

**OPERATION AND MAINTENANCE
OF THE
BLDC WASTEWATER TREATMENT PLANT
(BUILDING #731)
AT SOUTHSIDE**

REQUEST FOR PROPOSAL

FEBRUARY 2018

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INFORMATION TO TENDERERS

FEBRUARY 2018

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1 INTRODUCTION

1.1 General

The Bermuda Land Development Company Ltd. is requesting proposals for the Operation and Maintenance of the BLDC Wastewater Treatment Plant at Southside.

The facility at Orange Hole Road, St. George's Parish houses a wastewater treatment plant capable of processing 30,000 US gallons per day (USGPD) of wastewater with a peak capacity of 80,000 USGPD. The wastewater is collected and pumped from the Southside campus to the plant.

It is the BLDC's intent to procure professional contracting services, which will yield, or result in the greatest value. It is further understood that the quality of professional, technical and managerial skills may often have a disproportionately large influence on the overall cost.

Notwithstanding the foregoing and any perceived tradition of contract award based on lowest price proposals, the BLDC reserves the absolute right to award contracts based exclusively on the BLDC's perception of better value. The BLDC reserves the right not to enter into an agreement based on the proposals received.

Neither the proposal offering the greatest overall benefits, nor that offering the least total price will necessarily be ranked superior. It is essential that proposals address all specific requirements of this Request for Proposal.

Tenderers shall offer proposals comprised of two separate components; a Quality Submission containing Management and Technical Information and a Financial and Cost Quotation Submission.

1.2 Proposal Validity Period

Contractors are required to abide by their proposal for a period of sixty (60) days from the date fixed for receiving the same. The proposal shall remain binding and may be accepted at any time before the expiration of that period. The Contractor shall maintain, without charge, the proposed key staff.

In the case where an extension of the validity period is requested by the BLDC, the Contractor has the right to withdraw their proposal.

1.3 Proposal Length

Proposals shall not exceed 20 pages in length, excluding supporting material. Supporting material includes requisite project references and resumes of key personnel.

1.4 Quality Submission

Factors to be considered in the quality evaluation of the proposal submission shall be:

- Tenderers Eligibility;
- Tenderers proven record of experience;
- Contractor's Plan ;
- Demonstrated understanding of the Clients requirements;
- Tenderers Project Team.

1.5 Financial and Cost Quotation Submission

Factors to be considered in the financial evaluation of the proposal submission shall be:

- Monthly cost

1.6 Tender Reviews

The Quality Submissions of each proposal shall be opened on the same day and delivered to the proposal review team for evaluation.

2 QUALITY SUBMISSION

2.1 Tenderers Eligibility

Compliance with the requirements below is mandatory

- Significant relevant and demonstrated experience in the operation of a wastewater treatment facility specifically with membrane technology (a minimum of 5 years experience).
- Public Liability: Submit proof of public liability insurance in the amount of \$1.0M.
- Certification in wastewater treatment operations from a recognized state, provincial or national certification for a tertiary grade MBR. Certification in a Class IV or higher in accordance with the Association of the Boards of Certification Operator Certification or equivalent is required.

2.2 Tenderers proven record of experience

2.2.1 Corporate Background Information

Tenderers shall include detailed information concerning the organisation and structure of their partnership, association of persons, or corporation, including all sub-contractors.

Proposals shall include:

- detailed definition of the proposed contracting party;
- place of registration and location of the head office;
- names of directors, principals and key staff; and
- types of products or services offered.

2.2.2 Working background

Tenderers shall each provide summaries for at least one (1) wastewater treatment plant operations, of a similar nature to the proposed services, that were undertaken by the tenderer during the last five (5) years and which were carried out by staff assigned to this service.

Summaries shall include the following:

- title, location and a brief description of the service;
- services provided by the tenderer as they relate to this service;
- role and responsibility of the tenderer;
- key staff on the project and their roles;
- start and completion dates of the service;
- name of client, project contacts and telephone numbers.

2.3 Contractor's Plan

All proposals shall contain a plan for the required works. The plan shall detail such items as:

- The Management Structure;
- Coverage for staff absences;
- Communications plan with Employer which includes contact information for key personnel;
- Hurricane preparedness and emergency plan;
- An Environmental Management System (EMS) establishing the tenderers commitment to the protection of human life and safeguarding the natural environment during the course of its normal activities; and
- Health and Safety Program (HSP).

The plan shall detail how the tenderer proposes to ensure that the service as detailed in these Tender Documents will be delivered to the BLDC. The plan will form part of the Agreement, if the proposal is accepted.

2.4 Tenderers Demonstrated understanding of the Clients requirements

In developing their proposals, Contractors shall provide the following minimum information:

2.4.1 Compliance with the Companies Act 1981

Details of actions intended to ensure compliance with the Companies Act 1981, 1989 Revision, Sections 133 and 134. This shall include but not be limited to the names of proposed local legal representation for permit application; local contact name for a representative of the company; local contact address; proposals for advertising locally and a schedule of anticipated fees associated with the permit application.

Details of the Companies Act 1981 can be found at <http://www.bermudalaws.bm>

2.4.2 Relevant Experience and Qualifications of Service Personnel

Resumes or Curriculum Vitae for each individual key staff member assigned to the service shall be included emphasizing their most recent services similar in nature to this service and their role in each. Only personnel with proven technical competence to perform the required tasks shall be proposed.

2.4.3 Methodology

In the Contractor's Plan, Tenderers will present their methodology for undertaking the service and providing their professional and technical services in a safe, timely, effective and cost efficient manner.

The methodology shall clearly and concisely demonstrate:

- understanding of the service requirements;
- availability of qualified labour resources;
- familiarity with the geographic, environmental, regulatory and technological requirements of the service;
- any additional factors that the Contractor deems appropriate;
- details as required in the Service Information.

2.4.4 Proposal Innovation

Tenderers are encouraged to submit proposals, which are innovative and cost effective to BLDC.

2.4.5 Non-Collusion

Tenderers are required to complete the attached Certificate of Confirmation of Non-Collusion and include it with the submitted proposal.

2.5 Plant Information and Site Visit

2.5.1 Site Visit

A site visit to the plant for all tenderers will be held on **20th February 2018**, at 10AM.

2.5.2 Plant Information

O&M manuals are available for viewing by appointment at BLDC Facilities Office, Wallers Point Road. Interested parties should contact Mr. James Petty, Facilities and Plant Manager, at jpetty@bldc.bm, to arrange a time to view the documents.

3 FINANCIAL AND COST QUOTATION SUBMISSION

3.1 Introduction

This contract is a monthly fee for the operation and maintenance. The tenderer may add additional activities to the schedule in order to further break down the tendered total.

The actual cost will be the amount of payments due to sub contractors for work which has been subcontracted and the cost of the remaining completed works to the contractor, less any disallowed costs.

3.1.1 Disallowed Costs

Disallowed costs are costs which the Service Manager decides:

- Are not justified by the Contractor's accounts and records.
- Should not have been paid to a sub-contractor in accordance with his sub-contract.
- Were only incurred because the contractor did not:
 - Follow an approved procedure for acceptance or procurement stated in the Service Information.
 - Give an early warning which the contract required him to give
- Is the result of the contractor paying more to a sub-contractor than has been agreed in advance for additional works instructed under the contract.

and the cost of:

- Plant and Materials not used to provide the Service (after allowing for reasonable wastage) unless resulting from a change to the Service Information,
- resources not used to provide the Service (after allowing for reasonable availability and utilization) or not taken away when the Service Manager requested,
- events for which this contract requires the Contractor to insure and
- preparation for and conduct of an adjudication or proceedings of the tribunal

3.2 Price Schedule

All prices listed in the price schedule shall be the cost of the operational support at the Affected Property and any administrative costs incurred.

	Activity	Cost
1	Operations and Maintenance per month	BD\$
2	Administration per month	BD\$
3	Testing per month	BD\$
	Total Cost	BD\$

The Contractor shall provide rates for labour to be used for pricing additional repairs at the Affected Property.

Item	Unit	Rate
Skilled labour	hr	
Unskilled labour	hr	

3.3 Contract Duration

At the discretion of the BLDC, the Service Period may be extended for a minimum of one month up to a maximum of twelve months.

4 PROPOSAL SUBMISSION PROCEDURES

4.1 Clarification on Request for Proposal Documents

A tenderer requiring any clarification of the Request for Proposal documents may notify BLDC's Representative by e-mail or in writing at the following address;

By E-mail:

kharris@mason.bm

or:

By Courier or Mail:

Atlantic House, Basement Level
11 Par-la-ville Road
Hamilton, HM 11

Attention:
Kelly Harris, P.Eng.

The BLDC's Representative will respond by e-mail, in writing to any request for clarification, which is received earlier than 7 calendar days prior to the deadline for the submission of proposals.

Written copies of the BLDC's response, where necessary (including a description of the inquiry but without identifying its source), will be sent to all prospective Contractors.

The Contractor shall confirm receipt of each Addendum at the time of receipt of same.

4.2 Submission

The Contractor shall submit five (5) identical bound copies of their proposal. The envelope shall be clearly labeled **Operation and Maintenance of the BLDC Wastewater Treatment Plant at Southside**, and placed in the Tender Box at the BLDC offices at Triton House, 1 Longfield Road, St. George's Parish.

4.3 Proposal Opening

Deadline for submission of the Contractor's Management and Technical Information and Price and Rates Quotation Schedule proposals is the date stated in the Letter of Invitation.

5 PROPOSAL EVALUATION

All elements of the tender documents are mandatory. Tender response must be supported by proper and adequate detail. All proposals will be evaluated by representatives of the BLDC. It will be understood and accepted by all tenderers that the degree to which a proposal meets each stated requirement is the sole judgment of the evaluators.

Each proposal shall be evaluated based on the Quality Submission and the Financial and Cost Quotation submission.

5.1 The Quality Submission:

Each submission will be marked out of a total of one hundred points which will be awarded from the points available in each section as detailed below. The tenderers quality submission will be allotted a 70% weighting (Sections 1 & 3 of Scoring Matrix) in the evaluation of the proposal.

5.1.1 Tenderers Eligibility

This is a mandatory section and non compliance with any element of this section will result in disqualification of the submitted tender. The Financial and Cost Quotation submission will be returned unopened.

5.1.2 Scoring Matrix

ITEM	CRITERIA	WEIGHTING
1	Experience & Capability:	
1.1	Does the bidder clearly demonstrate the ability to deliver the requirements of the tender?	
1.2	Did the bidder offer evidence of experience with projects of a similar technical level?	
1.3	Did the bidder offer sufficient evidence of experience with completing projects within timescales and budgets?	
1.4	Is the bidder able to complete the work within the required timescales?	
1.5	Does the bidder state that they have sufficient, suitably experienced resources available?	
1.6	Does the bidder have a good track record in Health & Safety?	
1.7	Were the bidders referees positive about their experience of working with the contractor/supplier, and would they use them again?	

1T	Subtotal Score - Section 1	50%
2	Financial Analysis:	
2.1	Tender price (include all costs)	
2.2	The bidder is in a stable financial position.	
2.3	The bidder has no outstanding Government debt	
2T	Subtotal Score - Section 2	30%
3	Social, Environmental & Economic criteria:	
3.1	Percentage of workforce that are Bermudian	
3.2	Does the bidder offer evidence of providing apprenticeships/training positions or being willing to offer them?	
3.3	Does the bidder have an environmental policy in place?	
3.4	Has the bidder given evidence that they have participated in appropriate business skills training e.g. The BSBDC Construction Incubator?	
3T	Subtotal Score - Section 3	20%

5.2 The Financial and Cost Quotation Submission:

5.2.1 Total Operations Cost per month

The scores for the financial submission will be weighted to form a total of 30% (Section 2 of Scoring Matrix) of the overall score as shown in the table above.

Notwithstanding the technical / managerial and price scores, the BLDC reserves the right to reject any proposal where prices are deemed to be unreasonable relative to other prices proposed, typically a 25% variance from the average qualified proposal (excluding the proposal in question).

The BLDC reserves the right to negotiate any or all conditions of the Contractor's proposed work plan and reject all submitted proposals.

