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**SERVICES AGREEMENT**

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

BY AND BETWEEN:

(1)

**Ministry:** **Public Works**

**Department:** **Public Lands and Buildings**

**Address:** **General Post Office Building  
56 Church Street  
Hamilton HM12 Bermuda**

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

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

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

This Agreement including Schedule A, Appendix 1, Appendix 2 and Appendix 3 sets out the terms and conditions upon which you will provide services to the Government.

**SCHEDULE A**

**STATEMENT OF WORKS**

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

**1 Supplier Name and Contact Information:**

Supplier:

Address:

Tel:

441-

Mobile no: 441-

Email:



**2 Term and Termination**

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

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

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

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

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

**3 Fee**

- a. The Government will compensate you the gross fee(s) of **BMD \$ monthly** for the Services, subject to the General Terms and Conditions. The Fee will be subject to deductions by law in the event that you have not registered as a consultant with the relevant Government department.
- b. 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 the Government has suffered loss by your failure to follow instructions or exercise due diligence;
  - c. If you cause damage to Government property, the value of replacement or repair of the damaged property shall be deducted from the Fee;
  - d. If you leave or terminate this Agreement without giving the required notice, the value of the Fee for the notice period may be deducted;
  - e. When you no longer provide Services to the Government, there will be a deduction of any overpayments or advances of payment taken in excess of the Fee; and
  - f. Where you have outstanding payroll taxes or social insurance contributions.

**4 Expenses, Miscellaneous Charges and Taxes**

- a. You are not allowed to incur charges and/or expenses (“**Expenses**”) associated with the provision of the Services without having received prior written consent from the Government.
- b. All requested Expense shall be provided to the Government in writing and the decision to pay expenses suffered or incurred in breach of this section shall be at the sole discretion of the Government.
- c. You shall be responsible to register with the appropriate Government Department and to pay for all taxes associated with the provision of Services, including but not limited to payroll tax or social insurance (“**Taxes**”) and you consent to the Government deducting due or outstanding Taxes from the Fee on your behalf, at the Government’s option.
- d. Your tax information:

Payroll Tax No	Social Insurance No.

- e. In the event that the Government has not made deductions on your behalf, you shall provide to the Government proof of payment of amounts due to the Government such as any Taxes and all



other receivables to the Government, prior to you receiving your final payment.

**5 Insurance coverage**

You shall acquire insurance policies in the amounts as set out below, in accordance with and subject to the insurance section of the General Terms and Conditions of this Agreement:

<b>Insurance Coverage</b>	<b>Minimum Coverage amount</b>
Contractor's all risk	<b>BMD\$2,000,000</b>
Worker's compensation	<b>BMD\$500,000</b>

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

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



## **GENERAL TERMS AND CONDITIONS**

The parties, intending to be legally bound, agree that in this Agreement, words by their context importing the plural shall include the singular and vice versa, references to either gender includes any other gender or a neutral entity. Where the contexts requires, the word "Supplier" shall include the word "you" and vice versa.

### **1 Provision of Services**

- 1.1 You shall perform the services as described in Appendix 1 for the Government ("**Services**") in accordance with and subject to this Agreement which includes Schedule A, Appendix 1 and these General Terms and Conditions.
- 1.2 While on the Government's, premises you will comply with all Government policies, procedures, rules or other instructions ("**Rules**"), including Rules for security for information technology ("**IT**"); and Rules for health and safety, as notified and you will conduct yourself in a professional and safe manner. You shall notify the Government if you become aware of any breaches in IT security or health and safety violations. The Government may require personnel with access to premises or IT systems to sign a confidentiality undertaking.
- 1.3 You agree to abide by any other instructions or information as may be provided by the Government.

### **2 Representation and Warranty**

You represent and warrant that:

- 2.1 you are and shall remain responsible for all acts, errors or omissions of any person engaged by you or providing Services on your behalf and for ensuring their compliance with the requirements and obligations of this Agreement;
- 2.2 you and any person engaged by you, are in possession of all qualifications, rights, permits, licenses or authorizations ("**Consents**") necessary for the provision of Services and you will maintain such Consents at all times while providing the Services;
- 2.3 the Services are to be provided in accordance with all applicable laws, rules, regulations and policies of the Government; and
- 2.4 you are fully satisfied as to the scope and

nature of your obligations under this Agreement and you have the corporate power and authority to enter into, and perform your obligations under this Agreement.

