

THIS AIRPORT DEVELOPMENT AGREEMENT made as of, and effective, August 24th, 2015.

BETWEEN:

CANADIAN COMMERCIAL CORPORATION

50 O'Connor Street, 11th Floor
Ottawa, Ontario K1A 0S6

("CCC")

AND:

BERMUDA GOVERNMENT

as represented by the Ministry of Tourism Development and Transportation,
Government Administration Building
2nd Floor, 20 Parliament Building
Hamilton HM 12
Bermuda

("Bermuda")

WHEREAS:

- A. Bermuda owns and operates L.F. Wade International Airport (the "**Airport**") located in the parish of St. George's;
- B. CCC is a Crown corporation of the Government of Canada that connects government buyers with Canadian industrial solutions;
- C. Aecon Concessions, a division of Aecon Construction, is a Canadian based global infrastructure developer and investor specializing in airports, transportation and transit projects;
- D. On November 10, 2014, Bermuda and CCC entered into a non-binding memorandum of understanding (the "**MOU**"), with the intent of fostering collaboration through participation in mutual discussions and in the development of an airport-related infrastructure project deemed to be of mutual interest;
- E. On January 30, 2015, CCC executed, and on February 3, 2015, Bermuda countersigned, an amended and restated letter agreement (the "**Amended and Restated Letter Agreement**"), establishing a protocol to facilitate discussion and additional commercial agreements concerning an intended framework related to the redevelopment of the Airport;

- F. The Amended and Restated Letter Agreement confirmed, *inter alia*, Bermuda's and CCC's intent that:
- (a) the Project be developed and operated under a long term concession model, including the establishment of a special purpose concessionaire for the financing, design, construction, operation and maintenance of the Project; and
 - (b) upon the completion of those activities described in the section of the Amended and Restated Letter Agreement titled "Phase 1 - Preliminary Due Diligence, Project Scoping and Project Scoping leading to "Go"- "No-Go" Decision" ("**Phase 1**"), including the development of the Airport Project Concept, Bermuda and CCC would determine whether to proceed with the Project and enter into an Airport Development Agreement (as defined therein);
- G. On April 16, 2015, Bermuda and CCC executed a letter agreement amending the Amended and Restated Letter Agreement (the "**First Amendment**"), wherein, *inter alia*, Bermuda and CCC agreed to revise the target date for the conclusion of Phase 1 as set out in the Amended and Restated Letter Agreement, and thus the contemplated execution and delivery of the Airport Development Agreement, to June 30th, 2015;
- H. As of, and effective, June 29, 2015, Bermuda and CCC entered into a letter agreement amending the Amended and Restated Letter Agreement, as revised by the First Amendment (the "**Second Amendment**"), wherein, *inter alia*, Bermuda and CCC agreed to revise the target date for the conclusion of Phase 1 as set out in the Amended and Restated Letter Agreement as revised by the First Amendment, and thus the contemplated execution and delivery of the Airport Development Agreement, to July 31, 2015;
- I. As of, and effective, July 30th, 2015, Bermuda and CCC entered into a letter agreement amending the Amended and Restated Letter Agreement, as revised by the First Amendment and the Second Amendment (the "**Third Amendment**"), wherein, *inter alia*, Bermuda and CCC agreed to revise the target date for the conclusion of Phase 1 as set out in the Amended and Restated Letter Agreement as revised by the First Amendment and Second Amendment, and thus the contemplated execution and delivery of the Airport Development Agreement, to August 31, 2015 (the Amended and Restated Letter Agreement as revised by the First Amendment, Second Amendment and Third Amendment is hereinafter referred to as the "**Letter of Agreement**");
- J. CCC has identified Aecon Constructors, a division of Aecon Construction, as its proposed subcontractor to perform construction services and Aecon Construction, as represented by Aecon Concessions, as an equity provider for a special purpose entity ("**Project Co**") to deliver the balance of the Project deliverables described herein;
- K. Phase 1 as referenced in the Amended and Restated Letter Agreement has been completed, and the Parties have agreed to proceed with the Project and enter into this Airport Development Agreement;
- L. The Parties are committed to cooperating with each other and with any other stakeholders, (including the Bermuda Tourism Authority and the Bermuda Business Development Agency), who agree to collaborate with the Parties to develop initiatives and facilitate

enablers of change affecting the Bermudian economy in order to achieve passenger traffic growth objectives required to ensure the success of the Project.

THEREFORE, in consideration of the mutual covenants and agreements contained in this Airport Development Agreement, the Parties hereby agree as follows:

1. Schedules and Interpretation

- 1.1 The following schedules are attached hereto and are included as part of this Airport Development Agreement:

Schedule A	Definitions and Interpretation
Schedule B	Airport Project Concept
Schedule C	Project Agreement Heads of Terms
Schedule D	Construction Contract Heads of Terms
Schedule E	Regulated Fees and Charges
Schedule F	Preliminary Development Plan and Budget Part A: Preliminary Development Plan Part B: Preliminary Development Costs Budget
Schedule G	Off Ramp Events
Schedule H	Diagram of Airport Lands
Schedule I	Entrustment Letter

- 1.2 Except as the context otherwise requires, terms and expressions used in this Airport Development Agreement with initial capital letters shall have the meanings set out in Schedule A and this Airport Development Agreement will be interpreted in accordance with the provisions set out in Schedule A.

2. Purpose

The purpose of this Airport Development Agreement is to, *inter alia*:

- (a) confirm the agreement of the Parties to proceed with the Project and implement the Airport Project Concept subject to, and in accordance with, the terms of this Airport Development Agreement;
- (b) agree to the process by which the Project will be developed to Financial Close and identify certain specific events that may cause the Parties to elect to terminate this Airport Development Agreement (and the basis on which termination would occur) prior to Financial Close;
- (c) set out the heads of terms for the subject matter and agreements set out in Section 1.1 above, including the Project Agreement (the "**Project Agreement Heads of Terms**") that will establish the process for implementation of the Project from and after Financial Close; and

- (d) constitute the "Airport Development Agreement" contemplated by the Letter of Agreement.

3. Airport Project Concept

- 3.1 The Parties confirm that they have reviewed the Airport Project Concept and agree with the general principles, analysis and approach outlined therein, including, without limitation, the linear scheme for the new Airport terminal, as modified and supplemented by the terms of this Airport Development Agreement.

4. Cooperation

- 4.1 The Parties agree that they will work together in a spirit of mutual cooperation and good faith towards the attainment of the goals and objectives of this Airport Development Agreement.
- 4.2 The Parties acknowledge that, due to the early stage of the development of the Project, except as otherwise provided herein, many assumptions, inputs, costs and estimates contained in this Airport Development Agreement, the Airport Project Concept and the other Schedules attached hereto are preliminary in nature, and will be subject to further analysis, optimization and revision during the Term.
- 4.3 The Parties acknowledge that this Airport Development Agreement will guide the content and settlement of definitive transaction documents for the Project, each of which shall contain additional terms and conditions that are generally consistent with, and comparable to, similar infrastructure projects, including international airport concession transactions, including terms regarding operating service scope, standards, quality and processes to ensure that each of Bermuda and the members of the CCC Team have all of the usual rights and remedies respectively available to each comparable party that would normally exist in similar infrastructure projects, including international airport concession transactions.