The BLDC reserves the right to award an agreement to the Contractor whose services are judged most likely to provide a service, which results in best overall value to the BLDC. **The lowest priced proposal or highest quality proposal, or any proposal, will not necessarily be accepted.**

PRICE AND RATES QUOTATION FORM

Having examined the Request for Proposal consisting of the Service Information and Appendices, the Information to Tenderers and Addenda Nos. _____ for the execution of the said Services, we the undersigned offer to undertake and complete the whole of the said Services in accordance with the Conditions of Agreement, the Request for Proposal documents and Addenda, the Monthly Price for these works in their entirety shall be:

BD\$ _____ (words)

BD\$ _____ (numbers)

We hereby declare that:

- (a) We agree to abide by this Tender for the period of sixty (60) days from the date fixed for receiving the same and it shall remain binding upon us and may be accepted at any time before the expiration of that date.
- (b) Unless and until a formal Agreement is prepared and executed, this Tender, together with your written acceptance thereof, shall constitute a binding Contract between us. We understand that you are not bound to accept the lowest or any tender you may receive.

Signature: _____

Name: _____

Date: _____

in the capacity of _____

Duly authorized to sign proposals for and on behalf of:

(Company Name)

Witness :

Signature: _____

Name: _____

Date: _____

Position: _____

Duly authorized to witness proposals for and on behalf of:

(Company Name)

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OF THE
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CONTRACT DATA

FEBRUARY 2018

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CONTRACT DATA - VOLUME 1

6 PART ONE – DATA PROVIDED BY THE EMPLOYER

1.	General	
1.1	The <i>conditions of contract</i> are the core clauses and the clauses for main Option A and secondary Options X1, X2, X4, X18, X19 and Z of the NEC3 Term Service Contract (June 2005) (with amendments dated June 2006).	
1.2	The service is:	Operation and maintenance of the BLDC Wastewater Treatment Plant at Southside to provide wastewater treatment services as required by the <i>Employer</i> .
1.3	The <i>Employer</i> is:	Bermuda Land Development Company Ltd.
	Address	1 Longfield Road, St George's, DD 03 Bermuda
1.4	The <i>Service Manager</i> is	
	Name Address	Facilities and Plant Operations Manager 1 Longfield Road, St George's, DD 03 Bermuda
1.5	The <i>Adjudicator</i> is:	only appointed if deemed necessary by either the <i>Contractor</i> or the <i>Employer</i> .
1.6	The <i>Adjudicator</i> nominating body is:	Chartered Institute of Arbitrators Bermuda Branch
1.7	The Affected Property is	Wastewater Treatment Plant at Southside Orange Hole Road, St. George's
1.8	The Service Information is in	in Volume 3 of the Contract Data
1.9	The language of the contract is:	English
1.10	The <i>law of the contract</i> is:	the law of Bermuda
1.11	The <i>period for reply</i> is:	14 days
1.12	The <i>tribunal</i> is:	Arbitration
1.12	The <i>arbitration procedure</i> is:	Arbitration in accordance with the Bermuda Arbitration Act 1986
1.13	The place where the arbitration is to be held is:	
1.14		Bermuda
	The person or organisation who will choose an arbitrator	
	<ul style="list-style-type: none"> • if the Parties cannot agree a choice or • If the arbitration procedure does not state who selects an arbitrator is: 	

Part One – Data provided by the *Employer* - continued

1.15		Chartered Institute of Arbitrators Bermuda Branch
1.16	The additional conditions of contract together with deletions of core clauses are given at the end of this document.	
3.	Time	
3.1	The starting date is:	1 st April 2018
3.2	The service period is:	1 year
3.3	At the discretion of the BLDC, the Service Period may be extended for a minimum of one month up to a maximum of twelve months.	
5.	Payment	
5.1	The assessment interval is:	1 Calendar Month
5.2	The Contractor prepares forecasts of the final total of the Prices for the whole of the service at intervals no longer than	1 Calendar Month
5.3	The currency of the contract is:	Bermuda Dollars
5.4	The interest rate is:	2% per annum above the Bank of Butterfield base rate.
5.5	The period for payment is:	4 weeks
8.	Risks and Insurance	
8.1	The minimum amount of cover for insurance against loss or damage caused by the Contractor to the Employer's Property is	
		1,000,000.00
8.2	The minimum amount of cover for insurance in respect of loss of or damage to property (except for Employer's property, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the Contractor) arising from or in connection with the Contractor's Providing the Service for any one event is	
		1,000,000.00
8.3	The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the Contractor arising out of and in the course of their employment in connection with this contract for any one event is	
		1,000,000.00
8.4	The contractor submits a first plan for acceptance within 2 weeks of the Contract Date	

Part One – Data provided by the *Employer* - continued

X18	Limitation of Liability
X18.1	The Contractor's liability to the Employer for indirect or consequential loss is limited to
	1,000,000.00
X18.2	For any one event, the Contractor's liability to the Employer for loss of or damage to the Employer's property is limited to
	1,000,000.00
X18.4	The Contractor's total liability to the Employer for all matters arising under or in connection with this contract, other than excluded matters, is limited to
	1,000,000.00
X18.5	The end of liability date is 6 months after the end of the service period.
X19.5	The Contractor submits a Task Order programme to the Service Manager within 14 days of receiving the Task Order.

Additional conditions of contract (Option Z) ARE:

Z1.		The additional conditions of contract are below.
Laws, Regulations and Orders	Z2	The <i>Contractor</i> shall make himself fully acquainted with the Laws, Regulations and Orders of Bermuda and of any competent/statutory Authority and shall conform in all respects therewith during the continuance of the Contract. He shall conform similarly with any such Laws, Regulations and Orders which may come in to force after the date of this Agreement.
Construction of Contract	Z3	The Contract shall in all respects be constructed and operated in conformity with the Laws of Bermuda and the respective rights and liabilities of the Parties shall be in accordance with the Laws for the time being in force.
Members and Staff of Employer and Service Manager not Personally Liable	Z4	Neither the members nor the staff of the <i>Employer</i> or the <i>Service Manager</i> shall be in any way personally bound or liable for the acts or obligations of the <i>Contractor</i> under the Contract or answerable for any default or omission in the observance or performance of any of the acts, matters or things which are herein contained.
Named key personnel	Z5	Acceptance by the <i>Employer</i> of key persons stated in Contract Data Part Two does not constitute acceptance that such individuals are suitable for the roles assigned to them or serve to relieve the <i>Contractor</i> of his duties or obligations under the contract. Any such key person is not to be removed by the <i>Contractor</i> from the part of the <i>works</i> for which he has been nominated without the prior written consent of the <i>Service Manager</i> .
Named subcontractors	Z6.1	Where the <i>Contractor</i> has nominated a Subcontractor in Contract Data Part Two for part of the <i>works</i> , acceptance of the Contract Data by the <i>Employer</i> without qualification of such nomination is deemed to be a consent on the same legal basis as consent by the <i>Service Manager</i> under Clause 26.2. Any such Subcontractor is not be removed by the <i>Contractor</i> from the part of the <i>works</i> for which he has been nominated without the prior written consent of the <i>Service Manager</i> .
	Z6.2	Neither the objection to nor any failure to raise an objection to a proposed Subcontractor either by or through the <i>Service Manager</i> relieves the <i>Contractor</i> of any liability or obligation under the contract.
	Z6.3	The <i>Contractor</i> does not subcontract the whole of the <i>works</i> .
Details to be Confidential	Z7	The <i>Contractor</i> shall treat the details of the Contract as private and confidential, save in so far as may be necessary for the purposes thereof, and shall not publish or disclose the same or any particulars thereof in any trade or technical paper or elsewhere without the previous consent in

writing of the *Employer* or the *Service Manager*. If any dispute arises as to the necessity or disclosure for the purpose of the Contract the same shall be referred to the decision of the *Employer* whose award shall be final.

Rights and Remedies Not Waived	Z8	In no event shall the making by the <i>Employer</i> of any payment to the <i>Contractor</i> constitute or be construed as a waiver by the <i>Employer</i> of any breach of Contract, or any default which may then exist, on the part of the <i>Contractor</i> , and the making of any such payment by the <i>Employer</i> while any such breach or default exists shall in no way impair or prejudice any right or remedy available to the <i>Employer</i> in respect of such breach or default.
Arithmetical Accuracy of Proposal	Z9	The <i>Employer</i> accepts no responsibility for the arithmetical or other accuracy of the <i>Contractor</i> 's Proposal. Should it transpire after the Agreement has been executed that there are arithmetical mistakes in the accepted Proposal which would have increased or decreased the total amount of the Proposal had such mistakes not been made, the items affected will be paid for in accordance with the actual measurements of <i>service</i> performed and with the unit prices inserted against the said items.
Patents	Z10	<p>All concepts, products or processes produced by or resulting from the <i>service</i> rendered by the <i>Contractor</i> in connection with the Project, or which are otherwise developed or first reduced to practice by the <i>Contractor</i> in the performance of the <i>services</i>, and which are patentable, capable of trademark or otherwise, shall be and remain the property of the <i>Contractor</i>.</p> <p>The <i>Employer</i> shall have permanent non-exclusive royalty-free license to use any concept, product or process, which is patentable, capable of trademark or otherwise produced by or resulting from the <i>services</i> by the <i>Contractor</i> in connection with the Project and for no other purpose or project.</p>
Inspection	Z11	The <i>Employer</i> , or persons authorised by the <i>Employer</i> , shall have the right, at all reasonable times, to inspect or otherwise review the <i>service</i> performed, or being performed, under the Project and the premises where they are being performed.
Protection of Utilities	Z12	The <i>Contractor</i> shall carry out the Works so that there is the minimum of interruption to the supply of water, telephone, electricity and other utility services through existing mains and utility services. Work involving interference with existing works of any kind shall only be carried out with the permission of and during such times and in such a manner as are agreed in writing by the <i>Service Manager</i> or competent Authority.
Reporting of Errors	Z13	The <i>Contractor</i> shall examine and compare the Contract Documents and shall report any errors, inconsistencies, or omissions he may find to the <i>Employer</i> immediately.
Damage to Persons and Property	Z14	The <i>Contractor</i> shall, immediately on occurrence of any incident involving loss or injury at or about the Site, or in connection with the execution of the Works, report such incident to the <i>Employer</i> or the

Service Manager. The *Contractor* shall also report such incident to the appropriate Authority whenever such report is required by Law.

Rates, Wages, Hours and Conditions of Labour	Z15	The <i>Contractor</i> shall pay to all Foremen, Craftsmen, and Labourers not less than the rates of wages for the various Foremen, Craftsmen, and Labourers that prevail in Bermuda, and comply with such requirements relating to hours of work and conditions of labour as are or may be laid down from time to time by the Laws of Bermuda.
Facilities for Staff and Labour	Z16	<p>The <i>Contractor</i> shall provide such accommodation and amenities as he may consider necessary for all his expatriate staff and labour, employed for the purposes of or in connection with the Contract.</p> <p>The <i>Contractor</i> shall comply with all local statutes and regulations and any amendments thereto with regard to the health and safety of his employees and others, and shall provide adequate latrines for his workers on the Site to conform with the requirements of the Department of Health.</p>
Display of Notices	Z17	The <i>Contractor</i> shall post notices to inform the workers of their conditions of work in conspicuous places at the establishments and work places concerned.
Alcoholic Liquor and Drugs	Z18	The <i>Contractor</i> shall not, otherwise than in accordance with the Statutes, Ordinance and Government Regulations or Orders for the time being in force, import, sell, give, barter, or otherwise dispose of any alcoholic liquor, or drugs, or permit, or suffer any such importation, sale, gift, barter, or disposal by his sub-contractors, agents, or employees.
Arms and Ammunition	Z19	The <i>Contractor</i> shall not give, barter, or otherwise dispose of to any person or persons, any arms or ammunition of any kind or permit or suffer the same aforesaid.
Festivals and Religious Festivals	Z20	The <i>Contractor</i> shall in all dealings with labour in his employment have due regard to all recognised festivals, public holidays, days of rest, and religious or other customs.
Epidemics	Z21	In the event of any outbreak of illness of an epidemic nature, the <i>Contractor</i> shall comply with and carry out such regulations, orders, and requirements as may be made by the Government, or the local medical or sanitary authorities for the purpose of dealing with and overcoming the same.
Supply of Drinking Water	Z22	The <i>Contractor</i> shall so far as is reasonably practicable having regard to local conditions provide on the site, to the satisfaction of the <i>Service Manager</i> , an adequate supply of drinking water and other water for the use of the <i>Contractor's</i> staff and work people.
Approval by Other Authorities	Z23.1	Where the work of the <i>Contractor</i> is subject to the approval or review of an authority, department of Government, or agency other than the <i>Employer</i> , such applications for approval or review shall be the responsibility of the <i>Contractor</i> , but shall be submitted through the offices of the <i>Employer</i> and unless authorised by the <i>Employer</i> in writing, such applications for approval or review shall not be obtained by direct contact

by the *Contractor* with such other authority, department of Government or agency.