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

- 3.1 The Government shall at all times retain the right to inspect and accept or reject the Services.
- 3.2 If the Service does not conform to the warranty as set out in this Agreement, you shall make any required corrections promptly at no additional charge. In the event that you do not make corrections promptly, the Government may, at its discretion and at your cost and expense, use all reasonably commercial efforts to correct any such non-conformance or non-availability of Service promptly, or you shall, at your cost and expense, provide the Government with an alternative means of accomplishing the desired outcome or performance.
- 3.3 Your failure to proceed with reasonable promptness to make necessary corrections shall be a default. If your corrected performance remains unacceptable, the Government may terminate this Agreement, reduce the Fee and/or reject the hours submitted in connection with such work to reflect the reduced value of services received.

### **4 Fee, Invoicing Terms and Taxes:**

- 4.1 The Government shall pay you the Fee for the Services during the Term, in arrears. Your Fee is subject to deductions as set out in Schedule A.
- 4.2 You shall provide a monthly invoice to the Government itemizing the hours worked and the services provided.
- 4.3 Government shall pay the Fee and/or undisputed invoices **30 days in arrears**. The Government may dispute an invoice within **30 days of receipt**, however, the Government reserves the right to dispute payments made on an invoice at any time if it suspects fraud or willful misconduct on your part ("**Faults**"). In the event that any Faults are discovered in relation to payments made to you, the Government reserves the right to recover such



payments from you, at your cost (which shall include all legal and collection fees and expenses) or to set off any disputed amounts against unpaid invoices.

- 4.4 Your failure to timely submit a proper invoice as set forth in this section may result in a delay in payment by the Government. You agree that the Government is not responsible, nor will it be liable to you or under law or equity for any interest or expenses that you may incur resulting from any delays in payment caused by your failure to comply with the terms of this Agreement.
- 4.5 Except for the Fee and any approved Expenses, no other amounts are payable by the Government to you. Government may set off any amounts owed by you to the Government against any Fees or Expenses.
- 4.6 The Government shall pay by direct transfer into your bank account. It is your responsibility to inform the Government of your current contact and bank details in order that the Government can contact and make payment to you.
- 4.7 Without prejudice to section 4.1, the Government reserves the right to refuse to pay an invoice in the event that the invoice is presented 6 months after the time when it should have been presented for payment.

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

- 5.1 You shall indemnify, keep indemnified and defend the Government against all costs (including reasonable legal costs), claims, damage (including damage to software and equipment), loss or expenses arising from any breach by you, or any person engaged by you, of the terms of this Agreement, including bad faith, errors or omission to act in the provision of the Services. The Government may satisfy such indemnity (in whole or in part) by way of deduction from any payment due to you.
- 5.2 Without prejudice to Government's obligations to pay the Fee, neither you nor the Government shall be liable under this Agreement for any loss of profits, loss of business or other losses of opportunity to make a profit, whether foreseeable, unforeseeable, foreseen or unforeseen.
- 5.3 Nothing in this Agreement shall exclude or limit liability against, among other matters,

wrongful use of Information (as defined below); fraud; willful misconduct or any liability which cannot be lawfully limited or excluded.

- 5.4 Without limiting the provisions of this Section, each party's maximum aggregate liability, for all claims in connection with this Agreement or the performance thereof arising during its entire term shall be limited to the Fees paid to you under this Agreement for the month immediately preceding the date the on which the latest claim(s) first arose.
- 5.5 **Insurance**: You shall maintain at your sole expense, on a primary basis, and an "occurrence basis", at all times during the Term, insurance policies ("**Insurance Policies**") with coverage as set out in Schedule A. The Insurance Policies shall be evidenced by delivery to the Government of certificate(s) of insurance executed by the insurer(s) listing coverages and limits, expiration dates and terms of the policy or policies and all endorsements, and upon request a certified copy of each policy including all endorsements. Failure to provide acceptable proof of insurance as required by the Government shall entitle the Government to either obtain or maintain the Insurance Policies on your behalf at your sole cost and expense, or to terminate this Agreement without prejudice to any other of the Governments rights or remedies in connection with this Agreement.
- 5.6 You shall be responsible for the payment of all deductible amounts on such policy or policies and shall on request supply to the Government copies of such Insurance Policies and evidence that the relevant premiums have been paid.
- 5.7 You 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 above policy or policies may be required to respond.
- 5.8 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.



