Management and Procurement on the Government's Portal for the definition of "Specified Business")
- Local Workforce Utilization
  - Number of Bermudians employed by the proponent.
  - Engagement of Bermudian employee (%) during the project.
  - Use of local specified businesses in the proponent's supply chain.
  - Use of local specified business as subcontractors (if applicable).
- Safety and Health record of the proponent for the three immediately preceding years of reporting
- Operational Environmental considerations and policy for their working site and projects. (each proponent to provide a copy)

See Annex F - Local Benefits



## APPENDIX E – CERTIFICATE OF CONFIRMATION OF NON-COLLUSION

### Notes for the proponents

The essence of Open Tendering is that the Government of Bermuda shall receive bona fide competitive proposals from suitably qualified persons or entities. In recognition of this principle, each person or entity that submits a proposal will be required, by way of the signature of a duly authorized representative of the company, to confirm that the proposal has been submitted without any form of collusion.

All proponents must complete and sign a Certificate of Confirmation of Non-Collusion. Any proposals submitted which do not include a signed copy of the Certificate will be wholly rejected and will not be included in the evaluation process.

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

Any proponent that submits false information in response to this Request for Proposals (RFP), and any other person or entity involved in collusion, may be excluded from competing for future contracts tendered by the Government of Bermuda.

### Confirmation of non-collusion

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

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

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

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

By signing this document, I/we have read and agree to its terms and conditions.

(1) \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

(2) \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

for and on behalf of \_\_\_\_\_



ANNEX A

**FORM OF AGREEMENT**

**DRAFT**

Project name Tynes Bay Waste to Energy Facility  
Independent Emissions Testing

for the Ministry of Public Works  
Department of Works and Engineering

between the Owner Government of Bermuda,  
Ministry of Public Works,  
Department of Works and Engineering

and the Supplier to be confirmed

for the Supply of Independent Emissions Testing of the various types of gases and  
particulate matter in both existing stack flues, per the attached  
documents.

Agreement commencement date: to be confirmed

Agreement completion date: to be confirmed

Cabinet Conclusion Number: \_\_(\_)\_

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### **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 March, 2024, (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 including 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;

“**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;



“**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, 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 Standardization 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 Standards, 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 the Service shall be performed 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, 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 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 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 thirty (30) 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 non-conforming 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 15.

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

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

- (a) where there has been an overpayment to you for any reason;
- (b) 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.
- 14.4 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.
- 14.5 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.
- 14.6 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.
- 14.7 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.
- 14.8 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 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**

- 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 Government's 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.

#### **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 disclose 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, upon the request of the Government, 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 receiver, 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 the time of termination.
- 19.7 The Government may terminate this Agreement at any time based upon a Default that is not cured within thirty (30) days of the Supplier 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). The Government, in its sole discretion may provide the Supplier with a notice to cure the Default ("**Cure Notice**") and 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 Supplier's 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 Generally 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 relating to this Agreement 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.

<b>SIGNED</b> by a duly authorised officer for and on behalf of the <b>Government</b>	Signature:
	Print Name: Mr. Nasir Wade
	Title: Tynes Bay Waste to Energy Plant Manager
<b>SIGNED</b> by the <b>Supplier</b> or a duly authorised officer/representative for and on behalf of the <b>Supplier</b>	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.

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

2. **The Government**

<b>Ministry:</b>		Ministry of Public Works	
<b>Department:</b>		Works and Engineering	
<b>Address:</b>		General Post Office Building, 3rd Floor 56 Church Street Hamilton HM 12, Bermuda	
<b>Government Contact:</b>		Tarik Christopher	
<b>Tel No.:</b>	(441) 297-7842	<b>Mobile No.:</b>	(441) 501-3003
<b>Email address:</b>		<a href="mailto:tjchristopher@gov.bm">tjchristopher@gov.bm</a>	

3. **Supplier and Service conditions:**

<b>Supplier Name:</b>			
<b>Address:</b>			
<b>Office Tel:</b>		<b>Mobile No.:</b>	
<b>Email address:</b>			
<b>Commencement Date:</b>			
<b>Completion Date:</b>			
<b>Delivery Date:</b>			
<b>Delivery Location:</b>			
<b>Termination Notice Period:</b>		60 days	
<b>Fee for the Goods:</b>			
<b>Fee for the Services:</b>			
<b>Payroll Tax #:</b>		<b>Social Insurance No.:</b>	
<b>INSURANCE COVERAGE</b>			
<b>Professional Liability:</b>		BMD\$2,000,000	
<b>Commercial General Liability:</b>		BMD\$2,000,000	
<b>Technology Errors and Omissions for damages arising from the use of software</b>		BMD\$2,000,000	



required in order to enable the use of the Goods:	
<b>Performance Bond:</b>	<b>Not Applicable</b>

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

Name	Email	Telephone Number

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

Name	Email	Telephone Number

**6. Payment Terms**

- a. Evidence of Payments: Before payment of an invoice, which includes an amount payable to a nominated subcontractor, we may request that you to supply reasonable evidence that the nominated subcontractor has received all amounts due in accordance with previous payments, less applicable deductions for retention or otherwise.
  - b. Interim Payment: Within 30 days of delivery of each invoice related to a Service, we shall pay the amount shown in the invoice subject to any deductions as set out in the Agreement. We may withhold interim payments until any performance security is provided, as requested.
7. Letter of Credit: At our sole option or if you request a down payment, you shall deliver to us an irrevocable Letter of credit (“LOC”) which (i) shall name us, as beneficiary, (ii) remain in full force and effect until the expiry or termination of the Agreement; and (iii) shall require that any drawdown on the LOC shall be made only upon receipt by the issuing bank of a written letter by us certifying that an event of default by you pursuant to the Agreement has occurred and is continuing.

**SCHEDULE 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

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.

**A P P E N D I X 1****Statement of Work****SCHEDULE 3****Statement of Work****1. Mobilization**

- 1.1. Mobilize a work crew and all their equipment to complete the works including transportation costs, local accommodation costs and site facilities.
- 1.2. Meetings with Tynes Bay Operations to confirm laydown areas, set communications channels and facility use coordination to prevent delays.
- 1.3. Coordinate safety and health programs with Tynes Bay Operations.
- 1.4. Document the pre-mobilization conditions of the site and laydown areas and provide a copy to Tynes Bay operations.

**2. Emission Testing**

- 2.1. The Service Provider shall provide a complete and detailed testing program which will be reviewed and agreed prior to the start of the testing and commissioning.
- 2.2. The testing shall follow the standard test methods found in the United States Environmental Protection Agency (USEPA) Code of Federal Regulations Title 40, Part 60 (40 CFR 60), Appendix A and 40 CFR 51, Appendix M.
- 2.3. In addition or as a supplement to the Suppliers testing program the following items are to be included;
  - 2.3.1. Provide pre-testing activities e.g. site accessibility, checking installation, ensuring documentation is available
  - 2.3.2. Define and follow methods and techniques e.g. start-up procedures, confirming equipment/system meets testing specifications
  - 2.3.3. Ensure running equipment at recommended initial settings, checking electrical integrity, making sensory checks, running through the operating sequence, checking for correct functioning
  - 2.3.4. Make necessary adjustments to settings to achieve specification parameters
  - 2.3.5. Monitoring and recording measurements and observations
  - 2.3.6. Completing relevant paperwork e.g. commissioning log/record, job sheet, company specific, and handover report.