5. Term

- 5.1 Unless extended by the mutual agreement of the Parties, this Airport Development Agreement will commence upon the Effective Date and will continue until expiration on the earlier of:
 - (a) Financial Close;
 - (b) the termination of this Airport Development Agreement by either Party pursuant to, and as expressly permitted by, this Airport Development Agreement; and,
 - (c) March 31, 2017 (the "Expiry Date").

6. General Obligations of CCC, Aecon Concessions and Project Co

- 6.1 CCC shall cause Project Co to enter into the Core Project Documents to carry out all of its services, undertakings, obligations, duties and responsibilities specified therein: (1) in accordance with all of the services, undertakings, duties, objectives and the operational,

functional and technical requirements and specifications concerning same that are stipulated therein; and, (2) with a professional duty of care, diligence and prudence that is consistent with the practices then in effect during the applicable terms of the relevant Core Project Documents for both the construction and operation of an international airport by a skilled and experienced airport constructor and airport operator in reasonably similar circumstances and conditions to the Project.

- 6.2 Without limiting any other provision of this Airport Development Agreement, CCC agrees that the Project Agreement shall require Project Co to perform all Airport Operations specified therein in accordance with the terms and conditions thereof, and, in the performance thereof, Project Co shall engage the services of experienced and qualified Person(s) (whether by retainer, employment, acquisition or otherwise), who possess the necessary experience and expertise to directly assist with, and be engaged in, the performance of Project Co's Airport Operations duties and obligations. In the event that Project Co enters into an operations and maintenance agreement with a third party airport operator who will materially or substantially perform the Airport Operations, said third party operator shall be subject to the prior written approval of Airport Quango, which will not be unreasonably withheld or delayed.
- 6.3 During the Term, CCC will perform (or will cause to be performed by Aecon Concessions) the following activities, and provide (or cause to be provided by Aecon Concessions) the following deliverables, all to be completed to the satisfaction of the Parties, acting reasonably:
- (a) finalizing the Airport Traffic Forecasts;
 - (b) finalizing the Airport conceptual design that shall be consistent with the Construction Specifications and Airport Operations Scope and Specifications;
 - (c) in addition to the provisions hereof, establishing a risk allocation model based on industry norms and customary practices for projects that are reasonably comparable to the Project, taking into account anticipated Lender requirements;
 - (d) developing well-defined Project organization and operating structures including role definition and scope allocation between Project Co, Airport Quango and Bermuda;
 - (e) finalizing, in collaboration with Bermuda, the Airport Operations Scope and Specifications;
 - (f) establishing terms and conditions whereby Project Co shall:
 - (i) assume the operation, maintenance and periodic lifecycle refurbishment and replacement of Airport Assets to satisfy Project Co's obligations in relation to the Airport Operations;
 - (ii) design and construct all Airport improvements to satisfy Project Co's obligations in relation to the Construction and Airport Operations;

- (iii) operate, maintain and carry out periodic lifecycle replacements on the completed Airport improvements to satisfy Project Co's obligations in relation to the Airport Operations; and
 - (iv) complete the additional work, construction, services or undertakings that are reasonably required during the last five years of the term of the Project Agreement to ensure that Project Co will satisfy Project Co's obligations in relation to the Handback Conditions and Handback Assigned Obligations stipulated in the Project Agreement;
- (g) establishing a regime whereby Project Co and Airport Quango will monitor, report and verify Project Co's performance of the obligations, duties and responsibilities that are anticipated by this Airport Development Agreement and that will be required by the Core Project Documents, including the Airport Operations, which such Core Project Documents shall include normative, reasonable and appropriate undertakings, responses and remedies in response to any breach by Project Co of such obligations, duties and responsibilities;
- (h) developing, presenting and updating from time to time, for delivery to Bermuda, a Development Costs Budget setting out the Development Costs, a preliminary version of which is attached hereto as Part B to Schedule F, which shall constitute the Development Costs Budget until superseded by a revised version. Any change in the Development Costs Budget that increases the aggregate budgeted amount by more than 10% of the original aggregate budgeted amount shall require notice of such to Airport Quango;
- (i) agreeing with Bermuda on a transition plan for Airport Personnel (the "**Airport Personnel Transition Plan**") which shall include transitioning all Airport Personnel to either Project Co, Airport Quango or Bermuda, and, in the case of the transition of Airport Personnel to Project Co (and subject to receipt by Aecon Concessions of further information and the conduct of further due diligence and without prejudice to Section 6.3(j) below), on terms and conditions which, taken as a whole, are no less favourable than such employees' then existing employment terms and conditions;
- (j) with respect to employees transferred to Project Co, the Parties each acknowledge that:
 - (i) subject to applicable Laws (including labour relations and collective bargaining Laws) and the terms and conditions of the Project Agreement, Project Co shall have the right to structure the company, Project Co senior management, its employees, its organization, reporting structures and business operations in a way which it considers appropriate;
 - (ii) there may be certain existing terms and conditions, such as continued participation in the regulated government pension scheme (which will not be continued by Project Co although a private, defined contribution, pension plan will be offered) and other benefits that are not enjoyed by

comparable public sector employees in other common law jurisdictions that may be subject to modification or transfer to private sector pension and/or benefits schemes;

- (iii) as of Financial Close, Project Co shall assume any and all risk, liability and responsibility (financial or otherwise) related to the terms and conditions of all employment and independent contractor agreements associated with the Airport Operations, including any employee collective bargaining agreements that Project Co may have to negotiate and enter into in connection therewith; and
 - (iv) Bermuda shall retain any and all risk, liability and responsibility (financial or otherwise) arising in relation to any accrued liabilities (including accrued severance entitlements) up to the date of Financial Close and any employer's obligations concerning the provisions (or equivalent) that are related to the nature of the Project that are contained in any current employee collective bargaining agreement or under applicable Law.
- (k) establishing, in relation to Construction and Airport Operations, a plan whereby:
- (i) except where the *bona fides* qualifications, skills, experience, availability and capacity (financial or otherwise) requirements for labour and/or subcontracting requirements cannot be satisfied by Bermudian Labour or Bermudians in a manner which will permit Project Co to satisfy its obligations under the Core Project Documents, Project Co shall provide priority retainer and employment opportunities for Bermudians and Bermudian Labour concerning Project Co's performance of the Core Project Documents;
 - (ii) subject to Sections 6.2 and 6.3(j)(i) and 6.3(k)(i) Project Co shall establish a "**Development of Bermudian Labour Plan**" prior to the commencement of Airport Operations pursuant to the Project Agreement, which shall describe, among other things, the ongoing obligations, systems, undertakings and management processes that Project Co will implement to identify, train, develop and preferentially employ qualified Bermudian Labour. Such plan shall include, without limitations, the following: description of how staff shall be trained on the job; description of training provided for subcontractors; description of special training and method for recording training outputs; description of how training will be assessed and measured; description of training for Bermudians leading to progressive advancement; Bermudian succession planning in compliance with applicable immigration and work permit Laws; and, strategies designed with the objective of accessing overseas training; and,
 - (iii) Project Co shall establish mentoring and work shadowing programmes for a select number of unskilled Bermudians to allow those individuals to observe and learn certain Construction trade skills in Bermuda, and to establish job fairs and undertake employment recruiting events and requests

for proposals to identify Persons for the purpose of recruiting and retaining Bermudian Labour and Bermudian employees, independent contractors and service providers;