Z23.2 The *Contractor* shall ensure that a valid work permit is in place for all non- Bermudian staff working in Bermuda.

Taxation **Z24** The *Contractor* shall be required to pay Bermudian Taxes on all *Contractor's* Equipment (except as described in the Fifth Schedule, Section 2 of the Customs Tariff Act 1970) materials and other things of whatsoever nature brought into Bermuda for the purpose of the Contract.

Bribery **Z25** Any commission, advantage, gift, gratuity, reward, or bribe given, promised, or offered by or on behalf of the *Contractor* or his agent or servant or any person on his or their behalf to any officer, servant, representative, or agent of the *Employer* or of the *Service Manager* or to any person on their behalf or on behalf of any of them in relation to the obtaining or to the execution of this or of any other Contract with the *Employer* shall in addition to any criminal liability which may be thereby incurred subject the *Contractor* to the cancellation of this and of all other contracts which he may have entered into with the *Employer* and also to the payment of any loss or damage resulting from such cancellation.

Debt Recovery **Z26** The *Employer* shall be entitled upon a certificate in writing of the *Service Manager* to deduct the amounts so certified from any monies or otherwise due to the *Contractor* under this or any other contract or to recover the said amounts as a debt due or partly the one and partly the other as the *Employer* shall deem advisable.

Strikes and Lock-Outs **Z27** The *Contractor* shall forthwith notify the *Service Manager* of the commencing of any strike or lock-out and the *Service Manager* on account of any delay caused thereby may, after consultation with the *Employer*, grant such extension of time as he considers reasonable without prejudice to the right of the *Employer* to exercise after the expiration of such reasonable extension of time the rights and powers under these Conditions in case of default by the *Contractor*.

7 PART TWO – DATA PROVIDED BY THE CONTRACTOR

**Statements Given
in all contracts**

- The *Contractor* is
Name.....
Address.....
.....
.....
- The key persons are
 - (1) Name
Job
Responsibilities
Qualifications
Experience
 - (2) Name
Job
Responsibilities
Qualifications
Experience
 - (3) Name
Job
Responsibilities
Qualifications
Experience
 - (4) Name
Job
Responsibilities
Qualifications
Experience

**Optional
statements**

- The plan identified in the Contract Data is
- The price list is
- The tendered total of the Prices is

CONTRACT DATA VOLUME 2

Service Level Table

Service	Low Service Level	Damages
<p>Operation, maintenance and repair of the Orange Hole Wastewater Treatment Plant to provide wastewater treatment services to meet the requirements of the <i>Employer</i>.</p>	<p>Low service levels shall be deemed such if the following is identified by the <i>Service Manager</i>:</p> <ol style="list-style-type: none"> 1. Plant is not available for operation when temporary holding tanks are completely full and wastewater needs to be diverted to the borehole unless circumstances are beyond the control of the <i>Contractor</i>. This includes any emergency diverting of wastewater into the borehole. 2. Scheduled maintenance is not completed in accordance with the <i>Contractor's Plan</i>. 3. <i>Contractor</i> does not provide suitably qualified personnel to attend the <i>Affected Property</i> when necessary. 4. Monthly Reports are not submitted on the due date. 	<p>Damages shall be awarded to the <i>Employer</i> by the <i>Contractor</i> if any criterion has not been satisfied. The extent of damages awarded shall vary by the following:</p> <ol style="list-style-type: none"> 1. The <i>Contractor</i> shall pay for the removal of wastewater from the holding tanks to the Tynes Bay Septage Facility at a rate of \$600 per truckload (1000 gallons) for trucking and disposal. (Approximate volume of tanks is 35,460 US gallons) 2. Monthly payment on invoice will only be approved when supported by the corresponding Monthly Reports. Payment may be withheld until such reports are submitted to the <i>Service Manager</i>.

Note: The *Service Manager* shall review and assess the monthly report and meet with the *Contractor* to determine whether damages should be applied.

Responsibilities of Parties for Plant Maintenance

Item	Responsibility
Overall building maintenance <ul style="list-style-type: none"> • building structural framing • exterior cladding • exterior hardscapes and fencing • internal floors • external doors and louvers 	<i>Employer</i>
Overall building minor maintenance <ul style="list-style-type: none"> • changing light bulbs 	<i>Employer</i>
Building electrical systems (separate of plant electrical system) <ul style="list-style-type: none"> • Main panel for building services • Branch wiring and fixtures • Life safety system equipment 	<i>Employer</i>
General plumbing maintenance <ul style="list-style-type: none"> • Pump and pressure tank system in building • Fixtures 	<i>Employer</i>
Air handling maintenance <ul style="list-style-type: none"> • Annual preventative maintenance and servicing • Major failures of fans 	<i>Employer</i>
Communications <ul style="list-style-type: none"> • Internet 	<i>Employer</i>
Landscaping	<i>Employer</i>
Building 609 <ul style="list-style-type: none"> • Building envelope • Pumps and associated equipment 	<i>Employer</i> <i>Contractor</i>
Building 300 <ul style="list-style-type: none"> • Building envelope • Pumps and associated equipment 	<i>Employer</i> <i>Contractor</i>

Price Schedule

	Activity	Cost
1	Operations and Maintenance per month	BD\$
3	Administration per month	BD\$
4	Testing per month	BD\$
	Total Cost per month	BD\$

Item	Unit	Rate
Skilled labour	hr	
Unskilled labour	hr	



term
service
contract
June 2005

(amended June 2006)

1 General

Actions

10

10.1 The *Employer*, the *Contractor* and the *Service Manager* shall act as stated in this Contract and in a spirit of mutual trust and co-operation.

Identified and defined terms

11

11.1 In these conditions of contract, terms identified in the Contract Data are in italics and defined terms have capital initials.

11.2 (1) The Accepted Plan is the plan identified in the Contract Data or is the latest plan accepted by the *Service Manager*. The latest plan accepted by the *Service Manager* supersedes previous Accepted Plans.

(2) Affected Property is property of the *Employer* or Others which is affected by the work of the *Contractor* or used by the *Contractor* in Providing the Service and which is identified in the Contract Data.

(3) The Contract Date is the date when this contract came into existence.

(4) A Defect is

- a part of the *service* which is not provided in accordance with the Service Information or
- a part of the *service* which is not in accordance with the applicable law or the Accepted Plan.

Defined Cost is payments by the *Contractor* in Providing the Service for

- Operational management of the *Affected Property*,

less Disallowed Cost.

(6) Disallowed Cost is cost which the *Service Manager* decides

- is not justified by the *Contractor's* accounts and records,
- should not have been paid to a Subcontractor or supplier in accordance with his contract,
- was incurred only because the *Contractor* did not
 - follow an acceptance or procurement procedure stated in the Service Information or
 - give an early warning which this contract required him to give

and the cost of

- Plant and Materials not used to Provide the Service (after allowing for reasonable wastage) unless resulting from a change to the Service Information,
- resources not used to Provide the Service (after allowing for reasonable availability and utilization) or not taken away when

- the *Service Manager* requested,
- events for which this contract requires the *Contractor* to insure and
- preparation for and conduct of an adjudication or proceedings of the *tribunal*

and amounts paid to the *Contractor* by insurers.

(7) Equipment is items provided by the *Contractor* and used by him to Provide the Service and which the Service Information does not require him to include in the Affected Property.

(8) The Fee is the sum of the amounts calculated by applying the *subcontracted fee percentage* to the Defined Cost of subcontracted work and the *direct fee percentage* to the Defined Cost of other work.

(9) Others are people or organisations who are not the *Employer*, the *Service Manager*, the *Adjudicator*, the *Contractor* or any employee, Subcontractor or supplier of the *Contractor*.

(10) The Parties are the *Employer* and the *Contractor*.

(11) Plant and Materials are items intended to be included in the Affected Property.

(12) The Price List is the *price list* unless later changed in accordance with this contract. :

(13) To Provide the Service means to do the work necessary to provide the *service* in accordance with this contract and all incidental work, services and actions which this contract requires.

(14) The Risk Register is a register of the risks which are listed in the Contract Data and the risks which the *Service Manager* or the *Contractor* has notified as an early warning matter. It includes a description of the risk and a description of the actions which are to be taken to avoid or reduce the risk.

(15) Service Information is information which either

- specifies and describes the *service* or
- states any constraints on how the *Contractor* Provides the Service and is either
- in the documents which the Contract Data states it is in or
- in an instruction given in accordance with this contract.

(16) A Subcontractor is a person or organisation who has a contract with the *Contractor* to

- provide a part of the *service* or
- supply Plant and Materials which the person or organisation has

wholly or partly designed specifically for the *service*.

- (17) The Price for Services Provided to Date is the total of
- the Price for each lump sum item in the Price List which the *Contractor* has completed and
 - where a quantity is stated for an item in the Price List, an amount calculated by multiplying the quantity which the *Contractor* has completed by the rate.

(19) The Prices are the amounts stated in the Price column of the Price List. Where a quantity is stated for an item in the Price List, the Price is calculated by multiplying the quantity by the rate.

(20) A Day shall mean a calendar day.

**Interpretation
and the law 12**

- 12.1 In this contract, except where the context shows otherwise, words in the singular also mean in the plural and the other way round and words in the masculine also mean in the feminine and neuter.
- 12.2 This contract is governed by the *law of the contract*.
- 12.3 No change to this contract, unless provided for by the *conditions of contract*, has effect unless it has been agreed, confirmed in writing and signed by the Parties.
- 12.4 This contract is the entire agreement between the Parties.

Communications 13

- 13.1 Each instruction, certificate, submission, proposal, record, acceptance, notification, reply and other communication which this contract requires is communicated in a form which can be read, copied and recorded. Writing is in the *language of this contract*.
- 13.2 A communication has effect when it is received at the last address notified by the recipient for receiving communications or if none is notified, at the address of the recipient stated in the Contract Data.
- 13.3 If this contract requires the *Service Manager* or the *Contractor* to reply to a communication, unless otherwise stated in this contract, he replies within the *period for reply*.
- 13.4 The *Service Manager* replies to a communication submitted or resubmitted to him by the *Contractor* for acceptance. If his reply is not acceptance, the *Service Manager* states his reasons and the *Contractor* resubmits the communication within the *period for reply* taking account of these reasons. A reason for withholding acceptance is that more information is needed in

order to assess the *Contractor's* submission fully.

- 13.5 The *Service Manager* may extend the *period for reply* to a communication if the *Service Manager* and the *Contractor* agree to the extension before the reply is due. The *Service Manager* notifies the *Contractor* of the extension which has been agreed.
- 13.6 The *Service Manager* issues his certificates to the *Employer* and the *Contractor*.
- 13.7 A notification which this contract requires is communicated separately from other communications.
- 13.8 The *Service Manager* may withhold acceptance of a submission by the *Contractor*. Withholding acceptance for a reason stated in this contract is not a compensation event.

The *Service Manager*

14

- 14.1 The *Service Manager's* acceptance of a communication from the *Contractor* or of his work does not change the *Contractor's* responsibility to Provide the Service or his liability for his plan or his design.
- 14.2 The *Service Manager*, after notifying the *Contractor*, may delegate any of his actions and may cancel any delegation. A reference to an action of the *Service Manager* in this contract includes an action by his delegate.
- 14.3 The *Service Manager* may give an instruction to the *Contractor* which changes the Service Information.
- 14.4 The *Employer* may replace the *Service Manager* after he has notified the *Contractor* of the name of the replacement.