**3. Reporting**

- 3.1. The Proponent shall provide a suitable system to collect and consolidate data directly from the CEMS equipment. The Proponent shall design suitable reporting formats to meet Authorities reporting requirements as outline in the Tynes Bay Operating Licenses.



## SCHEDULE 4

### Pricing Form

All prices, in Bermuda dollars, are to be all inclusive of all other associated works as shown on the Contract Documents, materials, related accessories, storage, transport, assembly, placement, overhead and profit. These prices may be used for determining additions and deletions from the contract sum and for interim payment valuation.

<u>Item</u>	<u>Scope of Work Items for Construction Services</u>	<u>Lump Sum</u>
1	Annual site visit, testing and reporting for a three (3) year term, per year.	\$
2	Annual site visit, testing and reporting for year 4. (Optional)	\$
3	Annual site visit, testing and reporting for year 5. (Optional)	\$
4	Subsistence, transportation, expenses to be invoiced at cost plus	Cost + ____%

**Notes:**

1. All work detailed on the Contract Documents shall be covered completely by the Fixed Price Total.
2. The Fixed Price Total will include all the items in the Fixed Price Schedule.
3. Individual lump sum items are all-inclusive.
4. If a specific task is not identified separately in the above list, the Contractor shall assume that it is included as part of another related listed item or items, and shall base their lump sum amounts on this assumption.
5. The scheduled testing dates are to be agreed by both Parties to minimise interference with Operations.



**SCHEDULE 5**

**Reference: Tynes Bay Waste to Energy Facility Operating Licence**

## FIXED PRICE SCHEDULE

### Contract Price Breakdown

All prices, in Bermuda dollars, are to be all inclusive of all other associated works as shown on the Contract Documents, materials, related accessories, storage, transport, assembly, placement, overhead and profit. These prices may be used for determining additions and deletions from the contract sum and for interim payment valuation.

<u>Item</u>	<u>Scope of Work Items for Construction Services</u>	<u>Lump Sum</u>
1	Annual site visit, testing and reporting for a three (3) year term, per year.	\$
2	Annual site visit, testing and reporting for year 4. (Optional)	\$
3	Annual site visit, testing and reporting for year 5. (Optional)	\$
4	Subsistence, transportation, expenses to be invoiced at cost plus	Cost + ____%

**Notes:**

1. All work detailed on the Contract Documents shall be covered completely by the Fixed Price Total.
2. The Fixed Price Total will include all the items in the Fixed Price Schedule.
3. Individual lump sum items are all-inclusive.
4. If a specific task is not identified separately in the above list, the Contractor shall assume that it is included as part of another related listed item or items, and shall base their lump sum amounts on this assumption.
5. The scheduled testing dates are to be agreed by both Parties to minimise interference with Operations.



## Scope of Work

### 1. Mobilization

- 1.1. Mobilize a work crew and all their equipment to complete the works including transportation costs, local accommodation costs and site facilities.
- 1.2. Meetings with Tynes Bay Operations to confirm laydown areas, set communications channels and facility use coordination to prevent delays.
- 1.3. Coordinate safety and health programs with Tynes Bay Operations.
- 1.4. Document the pre-mobilization conditions of the site and laydown areas and provide a copy to Tynes Bay operations.

### 2. Emission Testing

- 2.1. The Service Provider shall provide a complete and detailed testing program which will be reviewed and agreed prior to the start of the testing and commissioning.
- 2.2. The testing shall follow the standard test methods found in the United States Environmental Protection Agency (USEPA) Code of Federal Regulations Title 40, Part 60 (40 CFR 60), Appendix A and 40 CFR 51, Appendix M.
- 2.3. The list of items to be measured is found in Annex G - Operating Licence OL-004 Cert 2023, clause 4.1.2.6 *Testing of Stack Emissions*.
- 2.4. In addition or as a supplement to the Suppliers testing program the following items are to be included;
  - 2.4.1. Provide pre-testing activities e.g. site accessibility, checking installation, ensuring documentation is available
  - 2.4.2. Define and follow sampling methods and techniques
  - 2.4.3. Ensure sampling equipment is set at recommended initial settings, checking electrical integrity, making sensory checks, running through the operating sequence, checking for correct functioning
  - 2.4.4. Make necessary adjustments to sampling equipment settings as needed
  - 2.4.5. Sample and record measurements and observations

### 3. Reporting

- 3.1. The Proponent shall provide reporting details to satisfy all the requirements for Independent Emission Testing per Annex G Operating Licence OL-004 Cert 2023.

### PROJECT PERSONNEL QUALIFICATIONS AND REFERENCES

(Note: all sheets form part of the proponent proposal)

Provide a two page CV for key personnel (team leader, managerial and general staff) that will be provided to support the implementation of this project. CVs should demonstrate qualifications in areas relevant to the deliverables.

**Company Name:** \_\_\_\_\_

Employee Name	Title	Date Employment Commenced and Total Years of Experience	Certifications and Dates Received
<b>Relevant Experience (From most recent):</b>			
Period: From – To <small>(e.g. June 2012 – January 2015)</small>	Name of activity/ Project/ funding organization, if applicable:	Job Title and Activities undertaken/Description of actual role performed:	

<p><b>References no.1</b> <i>(minimum of 3):</i></p>	<p><b>Name and Title:</b></p> <p><b>Project:</b></p> <p><b>Organization:</b></p> <p><b>Contact Information – Address; Phone; Email; etc.:</b></p>
<p><b>Reference no.2</b></p>	<p><b>Name and Title:</b></p> <p><b>Project:</b></p> <p><b>Organization:</b></p> <p><b>Contact Information – Address; Phone; Email; etc.:</b></p>
<p><b>Reference no.3</b></p>	<p><b>Name and Title:</b></p> <p><b>Project:</b></p> <p><b>Organization:</b></p> <p><b>Contact Information – Address; Phone; Email; etc.:</b></p>

**Technical Specifications for the  
Independent Flue Gas Testing and Reporting**

1. The Service Provider shall test the flue emissions for the following gaseous components for the existing stack flues:
  - 1.1. Sulfur dioxide - SO<sub>2</sub>
  - 1.2. Nitric Oxide - NO
  - 1.3. Nitric Dioxide - NO<sub>2</sub>
  - 1.4. Carbon Monoxide - CO
  - 1.5. Carbon Dioxide - CO<sub>2</sub>
  - 1.6. Hydrogen Chloride - HCl
  - 1.7. Moisture / Water - H<sub>2</sub>O
  - 1.8. Mercuric (II) Oxide - HgO
  - 1.9. Oxygen - O<sub>2</sub>
  - 1.10. Total Mercury - Hg
  - 1.11. Trace Metals
  - 1.12. Dioxins / Furans (total & TEQ) including;
    - 1.12.1. Polychlorinated Dibenzodioxin (PCDD)
    - 1.12.2. Polychlorinated Dibenzofurans (PCDF)
  - 1.13. Poly-Aromatic Hydrocarbons PAH's
  - 1.14. Particulate Matter (PM)
    - 1.14.1. Particle size distribution
  - 1.15. Volatile Organic Compounds - VOCs
  - 1.16. Flue gas temperature measurement and recording
2. The Emission test reporting shall include all the reporting requirements for the Facilities Operating License.