- (l) developing a detailed construction schedule and execution plan;
- (m) developing detailed capital and operating cost budgets;
- (n) developing a robust local procurement strategy that:
 - (i) taking into consideration the factors articulated in Section 6.3(k)(i) above, maximizes participation in the Project through all phases by local businesses on the terms and conditions set out in the Project Agreement; and
 - (ii) ensures that there is a high degree of competitive tension through open and transparent procurement of the various subcontracts (both during Construction and Airport Operations);
- (o) developing, in collaboration with Bermuda, a strategy for communications, community engagement and local benefits for the Project;
- (p) developing, in collaboration with Bermuda, a preliminary plan for managing the Airport-related 35th America's Cup activities;
- (q) developing, in collaboration with the Bermuda Tourism Authority and Business Development Agency, a preliminary Airport marketing plan, including route development initiatives;
- (r) collaborating with Bermuda, and supporting Bermuda's diligent efforts, to create a special committee that may be comprised of members of Project Co, Bermuda, the Bermuda Tourism Authority and the Bermuda Business Development Agency or any successor organization(s) from time to time to promote business and tourism and other relevant stakeholders (such possible committee to be referred to herein as the "Airport-BDA Joint Development Committee") for the purpose of promoting tourism and engaging in hotel promotion and development initiatives;
- (s) preparing and delivering to Bermuda the Base Case Financial Model and Financial Plan for the Project and providing Bermuda from time to time during the Term, but not less than quarterly, with updated versions of the Base Case Financial Model and Financial Plan as developed, which shall reflect (in part) the results of the work carried out or completed pursuant to and in accordance with the schedule contained in the Preliminary Development Plan and Budget, since the last prior version and on Financial Close the final version thereof as of Financial Close in each case in a format that can be used to model changes and sensitivities. Any development fees, commissions, third party advisory fees and closing fees that are associated with the development of Project, and that will have any direct or indirect financial impact on Bermuda, shall be generally consistent with normative industry practices in Canada or internationally for the development of a project of a nature that is comparable to

the Project, and, to the extent there are elements of the development Project that are unique or otherwise not readily comparable, shall at all events be fair and reasonable.

- (t) in order to satisfy Bermuda's Project governance and oversight requirements, the Project Agreement will require Project Co to provide Bermuda with reasonable financial information, reports and audited financial statements of Project Co and other financial information concerning the Construction, Airport Operations and related Core Project Documents throughout the term of the Project Agreement;
- (u) developing a preliminary Commercial Model;
- (v) preparing environmental and social impact studies with development-related action plans;
- (w) developing an energy load/energy consumption analysis for the new Airport terminal's energy consumption;
- (x) establishing required insurance for the Project;
- (y) completing site surveys and investigations, including geotechnical investigations, topographical surveys, environmental site assessments and condition surveys of Airport Assets and facilities;
- (z) working with Bermuda to further particularise Bermuda's obligations concerning Bermuda's provision of Limited Government Support as set forth in this Airport Development Agreement;
- (aa) negotiating the quantum and timing of the funding of the Required Equity Commitments with Senior Lenders;
- (bb) putting in place commitments to disclose to Bermuda the proposed Project Co Members and their associated Required Equity Commitments (including Acon Concessions), all of which Project Co Members being subject to Bermuda's prior written approval and consent, acting in good faith, and not to be unreasonably denied;
- (cc) ensuring that Acon Concessions contributes, directly or indirectly, no less than ■% of the Required Equity Commitments and maintains, at a minimum, a lead shareholder position with joint control of Project Co until the completion of Construction, provided that for greater certainty, no such equity commitment will be required in the event that the Project Member's projected internal rate of return is less than the Target IRR. Subject to Section K.3 of the Project Agreement Heads of Terms, Project Co shall not be controlled by any Person other than Acon Construction without Bermuda's prior written consent, such consent being in Bermuda's absolute discretion and subject to applicable Law.

- (dd) supporting Bermuda in all necessary or desirable consultations with any international air carriers and other international aviation organizations in relation to changes to Regulated Fees and Charges;
 - (ee) developing, and providing to Bermuda a proposed transition plan (the "**Transition Plan**") detailing the actions required to ensure an orderly transition of Airport Operations from Bermuda (or Airport Quango) to Project Co on the date of Financial Close;
 - (ff) carrying out the Aecon Concessions, Aecon Constructors and CCC tasks described in Part A of Schedule F, as such schedule may be amended from time to time (the "**Preliminary Development Plan and Budget**");
 - (gg) working with Airport Quango and Project Co to develop, within sixty (60) days after Financial Close, a reasonable Airport Services quality plan with respect to the existing Airport terminal that will be guided and informed by the intended elements and content of the SQP that is referred to in Appendix B of Schedule C.
 - (hh) using commercially reasonable efforts to perform all other actions and provide all other deliverables within its control in form and substance consistent with those set out above as otherwise may be necessary to ensure Financial Close is achieved.
- 6.4 Without limiting any other provision of this Airport Development Agreement, the Parties further acknowledge and agree that Project Co will be responsible for the Construction and Airport Operations, which shall include designing, constructing, operating and maintaining the Airport, including providing lifecycle replacements, in accordance with and to the standards set out in the Core Project Agreements. Capital expenditures not otherwise required to perform the foregoing obligations shall be made only if Project Co and Bermuda agree to amend the relevant terms and conditions associated with such required capital expenditures, if funding is available to Project Co for such purpose by way of an increase in Regulated Fees and Charges and if the remaining term under the Project Agreement is long enough to fully amortize any debt or equity investments associated with any such capital expenditures.
- 6.5 The Parties agree that Project Co shall, throughout the term of the Project Agreement, use its reasonable commercial efforts to generate and maximize revenues from Commercial Services and non-regulated revenues, subject to compliance with the Project Agreement and with all applicable Laws.
- 6.6 The Project Agreement shall require Bermuda to perform all Retained Government Services with the same quality, professional duty of care, diligence and prudence as Project Co is required to perform the Core Project Documents pursuant to this Airport Development Agreement, *mutatis mutandis*, and in accordance with normative industry practices internationally for a project of a nature that is comparable to the Project.
- 6.7 With respect to the Parties' obligations pursuant to Section 6.3(m) and 6.4 hereof and Section B.4 (Construction and Airport Operations) and Section B, Section F.5 (Funding Major Capital Works and Expansions; Late Term Capital Works) of Schedule C, and Project Co and Airport Quango's respective obligations in Appendix B, Section 1.1(kk) of

Schedule B, concerning the capital maintenance of, and ongoing capital investment in, the assets that Bermuda will use to provide the Retained Government Services, the Parties agree that within 60 days of the Effective Date, a Project working group shall be formed comprised of Bermuda and Aecon Concession representatives and advisors for the purpose and objective of commencing discussions to mutually agree to terms and conditions in the Project Agreement that shall: (i) more specifically and precisely define the nature, ambit and scope of the Retained Government Services and the interface of such services with the Airport Services; (ii) precisely identify the particular capital assets that are associated with the Retained Government Services; (iii) detail, the assistance, if any, Project Co shall provide to Bermuda in its efforts raising the capital funding required for such assets (including capital maintenance, replacement, improvement and enhancement as may be required); provided that Project Co shall not by way of this mechanism take on any liability for (y) the performance of the Retained Government Services or any operation or maintenance obligations in relation to the assets associated with the Retained Government Services, or (z) the raising of any capital funding required for such assets or any ongoing capital investment in any such assets that is outside of the agreed scope of the Airport Operations Scope and Specifications and/or Construction Specifications.