***Employer*
provides right of
access and things**

15

- 15.1 The *Employer* provides the right of access for the *Contractor* to Affected Property as necessary for the work in this contract subject to any constraints stated in the Service Information.
- 15.2 The *Employer* provides things which he is to provide as stated in the Service Information.

Early warning

16

- 16.1 The *Contractor* and the *Service Manager* give an early warning by notifying the other as soon as either becomes aware of any matter which could
 - increase the total of the Prices,

- interfere with the timing of the *service* or
- impair the effectiveness of the *service*.

The *Contractor* may *give* an early warning by notifying the *Service Manager* of any other matter which could increase his total cost. The *Service Manager* enters early warning matters in the Risk Register. Early warning of a matter for which a compensation *event* has previously been notified is not required.

- 16.2 Either the *Service Manager* or the *Contractor* may instruct the other to attend a risk reduction meeting. Each may instruct other people to attend if the other agrees.
- 16.3 At a risk reduction meeting, those who attend co-operate in
1. making and considering proposals for how the effect of the registered risks can be avoided or reduced,
 2. seeking solutions that will bring advantage to all those who will be affected,
 3. deciding on the actions which will be taken and who, in accordance with this contract, will take them and
 4. deciding which risks *have* now been avoided or *have* passed and can be removed from the Risk Register.
- 16.4 The *Service Manager* revises the Risk Register to record the decisions made at each risk reduction meeting and issues the revised Risk Register to the *Contractor*. If a decision needs a change to the Service Information, the *Service Manager* instructs the change at the same time as he issues the revised Risk Register.

Ambiguities and inconsistencies 17

- 17.1 The *Service Manager* or the *Contractor* notifies the other as soon as either becomes aware of an ambiguity or inconsistency in or between the documents which are part of this contract. The *Service Manager* gives an instruction resolving the ambiguity or inconsistency.

Illegal and impossible requirements 18

- 18.1 The *Contractor* notifies the *Service Manager* as soon as he considers that the Service Information requires him to do anything which is illegal or impossible. If the *Service Manager* agrees, he gives an instruction to change the Service Information appropriately.

2 The Contractor’s Main Responsibilities

Providing the 20

Service

- 20.1 The *Contractor* Provides the Service in accordance with the Service Information.
- 20.2 In Providing the Service, the *Contractor* minimises the interference caused to the Affected Property and the activities taking place in it.
- 20.5 The *Contractor* prepares forecasts of the final total of the Prices for the whole of the Service in consultation with the *Service Manager* and submits them to the *Service Manager*. Forecasts are prepared at the intervals stated in the Contract Data from the *starting date* until the end of the *service period*. An explanation of the changes made since the previous forecast is submitted with each forecast.

The *Contractor's* plan 21

- 21.1 If a plan is not identified in the Contract Data, the *Contractor* submits a first plan to the *Service Manager* for acceptance within the period stated in the Contract Data.
- 21.2 The *Contractor* shows on each plan which he submits for acceptance
- the *starting date* and the end of the *service period*,
 - the order and timing of the work of the *Employer* and Others as last agreed with them by the *Contractor* or, if not so agreed, as stated in the Service Information,
 - provisions for
 - time risk allowances,
 - health and safety requirements and
 - the procedures set out in this contract,
 - the dates when, in order to Provide the Service in accordance with his plan, the *Contractor* will need
 - access to the Affected Property as stated in the Service Information,
 - acceptances,
 - Plant and Materials, equipment and other things to be provided by the *Employer* and
 - information from Others,
 - for each operation, a statement of how the *Contractor* plans to do the work identifying the principal Equipment and other resources which he plans to use and
 - other information which the Service Information requires the *Contractor* to show on a plan submitted for acceptance.

- 21.3 Within two weeks of the *Contractor* submitting a plan to him for acceptance, the *Service Manager* either accepts the plan or notifies the *Contractor* of his reasons for not accepting it. A reason for not accepting a plan is that
- the *Contractor's* plans which it shows are not practicable,
 - it does not show the information which this contract requires,
 - it does not represent the *Contractor's* plans realistically or
 - it does not comply with the Service Information.
- 21.4 The *Contractor* provides information which shows how each item description on the Price List relates to the operations on each plan which he submits for acceptance.

**Revising the
Contractor's plan** 22

- 22.1 The *Contractor* submits a revised plan to the *Service Manager* for acceptance showing the effects of implemented compensation events and other changes. It is submitted
- within the *period for reply* after the *Service Manager* has instructed him to and
 - when the *Contractor* chooses to.

**Design of
Equipment** 23

- 23.1 The *Contractor* submits particulars of the design of an item of Equipment to the *Service Manager* for acceptance if the *Service Manager* instructs him to. A reason for not accepting is that the design of the item will not allow the *Contractor* to Provide the Service in accordance with
- the Service Information,
 - the Accepted Plan or
 - the applicable law.

People 24

- 24.1 The *Contractor* either employs each key person named to do the job stated in the Contract Data or employs a replacement person who has been accepted by the *Service Manager*. The *Contractor* submits the name, relevant qualifications and experience of a proposed replacement person to the *Service Manager* for acceptance. A reason for not accepting the person is that his relevant qualifications and experience are not as good as those of the person who is to be replaced.
- 24.2 The *Service Manager* may, having stated his reasons, instruct the *Contractor* to remove an employee. The *Contractor* then arranges that, after one day, the employee has no further connection with the work included in this contract.

**Working with the
Employer and
Others** 25

- 25.1 The *Contractor* co-operates with Others in obtaining and providing information which they need in connection with the *service*. He co-operates with Others and shares the Affected Property with them as stated in the Service Information.
- 25.2 The *Employer* and the *Contractor* provide facilities and other things as stated in the Service Information. Any cost incurred by the *Employer* as a result of the *Contractor* not providing the facilities and other things he is to provide is assessed by the *Service Manager* and paid by the *Contractor*.

Subcontracting 26

- 26.1 If the *Contractor* subcontracts work, he is responsible for Providing the Service as if he had not subcontracted. This contract applies as if a Subcontractor's employees and equipment were the *Contractor's*.
- 26.2 The *Contractor* submits the name of each proposed Subcontractor to the *Service Manager* for acceptance. A reason for not accepting the Subcontractor is that his appointment will not allow the *Contractor* to Provide the Service. The *Contractor* does not appoint a proposed Subcontractor until the *Service Manager* has accepted him.
- 26.3 The *Contractor* submits the proposed conditions of contract for each subcontract to the *Service Manager* for acceptance unless
- an NEC contract is proposed or
 - the *Service Manager* has agreed that no submission is required.

The *Contractor* does not appoint a Subcontractor on the proposed subcontract conditions submitted until the *Service Manager* has accepted them. A reason for not accepting them is that

- they will not allow the *Contractor* to Provide the Service or
- they do not include a statement that the parties to the subcontract shall act in a spirit of mutual trust and co-operation.

**Other
responsibilities** 27

- 27.1 The *Contractor* obtains approval from Others where necessary.
- 27.2 The *Contractor* provides access to work being done and to Plant and Materials being stored for this contract for the *Service Manager* and Others notified to him by the *Service Manager*.

27.3 The *Contractor* obeys an instruction which is in accordance with this contract and is given to him by the *Service Manager*.

27.4 The *Contractor* acts in accordance with the health and safety requirement stated in the Service Information.

3 Time

Starting and the service period 30

30.1 The *Contractor* does not start work until the *starting date* and Provides the Service throughout the *service period*.

Access 31

31.1 The *Employer* allows the *Contractor* access to the Affected Property as shown on the Accepted Plan.

Instruction to stop or not to start work 32

32.2 The *Service Manager* may instruct the *Contractor* to stop or not to start any work and may later instruct him that he may re-start or start it.

4 Testing and Defects

Tests and inspections 40

40.1 The sub-clauses in this clause only apply to tests and inspections required by the Service Information or the applicable law.

40.2 The *Contractor* and the *Employer* provide materials, facilities and samples for tests and inspections as stated in the Service Information.

40.3 The *Contractor* and the *Service Manager* each notifies the other of each of his tests and inspections before it starts and afterwards notifies the other of its results. The *Contractor* notifies the *Service Manager* in time for a test or inspection to be arranged and done before doing work which would obstruct the test or inspection. The *Service Manager* may watch any test done by the *Contractor*.

40.4 If a test or inspection shows that any work has a Defect, the *Contractor* repeats the work if possible and the test or inspection is repeated.

40.5 The *Service Manager* does his tests and inspections without causing unnecessary delay to the work.

40.6 The *Service Manager* assesses the cost incurred by the *Employer* in repeating a test or inspection after a Defect is found. The *Contractor* pays the amount assessed.

Testing and inspection before delivery 41

41.1 The *Contractor* does not deliver those Plant and Materials which the Service Information states are to be tested or inspected before delivery until the *Service Manager* has notified the *Contractor* that they have passed the test or inspection.

Correcting Defects 42

42.1 The *Contractor* corrects Defects within a time which minimises the adverse effect on the *Employer* or Others. If the *Contractor* does not correct a Defect within the time required by this contract, the *Service Manager* assesses the cost to the *Employer* of having the Defect corrected by other people and the *Contractor* pays this amount.

42.2 The *Service Manager* arranges for the *Employer* to allow the *Contractor* access if it is needed for correcting a Defect.

Accepting Defects 43

43.1 The *Contractor* and the *Service Manager* may each propose to the other that the Service Information should be changed so that a Defect does not have to be corrected. If the *Contractor* and the *Service Manager* are prepared to consider the change, the *Contractor* submits a quotation for reduced Prices to the *Service Manager* for acceptance. If the *Service Manager* accepts the quotation, he gives an instruction to change the Service Information and the Prices accordingly.

5 Payment

Assessing the amount due 50

50.1 The *Service Manager* assesses the amount due at each assessment date. The first assessment date is decided by the *Service Manager* to suit the procedures of the Parties and is not later than the assessment interval after the *starting date*. Later assessment dates occur at the end of each assessment interval until four weeks after the end of the service period.

- 50.2 The amount due is
- the Price for Services Provided to Date,
 - plus other amounts to be paid to the *Contractor*,
 - less amounts to be paid by or retained from the *Contractor*.

Any tax which the law requires the *Employer* to pay to the *Contractor* is included in the amount due.

50.3 If no plan is identified in the Contract Data, one quarter of the Price for Services Provided to Date is retained in assessments of the amount due until the *Contractor* has submitted a first plan to the *Service Manager* for acceptance showing the information which this contract requires.

50.4 In assessing the amount due, the *Service Manager* considers any application for payment the *Contractor* has submitted on or before the assessment date. The *Service Manager* gives the *Contractor* details of how the amount due has been assessed.

50.5 The *Service Manager* corrects any wrongly assessed amount due in a later payment certificate.

Payment **51**

51.1 The *Service Manager* certifies a payment within one week of each assessment date. The first payment is the amount due. Other payments are the change in the amount due since the last payment certificate. A payment is made by the *Contractor* to the *Employer*- if the change reduces the amount due. Other payments are made by the *Employer* to the *Contractor*. Payments are in the *currency of this contract* unless otherwise stated in this contract.

51.2 Each certified payment is made within three weeks of the assessment date or, if a different period is stated in the Contract Data, within the period stated. If a certified payment is late, or if a payment is late because the *Service Manager* does not issue a certificate which he should issue, interest is paid on the late payment. Interest is assessed from the date by which the late payment should have been made until the date when the late payment is made, and is included in the first assessment after the late payment is made.

- 51.3 If an amount due is corrected in a later certificate either
- by the *Service Manager* in relation to a mistake or a compensation event or
 - following a decision of the *Adjudicator* or the *tribunal*,

interest on the correcting amount is paid. Interest is assessed from the date when the incorrect amount is paid. Interest is assessed from the date when the incorrect amount was certified until the date when the correcting amount is certified and is included in the assessment which includes the correcting amount.