- 5.9 If you subcontract any work under this Agreement, you shall ensure that each subcontractor maintains insurance coverage with policy limits of at least the amounts stated in Schedule A.
- 5.10 The insurance requirements set forth above do not in any way limit the amount or scope of your liability under this Agreement. The amounts listed indicate only the minimum amounts of insurance coverage that the Government is willing to accept to help ensure full performance of all terms and conditions of this Agreement.
- 5.11 Neither of the parties shall be liable to the other for failure or delay to perform obligations under this Agreement to the extent that any delay is caused by flood, fire and other event beyond its reasonable control (not caused by its own act or negligent omission) ("*force majeure*") but each party shall use its best endeavours to perform its obligations notwithstanding the *force majeure* event.

## **6 Confidentiality and Non-Publicity**

- 6.1 You must ensure that all information or data (including this Agreement, documents, plans, technical or financial data) and other information where you should reasonably understand the confidential nature of that information or any other Government information not in the public domain ("**Information**") is protected against unauthorized access, use, copying or disclosure as Information is strictly confidential. You acknowledge that the improper use or disclosure of Information could be unlawful. You must comply with Government's instructions in relation to Information.
- 6.2 A breach or anticipated breach of the confidentiality provisions of this Agreement, will cause the Government irreparable harm and you agree that monetary damages alone may not be an adequate remedy and, accordingly, that the Government will, without prejudice to any other rights or remedies that it may have, be entitled, without proof of special damages and without the necessity of giving an undertaking in damages, to seek an injunction or specific performance, at your cost on a full indemnity basis, together with all other remedies as may

be available in law or equity.

- 6.3 If you or anyone acting on your behalf fails to abide by the confidentiality provisions at any time, then such failure shall constitute a material breach of this Agreement and you shall pay the Government the equivalent of the Fee paid to you for a 3 month period as liquidated damages, in addition to any attorney's fees and costs of enforcement. You and anyone acting on your behalf shall be jointly and severally liable to the Government under this section.
- 6.4 You may not use the Government's name or logo for any publicity or marketing purposes.

## **7 Term and Termination**

- 7.1 The term of this Agreement shall be as set out in Schedule A.
- 7.2 Either party may terminate a Service or this Agreement, in part or in whole, during the Term upon prior written notice without cause in accordance with the termination notice period as set out in Schedule A.
- 7.3 The Government may immediately terminate this Agreement if you commit a material breach of this Agreement, including failure to deliver a service within agreed timeframes, which is not remedied within 30 days of notice by the Government informing you of the breach, or an irremediable breach.
- 7.4 Either party may immediately terminate if the other party's performance is affected by a *force majeure* event which lasts 30 days or more.
- 7.5 Either party may terminate this Agreement by giving the other party prior written notice immediately if, where applicable, either party becomes insolvent or chooses to discontinue its business or loses its Consent. In the event of immediate termination of this Agreement, all Fees due and payable shall be paid promptly to you, subject to this Agreement.
- 7.6 The rights arising under this termination clause represent your sole remedy and excludes common law rights to terminate and claim damages for loss under this Agreement.
- 7.7 Upon expiry or termination of this Agreement, you shall provide the Government with all such assistance as may be reasonably necessary in order to end the relationship in a manner which causes the least inconvenience



to the Government including returning all Government property.

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

## **8 General**

8.1 This Agreement is effective on the Effective Date. Where this Agreement refers to past or current obligations, this Agreement applies retrospectively from that date.

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

8.3 No one other than a party to this Agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.

8.4 You will be an independent contractor and nothing in this Agreement shall render you an employee, worker, agent or partner of the Government and you shall not hold yourself out as such.

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

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

enforceable.

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

8.8 You consent to the Government processing data relating to you for legal, personal, administrative and management purposes and in particular to the processing of any sensitive personal data relating to you, as appropriate. The Government may make such information available to those who provide products or services to it (such as advisers and payroll administrators), regulatory authorities, potential or future employers and governmental or quasi-governmental organizations including those outside of Bermuda.

## **9 Governance**

9.1 You shall inform Government promptly of all known or anticipated material problems or of any conflicts of interest which might affect your ability to provide the Services.

9.2 You agree to provide the Government (and, if the Government requests in writing, its auditors and competent regulatory authorities) with full information on the provision and delivery of the Services in an open and cooperative way and attend meetings with the Government to discuss the Services and this Agreement.

## **10 Governing law and Dispute Resolution**

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



## APPENDIX 1

### Service Objective

To provide cleaning, routine maintenance and inspections of Air Conditioning equipment in the **Dame Lois Browne Evans Building Bermuda** in accordance with the service level agreement and this Agreement. Services generally shall be provided during normal working hours e.g. 8am – 5pm Monday to Friday unless otherwise discussed and agreed upon.