7. General Obligations of Bermuda

7.1 During the Term, Bermuda will perform the following activities and provide the following deliverables, all to be completed to the satisfaction of the Parties, acting reasonably:

- (a) subject to the due process of public policy formulation and legislative enactment in Bermuda, create and implement a regulatory structure for the Project and enact Enabling Legislation, as may be required to:
 - (i) provide the Limited Government Support;
 - (ii) authorize and approve the airport-related regulated fees and charges (the **"Regulated Fees and Charges"**) as contemplated in Schedule E and Schedule C, Section F.6(a) to this Airport Development Agreement, and as further set forth in the Project Agreement;
 - (iii) deregulate all Airport-related fees and charges other than the Regulated Fees and Charges and the Excepted Airport Fees (which will be determined on a fair and reasonable basis and will remain subject to Airport Quango's oversight (of a nature and scope to be specified in the Project Agreement)), such that the administration and control of any and all Airport-related fees and charges other than those that comprise Regulated Fees and Charges and Excepted Airport Fees is under Project Co's management and control. For greater certainty, all revenues generated from such Airport-related fees and charges, including the Excepted Airport Fees, shall be used and collected exclusively by Project Co;
 - (iv) enable Project Co to implement the Commercial Plan and to perform the Airport Operations in accordance with the Core Project Documents;

- (v) perform Bermuda's Limited Government Support obligations pursuant to Section 9.1 of this Airport Development Agreement;
- (vi) establish the Airport Quango;
- (vii) provide the AIF Reserve and allocate the AIF Reserve to the Project pursuant to Section 9.2 of this Airport Development Agreement;
- (viii) ensure that all post-Financial Close sources of Airport-related revenue that Bermuda, Airport Quango or any other Bermuda Governmental Authority has control over prior to and during the term of the Project Agreement be allocated and directed to and for the benefit of Project Co, and that Project Co has the sole right and authority to collect and utilize all such revenues;
- (ix) ensure that Project Co has the exclusive right to operate a commercial airport with fixed-wing aircraft in Bermuda for the term of the Project Agreement;
- (x) ensure that the following financial incentives and benefits are provided exclusively for the benefit of the Project and for the term of the Project:
 - A. Project Co, Aecon Construction and its Affiliates, and all Subcontractors, will have full relief from custom duty in respect of capital items (and excluding consumable items) such as any building materials, furnishings, fixtures, and equipment which are necessary for the building, furnishing and equipping of the airport construction and for Airport Operations. For greater certainty, such relief from customs duty for Subcontractors related to Airport Operations shall only apply to capital works associated with Airport Operations that are undertaken by Subcontractors;
 - B. Project Co, Aecon Construction and its Affiliates, and all Subcontractors will be exempt from paying the employer's share of payroll tax under the Payroll Tax Act 1995 (or any successor applicable Law), with respect to all work done concerning the Project during the term of the Construction Contract and with respect to any capital works, capital refurbishment or capital improvements that are undertaken concerning Airport Operations pursuant to the Project Agreement. The employer's share of payroll tax means that portion of payroll tax which the employer is not entitled to deduct from an employee's wages under section 19 of the Payroll Tax Act 1995;
 - C. Project Co will be exempt from paying the employer's share of payroll tax under the Payroll Tax Act 1995 (or any successor applicable Law);
 - D. for greater certainty concerning the scope and nature of Bermuda's obligations in this Section 7.1, except for non-Bermudian

employees who do not (and are not required to) hold work permits, Aecon Construction and its Affiliates, Project Co, and all Subcontractors will otherwise fully comply with all of their other employee payroll tax collection and remittance obligations and other duties under the Payroll Tax Act 1995. For greater certainty, all employee's share of payroll tax under the Payroll Tax Act 1995 (or successor applicable Law) shall be deducted and remitted by the employer in accordance with applicable Laws;

- E. notwithstanding subsection D above, each of Aecon Construction and its Affiliates, Project Co, and all Subcontractors will be exempt from the requirement to make payments (including taxes and fees) that it would otherwise be required to be made under Heading 6 paragraph (5) of the Government Fees Regulations 1976 (work permit fees) in relation to any employee who does not fall under the definition of Bermudian Labour;
- F. Aecon Construction and its Affiliates, together with Project Co, shall be exempt from all income, profits, capital, capital gains, and all other revenue based taxes that are in any way associated with the Project that Bermuda may after the Effective Date either impose, enact or implement in Bermuda, whether as Laws of general application or otherwise, throughout the term of this Airport Development Agreement or during the terms of the Core Project Documents;
- G. Aecon Construction and its Affiliates, together with Project Co, shall be exempt from all land, land transfer, lease and other real estate taxes, levies and stamp duty in Bermuda that may be associated with the Airport, Airport Operations, Construction, Lease, Leased Lands, or otherwise with the Project at any time during the term of this Airport Development Agreement and the terms of the Core Project Documents;
- H. Aecon Construction and its Affiliates and Project Co will not be exempt from any other Taxes that may be applicable to the Project in the performance of this Airport Development Agreement, Core Project Documents, or otherwise, except as otherwise expressly set out in this Section 7.1(a)(x), or as may otherwise be agreed to in the Project. For greater certainty, neither Aecon Construction, Project Co nor any other Person shall be relieved or exempt from paying any Governmental Authority fees or charges (that are not Concessioned Taxes) of general application in Bermuda that are ordinarily charged for government services, including without limitation (by way of example) fees or charges associated with licensing, incorporation, wharfage, filings or registration, motor vehicles or work permits; and,

- (xi) establish a mechanism for the timely and efficient processing of Permits in accordance with the construction schedule;

all of which is to be effective for the term of the Project Agreement (collectively, the “**Enabling Legislation**”). With respect to Section 7.1(a)(x) above, all concessions and relief related to Taxes, and that are otherwise expressly provided for in Section 7.1(a)(x), shall be collectively referred to herein as “**Concessioned Taxes**”.

- (b) ensuring that it has sufficient rights and interest in and to the Leased Airport Lands to enter into the Lease and grant to Project Co the requisite legal rights to allow Project Co to perform the Construction and Airport Operations, in each case free and clear of all encumbrances, restrictions or limitations other than certain permitted encumbrances to be specified and agreed to that do not materially interfere, individually or collectively, with the Construction or Airport Operations;
- (c) providing Aecon Concessions with an accurate legal description of the Leased Lands within 90 days of execution of this Airport Development Agreement;
- (d) populating, and updating as required, the Project data room with up-to-date copies of all material Airport-related agreements, financials, contracts and governance documents, including Airport Personnel employment documents;
- (e) using commercially reasonable efforts to enter into novation agreements (or otherwise entering into assignment and assumption agreements) with respect to agreed existing Airport-related contracts;
- (f) agreeing with CCC and Aecon Concessions on the Airport Personnel Transition Plan;
- (g) actively participating, and collaborating in, an Airport-BDA Joint Development Committee in the event that such committee is created and constituted;
- (h) facilitating and enabling an approach to assist Project Co with the implementation of a robust commercial platform at the Airport in accordance with the Commercial Model;
- (i) facilitating necessary access to the organization(s) coordinating the 35th America’s Cup to determine the obligations of the Airport and to achieve agreement on associated preliminary operating plans;
- (j) obtaining the approval of Aecon Concessions (not to be unreasonably withheld), before entering into any new Airport-related contract or arrangement (including extending existing contracts other than in the ordinary course or hiring additional Airport Personnel over and above the level contemplated by the current Airport staffing plan) or making any commitments to capital expenditures that would be payable post-Financial Close, that would be expected to have a cost impact on Construction, Airport Operations, the Commercial Model or Project Co revenues after Financial Close, excepting;