## LOCAL BENEFITS (SOCIAL, ECONOMIC AND ENVIRONMENTAL)

**All pages of this form must be completed and returned with the Proponent’s response.**

This form is used to gather information to influence and help the economic transformation and enable meaningful participation of Bermudians and “specified business” in Bermuda’s economy. This form looks at the ownership, management structures, and skill development opportunities and to learn more about the businesses bidding on Government Contracts. The Government’s aim is to increase access to local economic activities and encourage skills training opportunities for Bermudians and the Government’s use of specified businesses.

Rated criteria in the Government’s Standard Evaluation Matrix Section 3 is equivalent to mandatory 30% of the overall score. It helps the public officers to measure, promote equal opportunities, and optimize the participation of specified businesses.

Date: .....

**Ownership:**

1. Bermudian Owned Business..... Yes  No

2. Are you defined as a “Specified Business” in Bermuda (Small or MediumSized)?

Yes  No

Other \_\_\_\_\_

Definition - According to the Code of Practice Project Management and Procurement (page 8 and 9), “**Specified Business**” means a Bermudian-owned and owner-operated business enterprise with such characteristics as the Bermuda Economic Development Corporation may determine and

(A) gross annual sales of less than one million dollars, or an annual payroll of less than five hundred thousand dollars; or

(B) at least three of the following attributes:

- (i) gross annual revenue of between \$1,000,000 and \$5,000,000;
- (ii) net assets of less than \$2,500,000;
- (iii) an annual payroll of between \$500,000 and \$2,500,000;
- (iv) between a minimum of 11 and a maximum of 50 employees; and
- (v) been in operation for a minimum of 10 years.

3. Provide a copy of the Certificate of Incorporation (if applicable).

Copy attached  Yes  No

**4. Number of employees/Bermudians**

Please indicate the total number of persons employed by the company and the number and percentage of Bermudian employees.

NUMBER OF NON-BERMUDIANS:	
NUMBER OF BERMUDIANS:	
NUMBER OF EMPLOYEES:	
PERCENTAGE OF BERMUDIANS:	

**Management Control:**

**5. INCUMBENCY CERTIFICATE**

The undersigned being the secretary of the company has named below (the “Company”), a company duly organised and existing under the laws of the Islands of Bermuda and having its registered office as set out below **DO HEREBY CERTIFY** that the following is a true and correct listing of the Directors and Officers of the Company in full force and effect as of the date hereof.

DIRECTORS and ALTERNATE DIRECTORS

NAME	TITLE

OFFICERS

NAME	TITLE

IN WITNESS WHEREOF I have hereunto set my signature in accordance with the Bye- Laws of the Company.

Company Name: .....

**Skill Development - Apprenticeships/training opportunities:**

**6.** Do you offer apprenticeships/training opportunities?

Yes  No

**7.** Does your business offer Bermudian’s apprenticeships/training opportunities?

Yes  No

**8.** Does your business offer Bermudian’s internship opportunities?

Yes  No

**9.** If yes, to questions 8 and 9, what apprenticeship or training opportunities exist, please indicate below. (add more lines as needed)

<u>NUMBER</u>	<u>NAME</u>	<u>NON BERMUDIAN</u>	<u>BERMUDIAN</u>	<u>APPRENTICESHIPS OR TRAINING OFFERED BY YOUR COMPANY (month/year)</u>

**Preference Procurement:**

**10.** Will the proponent use Bermuda specified businesses in their supplychain?

Yes \_\_\_\_\_ No \_\_\_\_\_

If no, then please provide an explanation \_\_\_\_\_

**11.** Will the proponent use Bermuda specified business sub-contractors (if applicable)?

Yes \_\_\_\_\_ No \_\_\_\_\_

If no, then please provide an explanation \_\_\_\_\_

**Enterprise and Supplier Development:**

**12. Safety and Health, Sustainability and Environmental Policies**

Please indicate whether the business has a:

a) Safety and Health Policy,

Yes                       No,      if yes, then please provide a copy.

b) Sustainable Goods and Services Policy

Yes                       No,      if yes, then please provide a copy.

c) Environmental Policy.

Yes                       No,      if yes, then please provide a copy.



**THE CLEAN AIR ACT**

Decal # : 124

Ministry of Public Works  
P.O. Box HM 525  
Hamilton HM CX  
**Attention: Permanent Secretary**



Department of Environment & Natural Resources  
P.O. Box HM 834  
Hamilton HM CX  
Bermuda  
email: pollutioncontrol@gov.bm

**Operating Licence # : OL-004**

Assess. No.:	<b>041411919</b>
Map No.:	<b>3 Sheet No: 11 Grid ref: 3375 7566</b>

**Type of plant : Incinerator****Issued to :**

LICENSEE : **Ministry of Public Works**  
Contact Name: **Permanent Secretary**

**For a plant located at :**

Property Name: **Tynes Bay Waste to Energy**  
Street No. & Name: **31 Palmetto Road**  
Parish: **Devonshire** Post Code: **DV 05**

**Plant description :**

Type of Plant: <b>Incinerator</b>	Size of Plant: <b>2 x 156 tonnes/day</b>
Manufacturer: <b>Von Roll</b>	Model:
Fuel Type: <b>Garbage</b>	Year Installed: <b>1994</b>
Hours of Operation: <b>24 hrs/day</b>	Fuel Consumption (gal/yr):

**Stack data :**

Stack height above ground: **73 m** Stack height above building:

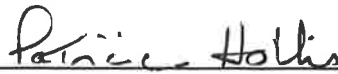
Type of instack monitor:

**Emissions data :**

SOx:	Opacity:
NOx:	Particulates:
CO:	Other:

**Licence Status :**

Date Issued: **09 June 2023**  
Expiry date: **30 April 2024**  
Length of Licence: **1 year**