- 51.4 Interest is calculated on a daily basis at the *interest rate* and is compounded annually.

Defined Cost 52

- 52.1 All the *Contractor's* costs which are not included in the Defined Cost are treated as included in the Fee. Amounts included in the Defined Cost are at open market or competitively tendered prices with deductions for all discounts, rebates and taxes which can be recovered.

The Price List 54

- 54.1 Information in the Price List is not Service Information.
- 54.2 If the *Contractor* changes a planned method of working at his discretion so that the item descriptions on the Price List do not relate to the operations on the Accepted Plan, he submits a revision of the Price List to the *Service Manager* for acceptance.
- 54.3 A reason for not accepting a revision of the Price List is that
- it does not comply with the Accepted Plan,
 - any changed Prices are not reasonably distributed between the items in the Price List or
 - the total of the Prices is changed.

6 Compensation Events

Compensation 60

Events

60.1 The following are compensation events.

(1) The *Service Manager* gives an instruction changing the Service Information except

- a change made in order to accept a Defect or
- a change to the Service Information provided by the *Contractor* for his plan which is made either at his request or to comply with other Service Information provided by the *Employer*.

(2) The *Employer* does not provide the right of access to the Affected Property in accordance with the Accepted Plan.

(3) The *Employer* does not provide something which he is to provide as stated in the Service Information in accordance with the Accepted Plan.

(4) The *Service Manager* gives an instruction to stop or not to start any work.

(5) The *Employer* or Others do not work in accordance with the Accepted Plan or within the conditions stated in the Service Information.

(6) The *Service Manager* does not reply to a communication from the *Contractor* within the period required by this contract.

(7) The *Service Manager* changes a decision which he has previously communicated to the *Contractor*.

(8) The *Service Manager* withholds an acceptance (other than acceptance of a quotation for not correcting a Defect) for a reason not stated in this contract.

(9) A test or inspection done by the *Service Manager* causes unnecessary delay.

(10) A change to the Affected Property other than a change as a result of Providing the Service.

(11) The *Employer* does not provide materials, facilities and samples for tests and inspections as stated in the Service Information.

(12) An event which is an *Employer's* risk in this contract.

(13) The *Service Manager* notifies a correction to an assumption which he has stated about a compensation event.

(14) A breach of contract by the *Employer* which is not one of the other compensation events in this contract.

**Notifying
compensation
events**

61

61.1 For compensation events which arise from the *Service Manager* giving an instruction or changing an earlier decision, the *Service Manager* notifies the *Contractor* of the compensation event at the time of giving the instruction or changing the earlier decision. He also instructs the *Contractor* to submit quotations, unless the event arises from a fault of the *Contractor* or quotations have already been submitted. The *Contractor* puts the instruction or changed decision into effect.

61.2 The *Service Manager* may instruct the *Contractor* to submit quotations for a proposed instruction or a proposed changed decision. The *Contractor* does not put a proposed instruction or a proposed changed decision into effect.

61.3 The *Contractor* notifies the *Service Manager* of an event which has happened or which he expects to happen as a compensation event if

- the *Contractor* believes that the event is a compensation event, and
- the *Service Manager* has not notified the event to the *Contractor*.

If the *Contractor* does not notify a compensation event within eight weeks of becoming aware of the event, he is not entitled to a change in the Prices unless the *Service Manager* should have notified the event to the *Contractor* but did not.

61.4 If the *Service Manager* decides that an event notified by the *Contractor*

- arises from a fault of the *Contractor*,
- has not happened and is not expected to happen,
- has no effect upon Defined Cost or
- is not one of the compensation events stated in this contract

he notifies the *Contractor* of his decision that the Prices are not to be changed.

If the *Service Manager* decides otherwise, he notifies the *Contractor* accordingly and instructs him to submit quotations.

If the *Service Manager* does not notify his decision to the *Contractor* within either

- one week of the *Contractor's* notification or
- a longer period to which the *Contractor* has agreed,

the *Contractor* may notify the *Service Manager* to this effect. A failure by the *Service Manager* to reply within two weeks of this notification is treated

as acceptance by the *Service Manager* that the event is a compensation event and an instruction to submit quotations.

- 61.5 If the *Service Manager* decides that the *Contractor* did not give an early warning of the event which an experienced contractor could have given, he notifies this decision to the *Contractor* when he instructs him to submit quotations.
- 61.6 If the *Service Manager* decides that the effects of a compensation event are too uncertain to be forecast reasonably, he states assumptions about the event in his instruction to the *Contractor* to submit quotations. Assessment of the event is based on these assumptions. If any of them is later found to have been wrong, the *Service Manager* notifies a correction.
- 61.7 A compensation event is not notified after the end of the service period.

Quotations for compensation events

62

- 62.1 After discussing with the *Contractor* different ways of dealing with the compensation event which are practicable, the *Service Manager* may instruct the *Contractor* to submit alternative quotations. The *Contractor* submits the required quotations to the *Service Manager* and may submit quotations for other methods of dealing with the compensation event which he considers practicable.
- 62.2 Quotations for compensation events comprise proposed changes to the Prices assessed by the *Contractor*. The *Contractor* submits details of his assessment with each quotation. If the plan for remaining work is altered by the compensation event, the *Contractor* includes the alterations to the Accepted Plan in his quotation.
- 62.3 The *Contractor* submits quotations within three weeks of being instructed to do so by the *Service Manager*. The *Service Manager* replies within two weeks of the submission. His reply is
- an instruction to submit a revised quotation,
 - an acceptance of a quotation,
 - a notification that a proposed instruction will not be given or a proposed changed decision will not be made or
 - a notification that he will be making his own assessment.
- 62.4 The *Service Manager* instructs the *Contractor* to submit a revised quotation only after explaining his reasons for doing so to the *Contractor*. The *Contractor* submits the revised quotation within three weeks of being instructed to do so.

- 62.5 The *Service Manager* extends the time allowed for
- the *Contractor* to submit quotations for a compensation event and
 - the *Service Manager* to reply to a quotation

if the *Service Manager* and the *Contractor* agree to the extension before the submission or reply is due. The *Service Manager* notifies the extension that has been agreed to the *Contractor*.

- 62.6 If the *Service Manager* does not reply to a quotation within the time allowed, the *Contractor* may notify the *Service Manager* to this effect. If the *Contractor* submitted more than one quotation for the compensation event, he states in his notification which quotation he proposes is to be accepted. If the *Service Manager* does not reply to the notification within two weeks, and unless the quotation is for a proposed instruction or a proposed changed decision, the *Contractor's* notification is treated as acceptance of the quotation by the *Service Manager*.

Assessing compensation events

63

- 63.1 For a compensation event which only affects the quantities of work shown in the Price List, the change to the Prices is assessed by multiplying the changed quantities of work by the appropriate rates in the Price List.
- 63.2 For other compensation events, the changes to the Prices are assessed as the effect of the compensation event upon
- the actual Defined Cost of the work already done,
 - the forecast Defined Cost of the work not yet done and
 - the resulting Fee.

The date when the *Service Manager* instructed or should have instructed the *Contractor* to submit quotations divides the work already done from the work not yet done.

Effects on the Defined Cost are assessed separately for

- people who are employed by the *Contractor*,
- Plant and Materials,
- work subcontracted by the *Contractor* and
- Equipment.

The *Contractor* shows how each of these effects is built up in each quotation for a compensation event.

- 63.3 If the *Service Manager* and the *Contractor* agree, rates and Prices in the Price List may be used as a basis for assessment instead of Defined Cost and the resulting Fee.

- 63.4 If the effect of a compensation event is to reduce the total Defined Cost, the Prices are not reduced except as stated in this contract.
- 63.5 The rights of the *Employer* and the *Contractor* to changes to the Prices are their only rights in respect of a compensation event.
- 63.6 If the *Service Manager* has notified the *Contractor* of his decision that the *Contractor* did not give an early warning of a compensation event which an experienced contractor could have given, the event is assessed as if the *Contractor* had given early warning.
- 63.7 Assessment of the effect of a compensation event includes risk allowances for cost for matters which have a significant chance of occurring and are at the *Contractor's* risk under this contract.
- 63.8 Assessments are based upon the assumptions that the *Contractor* reacts competently and promptly to the compensation event, that any Defined Cost due to the event is reasonably incurred and that the Accepted Plan can be changed.
- 63.9 A compensation event which is an instruction to change the Service Information in order to resolve an ambiguity or inconsistency is assessed as if the Prices were for the interpretation most favourable to the Party which did not provide the Service Information.
- 63.10 If the effect of a compensation event is to reduce the total Defined Cost and the event is
- a change to the Service Information or
 - a correction of an assumption stated by the *Service Manager* for assessing an earlier compensation event,
- the Prices are reduced.
- 63.12 Assessments for changed Prices for compensation events are in the form of changes to the Price List.

The *Service Manager's* assessment

64

- 64.1 The *Service Manager* assesses a compensation event
- if the *Contractor* has not submitted a quotation and details of his assessment within the time allowed,
 - if the *Service Manager* decides that the *Contractor* has not assessed

the compensation event correctly in a quotation and he does not instruct the *Contractor* to submit a revised quotation,

- if, when the *Contractor* submits quotations for a compensation event, he has not submitted a plan or alterations to a plan which this contract requires him to submit or
- if, when the *Contractor* submits quotations for a compensation event, the *Service Manager* has not accepted the *Contractor's* latest plan for one of the reasons stated in this contract.

64.2 The *Service Manager* notifies the *Contractor* of his assessment of a compensation event and gives him details of it within the period allowed for the *Contractor's* submission of his quotation for the same event. This period starts when the need for the *Service Manager's* assessment becomes apparent.

64.3 If the *Service Manager* does not assess a compensation event within the time allowed, the *Contractor* may notify the *Service Manager* to this effect. If the *Contractor* submitted more than one quotation for the compensation event, he states in his notification which quotation he proposes is to be accepted. If the *Service Manager* does not reply within two weeks of this notification the notification is treated as acceptance of the *Contractor's* quotation by the *Service Manager*.

Implementing compensation events 65

65.1 A compensation event is implemented when

- the *Service Manager* notifies his acceptance of the *Contractor's* quotation,
- the *Service Manager* notifies the *Contractor* of his own assessment or
- a *Contractor's* quotation is treated as having been accepted by the *Service Manager*.

65.2 The assessment of a compensation event is not revised if a forecast upon which it is based is shown by later recorded information to have been wrong.

65.3 The changes to the Price List are included in the notification implementing a compensation event.

7 Use of equipment, Plant and Materials

The Parties' use 70

**of equipment,
Plant and
Materials**

- 70.1 The *Contractor* has the right to use equipment, Plant and Materials provided by the *Employer* only to Provide the Service.
- 70.2 At the end of the service period the *Contractor*
- returns to the *Employer*, equipment and surplus Plant and Materials provided by the *Employer*,
 - provides items of Equipment for the *Employer's* use as stated in the Service Information and
 - provides information and other things as stated in the Service Information.

8 Risks and Insurance

***Employer's risks* 80**

- 80.1 The following are *Employer's* risks.
- Claims, proceedings, compensation and costs payable which are due to
 - the unavoidable result of the service or of Providing the Service,
 - negligence, breach of statutory duty or interference with any legal right by the *Employer* or by any person employed by or contracted to him except the *Contractor* or,
 - a fault of the *Employer* or a fault in his design.
 - Loss of or damage to Plant and Materials supplied to the *Contractor* by the *Employer*, or by Others on the *Employer's* behalf, until the *Contractor* has received and accepted them.
 - Loss of or damage to the Affected Property, Plant and Materials due to
 - war, civil war, rebellion, revolution, insurrection, military or usurped power,
 - strikes, riots and civil commotion not confined to the *Contractor's* employees or
 - radioactive contamination.
 - Loss of or wear or damage to any Equipment, Plant and Materials retained by the *Employer* after a termination, except loss, wear or damage due to the activities of the *Contractor* after the termination.
 - Additional *Employer's* risks stated in the Contract Data.

The Contractor's risks 81

81.1 From the *starting date* until the end of the service period, the risks which are not carried by the *Employer* are carried by the *Contractor*.