- (i) filling existing Airport Personnel positions;
- (ii) replacing Airport Personnel in existing positions; and
- (iii) entering into short term agreements as may be required for the maintenance of safety or security (in which instance Bermuda will enter into such agreements and immediately inform Aecon Concessions of any changes in operations or in operating costs resulting therefrom);
- (k) ensuring expedited processing of Permits, including any work permits that may be required in relation to the Project, and providing all necessary Permits in a timely manner;
- (l) providing, as of the date of execution of this Airport Development Agreement and for the duration of the Term, at no cost, reasonable office space at the Airport to the CCC Team to support the Project;
- (m) providing the CCC Team with full access to the Airport and visibility to the existing Airport Operations as well as with input with respect to all Airport-related decisions made during the Term, including with respect to the transition of commercial contracts and Airport Personnel and in relation to capital expenditures;
- (n) providing the CCC Team with sufficient access to the Existing Airport Lands as may be required to complete all pre-Financial Close Construction-related due diligence;
- (o) providing the CCC Team with an inventory of all Airport property, including buildings, structures, improvements, appurtenances and fixtures and all other machinery and equipment and all vehicles, tools, furniture, furnishings, computer hardware and peripheral equipment, supplies and accessories, pre-paid expenses and deposits, accounts receivable, Permits, contracts and commitments relating to the Airport, customer lists, plans and specifications relating to the Airport, all personnel records, inspection records and other records, books, documents and data bases, recorded or stored by means of any device, including in electronic form, relating to the Airport and intellectual property, including property that is within the possession of the Airport Personnel (the "**Airport Assets**");
- (p) agreeing with CCC and Aecon Concessions on the content of an inventory of all Airport Assets not required for the performance of the Retained Government Services (the "**Transferred Airport Assets**"), which at a minimum shall include all Airport Assets utilized for the operation, management, administration, maintenance and lifecycle replacement of the Airport during the Term (other than those Airport Assets required for the performance of the Retained Government Services);
- (q) agreeing with CCC and Aecon Concessions on the mechanism for the transfer of the Transferred Airport Assets to Project Co on Financial Close at a nominal amount, and the mechanism for the transfer of comparable airport assets from

Project Co to Bermuda at the end of the term of the Project Agreement as part of the Handback Assigned Obligations;

- (r) as of Financial Close, setting aside the AIF Reserve into a Bermuda owned segregated account (the "**AIF Reserve Account**"), the funds of which shall be made available for the sole benefit of funding the Project subject to terms and conditions set out herein and as the Parties may further agree in the Core Project Documents;
- (s) establishing, organizing and funding the Airport Quango;
- (t) developing, and providing to Aecon Concessions, at least three (3) months prior to the establishment of the Airport Quango, a proposed plan detailing the actions required to ensure an orderly staffing and start-up of the Airport Quango;
- (u) cooperating with Aecon Concessions to implement the Transition Plan and Airport Personnel Transition Plan;
- (v) facilitating the transfer of the airport operating certificate to Airport Quango;
- (w) providing reasonable assistance to Aecon Concessions, CCC and Aecon Constructors to complete their deliverables under the Preliminary Development Plan to the extent the same depends on the cooperation and actions of Bermuda;
- (x) performing all other actions and providing all other deliverables as otherwise may be necessary to ensure an orderly and efficient transition of Airport Operations from Bermuda to Project Co; and
- (y) using commercially reasonable efforts to perform all other actions and providing all other deliverables within its control in form and substance consistent with those set out above as otherwise may be necessary to ensure Financial Close is achieved.

8. Schedule of Fees and Charges

8.1 The Parties acknowledge and agree that, in relation to the schedule of Regulated Fees and Charges attached hereto as Schedule E (the "**Regulated Fees and Charges Schedule**"):

- (a) the current Regulated Fees and Charges are as indicated in the column titled "Description";
- (b) the current Regulated Fees and Charges rates are as indicated in the column titled "Current Rate";
- (c) certain of the Regulated Fees and Charges will be implemented and/or increased during the Term as indicated in the column titled "Interim Rate"; and
- (d) the Regulated Fees and Charges will be further adjusted on Financial Close as indicated in the column titled "Financial Close" and will be adjusted thereafter in accordance with the principles set out in Section F.6 of Schedule C. Since final

capital and operating costs will be determined during the Term, the Financial Close adjustment will also take into consideration the level of Airport Infrastructure Charge required to make the Project financially viable and such other factors as may be relevant in that regard including, without limitation, the Base Case Financial Model reflecting the Target IRR and servicing of Bermuda Subordinated Debt.

9. Limited Government Support; Bermuda Participation

9.1 Bermuda will provide the following financing support to Project Co:

- (a) the AIF Reserve described in Sections 7.1(r) and 9.2;
- (b) an amount in respect of the annual energy consumption for the Airport described in Section 9.3; and
- (c) the Guaranteed Revenue Payments, if any, described in Section 9.4.

(collectively, the "**Limited Government Support**")

9.2 Bermuda will establish the AIF Reserve Account on Financial Close. Project Co may take advances of the funds held in the AIF Reserve Account from time to time on or after Financial Close as subordinated debt ("**Bermuda Subordinated Debt**"), subordinated and postponed to the Senior Debt on terms satisfactory to Project Co, Senior Lenders and rating agencies. The AIF Reserve funds may only be used by Project Co to fund Project Co obligations for construction costs as permitted by IATA guidelines for the application of such funds. AIF Reserve funds may not be used for the payment of investor distributions or fees to equity holders or their Affiliates. The Bermuda Subordinated Debt shall accrue interest calculated at Bermuda's cost of funds plus a margin to be determined in the Project Agreement and shall be on terms, including covenants, satisfactory to Project Co, the Senior Lenders and rating agencies that do not in any way negatively impact an investment grade rating of the Senior Debt at Financial Close. Bermuda Subordinated Debt may be freely pre-payable at the discretion of Project Co at any time. The Bermuda Subordinated Debt shall be deeply subordinated and shall not entitle Bermuda to any governance rights in Project Co. All Bermuda Subordinated Debt shall be immediately repayable to Bermuda upon any change of control of Project Co. Any remaining unpaid balance of the Bermuda Subordinated Debt and interest accrued thereon will become due and be payable on a timeline to be set out in the Project Agreement.

9.3 Bermuda will pay to Project Co, on an annual basis and for the term of the Project Agreement, an amount equal to:

- (a) (Y) the energy consumption for the Airport Operations, multiplied by (Z) the prevailing commercial energy cost per unit, less
- (b) the amount chargeable to, and recovered from, Airport tenants for energy costs, whether as part of a gross rent or payable separately.

If Project Co obtains and utilizes alternative energy sources that yield a net energy cost to Project Co that is lower than the prevailing commercial energy cost, the energy consumption for the Airport in paragraph (a) above will be reduced by the energy provided by the alternative energy source and Bermuda will pay to Project Co the cost of the energy produced by the alternative energy source and utilized by Project Co for Airport Operations. The Parties will work together to ensure that: (i) the Project Agreement provides certainty and particularity concerning Bermuda's long term commitment to fund the cost of Project Co's prudent energy consumption pursuant to this Section 9.3; and, (ii) there are appropriate financial incentives in the Project Agreement to ensure that Project Co achieves energy efficiencies over the term of the concession as may be appropriate. Project Co shall utilize energy efficiency practices in design, construction and operations consistent with the practices in effect during the applicable terms of the relevant Core Project Documents for both the construction and operation of an international airport by a skilled and experienced airport constructor and airport operator in reasonably similar circumstances and conditions to the Project in order to minimize Bermuda's liabilities associated therewith.