  
For the Chairman of the Environmental Authority

N/A = Not available

See conditions attached



# *Department of Environment and Natural Resources*

## **TYNES BAY WASTE TO ENERGY FACILITY**

### **OPERATING LICENCE, Clean Air Act, 1991**

**Licence number: OL-004**

**Date of Issue: 9<sup>th</sup> June 2023**

**Date of Expiry: 30 April 2024**

**Effective Period: 30 April 2023 to 30 April 2024**

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## 1. ABBREVIATIONS

AOD:	above ordnance datum
ASME:	American Society of Mechanical Engineers
CEM:	continuous emissions monitoring
CO:	carbon monoxide
CO <sub>2</sub> :	carbon dioxide
dscf:	dry standard cubic foot
ESP:	electrostatic precipitator
EA:	Environmental Authority
gr:	grain (7000 gr – 453.6 grams = 1 pound)
gr/dscf:	grains per dry standard cubic foot
HCl:	hydrogen chloride
mg:	milligram (10 <sup>-3</sup> grams)
DENR:	Department of Environment and Natural Resources
MSW:	municipal solid waste
MWC:	municipal waste combustor
ng:	nanogram (10 <sup>-9</sup> grams)
nm <sup>3</sup> :	normal cubic meter
NO <sub>x</sub> :	nitrogen oxides (includes NO and NO <sub>2</sub> )
O <sub>2</sub> :	oxygen
PCB:	polychlorinated biphenyls
PCDD:	polychlorinated dibenzo-p-dioxins
PCDF:	polychlorinated dibenzofurans
ppm:	parts per million
ppmdv:	parts per million dry volume
PM:	particulate matter
SO <sub>2</sub> :	sulfur dioxide
TCDD:	tetrachlorodibenzo-p-dioxin
TEF:	toxicity equivalent factor
TPD:	tonnes per day
VOC:	volatile organic compounds
m <sup>3</sup> /s:	cubic meters per second

## 2. INTRODUCTION

This licence authorises the Ministry of Public Works to operate a municipal waste incinerator and energy recovery facility located at Tynes Bay, Devonshire, Bermuda under the conditions set forth herein. The Licensee is herewith allowed to dispose of wastewater, cooling water, ash and discharge exhaust gases containing air contaminants, only as results from those processes and activities described herein and only in accordance with limitations and stipulations contained in this licence.

This licence is conditional upon the demonstration that the equipment is being maintained in accordance with approved plans and specifications, and that the facility can be operated in compliance with the emissions limits and other rules specified herein.

The specific listing of requirements, limitations, and conditions contained herein does not relieve the Licensee from complying with all other applicable rules, regulations, standards, or guidelines issued by other Government Ministries nor does it allow significant levels of emissions of air contaminants not limited in this licence or contained in the licence application.

An application for renewal must be submitted no less than one month prior to the date of expiration to ensure continued operations. Should this licence expire before a renewal licence is granted, a two-month extension of the existing licence may be granted.

**As part of its application for renewal, the Ministry of Public Works shall submit a report containing comments on and confirmation of compliance with each condition contained in the licence.**

This licence is issued to the Ministry of Public Works. In the event of a change in ownership, control, or management of the facility, the new owner/operator must apply to the Environmental Authority for a new licence, at least 60 days prior to the change.

In the case where the Licensee applies for modification of conditions imposed by this licence, if the Environmental Authority determines that modification is appropriate, only the conditions subject to modification shall be reopened. The filing of a request for modification does not stay any term or condition of this licence.

### 3. FACILITY DESCRIPTION

**Location:** Tynes Bay, 31 Palmetto Road, Devonshire

**Size:** 2 units (streams) with capacity of 6.5 tonnes per hour each  
Each unit capacity is 156 tonnes per day, total design capacity is 312 tonnes per day

**Process Description, Including Type:**

Von Roll mass burn waterwall, continuous charging, moving grate.

**Auxiliary Burner Description And Fuel Type:** None

**Pollution Control System:** Stream 1: Three-field electrostatic precipitator  
Stream 2: Three-field electrostatic precipitator

**How Waste Is Received:**

There is limited pre-sorting of glass and metal, by households. Collection programmes for white goods, special wastes, hazardous wastes and batteries are in place.

**Operating Parameters:**

stack height:	91 m, AOD top of flue 89 m, AOD top of chimney 75 m from base to top of flue
diameter:	1.1 meter
average gas flow rate:	23 m <sup>3</sup> /s
average exit temperature:	230°C

**Electricity Generation Process and Capacity:**

Eckrohr Manufacturing No. 3566 steam boiler turbine/generator performance averages:

load	<del>3800 kW T1</del> and 7400kW T2
inlet steam quantity	21300 kg/hr
bleed steam quantity	2800 kg/hr

**Quantity Of Bottom And Fly Ash Generated And Disposal Method/Location:**

Fly ash and bottom ash are currently combined in the quench tank but plans have started to separate the fly ash from the bottom ash before it reaches the ash processing facility. Total ash production is approximately 2 tonnes per hour per stream. Ash is screened through a 10" grizzly to remove oversized materials. Large ferrous metal pieces are removed by a drum magnet. The ash is crushed to 3" maximum size and smaller ferrous metals are removed by a magnetic head pulley. Non-ferrous metals are removed by an eddy current separator. The residual ash is crushed to 1.25" and discharged onto a scalping screen to remove un-burnt material. A pre-defined weight of final processed ash is discharged into mixer trucks with cement and water.

Ash concrete is discharged from the mixer trucks into steel moulds at the Airport Waste Management Facility, Castle Harbour, to produce 1m cube concrete blocks.

The washed non-ferrous metals was sent overseas for recycling but is currently disposed at the AWMF.

Ferrous metals are disposed of at the Airport Waste Management Facility.

Un-burnt material is returned to the incinerator for re-burning.

## 4. TERMS AND CONDITIONS

### 4.1 AIR EMISSIONS

#### 4.1.1 Concentration and Total Emissions Limits

The maximum allowable emissions rate for pollutants shall be as follows:

<u>Pollutant</u>	<u>Max. conc. in stack*</u>
Particulates/Opacity	35 mg/nm <sup>3</sup> aggregated 6 minutes over 1 hour
Carbon Monoxide	50 mg/nm <sup>3</sup> , averaged over 1 hr.
Dioxin and furans	1 ng/nm <sup>3</sup> (TEF, EPA method)
Sulphur Dioxide	100 mg/nm <sup>3</sup> averaged over 1 hour
Hydrogen Chloride	800mg/nm <sup>3</sup> averaged over 1 hour

A normal cubic meter (Nm<sup>3</sup>) is defined as dry gas, 273°K, 101.3 kPa.

\* All measurements are corrected to 11% O<sub>2</sub>.

#### 4.1.1.a *Particulates and Opacity*

- i). The Licensee shall operate high efficiency electrostatic precipitators to control particulate emissions from each boiler.
- ii). Particulate emissions shall not exceed 35 milligrams per dry normal cubic meter at 11% oxygen for a period aggregating more than six minutes in any one hour.

#### 4.1.1.b *Heavy metals*

Heavy metals will be controlled through the capture of fine particulates by the electrostatic precipitators. The temperature of flue gases shall be no greater than 300°C when they pass through the particulate control device.

#### 4.1.1.c *Trace organics*

Emission of trace organics shall be controlled through efficient combustion and maintenance of a minimum combustion temperature of 850°C as required by 4.2.2. It is noted that the design furnace temperatures are between 850°C and 1200°C with an average operating range of 850°C to 1050°C.