Indemnity 82

82.1 Each Party indemnifies the other against claims, proceedings, compensation and costs due to an event which is at his risk.

82.2 The liability of each Party to indemnify the other is reduced if events at the other Party's risk contributed to the claims, proceedings, compensation and costs. The reduction is in proportion to the extent that events which were at the other Party's risk contributed, taking into account each Party's responsibilities under this contract.

Insurance cover 83

83.1 The *Contractor* provides the insurances stated in the Insurance Table except any insurance which the *Employer* is to provide as stated in the Contract Data. The *Contractor* provides additional insurances as stated in the Contract Data.

83.2 The insurances are in the joint names of the Parties and provide cover for events which are at the *Contractor's* risk from the *starting date* until the end of the service period or the termination certificate has been issued.

INSURANCE TABLE

Insurance against	Minimum amount of cover or minimum limit of indemnity
Loss of or damage caused by the <i>Contractor</i> to the <i>Employer's</i> property	The amount stated in the Contract Data
Loss of or damage to Plant and Materials	The replacement cost, including the amount stated in the Contract Data for the replacement of any Plant and Materials provided by the <i>Employer</i>
Loss of or damage to Equipment	The replacement cost
The <i>Contractor's</i> liability for loss of or damage to property (except the <i>Employer's</i> property, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Contractor</i>) arising from or in connection with the <i>Contractor's</i> Providing the Service	The amount stated in the Contract Data for anyone event with cross liability so that the insurance applies to the Parties separately

Liability for death of or bodily injury to employees of the <i>Contractor</i> arising out of and in the course of their employment in connection with this contract	The greater of the amount required by the applicable law and the amount stated in the Contract Data for any one event
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Insurance policies 84

- 84.1 Before the *starting date* and on each renewal of the insurance policy, the *Contractor* submits to the *Service Manager* for acceptance certificates which state that the insurance required by this contract is in force. The certificates are signed by the *Contractor's* insurer or insurance broker. A reason for not accepting the certificates is that they do not comply with this contract.
- 84.2 Insurance policies include a waiver by the insurers of their subrogation rights against directors and other employees of every insured except where there is fraud.
- 84.3 The Parties comply with the terms and conditions of the insurance policies.
- 84.4 Any amount not recovered from an insurer is borne by the *Employer* for events which are at his risk and by the *Contractor* for events which are at his risk.

If the *Contractor* does not insure 85

- 85.1 The *Employer* may insure a risk which this contract requires the *Contractor* to insure if the *Contractor* does not submit a required certificate. The cost of this insurance to the *Employer* is paid by the *Contractor*.

Insurance by the *Employer* 86

- 86.1 The *Service Manager* submits policies and certificates for insurances provided by the *Employer* to the *Contractor* for acceptance before the *starting date* and afterwards as the *Contractor* instructs. The *Contractor* accepts the policies and certificates if they comply with this contract.
- 86.2 The *Contractor's* acceptance of an insurance policy or certificate provided by the *Employer* does not change the responsibility of the *Employer* to provide the insurances stated in the Contract Data.
- 86.3 The *Contractor* may insure a risk which this contract requires the *Employer* to insure if the *Employer* does not submit a required policy or certificate.

The cost of this insurance to the *Contractor* is paid by the *Employer*.

9 Termination

Termination 90

- 90.1 If either Party wishes to terminate the *Contractor's* obligation to Provide the Service, he notifies the *Service Manager* and the other Party giving details of his reason for terminating. The *Service Manager* issues a termination certificate to both Parties promptly if the reason complies with this contract.
- 90.2 The *Contractor* may terminate only for a reason identified in the Termination Table. The *Employer* may terminate for any reason. The procedures followed and the amounts due on termination are in accordance with the Termination Table.

TERMINATION TABLE

Terminating Party	Reason	Procedure	Amount Due
The <i>Employer</i>	A reason other than R1-R21	P1, P2 and P4	A1, A2 and A4
	R1-R15 or R18	P1, P2, P3 and P4	A1, A2 and A3
	R17 or R20	P1 and P4	A1 and A2
	R21	P1, P3 and P4	A1 and A2
The <i>Contractor</i>	R1-R10, R16 or R19	P1, P2 and P4	A1, A2 and A4
	R17 or R20	P1, P2 and P4	A1 and A2

Reasons for termination 91

- 91.1 Either Party may terminate if the other Party has done one of the following or its equivalent.
- If the other Party is an individual and has
 - presented his petition for bankruptcy (R1),
 - had a bankruptcy order made against him (R2),
 - had a receiver appointed over his assets (R3) or
 - made an arrangement with his creditors (R4).

- If the other party is a company or partnership and has
 - had a winding-up order made against it (R5)
 - had a provisional liquidator appointed to it (R6),
 - passed a resolution for winding-up (other than in order to amalgamate or reconstruct) (R7),
 - had an administration order made against it (R8),
 - had a receiver, receiver and manager, or administrative receiver appointed over the whole or a substantial part of its undertaking or assets (R9) or
 - made an arrangement with its creditors (R10).

91.2 The *Employer* may terminate if the *Service Manager* has notified that the *Contractor* has defaulted in one of the following ways and not put the default right within four weeks of the notification.

- Substantially failed to Provide the Service (R11).
- Not provided a bond or guarantee which this contract requires (R12).
- Appointed a Subcontractor for substantial work before the *Service Manager* has accepted the Subcontractor (R13).

91.3 The *Employer* may terminate if the *Service Manager* has notified that the *Contractor* has defaulted in one of the following ways and not stopped defaulting within four weeks of the notification.

- Substantially hindered the *Employer* or Others (R14).
- Substantially broken a health or safety regulation (R15).

91.4 The *Contractor* may terminate if the *Employer* has not paid an amount certified by the *Service Manager* within thirteen weeks of the date of the certificate (R16).

91.5 Either Party may terminate if the Parties have been released under the law from further performance of the whole of this contract (R17).

91.6 If the *Service Manager* has instructed the *Contractor* to stop or not to start any substantial work or all work and an instruction allowing the work to restart or start has not been given within thirteen weeks,

- the *Employer* may terminate if the instruction was due to a default by the *Contractor* (R18),
- the *Contractor* may terminate if the instruction was due to a default by the *Employer* (R19) and
- either Party may terminate if the instruction was due to any other reason (R20).

91.7 The *Employer* may terminate if an event which the Parties could not reasonably prevent has substantially affected the *Contractor's* work for a continuous period of more than thirteen weeks (R21).

Procedures on termination 92

- 92.1 On termination, the *Employer* may complete the service and may use any Plant and Materials provided by the *Contractor* (P1).
- 92.2 The procedure on termination also includes one or more of the following as set out in the Termination Table.
- P2 The *Employer* may instruct the *Contractor* to remove any Equipment, Plant and Materials and assign the benefit of any subcontract or other contract related to performance of this contract to the *Employer*.
- P3 The *Employer* may use any Equipment to which the *Contractor* has title to complete the service. The *Contractor* promptly removes the Equipment when the *Service Manager* notifies him that the *Employer* no longer requires it to complete the service.
- P4 The *Contractor* provides to the *Employer* information and other things which the Service Information states he is to provide at the end of the service period.

Payment on termination 93

- 93.1 The amount due on termination includes (A1)
- an amount due assessed as for normal payments,
 - the Defined Cost for Plant and Materials
 - which have been delivered and retained by the *Employer* or
 - which the *Employer* owns and of which the *Contractor* has to accept delivery,
 - other Defined Cost reasonably incurred in expectation of completing the whole of the service and
 - any amounts retained by the *Employer*.
- 93.2 The amount due on termination also includes one or more of the following as set out in the Termination Table.
- A2 The forecast Defined Cost of removing the Equipment.

A3 A deduction of the forecast of the additional cost to the *Employer* of completing the whole of the service.

A4 The direct fee percentage applied to

- for Options A and C, any excess of the total of the Prices at the Contract Date over the Price for Services Provided to Date or
- for Option E, any excess of the first forecast of the Defined Cost for the service over the Price for Services Provided to Date less the Fee.

Price Adjustment for Inflation

Defined Terms X1

X1.1 (a) The Base Date Index (B) is the latest available index before the base date.
(b) The Latest Index (L) is the latest available index before the date of assessment of an amount due.
(c) The Price Adjustment Factor is the total of the products of each of the proportions stated in the Contract Data multiplied by $(L - B)/B$ for the index linked to it.

Price adjustment factor X1.2 If an index is changed after it has been used in calculating a Price Adjustment Factor, the calculation is repeated and a correction included in the next assessment of the amount due.

Compensation events X1.3 The Defined Cost for compensation events is assessed using the

- Defined Cost current at the time of assessing; the compensation event adjusted to base date by dividing by one plus the Price Adjustment Factor for the last assessment of the amount due and
- Defined Cost at base date levels for amounts calculated from rates and prices in the Price List.

Price adjustment Option A X1.4 Each amount due includes an amount for price adjustment which is the sum of

- the change in the Price for Services Provided to Date since the last assessment of the amount due multiplied by the Price Adjustment Factor for the date of the current assessment,
- the amount for price adjustment included in the previous amount due and
- correcting amounts, not included elsewhere, which arise from

changes to indices used for assessing previous amounts for price adjustment.

Changes in the law

Changes in the law X2

- X2.1 A change in the law of the country in which the Affected Property is located is a compensation event if it occurs after the Contract Date. The *Service Manager* may notify the *Contractor* of a compensation event for a change the law and instruct him to submit quotations. If the effect of a compensation event which is a change in the law is to reduce the total Defined Cost, the Prices are reduced.

Parent Company Guarantee

Parent Company Guarantee X4

- X4.1 If a parent company owns the *Contractor*, the *Contractor* gives to the *Employer* a guarantee by the parent company of the *Contractor's* performance in the form set out in the Service Information. If the guarantee was not given by the Contract Date, it is given to the *Employer* within four weeks of the Contract Date.

Limitation of liability

Limitation of liability X18

- X18.1 The *Contractor's* liability to the *Employer* for the *Employer's* indirect or consequential loss is limited to the amount stated in the Contract Data.
- X18.2 For any one event, the liability of the *Contractor* to the *Employer* for loss of damage to the *Employer's* property is limited to the amount stated in the Contract Data.
- X18.3 The *Contractor's* liability to the *Employer* for Defects due to his design of an item of Equipment is limited to the amount stated in the Contract Data.
- X18.4 The *Contractor's* total liability to the *Employer* for all matters arising under: in connection with this contract, other than the excluded matters, is limited:

the amount stated in the Contract Data and applies in contract, tort or delict and otherwise to the extent allowed under the *law of the contract*.

The excluded matters are amounts payable by the *Contractor* as stated in the contract for

- loss of or damage to the *Employer's* property,
- low service damages if Option X17 applies,
- delay damages if Option X19 applies and
- *Contractor's* share if Option C applies.

X18.5 The *Contractor* is not liable to the *Employer* for a matter unless it is notified to the *Contractor* before the *end of liability date*.

Task Order

Identified and defined terms X19

- X19.1 (1) A Task is work within the *service* which the *Service Manager* may instruct the *Contractor* to carry out within a stated period of time.
- (2) A Task Order is the *Service Manager's* instruction to carry out a Task.
- (3) Task Completion is when the *Contractor* has done all the work in the Task and corrected Defects which would have prevented the *Employer* or Others from using the *Affected Property* and Others from doing their work.
- (4) Task Completion Date is the date for completion stated in the Task Order unless later changed in accordance with this contract.

Providing the Service X19.2

- A Task Order includes
- a detailed description of the work in the Task,
 - a priced list of items of work in the Task in which items taken from the Price List are identified,
 - the starting and completion dates for the Task,
 - the amount of delay damages for the late completion of the Task and
 - the total of the Prices for the Task when Option A or C is used or the forecast total of the Prices for the Task if Option E is used.

The *Service Manager* consults the *Contractor* about the contents of a Task Order before he issues it.