9.4 The Parties will use their reasonable commercial efforts to establish an agreed minimum annual Regulated Revenue amount, the amount of which will be included in a schedule to the Project Agreement (the "**Guarantee Line Schedule**"), that will be sufficient to achieve an investment grade rating for the Senior Debt at Financial Close while ensuring affordability for Bermuda (the "**Guaranteed Minimum Annual Regulated Revenues**"). The Guaranteed Minimum Annual Regulated Revenues for each year shall be as specified in the Project Agreement. If, in any calendar year ending on or before a date specified in the Project Agreement (the "**Revenue Guarantee Term**"), Regulated Revenues are less than the Guaranteed Minimum Regulated Revenues, Bermuda will make a payment (a "**Guaranteed Revenue Payment**") in an amount equal to the Guaranteed Minimum Regulated Revenues minus the Regulated Revenues for such calendar year. For this purpose:

- (a) during the Phase 1 Construction Works, the Guaranteed Minimum Annual Regulated Revenues in the Guarantee Line Schedule will be set at 90% of the projected Regulated Revenues based on the Base Case Traffic Forecasts in the Base Case Financial Model; and
- (b) in the period post-completion of the Phase 1 Construction Works, in any given year during the Revenue Guarantee Term, the Guaranteed Minimum Annual Regulated Revenues will be set as per the introductory paragraph of this Section 9.4 above.

Upon receipt of Guaranteed Revenue Payments made available by Bermuda to Project Co, Project Co shall provide Bermuda with participating equity certificates on terms satisfactory to the Senior Lenders and rating agencies that do not in any way negatively impact a stable investment grade rating of the Senior Debt and exclude any security, covenants or step-in rights in favour of Bermuda ("**Participating Equity Certificates**"). All Guaranteed Revenue Payments paid to Project Co between Financial Close and the Terminal Opening Date shall be used by Project Co solely to fund operating costs of the Airport. Guaranteed Revenue Payments paid to Project Co may not be used for payment of distributions or fees to equity holders or their Affiliates. All Guaranteed Revenue

Payments paid to Project Co after the Terminal Opening Date will be held by Project Co in a segregated interest bearing account at a financial institution satisfactory to Bermuda and Project Co (the "**Guarantee Revenue Reserve Account**") on terms acceptable to the Senior Lenders. Funds in the Guarantee Revenue Reserve Account shall be held by Project Co in trust for the Senior Lenders and may be used by Project Co only for the purpose of paying debt service and/or funding a debt service reserve account required by Senior Lenders, or to achieve the minimum debt service coverage ratio required by the Senior Lenders and only in the event that Project Co will be unable to adequately fund any of the foregoing from normal operating cash flows. Guaranteed Revenue Payments shall be suspended in any year where the balance of the Guarantee Revenue Reserve Account exceeds the amount of the following year's debt service obligation on the Senior Debt or some other maximum amount satisfactory to Senior Lenders and rating agencies. Any remaining balance in the Guarantee Revenue Reserve Account at the end of the Revenue Guarantee Term shall be applied by Project Co to redeem Participating Equity Certificates outstanding on the last day of the Revenue Guarantee Term.

- 9.5 If, in any calendar year during the Revenue Guarantee Term, the annual Regulated Revenues are greater than the Guaranteed Minimum Annual Regulated Revenue for such year, Bermuda will have no obligation to make a Guaranteed Revenue Payment in respect of such year.
- 9.6 Bermuda shall be entitled to participate in Regulated Revenues ("**Bermuda Participation**") in accordance with the following principles:
- (a) Bermuda Participation may commence only after Project Co Members have recovered their initial and any subsequent equity investments plus any other conditions that are stipulated in the Project Agreement that are designed to proportionately reflect the Parties' respective risks and contributions to the Project have been satisfied;
 - (b) Bermuda Participation shall occur in any particular calendar year only in the event Regulated Revenues exceed the Revenue Sharing Line for such fiscal year. The Revenue Sharing Line for each year shall be specified in the Project Agreement;
 - (c) until such time as Bermuda has recovered all amounts advanced for Participating Equity Certificates, together with interest thereon calculated at Bermuda's cost of funds plus a margin that reasonably reflects Bermuda's risk and contribution, Bermuda shall be entitled to a percentage of the Regulated Revenues (such percentage to be based on the Parties' respective risks and contributions to the Project) above the Revenue Sharing Line, such percentage to be specified in the Project Agreement;
 - (d) once Bermuda has recovered the amounts referenced in paragraph 9.6(c) above, Bermuda will be entitled to a percentage of the Regulated Revenues (such percentage to be based on the Parties' respective risks and contributions to the Project) above the Revenue Sharing Line, such percentage to be specified in the Project Agreement; and

(e) Bermuda Participation will only be paid after all Senior Debt service for the period.

9.7 For the purposes of Section 9.4, Section 9.5, and Section 9.6 above, the calculation of Regulated Revenues shall exclude Project Co revenues derived from the implementation or increase in any Regulated Fees and Charges as may be permitted under the Project Agreement to fund major capital works or expansions (i.e., outside the scope of the Phase 1 Construction Works) or to compensate Project Co as required under the Project Agreement.

10. Core Project Documents

10.1 The Parties will, prior to 270 days after the Effective Date, use their reasonable commercial efforts to agree to definitive drafts of the following agreements:

- (a) the Project Agreement, which will be consistent in form and substance with the Project Agreement Heads of Terms attached as Schedule C hereto and which will be the Project's overriding master agreement that requires all of the other agreements in this Section 10.1 to be entered into;
- (b) the Construction Contract, which will be consistent in form and substance with the Construction Contract Heads of Terms attached as Schedule D hereto;
- (c) the Lease;
- (d) the Master Assignment and Consent Agreement; and,
- (e) the Domestic Contract;

(collectively, the "**Core Project Documents**"). The date upon which Bermuda and Project Co mutually agree in writing that all Core Project Documents are substantially agreed to between the Parties shall be referred to as the "**Core Project Documents Date**". For greater certainty, Bermuda will not provide any such agreement without the prior direction of Bermuda's Cabinet.

10.2 For greater certainty, the Core Project Documents shall be negotiated and settled, prior to Financial Close but the effectiveness thereof shall all be subject to the fundamental precondition of Financial Close. Once agreed, the Core Project Documents shall be subject only to those amendments as are necessary to meet the requirements of the Senior Lenders and rating agencies.

11. Project Financing

11.1 The Parties acknowledge and confirm their mutual objective that Project Co's Senior Debt receive an investment grade credit rating at Financial Close by an internationally recognized rating agency, and that the Financial Plan is fully funded, while also providing the Project Co Members with the Target IRR (collectively, the "**Financing Objective**") and acknowledge that, consistent with the conclusions set out in Section 9.2 of the Airport Project Concept, a combination of equity, cash from Airport Operations (post Financial

Close), Senior Debt and Limited Government Support will be required to achieve the Financing Objective.