#### 4.1.1.d *Carbon monoxide*

Carbon monoxide emissions shall be controlled through good combustion practices. Carbon monoxide emissions shall not exceed 50 mg/nm<sup>3</sup> as a one-hour average. Measurements are taken at the stack inlet in conjunction with a measurement of oxygen concentration, corrected to 11% oxygen (dry basis).

#### 4.1.1.c *Sulphur Dioxide*

Sulphur dioxide emissions shall be controlled through good combustion practices and mixing of waste. Sulphur dioxide emission shall not exceed 100 mg/nm<sup>3</sup> (Tynes Bay to review their CEMS data) as a one-hour average. Measurements are taken at the stack inlet in conjunction with a measurement of oxygen concentration, corrected to 11% oxygen (dry basis).

#### 4.1.1.f *Hydrogen Chloride*

Hydrogen chloride emissions shall be controlled through good combustion practices and mixing of waste. Hydrogen chloride emissions shall not exceed 800 mg/nm<sup>3</sup> (Tynes Bay to review their CEMS data) as a one-hour average. Measurements are taken at the stack inlet in conjunction with a measurement of oxygen concentration, corrected to 11% oxygen (dry basis).

### 4.1.2 Compliance Monitoring and Testing Requirements

All monitoring and testing data collected shall include a detailed description of sampling locations, sampling equipment, sampling and analytical procedures, and operating conditions.

#### 4.1.2.a *Continuous Emission Monitors (CEMs)*

- i) The Licensee, using continuous emissions monitoring equipment, shall continuously monitor emissions of the following parameters:

Parameter	Monitoring location	Frequency
Particulates	stack	continuous
SO <sub>2</sub>	stack	continuous
HCl	stack	continuous
CO	stack	continuous
O <sub>2</sub>	stack	continuous
temperature	boiler	continuous
	ESP inlet	continuous

- ii) The Licensee shall maintain and calibrate all continuous emissions monitoring equipment in accordance with equipment manufacturer recommendations and instructions. The CEMs shall also be calibrated and tested during periods of manual stack testing.
- iii) The Licensee shall maintain an adequate inventory of replacement parts on site to repair all continuous monitoring systems if and as needed and to comply with 4.1.2.a.(ii) above.



- iv) The continuous emission monitors (CEMs) shall be in operation at all times during combustor/boiler operation. If any of these continuous monitoring systems fail for any reason, the Department of Environment and Natural Resources shall be notified and the failed monitoring system restored to full operation within 96 hours. In the event that such systems are not restored to operation within this time, special permission shall be obtained from the Environmental Authority to continue operations. The CEMs referred to in this section are those for particulates, temperature, carbon monoxide, hydrogen chloride, sulphur dioxide and oxygen.
- v) Other applicable recordkeeping and reporting requirements are described in section 4.4.4.

#### 4.1.2.b *Testing of Stack Emissions*

It shall be a condition of the licence that annual stack tests be conducted. The Ministry of Public Works will engage a contractor for this purpose. The contractor and the test programme shall be approved by the Department of Environment and Natural Resources and the results of the tests shall be made available to the Environmental Authority. Stack testing shall be done according to established U.S. EPA methods. Stack test results shall be provided 60 days prior to applying for a renewal of this licence. The required tests are as follows:

<b>Parameter</b>	<b>Monitoring Location</b>	<b>Frequency</b>
particulates (size distribution)	stack	annual
fine particulates (PM-10)	stack	annual
trace metals		
arsenic	stack	annual
cadmium	stack	annual
chromium	stack	annual
copper	stack	annual
lead	stack	annual
mercury	stack	annual
nickel	stack	annual
selenium	stack	annual
zinc	stack	annual
Thallium (From 2013)	stack	annual
SO <sub>2</sub>	stack	annual
HCl	stack	annual
NO <sub>x</sub>	stack	annual
PCDD, PCDF (dioxins and furans)	stack	annual
VOCs (or total hydrocarbons)	stack	annual
PolyAromatic Hydrocarbons (EPA 16) (From 2013)	stack	annual
Opacity of Visual Emission Test (to be recorded at time of annual stack emissions)		

#### 4.1.2.c *Ambient Air Monitoring*

It shall be a condition of this licence that the ambient air be monitored for the following parameters, and the results of the tests shall be made available to the Environmental Authority. The test programme shall be approved by the Department of Environment and Natural Resources.

Parameter	Monitoring location	Frequency
particulates	ambient	on going
fine particulates (PM-10)	ambient	on going
SO <sub>2</sub>	ambient	on going
HCl	ambient	on going
NO <sub>x</sub>	ambient	on going
trace metals as above	ambient	on going
dioxins and furans	ambient	on going

## 4.2 OPERATING REQUIREMENTS FOR AIR EMISSIONS

The Licensee shall maintain and operate all air pollutant generating processes and all air pollution control equipment such that the emissions of air pollutants are kept at the lowest practicable levels at all times. A preventive maintenance programme shall be carried out and shall include regular inspection and prompt repair of equipment by the responsible individual(s). Specific operation requirements to minimise emission of pollutants are contained in this section.

### 4.2.1 Materials Restrictions

4.2.1.a The combustion of certain components of the municipal solid waste stream is restricted in order to reduce the levels of certain air emissions.

#### 4.2.1.b **Restricted Wastes**

The Licensee shall restrict combustion in the incinerator of the following materials by providing programmes for their separate collection, consistent with the requirements in section 4.4.1.

- i) **Recyclable Materials**, specifically glass, steel, and aluminium food and beverage containers;
- ii) **Compostable Materials**, specifically horticultural waste and wet sludge in bulk;
- iii) **Special Wastes**, specifically:
  - household hazardous waste,
  - motor vehicle tyres,
  - batteries, (all types),
  - fluorescent tubes,
  - products that contain liquid mercury,
  - electrical appliances (including battery operated),
  - PCBs
  - paints and paint thinners,
  - plaster and drywall (sheet rock)
  - radioactive materials except smoke detectors

- 4.2.1.c All regular users of the facility shall be given a list of the restricted wastes and that list shall be posted at the facility's entrance.
- 4.2.1.d Any containers placed on the property for the collection of restricted wastes shall be inspected for compliance with the list of acceptable wastes at the receiving facilities.

#### 4.2.2 Combustion Control

- 4.2.2.a All gases shall be exposed to a minimum temperature of 850°C for a minimum of two seconds after secondary air injection when solid waste is present in the combustion chamber.
- 4.2.2.b On start-up, operating temperatures must reach 850°C within 24 hours (new recommendations from the manufacturer). The start-up procedure after repair to the refractory requires 48-72 hours to reach 850°C.
- 4.2.2.c Maximum daily charging rate shall not exceed the permitted tonnage of 6.5 tonnes per hour per stream.
- 4.2.2.d. The weigh station shall be instructed to determine whether the load is grease or sewage related wastes. Grease shall be directed to the pit at TBWEF whereas sewage sludge shall be directed to the septic facility. MPW shall develop policies & procedures to avoid mixed loads containing significant quantities of both grease and sewage sludge.