### Service Provision

1. The Supplier and its personnel assigned to the Government facility agree to:
  - 1.1 Perform the cleaning, routine maintenance and inspections in accordance with the Scope of Works as set out in Appendix 2.
  - 1.2 Adhere to all aspects of the security and facility access rules, regulations and procedures for employees which may include background checks, photographic identification cards and computerized access control. The Government reserves the right to refuse and/or remove any employee of the Supplier that does not meet the security or performance requirements.
  - 1.3 Advise all employees prior to assignment that public areas and administration offices are not to be used as break areas AND the consumption of alcoholic beverages or drugs are strictly forbidden. There is to be no smoking on any Government property.
  - 1.4 Use only Supplier employees to provide the Services. Subcontracting the Services or any part of the Services is prohibited without the Government's prior written consent.
  - 1.5 Pay its employees, or anyone working on its behalf, all wages, taxes and benefits required by law or other legal agreement.
  - 1.6 Provide a list of all equipment to be used for the Services.
  - 1.7 Provide a list of all cleaning materials used to perform the Services. The Department reserves the right to require the use of a certain service products or type of product if that product is specified or required under the terms of a warranty or guarantee.
2. The Government reserves the right to request an authorized representative to carry out an inspection of the subject areas with the Supplier's appointed supervisor at any time during work hours at times to be agreed.
3. The Supplier must provide 24 hour telephone communication between the shift supervisor and the Government.
4. The Supplier shall supply extra staff for "on call work" as requested so as not to detract from scheduled work. Costs for this will be billed separately by the Supplier.
5. The Supplier is required to make the most efficient use of all service items whilst maintaining a high level of service. Any misuse or theft of Government property or supplies will result in prosecution to the maximum extent of the law.
6. The Supplier shall use its best efforts to hire only Bermudians or those workers that have a legal right to work in Bermuda.
7. There will be regular performance meetings between the Supplier and the Governments' representative.
8. The Supplier shall adhere to the guidelines of the Safety and Health Act, and the Department of Health Regulations for the proper disposal of any hazardous and unsafe materials derived from the service provided.





## APPENDIX 2

### **Scope of Works**

#### **Routine Inspection & Maintenance of Chiller Plant, component parts and Fan Coil Units**

1. The Supplier shall provide a detailed Air Conditioning System Inspection Report to the owner's representative for all works carried out on the inspection and maintenance of the plant and equipment.
2. The Supplier shall carry out routine inspections of the chiller plant and component parts for leaks. Inspection of all risers, chill water supply loops, chill water flow rate, chill water condition, drain lines and Fan Coil Units.
3. Inspection of refrigerant charges within system. If system is discovered to be needing refrigerant it will be discussed and carried out thereafter.
4. Inspection of all Fan Coil units for leaks and general cleaning of unit to prevent mold or fungal growth.
5. Record maintenance inspections on all air delivery systems including the cleaning, changing out of filters in all AHUs, Fan coils units, and intake grills.
6. Inspect outside intake and exhaust grills, hoods and vents.
7. Clean all supply and exhaust grills, linear diffusers on the interior of the buildings.
8. Inspect and lubricate all shafts, drives and moving parts as per the required maintenance manual for said equipment.
9. Inspect and change out any worn belts on drives and motors.
10. Inspect for any damaged insulation to piping from water, condensation, mold and or wear and tear. Any major damaged or saturated insulation needing changing will be discussed and carried out thereafter.
11. Repair and paint any exposed corroded metal works on condensers.
12. Inspection of Energy Management Systems (where applicable) that monitors the building and provide the systems report to the owner's representative on a monthly basis.
13. Monitor all AC plants for efficiency and energy consumption on a weekly and monthly basis.
14. Inspect all Plant rooms and surrounding areas to ensure that all areas are kept tidy, neat and free of debris.

### **Note**

The Supplier shall include for the supply and provision of the following:

- a) All belts, filters cleaning materials and equipment necessary to carry out the above services.



## APPENDIX 3

### **Equipment to be maintained**

Rooftop – Chiller Plant

3<sup>rd</sup> Floor – 31 fan coil units

2<sup>nd</sup> Floor -28 fan coil units

1<sup>st</sup> Floor -7 air handlers

Ground Floor -6 air handlers & Chilled Water Pump