- 11.2 With respect to debt financing, in addition to the activities and deliverables set out in Section 6.1, above, Aecon Concessions, in collaboration with Bermuda, will:
- (a) facilitate the completion of due diligence required by the Senior Lenders and rating agencies, including the finalization of Airport Traffic Forecasts and revenue, operating cost and capital cost reports from third party advisors;
 - (b) establish a set of Base Case Financial Model assumptions that reflect the Project Agreement and financial market conditions;
 - (c) present the draft Base Case Financial Model, Project Agreement and Preliminary Debt Financing Package to one or more credit rating agencies in order to facilitate the obtaining of a credit rating; and
 - (d) upon identification of prospective Senior Lenders, propose to and consult with, such Senior Lenders with respect to:
 - (i) the Financial Plan, Base Case Financial Model and the Airport operating budget;
 - (ii) the Core Project Documents; and,
 - (iii) the Financing Documents.
- 11.3 Throughout the financing process, the Parties will cooperate and use commercially reasonable efforts to convey the Project's strengths and growth potential in order to achieve the most favourable financing terms possible for the Project.
- 12. Financial Close**
- 12.1 The target date for the completion of the execution of all Transaction Documents and for the achievement of Financial Close is November 30, 2016, with the expectation that it will be no later than March 31, 2017.
- 12.2 As of the date of Financial Close, the Parties will enter into (or will cause the respective Parties to such agreements to enter into), *inter alia*, the Financing Documents, and the Core Project Documents shall become effective and in force as of the Financial Close (such Core Project Documents and Financing Documents shall be collectively referred to as the "**Transaction Documents**").
- 12.3 Pursuant to CCC's statutory mandate, CCC's sole obligation in relation to the Transaction Documents will be to enter into the Construction Contract with Bermuda, the Master Assignment and Consent Agreement with Bermuda and Project Co and the Domestic Contract with Aecon Constructors.

12.4 On Financial Close:

- (a) Project Co will acquire operational control of the Airport from Bermuda (subject to Bermuda retaining control over the Retained Government Services), and will commence the Airport Operations;
- (b) Bermuda will contribute the AIF Reserve to Project Co as stipulated herein;
- (c) all Airport revenue dedicated to the Project will accrue to and be received by or on behalf of Project Co;
- (d) all accrued and pre-paid maintenance costs and other expenses associated with the Airport Assets will be reconciled, adjusted and attributed on a pro-rated basis between Bermuda and Project Co in accordance with their respective rights and obligations; and
- (e) without any further financial obligations of Bermuda other than as expressly set out herein and in the Project Agreement, Project Co will avail itself of sufficient debt, equity and other sources of funds to fund the Airport Operations and the Construction.

12.5 All liabilities and obligations of Bermuda arising in connection with the Airport, Airport Assets and Existing Airport Lands prior to Financial Close, including all obligations in relation to Airport Personnel (including accrued pension liabilities, severance liabilities, benefits and sick bank, overtime, vacation accruals and any employer's obligations in relation to the "privatization" provisions (or equivalent) contained in any current employee collective bargaining agreement or under applicable Law) as well as pre-existing environmental liabilities shall be for Bermuda's account, and Project Co shall not assume or be liable for any such obligations. All liabilities and obligations arising in connection with the Leased Lands, the Transferred Airport Assets and other than in respect of Retained Government Services and as agreed pursuant to the Project Agreement, shall be for Project Co's account, and each of Project Co and Bermuda agrees to conduct its affairs and operations on an "ordinary course of business" basis, including where it would ordinarily defend, at its sole cost and expense, any third party suit, action or proceeding instituted in connection with the Airport.

13. Indemnities

- 13.1 Bermuda will indemnify and hold harmless CCC, Aecon Concessions and each of their respective shareholders, directors, officers, employees and agents from and against any Direct Losses actually suffered or incurred by CCC, Aecon Concessions or such shareholders, directors, officers, employees and agents arising from (A) any failure by Bermuda to comply with, observe or perform any of the covenants, obligations, agreements, terms or conditions in this Airport Development Agreement or (B) any breach by Bermuda of its representations or warranties set forth in Section 16.3.
- 13.2 CCC will indemnify and hold harmless Bermuda and each of its respective elected officials, employees and agents from and against any Direct Losses actually suffered or incurred by Bermuda or such elected officials, employees and agents arising from (A) any

failure by CCC to comply with, observe or perform any of the covenants, obligations, agreements, terms or conditions in this Airport Development Agreement or (B) any breach by CCC its representations or warranties set forth in Section 16.1.

- 13.3 No Party to this Airport Development Agreement will be liable to another Party, whether in contract or in tort or on any other basis whatsoever, for any Indirect Losses suffered or incurred by that other Party.
- 13.4 If payment of any amount payable under this Airport Development Agreement is not made when due, interest will be payable on such amount with interest accruing at three (3) percent per annum, and will be calculated from the date that such amount is due under this Airport Development Agreement until paid, compounded monthly.

14. Development Costs

- 14.1 All reasonable internal and substantiated third party costs that have been necessarily incurred in accordance with normative industry practices in Canada or internationally for a project of a nature that is comparable to the Project, and that are related to the development of the Project, (but which shall not include any such costs or expenses that are incurred in any association with, or as a result of, the exercise of either Party's rights pursuant to this Section 14) that have been incurred by any member of the CCC Team from (but not prior to) the inception of Phase 1 (the "**Development Costs**"), shall ultimately be borne by the Project and form part of the Project's Base Case Financial Model. For greater certainty, the term "Development Costs" shall not include: internal costs that are not associated with the reasonably allocated overhead costs of the Project and that have not been incurred directly and specifically by Aecon Construction expressly for the purpose of the Project; and, any inter-company mark-up or transfer pricing additional (that are not flow-through costs), costs, charges or expenses that have been incurred between any Aecon Construction Affiliates concerning the Project.

15. Early Termination

- 15.1 Bermuda may, on seven (7) days' prior written notice, terminate this Airport Development Agreement without liability in the event that either: (i) Aecon Concessions or CCC fundamentally or materially breaches this Airport Development Agreement; or, (ii) any of the certifications made by Aecon Concessions in the certificate that must be delivered pursuant to Section 16.2 are untrue; or upon any breach by CCC of the representations set out in Section 16.1.
- 15.2 If Bermuda:
 - (a) terminates this Airport Development Agreement other than pursuant to Section 15.1 or Section 15.4;
 - (b) abandons the Project;

- (c) is unwilling or unable to:
 - (i) provide the Limited Government Support as stipulated in this Airport Development Agreement;
 - (ii) reasonably demonstrate to CCC, Aecon Concessions' and/or the Senior Lenders' that the Limited Government Support will be provided by Bermuda to Project Co as stipulated in this Airport Development Agreement; or
 - (iii) demonstrate to CCC, Aecon Concessions' and/or the Senior Lenders' reasonable satisfaction that Bermuda will have sufficient resources to provide the AIF Reserve, establish the Airport Quango and/or fund the Retained Government Services during the term of the Project Agreement;
- (d) fails to enact the Enabling Legislation;
- (e) elects to tender the Project under any public procurement mechanism, pursuant to a "Swiss Challenge" or otherwise; or
- (f) fundamentally or materially breaches this Airport Development Agreement or otherwise refuses to perform its obligations under this Airport Development Agreement;

CCC may, on seven (7) days' prior written notice, terminate this Airport Development Agreement, and Bermuda shall reimburse the CCC Team in an amount equal to 120% of all substantiated Development Costs to the date of such termination within thirty (30) days of receipt from the CCC Team of written demand therefor.