#### 4.2.3 Equipment Maintenance and Malfunctions

- 4.2.3.a The Licensee shall have a regular maintenance programme for air pollution control equipment.
- 4.2.3.b The Licensee shall notify the Department of Environment and Natural Resources verbally within eight hours of any excursion greater than six hours duration. The excursion shall be confirmed by email within 24 hours.
- 4.2.3.c The Licensee shall notify the Department of Environment and Natural Resources in advance of all scheduled and within 48 hours after unscheduled shutdowns of a stream.
- 4.2.3.d The Licensee shall produce operating procedures to be activated in the event of a shutdown, the malfunction of pollution control equipment, the malfunction of continuous monitoring systems or any other systems vital to the safe operation of the facility.
- 4.2.3.e The Licensee shall repair within 24 hours any fault resulting in the accidental leak of combustion gases or ash.

### 4.3 ASH MANAGEMENT REQUIREMENTS

#### 4.3.1 Ash Management Plan

The Licensee shall implement an ash management programme which fulfils the requirements of this section. This programme shall:

- a. chemically analyse the incinerator ash generated in Bermuda;
- b. compare the analysis of Bermuda generated ash with overseas ash used in the environmental impact studies conducted to date in Bermuda;
- c. ensure proper disposal methods for the concrete/ash; and
- d. provide for the continued monitoring of the ash and the stabilised concrete/ash.
- e. The Halcrow study (2014) highlighted from the ash-concrete leachability studies that there is no environmental advantage to managing the fly ash separately to the bottom ash in ash-concrete mixes. Proposals to segregate the fly ash in the ash hall therefore do not need to ensure that the fly ash remains segregated from the bottom ash thereafter.

#### 4.3.2 Ash Testing

4.3.2.a The Licensee shall test the ash annually. (Tynes Bay to determine from the variability in the current annual data whether less frequent analyses could be proposed)

4.3.2.b Test results shall be submitted to the Environmental Authority. The reports shall contain the weight of ash produced since the previous test report, details of the concrete/ash block production programme, its place of disposal, and the results of all testing. Testing shall include pH, and concentrations of arsenic, barium, cadmium, chromium, copper, cyanide, lead, mercury, nickel, selenium, silver, sulphates, calcium and magnesium chlorides, zinc, PAH's, PCDD, and PCDF. In addition to determining concentrations in the total ash sample leachability tests to the US EPA method 1311 shall also be applied to the ash samples.

#### 4.3.3 Concrete/Ash Disposal

##### 4.3.3.a *Ash Disposal Plan:*

The ash disposal plan shall include a description of the stabilisation process, ash/concrete mixing ratios, methods for exclusion of ferrous metals, stability and strength testing, sampling and analysis protocols, quality assurance/quality control procedures, and details for final placement of the concrete/ash blocks. The ash disposal plan, as approved by the Environmental Authority, shall be adhered to. There shall be no change to the plan unless prior approval of the Environmental Authority is obtained.

The site of disposal shall be appropriately monitored for impact on the local marine

environment. Records shall be kept and the results of the stability and strength testing and quality control shall be reported annually by 31 March.

#### 4.3.3.b *Concrete/Ash use alternatives:*

The Licensee may apply to the Environmental Authority for permission to use the concrete/ash rather than disposing of it at the approved site. Any use of the concrete/ash shall meet the following criteria:

- i) The Licensee shall submit data demonstrating that the concrete/ash can be reliably reused in the manner proposed so as to protect human health, safety, and the environment. A risk assessment accounting for all possible routes of exposure and environmental impact may be required.
- ii) The Licensee shall submit data demonstrating the effectiveness of the stabilising method for the ash using standard sampling and analysis methods. Data shall include the chemical and physical properties of the feedstock ash and of the final product.

#### 4.3.4 Ash Handling and Fugitive Dust Controls

- 4.3.4.a Ash residue shall be kept sufficiently wetted and contained to ensure that dust emissions are controlled during on-site and offsite storage, loading, transport, unloading, mixing and processing.
- 4.3.4.b Ash or wet ash shall be stored in covered watertight, leak resistant containers. Loaded containers may be stored outside of a building or enclosed structure only if the container is covered to prevent rainwater infiltration or airborne emissions.
- 4.3.4.c Ash transportation containers or vehicles shall be watertight and leak resistant to prevent leakage under normal transportation conditions. The transport vehicle shall be enclosed or covered and sealed to prevent fugitive dust from the top surface of the load.
- 4.3.4.d Metals and other materials removed from the ash which are not sent abroad for recycling shall be transported to the Airport Waste Management Facility for disposal. The transport vehicle shall be enclosed or covered and sealed to prevent fugitive dust from the top surface of the load. The metals and other materials shall be deposited in an area that is remote from the shoreline and suitably drained to prevent washings entering the sea and to prevent the escape of ash. They shall be covered immediately to prevent release of fugitive dust. Alternatively, they may be shipped overseas for recycling or disposal.
- 4.3.4.e Any washing of the internal surfaces of the mixing drums of ash transportation vehicles shall be performed at the Airport Waste Management Facility at a site which is remote from the shoreline and suitably drained to prevent washings entering the sea and to prevent the escape of ash.

- 4.3.4.f All ash leachate or liquid drained from the ash shall be recycled in the process or be handled and disposed of in accordance with permission granted by the Environmental Authority and other relevant authorities.
- 4.3.4.g Ash shall only be disposed of in one of two options:
- Ash-Concrete blocks for use within landfill operations BELOW the water level, such as cell wall construction, and possibly revetment toe stabilisation when permanently submerged. However, it is not recommended that the blocks are used for revetment construction above the low tide zone as degradation is seen to be most prevalent when the blocks are not submerged. Above low tide level it is recommended that blocks used for revetment protection be constructed of full strength concrete (not containing ash).
  - Free-form ash-concrete shall only be used in the internal areas of the landfill greater than 20 feet from the revetment edge. Free-form ash-concrete can be used as fill material to facilitate building levels of the landfill to the required runoff grades. Unmolded, wet concrete/ash shall not be deposited on the foreshore for any purpose. Should a capping material be required, non-ash-containing concrete shall be used.
- 4.3.4.h In an emergency situation which is a direct result of an act of God when it can be shown to the satisfaction of the Environmental Engineer that the facility is unable to manufacture ash blocks, or an ash-concrete mixture then ash may be disposed of at the Airport Facility on condition that:
- i) Disposal of unconsolidated ash is for a specified, limited duration of time;
  - ii) The ash shall be kept wetted until buried to minimise escape of fine particulate matter;
  - iii) Trucks carrying the unconsolidated ash shall be covered, at least with a tarpaulin;
  - iv) The ash shall be disposed of in an area at least 20 feet from the shoreline and in a place that will not be disturbed in the future. The proposed site shall be approved by either the Environmental Engineer or his designate prior to the disposal of ash; and
  - v) The area of ash disposal shall be prepared with a bed of concrete (ash concrete may be used). The unconsolidated ash shall be placed on the concrete and then covered with more concrete (ash concrete may be used) in a timely manner. A final cover of clean fill shall be placed over the concrete capping.
- 4.3.4.i The outcome from the Halcrow (2014) study on site development and progressive finishing cap will be updated in the conditions to the AWMF (OL-168).