	X19.3	<p>The delay damages in a Task Order, if any, are not more than the estimated cost to the <i>Employer</i> of late completion of the Task. If Task Completion is later than the Task Completion Date, the <i>Contractor</i> pays delay damages at the rate stated in the Task Order from the Task Completion Date until Task Completion.</p> <p>The Prices for items in the Task price list which are not taken from the Price List are assessed in the same way as compensation events.</p>
Time	X19.4	<p>The <i>Contractor</i> does not start any work included in the Task until the <i>Service Manager</i> has instructed him to carry out the Task and does the work so that Task Completion is on or before the Task Completion Date. No Task Order is issued after the end of the <i>service period</i>.</p>
Task Order programme	X19.5	<p>The <i>Contractor</i> submits a Task Order programme to the <i>Service Manager</i> for acceptance within the period stated in the Contract Data.</p>
	X19.6	<p>The <i>Contractor</i> shows on each Task Order programme which he submits for acceptance</p> <ul style="list-style-type: none"> • the Task starting date and the Task Completion Date, • planned Task Completion, • the order and timing of the operations which the <i>Contractor</i> plans to do in order to complete the Task, • provisions for <ul style="list-style-type: none"> ○ float, ○ time risk allowances, ○ health and safety requirements and ○ the procedures set out in this contract, • the dates when, in order to Provide the Service in accordance with his Task Order programme, the <i>Contractor</i> will need <ul style="list-style-type: none"> ○ access to the Affected Property, ○ acceptances, ○ Plant and Materials, equipment and other things to be provided by the <i>Employer</i> and ○ information from Others, • for each operation, a statement of how the <i>Contractor</i> plans to do the work identifying the principal Equipment and other resources which he plans to use and • other information which the Service Information requires the <i>Contractor</i> to show on a Task Order programme submitted for acceptance.
	X19.7	<p>Within one week of the <i>Contractor</i> submitting a Task Order programme to</p>

him for acceptance, the *Service Manager* either accepts the programme or notifies the *Contractor* of his reasons for not accepting it. A reason for not accepting the Task Order programme is that

- the *Contractor's* plans which it shows are not practicable,
- it does not show the information which this contract requires or
- it does not comply with the Service Information.

Revising the Task Order programme

X19.8 The *Contractor* shows on each revised Task Order programme

- the actual progress achieved on each operation and its effect upon the timing of the remaining work,
- the effects of implemented compensation events,
- how the *Contractor* plans to deal with any delays and to correct notified Defects and
- any other changes which the *Contractor* proposes to make to the Task Order programme.

X19.9 The *Contractor* submits a revised Task Order programme to the *Service Manager* for acceptance

- within the period for reply after the *Service Manager* has instructed him to and
- when the *Contractor* chooses to.

The latest programme accepted by the *Service Manager* supersedes previous accepted programmes.

Compensation events

X19.10 The following are compensation events.

- (1) The *Service Manager* gives an instruction changing a Task Order.
- (2) The *Contractor* receives the Task Order after the starting date stated in the Task Order.
- (3) The *Employer* does not provide the right of access to the Affected Property in accordance with the latest accepted Task Order programme.
- (4) The *Employer* does not provide something which he is to provide as stated in the Service Information in accordance with the latest accepted Task Order programme.
- (5) The *Employer* or Others do not work in accordance with the latest accepted Task Order programme or within the conditions stated in the Service Information.
- (6) An event which
 - stops the *Contractor* completing a Task or
 - stops the *Contractor* completing a Task by the Task Completion Date,

and which

- neither Party could prevent,
- an experienced contractor would have judged at the date of issue of the Task Order to have such a small chance of occurring that it would have been unreasonable for him to have allowed for it and
- is not one of the other compensation events stated in this contract.

(7) A Task Completion Date is later than the end of the *service period*.

X19.11 If, due to the compensation event, planned Task Completion is delayed, the delay is stated in the *Contractor's* quotation for the event and a programme is submitted with details of the assessment of the delay.

Assessments of delay include time risk allowances and are based on the assumption that the Task Order programme can be changed and that delays were or will be reasonably incurred.

The *Service Manager* may assess the delay if, when the *Contractor* submits quotations for a compensation event, the *Contractor* has not submitted a Task Order programme required by this contract.

**Implementing
compensation
events**

X19.12 The changes to the calculated total of the Prices for the Task Order and any delay to the Task Completion Date are included in the *Service Manager's* notification implementing a compensation event.

**OPERATION AND MAINTENANCE
OF THE
BLDC WASTEWATER TREATMENT PLANT
AT SOUTHSIDE**

SERVICE INFORMATION

FEBRUARY 2018

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SECTION 1: DESCRIPTION OF SERVICE

1.1 Scope of Work

- A** The scope of work shall be the operation and maintenance of the BLDC Wastewater Treatment Plant and Lift Station 609 at Southside and associated plant (herein after referred to as the *Affected Property*) in a manner that is in compliance with the terms of the Agreement, and that maintains the utility of the assets.
- B** The *Contractor* shall provide the following professional services to support all operations that are required to sustain full functionality of the *Affected Property* and shall include but not be limited to:
1. Operation, repair and maintenance of the *Affected Property* including all associated equipment; both internal and external;
 2. Operation, repair and maintenance of the disposal boreholes;
 3. Sampling, testing and collection of data; and
 4. Prepare and submit monthly reports as defined in the Service Information.
 5. Five visits to the *Affected Property* per week inclusive of one day on the weekend during operations.
 6. Attendance at the plant for any emergency, at any time, within 2 hours of notification of the event.

The *Contractor* shall provide all tools required to complete the *Service*.

- C** Repair and maintenance of the *Affected Property* shall mean fixing any sort of mechanical or electrical device should it be broken or not functioning (repair) as well as performing the routine actions which keep the device in working order (maintenance) or prevent trouble from arising (preventive maintenance).
- D** The *Affected Property* shall be reviewed for the *Service Period* which is stated in Part One of the Contract Data. The *Employer* reserves the right to extend or to terminate the contract at the end of the *Service Period*.
- E** The Service shall be conducted under the NEC3 Term Service Conditions of Contract (June 2005) (with amendments dated June 2006).
- ### 1.2 Security of the Site
- A** The *Employer* is responsible for maintaining the security of the site area.

1.3

Submittals

A

- *Contractor's Plan*
- Copies of certification and where appropriate work permits for workforce
- Insurance Certificates
- Monthly Reports

SECTION 2: PLANT AND MATERIALS

2.1 Plant

- A** The *Affected Property* includes a wastewater treatment plant capable of processing 30,000 US gallons per day (USGPD) of wastewater with a peak capacity of 80,000 USGPD and wastewater lift station 609. Actual average flow is approximately 20,000 USGPD with peak flows of 24,000 – 25,000 USGPD.
- B** The main components of the plant include:
- Influent screens
 - Equalization Tank
 - Bioreactor tank
 - GE MBR M4 Dual Skid System
 - Sludge Holding Tank
 - Plant infrastructure
 - Two effluent disposal boreholes (east and south sides of the *Affected Property*)
 - Lift station 609 and associated pumps (4 no. Mono MC1XKC11RMA/E)
 - Lift station 300 and associated pumps (2 no. Pentair Aurora 652A)
- C** The removal of sludge from the Sludge Holding Tank shall be the responsibility of the *Employer*. The *Contractor* shall provide sufficient notice to the *Service Manager* that sludge removal is required.
- D** The removal of material captured by the influent screens shall be the responsibility of the *Contractor*. The material shall be disposed of at the appropriate Government Waste Management Facility.
- E** The plant shall be maintained as per the manufacturer's recommendations which are included in the Equipment and Operations Manual for the *Affected Property*.
- F** Further details and information about the plant is located in the Operations and Maintenance Manual for the *Affected Property*.

2.2 Materials

- A** The *Contractor* shall be responsible for all consumable materials required to operate and maintain the facility.

2.3 Spares

- A** A supply of specific spares is available for the plant. The list of spares is included in Appendix A.
- B** The *Employer* and *Contractor* within one week of the commencement of the *Service Period* shall review this list and agree the sufficiency of spares in the inventory to reliably operate the plant. Any required parts that are not in the inventory shall be supplied by the *Employer*.
- B** Spares may be used, when necessary, during the operation of the facility. The *Employer* shall pay for the replacement of spares. The *Contractor* shall notify the *Service Manager* when spares are to be used. Use of the spares during will be agreed with the *Service Manager*.
- C** Spare parts not listed in Appendix A shall only be purchased with the prior written approval of the *Employer*.

2.4 Capital Replacement of Equipment

- A** The *Contractor* shall issue a Warning Notice indicating that a failure of a major piece of equipment will impact delivery of the Service. Included in the warning notice shall be a justification detailing why the equipment must be replaced rather than repaired. If the *Service Manager* determines the equipment failure was through no fault of the *Contractor*, he/she will decide whether the equipment will be purchased directly by the *Employer* or through the *Contractor*.

If the *Service Manager* considers that the need for replacement is due to the failure of the *Contractor* to properly maintain or operate the equipment, the *Contractor* will be required to bear the full cost of replacement.

2.5 Repairs

- A** If repairs are required to maintain functionality of the Plant, the *Contractor* shall notify the *Service Manager* who will issue a Task Order as defined in the Conditions of Contract. Costs for repair work shall be agreed with the *Service Manager* prior to works and shall be in accordance with the rate schedule.

SECTION 3: PROPERTY AND FACILITIES

3.1 Affected Property

A The *Affected Property* is located at Orange Hole Road, St. George's, DD03.

3.2 Buildings

A The main building (#731) is a 1500 sq ft, structure located at the *Affected Property*. The *Affected Property* also includes Building 609 and adjacent manhole to the south of the Building #731 and Building #300.

3.3 Use Of Affected Property

A The *Contractor* shall have full use of *Affected Property* for the service during the Service Period of the Contract except as directed by the *Employer*.

B The *Contractor* shall arrange a site visit to the *Affected Property* to show the *Service Manager* how the plant is operating. These visits can be arranged around the Monthly Performance Report submission.

3.4 Employer's Access

A The *Affected Property* shall be accessible to the *Employer* or *Service Manager* at all times. Access shall be via electronic or standard lock system.

3.5 Damages to Affected Property

A The *Contractor* shall make good any damages made to the *Affected Property* during the Service Period as a result of actions by the *Contractor*. The damages shall be repaired to match existing or as approved by the *Employer*.

B Normal maintenance and damages to the building and surrounding grounds shall be reported to the *Service Manager*.

3.6 Transfer of Operations and Maintenance

A Transfer of the operations and maintenance shall be undertaken in an orderly manner at the commencement and completion of the Service Period.

B The actual time of day for transfer of the support from the *Employer* to the *Contractor* shall be agreed prior to commencement of the Service Period.

- C** The *Service Manager* and *Contractor* shall complete an initial joint inspection of the *Affected Property* prior to commencement of the *Service Period* and agree and certify the condition and operational competency of the *Affected Property*. The following parameters shall be confirmed;

Parameter	Influent Value	Effluent Value
Average daily flow (US gallons per day)	30,000	30,000
Biochemical Oxygen Demand - BOD ₅ (mg/L)	300	≤5
Total Suspended Solids - TSS (mg/L)	150	≤5
Alkalinity (mg/L)	150	N/A
Turbidity (NTU)	N/A	<1
NH ₃ - N (mg/L)	66	≤1
Total Nitrogen (mg/L)	N/A	<40
Total Phosphorus (mg/L)	21	N/A
pH	6-9	6-9
Faecal Coliforms (counts/100mL)	N/A	nil

Variance of the above parameters is allowable upon agreement between the *Service Manager* and *Contractor*.

- D** At the completion of the *Service Period* the operational support shall be transferred in the same manner as at the commencement of the *Service Period*.
- E** The *Service Manager* and *Contractor* shall complete an inspection at the end of the *Service Period*. The *Affected Property* shall be fully operational and the *Service Manager* shall certify condition and operational competency. The *Contractor* shall oversee any works required by the *Service Manager* in order to return the *Affected Property* in same condition and operational competency as when certified prior to commencement of the *Service Period*, except for reasonable wear and tear as determined by the *Service Manager*.
- F** The *Employer* may elect to purchase the remaining consumables from the *Contractor* at the end of the *Service Period*.