## 4.4 GENERAL OPERATING REQUIREMENTS

All activities at the facility must be performed in accordance with the manuals, plans, and programmes required by this licence.

### 4.4.1 Restricted Wastes

The Licensee shall provide residents and industry with facilities and systems to have all Restricted Wastes (4.2.1.b) processed and directed away from disposal at the Tynes Bay Waste-to-Energy Facility. Further the Licensee shall refuse loads of waste that have a high percentage (*i.e.* >5%) of their contents made up of the above-mentioned Restricted Wastes.

### 4.4.2 Operator Requirements

#### 4.4.2.a *Training and Certification*

The Licensee shall ensure that operators are trained in the following areas:

- i) composition and variability of MSW feedstock and rationale for restricted wastes;
- ii) fundamentals of the combustion process and optimum combustion conditions applicable to a MWC unit;
- iii) incinerator combustion control systems;
- iv) continuous emissions monitoring systems;
- v) emissions control equipment;
- vi) special operating procedures for managing upset conditions including start-up and shut down;
- vii) safety precautions and guidelines; and
- viii) emergency procedures.

4.4.2.b All employees shall receive annual review in safety and emergency procedures.

4.4.2.c The Licensee shall ensure that an operator certified to the standard of Shift Supervisor (ASME or equivalent) is present on site at all times during incinerator operation.

4.4.2.d The Licensee shall provide a list of certified operators to the Department of Environment and Natural Resources on an annual basis by 31 March.

### 4.4.3 Fire Protection

Fire protection shall be in accordance with the requirements of the Chief Fire Officer. A letter confirming compliance with this condition shall be submitted to the Environmental

Authority with any application for renewal of the operating licence

#### 4.4.4 Record Keeping and Reporting Requirements

##### 4.4.4.a *Record Keeping*

The Licensee shall maintain a complete central file containing all measurements, records, and other data that are required to be collected pursuant to the various provisions contained herein. Operating records shall be kept in a daily log or filing system and shall include:

- i) complete data collected from stack monitoring equipment and all continuous monitoring systems;
- ii) total weight of solid waste received during each day, including the number of loads received, the specific identity of delivery vehicles;
- iii) recordings every four hours of furnace and combustion chamber temperatures;
- iv) per shift recordings of MSW feed rate, air volumes;
- v) steam flow rate and electricity produced for each day;
- vi) times of start-up and shutdown of streams;
- vii) results of all performance tests and operating tests;
- viii) major equipment breakdowns or malfunctions;
- ix) notices received from other Government agencies and complaints received from the public.

##### 4.4.4.b *Continuous Emissions Monitoring Systems Data (CEMS)*

Records of the emission rates and parameters measured using CEMs shall be maintained for five years. The following must be recorded in computer-readable standard format (on disk) and on paper:

- i) All 24-hour daily averages;
- ii) The results of all annual performance tests (manual stack testing).

##### 4.4.4.c *Annual Reporting*

The Licensee shall report the following to the Environmental Authority annually on March 31 for the proceeding calendar year.

- i) the tonnage of solid waste received at the facility, the tonnage combusted, annually and weekly, and the tonnage rejected. This table should show a rolling



5-year period of similar data for direct visualisation of trends in Bermuda;

- ii) an estimate of the average composition of waste combusted over the reporting period including a statement as to how this estimate was made and the margin of error. This table should show a rolling 5-year period of similar data.
- iii) the amount of electricity produced. This table should show a rolling 5-year period of similar data;
- iv) a summary of shutdowns, breakdowns and exceedances. This table should show a rolling 5-year period of total summary data;
- v) a summary of shutdowns, breakdowns and exceedances. This table should show a rolling 5-year period of total summary data;
- vi) a summary of maintenance performed on each waste stream including furnaces, CEMs and air pollution control devices;
- vii) a summary of the testing and maintenance of all alarm systems and fire protection equipment
- viii) a list of certified operators;
- ix) confirmation that fire protection is acceptable to the Chief Fire Officer (MPW to write to CFO to determine what inspection frequency BFRS would recommend);
- x) Confirmation that the safety audit was undertaken to the satisfaction of the Government's Health and Safety Officer (Update since 2011 required);
- xi) results from monitoring the sea water cooling inlet and discharge for temperature rise and chlorine concentration. This table should show a rolling 5-year period of total averaged data for the year also;
- xii) the results of stack emissions testing. This table should show a rolling 5-year period of similar data;
- xiii) the Emergency Response Plan;
- xiv) the Contingency Plan;
- xv) a summary of the results of ambient air testing This table should show a rolling 5-year period of similar data which will be supplied by the Department of Environment and Natural Resources for incorporation into your annual report;
- xvi) a summary of the ash management programme, including the tonnes of ash processed, ash blocks produced, amounts and shapes of concrete/ash disposed of

- other than as ash blocks, and tonnes of concrete/ash;
- xvii) the results of ash analyses. This table should show a rolling 5-year period of similar data;
- xviii) a summary of the ash disposal plan, including site of ash block disposal, and results of the ash block stability, strength testing and quality control;
- xix) results of tests for fallout from emissions and their accumulation in the environment. This table should show a rolling 3 sets of data;
- xx) the notices received from other Government agencies and complaints received from the public. This table should show a rolling 5-year period of total numbers of complaints.
- xxi) Results of the benthic survey at the end of the cooling water return to the outlet on the North Shore should be re-surveyed (See BWC Report 2006) to assess for impacts related to elevated temperature, chlorine residual and additional saline. Analysis of all past data to be used by Tynes Bay with recommendations of benthic surveyors to derive the appropriate frequency of analysis going forward.

#### 4.4.4.e *Reporting whenever applicable*

The Licensee shall report the following to the Department of Environment and Natural Resources whenever applicable:

- i) any shutdown or failure of air pollution control equipment in accordance with 4.2.3;
- ii) any exceedences recorded by the CEMS, with explanations for any excess over emission limits;
- iii) any shutdown or failure of CEMs for a period of 96 hours;
- iv) in advance of any scheduled shutdowns and within 48 hours after unscheduled shutdowns or failures of the incinerator.

#### 4.4.5 Access to the Facility, Records, and Reports

- a) The Licensee shall grant access to the facility in accordance with the provisions of the Clean Air Act 1991.
- b) The measurements, records, and other data that are required to be maintained by the Licensee shall be made available during regular business hours to any duly authorised representative of the Department of Environment and Natural Resources, upon reasonable notice to the Licensee Plant Manager.
- c) All reports that the Licensee is required to submit to the Environmental Authority pursuant to air emissions shall be considered public records.

#### 4.4.6 Safety and Emergency Response

##### 4.4.6.a *Emergency Response Plan*

The Licensee shall maintain and update as required, with the assistance of appropriate government officers, an Emergency Response Plan for dealing with fire, explosion, release of hazardous chemicals into the air, or other catastrophe which may endanger the health and safety of the workers, the general public or pose a risk to the environment. The plan shall describe the arrangements with the police department, fire department, hospital, and the appropriate emergency response teams. The plan shall identify the facility's emergency response co-ordinators who are responsible for implementing the plan if needed. An emergency co-ordinator must be on site at all times the facility is in operation. The updated Emergency Response Plan shall be submitted to the Environmental Authority annually with any application for renewal.

##### 4.4.6.c *Safety Equipment*

The facility shall be equipped with the following:

- i) an internal communication and alarm system capable of providing immediate emergency instruction to facility operators. All operators shall have immediate access to the system either directly or through visual or voice contact with another employee;
- ii) portable fire extinguishers; and
- iii) a device, such as a telephone or hand-held two-way radio, at the scene of operations capable of summoning emergency assistance from local police and fire departments, and local emergency response teams. The Licensee shall periodically familiarise the police and fire departments with the layout, operations, and potential hazards of the facility.

##### 4.4.6.d *Water Supply*

The Licensee shall ensure that the facility at all times has water at adequate volume and pressure to operate hoses or foam-producing equipment or automatic sprinkler or water spray system.

##### 4.4.6.e *Maintenance of Alarm Systems*

The Licensee shall test and perform maintenance on all alarm systems and fire protection equipment at least once per year to assure proper operation. Records of testing and maintenance shall be subject to the requirements of 4.4.3.

#### 4.4.7 Occupational Safety and Health Requirements

- 4.4.7.a The Licensee shall undertake a comprehensive safety audit of the entire facility to be completed to the satisfaction of the Government's Health and Safety Officer. The results of the audit shall be submitted to the Environmental Authority.

#### 4.4.8 Odour and Health Hazard Controls

- 4.4.8.a The solid waste unloading area shall be enclosed in order to minimise dust and odour emissions. The unloading area shall be maintained at negative air pressure, with air from the unloading area and refuse bunker utilised as combustion air in the boilers.
- 4.4.8.b A housekeeping schedule shall be established throughout the facility and at a minimum, shall require cleaning of the tipping hall floor and residue areas at least weekly. The tipping hall floor shall be managed to minimise waste accumulation at the sides and corners.
- 4.4.8.c The floor of the tipping hall shall be impervious to liquid and shall be designed for cleaning by flushing. The disposal of liquid from the tipping hall and refuse bunker shall be in accordance with the requirements of the Water Authority.
- 4.4.8.d The refuse bunker shall be managed to rotate the refuse in order to avoid the accumulation of malodorous material.
- 4.4.8.e All vehicles, plant, and machinery shall be maintained and operated to minimise noise and vibration emissions.

#### 4.4.9 Traffic and Grounds Maintenance Requirements

- 4.4.9.a The traffic areas of the facility shall be maintained to minimise fugitive dust emissions.
- 4.4.9.b Except for the public drop off area, waste unloading from vehicles, waste storage, waste compaction, waste loading for incineration and waste transfer shall not be visible from passing vehicular traffic.
- 4.4.9.c The grounds and adjoining public roads shall be managed to prevent litter and grease accumulation.

### 4.5 FACILITY OPERATING MANUAL

- 4.5.1 An operating manual that is specific to the Tynes Bay Waste-to-Energy facility shall be maintained and updated on an as required basis with a yearly review. The manual shall emphasise the importance of good combustion practices as an essential factor in reducing air emissions. The manual shall include the following elements of the MWC waste stream operation:
  - a. description of the basic design, basic operating principles, and flow of materials through the facility;
  - b. description of basic combustion theory applicable to a MWC unit;
  - c. procedures for receiving and handling, and strategies for feeding MSW;

- d. MWC unit start-up, shutdown, and malfunction procedures;
- e. procedures for maintaining proper combustion air supply levels;
- f. procedures for responding to periodic upset or off-specification conditions;
- g. procedures for monitoring the degree of MSW burnout;
- h. procedures for minimising the particulate matter carry-over;
- i. procedures for handling and processing the ash;
- j. procedures for monitoring the emissions;
- k. procedures for operating the seawater cooling system;
- l. procedures for handling all types of emergency situations;
- m. contingency plans for equipment malfunctions;
- n. procedures for handling all types of restricted wastes.

4.5.2 Each member of the staff shall understand the contents of the facility operating manual, and shall read the relevant sections of the manual weekly.

4.5.3 The Plant Manager, together with the relevant staff, shall review and update the manual as required, at least annually.

#### **4.6 SEA WATER COOLING SYSTEMS**

The chlorine concentration and the temperature of the cooling discharge water shall be regularly (at least every 8 hours) monitored. There shall be a record of the automated dosing of chlorine in the intake waters. The results of the monitoring of the temperature and chlorine concentrations shall be reported to the Environmental Authority, and other relevant Authorities, on an annual basis.

#### **4.7 DISCHARGE OF LIQUID WASTES OR OTHER EFFLUENTS**

4.7.1 The Licensee shall make no discharge from within the facility to the sewer system, the sea, or the ground/groundwater, either directly or otherwise, unless necessary licences, permits, and approvals are received from the Environmental Authority and other relevant Authorities.

4.7.2 The draining, transferring, pumping, release or discharge of any wastewater, waste chemicals, or any other liquids into the quench tank shall be recorded in the daily operations log. This includes rainwater from the chimney flues, boiler house leaks, boiler tube cleaning washings, and run off from the ash processing contingency site.

4.7.3 Under no circumstances shall any waste liquid, solid, or gas be discharged or released into the seawater cooling system for discharge to the sea.

#### **4.8 CONTINGENCY PLAN**

The Licensee shall maintain and update as required a Contingency Plan to address waste disposal options in the event of long-term outages of the Tynes Bay Waste-to-Energy Facility. The updated Contingency Plan shall be submitted annually by 31 March to the Environmental Authority.

#### **4.9 ENVIRONMENTAL MONITORING**

4.9.1 Manual stack emission testing shall be carried out on an annual basis. The details, experimental design, and methods used shall be approved by the Department of Environment and Natural Resources.

4.9.2 Testing for the fall out and possible accumulation in the environment of pollutants from the emissions of the incinerator shall be conducted every 2 years. These tests shall include testing for heavy metals and organics in:

- Drinking water tanks (Tank sediments may be used if concentrations in the water are below analytical detection limits),
- Soils
- Marine sediments in the vicinity of Tynes Bay.
- Ambient Air. Air fall-out data can be combined with the occupational health monitoring requirement but with emphasis on reporting the fallout in the ambient air samples collected outside of the facility with respect to list of contaminants provided above

The details, experimental design, and methods used shall be approved by the Department of Environment and Natural Resources.