SECTION 4: *CONTRACTOR'S PLAN*

4.1 **Plan Details**

A The *Contractor* shall prepare a plan detailing how the service shall be undertaken. This should include:

1. The Management Structure;
2. Coverage for *Contractor's* staff absences;
3. Communications plan with Employer which includes contact information for key personnel;
4. Hurricane preparedness and emergency plan;
5. Blackout operations plan (i.e. loss of electrical power);
6. An Environmental Management System (EMS); and
7. Health and Safety Program (HSP).

4.2 **Program of Works**

A The *Contractor* shall include a programme of the maintenance works coordinating all tasks and activities and based on the manufacturer's maintenance requirements of the plant equipment.

B All corrective action that is required to maintain the operations of the *Plant* shall be logged and included as part of the monthly reports.

4.3 **Warning Notices**

A The *Contractor* must issue a warning notice to the *Service Manager* any time it is required to take corrective actions that will impact on the delivery of the service to the *Employer*.

The *Contractor* shall provide notification to the *Service Manager* by telephone or email within two hours of any impact to the delivery of service which will possibly result in the emergency storage of effluent or rerouting of flow.

B The *Contractor* shall provide details in the plan which indicates how notification shall be accomplished.

4.4 **Hurricanes and Emergency Preparations**

A The *Contractor* shall coordinate with the *Employer* during tropical storms, hurricanes or other extreme weather conditions.

B In the event of a hurricane, the *Affected Property* shall operate as follows:

- When a Hurricane Watch is issued by the Bermuda Weather Service, the *Employer* shall inspect and secure the *Affected*

Property.

- The *Affected Property* shall be operated until a Hurricane Warning is issued from the Bermuda Weather Service or at the end of the work day; whichever occurs first. The *Affected Property* shall be shut down to protect it from any damage for the duration of the storm. The *Affected Property* shall be made secure to minimize any damage from the storm.

C The *Contractor* shall have personnel available to attend the *Affected Property* after a storm. The *Contractor* shall report to the *Affected Property* as soon as is practicable, to assess any potential damage to the *Affected Property*. The *Contractor* shall notify the *Service Manager* that operations have resumed.

4.5 Borehole Disposal

A The *Contractor* shall notify the Department of Environmental Protection and the *Employer* any time that the treatment process is bypassed and raw sewage is disposed into the boreholes.

4.6 Training Program

A As part of the Service, the *Contractor* may be asked to provide a secondment opportunity to a member of BLDC staff. The purpose of the secondment is to have the staff member be trained in wastewater treatment plant operations with the end result in a license in wastewater treatment.

B The *Contractor* shall provide regular reports on the progress of the training. Frequency of the reports shall be agreed with the *Employer*.

SECTION 5: SAFETY AND HEALTH

5.1 Legislation

A The *Contractor* shall comply with all current Health and Safety Legislation.

5.2 Health and Safety Program

A The *Contractor* shall prepare a Health and Safety Program as per Section 4, Clause 4.1 (A) of the Service Information.

5.3 Notification

A The *Contractor* shall, immediately on occurrence of any accident at or about the *Affected Property*, or in connection with the execution of the Works, report such accident to the *Service Manager*. The *Contractor* shall also report such accident to the appropriate Authority whenever such report is required by Law.

B The *Contractor* shall post notices to inform the workers of their conditions of work in conspicuous places at the establishments and work places concerned.

SECTION 6: TESTS AND INSPECTIONS

6.1 Effluent Quality Standards

- A The quality of the effluent produced by the *Affected Property* shall conform to the specific parameters as indicated in Section 3, Clause 3.6(C) of the Service Information.

6.2 Measurement Requirements

- A In addition to activities that the *Contractor* must perform to satisfy obligations under other sections of this Contract, the *Contractor* is required to provide the sampling and analytical services. All analysis is to be performed in accordance with standard protocols and procedures.

6.3 Measurement of Volumes, Physical and Chemical Parameters

- A These requirements are the minimum required by the *Employer*. The *Contractor* may require more frequent sampling and analysis for effective process control.

Influent

- **Daily** - flowrate
- **Quarterly** – salinity level, BOD₅, Total Suspended Solids (TSS), Total Phosphorus

Effluent

- **Daily** – flowrate (note quantities for disposal and re-use separately)
- **Weekly** - BOD₅, TSS, residual chlorine, pH, Total coliform, E. Coli
- **Quarterly** - Total Phosphorus, Total Nitrogen, Nitrogen-as-nitrate, oils and grease, surfactants, colour, odour

SECTION 7: RECORD KEEPING

7.1 Reporting

A The *Contractor* shall develop and maintain a system for documenting the operation of the *Affected Property* and preparing monthly reports to the *Employer*. The *Employer* may require additional information that the *Contractor* would normally be expected to compile as complete documentation of the service.

B The report shall be submitted to the *Service Manager* each month and shall be used as a basis for payment when an invoice is received. The *Contractor* may meet with the *Service Manager* to review the report. No payment shall be made until the report is received.

C An exceedence of a standard for a single reading shall be reported to the *Service Manager* within 24 hours of its occurrence. The circumstances and proposed corrective action shall be included in the report.

An exceedence of a monthly standard shall be reported in the monthly report. The circumstances and proposed corrective action shall be included in the report.

7.2 Monthly Performance Report

A The following details shall be contained in the monthly performance report.

- Summary of Plant condition.
- Total volume of wastewater processed over reporting period and aggregate total over Service Period.
- Influent at the inlet. The measured values are to include (frequency as stated in 6.3A):
 - Flowrate
 - Salinity level
 - BOD₅
 - TSS
 - Total phosphorus level
- Effluent. The measured values are to include (frequency as stated in 6.3A):
 - Flowrate
 - BOD₅
 - TSS
 - Residual Chlorine level
 - pH
 - Total coliform, E. Coli
 - Total Phosphorus
 - Total Nitrogen
 - Colour and odour

- Nitrogen-as-nitrate
- Oils and grease
- Surfactants
- Summary of plant status to include:
 - Hours run
 - Total volume through unit
 - Average flow rate per minute and per day
- Total hours of out of service down time
- List and status of consumable inventory
- Status of spare parts inventory and recommendations for additional spares
- Summary of all maintenance issues and any maintenance performed at the *Affected Property*.

B The *Contractor* shall keep a log of maintenance performed on the sites. The log shall be available for review by the *Employer* at all times.

7.3 Statutory Reporting

A The *Contractor* shall maintain all records and reports as required by law.

APPENDIX A

SPARES LIST

Item	Component	Supplier	Description	Quantity
1	Process Blower Belt	Aerzen	V-Belt, "B" Style	3
2	Process Blower Air Filter	Aerzen	Filter Element, Air K4 DN-80	3
3	Spare Transfer Pump	ABS	Spare transfer pump AS 0841 -S16/4D. With pedestal and bracket fasteners	1
4	Transfer pump repair kit	ABS	Sulzer repair kit XFP PE1 CB for existing pumps	2
5	Transfer pump repair kit	ABS	Sulzer repair kit AS 0841 for spare pump	1
6	Spare grinder pump	Myers	230V 1PH 60HZ Model WG.30.21, 3HP, 36 AMPS, Panel Cat. No. CG30.21 DW, Code 4.09, Panel AMPS 74	1
7	Grinder pump repair kit	Myers	Pump repair kit WG-30 Eng no 25218A005 (2 shaft seals, gasket, o-rings, seal leak wires, grommet, upper/lower bearings	1
8	Grinder pump panel repair kit	Myers	Capacitor start, 270-324 MFD, 220 VAC	2
9	Grinder pump panel repair kit	Myers	Bulb, 120V, Incandecent, Bayone	4
10	Grinder pump panel repair kit	Myers	Breaker, Cir;120V,1P,15AMP	1
11	Grinder pump panel repair kit	Myers	Breaker, Cir;240V,2P,50AMP	2
12	Grinder pump panel repair kit	Myers	Relay, Start, GE 3 ARR22J24B3	2
13	Grinder pump panel repair kit	Myers	Relay; Alternator 120V, 60hz	1
14	Grinder pump panel repair kit	Myers	Overload Relay,30-40 AMP	2
15	Grinder pump panel repair kit	Myers	Contacto;40 AMP, 120V COIL	2
16	Grinder pump panel repair kit	Myers	Relay;Mini,DPDT,3,AMP,1 20V	1
17	Grinder pump panel repair kit	Myers	Capacitor;Run,30 MFD,370 VAC	2

18	M4-DUAL Critical Spares	GE	Permeate/Backpulse Pump – Spare Parts Kit	1
19	M4-DUAL Critical Spares	GE	Membrane Blower (B85) – Spare Parts Kit	1
20	M4-DUAL Critical Spares	GE	Recirculation Pump (P34) – Spare Parts Kit	1
21	M4-DUAL Critical Spares	GE	Pressure Transmitter (PT-9623)	1
22	M4-DUAL Critical Spares	GE	Membrane Air Flow Switch (FSL-8506)	1
23	M4-DUAL Critical Spares	GE	Membrane Air Flow Switch (FSL-8506)	1
24	M4-DUAL Critical Spares	GE	Control Panel – Spare Parts Package	1
25	M4-DUAL Critical Spares	GE	Motorized Flow Valve	1
26	M4-DUAL Critical Spares	GE	Backpulse Ball Flow Control Valve	1
27	M4-DUAL Critical Spares	GE	Pressure Gauge	1
28	M4-DUAL Critical Spares	GE	Membrane Float Level Switches	1
29	M4-DUAL Critical Spares	GE	Backpulse Tank Level Sensor	1
30	M4-DUAL Critical Spares	GE	Bioreactor Level Switches	1
31	M4-DUAL Critical Spares	GE	Discharge Flow indicator	1
32	M4-DUAL Critical Spares	GE	Backpulse tank filter	1
33	M4-DUAL Critical Spares	GE	ZW500A/B – Cassette Repair Kit	1
34	M4-DUAL Critical Spares	GE	ZW500A/B – Module Permeate Adapter	1
35	M4-DUAL Critical Spares	GE	Bubble Test Equipment	1
36	M4-DUAL Critical Spares	GE	ZeeWeed Fiber Repair Kit	1
37	M4-DUAL Critical Spares	GE	DispensGun – Fiber Repair Aid	1

Note that this list of spares may vary from the current spares on site.

APPENDIX B

WASTEWATER STANDARDS

(As per the requirements of the Department of Environment and Natural Resources)

Criteria	Maximum
BOD ₅	10 mg/L
Total suspended solids	10 mg/L
Residual chlorine (re-use)	1 mg/L
Residual chlorine (immediate disposal)	<0.05 mg/L
pH	6 -9
Faecal coliforms	200 count/100 mL
Enterococci	35 count/100 mL

Duration and Frequency: Monthly average concentrations, based on readings made at intervals of a week, or more frequently, shall not exceed the above standard by more than 50%. No single measured concentration shall exceed the above standard by more than a factor of three.

CERTIFICATE OF CONFIRMATION OF NON-COLLUSION

Notes for the tenderer/bidder

The essence of Open Tendering is that the Bermuda Land Development Company Ltd. shall receive bona fide competitive Tenders from all persons Tendering. In recognition of this principle, all companies submitting a tender will be required, by way of the signature of the Company Principle, state their agreement to the statements below, which indicates that the tender has been submitted without any form of collusion.

The Certificate of Confirmation of Non-Collusion is a mandatory requirement from all bidders. Any bids 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 process, the bidder 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 bidder and/or any party involved in the matter.

False submissions may also exclude the bidder, and any other person or company involved in collusion, from bidding for future contracts tendered by the Bermuda Land Development Company Ltd.

Confirmation of non-collusion

I/We certify that this is a bona fide Tender, intended to be competitive and that I/We have not fixed or adjusted the amount of the Tender 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 additional information, other than that contained within the tender pack, or supplementary information provided to all bidders.

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 tender administrator the amount or approximate amount of my/our proposed Tender (other than in confidence in order to obtain quotations necessary for the preparation of the Tender for insurance) or
- (b) entering into any agreement or arrangement with any other person that he shall refrain from tendering or as to the amount of any Tender 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 tender.

Signed

(1) _____ Status _____

(2) _____ Status _____

for and on behalf of

Date _____