15.3 If:

- (a) Bermuda is in breach of any representation, warranty and covenant set out in Section 16.3 of this Airport Development Agreement; or
- (b) subsequent to the Core Project Documents Date, Bermuda either takes or fails to take any action enumerated in Section 15.2(a) – (f) that would permit CCC to terminate this Airport Development Agreement under that Section;

CCC may, on seven (7) days' prior written notice, terminate this Airport Development Agreement and Bermuda shall reimburse the CCC Team in an amount equal to the sum of (A) 120% of all substantiated Development Costs to the date of such termination, plus (B) the Breakage Fee, plus (C) an amount equal to the financial advisory fees payable to Aecon Concessions' financial advisor, plus (D) and any fees and expenses then due to Senior Lenders and/or other financing parties to the extent any financing has been arranged, within thirty (30) days of receipt from the CCC Team of written demand therefor.

15.4 Either Party shall be entitled, on or subsequent to the date set out in the column titled "Permitted Termination Notification Date" in the table set out in Schedule G, on seven (7)

days' prior written notice, to terminate this Airport Development Agreement on the occurrence of a corresponding Off Ramp Event as specified in the column titled "Off Ramp Event" in the table in Schedule G. Upon any termination of this Airport Development Agreement resulting from the occurrence of an Off Ramp Event, Bermuda shall reimburse the CCC Team in an amount equal to 100% of all substantiated and reasonably incurred out-of-pocket third party Development Costs within thirty (30) days of receipt from the CCC Team of written demand therefor. To the extent that any Project related work product that has been created or produced by such third parties and is capable of licensing by the CCC Team, it shall be licensed to Bermuda on a royalty free, non-exclusive, personal and non-transferable basis to use for its own purposes (and not for the benefit of any other Person). Such work product shall not be disclosed to any other Person without the applicable third party written consent (not to be unreasonably withheld) and if consent is so received, disclosure by Bermuda to such Person shall be made solely on a non-reliance basis and subject to confidentiality by such Person.

- 15.5 Bermuda's aggregate liability for Development Costs payable on any termination under this Section 15 at any time shall not exceed the aggregate amount indicated and forecast for Development Cost expenditures up to the date of such termination, as set out in the then current Development Costs Budget.
- 15.6 The Parties agree that the amounts payable by Bermuda pursuant to Sections 15.2, 15.3 and 15.4 are not penalties but represent genuine and reasonable pre-estimates of the damages that the members of the CCC Team will suffer as a result of the happening of the specified events that would be difficult or impossible to quantify upon the happening of the specified events. The Parties agree that such amounts that are substantiated by CCC, other than Development Costs which are acknowledged to be limited to compensation only, shall be payable whether or not the CCC Team incurs or mitigates its damages, and that no member of the CCC Team shall have any obligation to mitigate any such damages. The Parties agree to act in good faith in relation the termination remedies set out in Sections 15.2, 15.3 and 15.4.

16. Representations, Warranties and Covenants

- 16.1 CCC represents, warrants and covenants, as of the Effective Date of this Airport Development Agreement (and shall represent, warrant and covenant, *mutatis mutandis*, as may be applicable, in the Construction Contract and throughout the term of the Construction Agreement), that:
 - (a) CCC is a Crown corporation duly organized, validly existing and in good standing under the laws of Canada. The business or activity that CCC is presently engaged in and which it proposes to undertake for the purposes of this Airport Development Agreement is consistent with the purposes for which it was created;
 - (b) CCC has all requisite power, capacity and authority to enter into, incur, execute, deliver and perform its obligations under this Airport Development Agreement. The execution, delivery and performance by CCC of the Airport Development Agreement and the transactions contemplated thereby have been duly and validly

authorized by all necessary action of CCC. The Airport Development Agreement has been duly executed and delivered on behalf of CCC;

- (c) no authorization, approval or consent of, and no filing or registration with, any governmental or regulatory authority or agency of Canada under any Canadian Law is required on the part of CCC for the execution or delivery by CCC of, or for the performance and incurrence by CCC of any of its obligations and liabilities under, this Airport Development Agreement, except for the approval to enter into any Transaction Documents to which CCC is a party will be required by the CCC Board of Directors, the Minister for International Trade and the concurrence of the Minister of Finance, in accordance with the guidelines issued to CCC by the Cabinet of Canada entitled "1999 Risk Management Guidelines for Capital Projects";
- (d) CCC has not within ten (10) years prior to the Effective Date been or be convicted by a Court or tribunal of competent jurisdiction of a criminal offence concerning unethical business practices, including bid rigging, criminal fraud, money laundering, tax evasion, and corruption of foreign officials; and
- (e) CCC shall not, during the term of the Construction Agreement, be convicted by a Court or tribunal of competent jurisdiction of a criminal offence concerning unethical business practices, including bid rigging, criminal fraud, money laundering, tax evasion, and corruption of foreign officials.

16.2 CCC will deliver to Bermuda a certificate executed by Aecon Concessions wherein Aecon Concessions certifies that as of the Effective Date of this Airport Development Agreement:

- (a) Aecon Concessions is a division of Aecon Construction, a corporation duly organized, validly existing and in good standing under the laws of Canada and has the requisite power and capacity to perform its third party obligations under this Airport Development Agreement and all other documents, instruments and agreements required to be executed and delivered by Aecon Concessions pursuant to this Airport Development Agreement;
- (b) the third party obligations of Aecon Concessions contained in this Airport Development Agreement and all documents, instruments and agreements required to be executed and delivered by Aecon Concessions pursuant to this Airport Development Agreement have been duly authorized by all necessary corporate action of Aecon Concessions, with the exception of the execution and delivery of the Transaction Documents and all other documents, instruments and agreements required to be executed and delivered by Aecon Concessions pursuant to the Transaction Documents, and the completion of the transactions contemplated by the Transaction Documents, all of which shall be subject to due and valid authorization by all necessary corporate action of Aecon Concessions;
- (c) no authorization, approval or consent of, and no filing or registration with, any governmental or regulatory authority or agency of Canada under any Canadian Law is required on the part of Aecon Concessions concerning the performance and

incurrence by Aecon Concessions of any of its obligations and liabilities set out in this Airport Development Agreement; and,

- (d) Aecon Construction has not within ten (10) years prior to the Effective Date been convicted by a Court or tribunal of competent jurisdiction of a criminal offence concerning unethical business practices, including bid rigging, criminal fraud, money laundering, tax evasion, and corruption of foreign officials.

16.3 Bermuda represents, warrants and covenants as of the Effective Date of this Airport Development Agreement (and shall represent, warrant and covenant, *mutatis mutandis*, in the Project Agreement and throughout the term of the Core Project Documents), that:

- (a) as provided in, and subject to, the Entrustment Letter, Bermuda has the power and capacity to enter into, incur, execute, deliver and perform its obligations under this Airport Development Agreement and all other documents, instruments and agreements required to be executed and delivered by Bermuda pursuant to this Airport Development Agreement;
- (b) the execution and delivery of this Airport Development Agreement and all documents, instruments and agreements required to be executed and delivered by Bermuda pursuant to this Airport Development Agreement, and the completion of the transactions contemplated by this Airport Development Agreement, have been duly authorized by all necessary action on the part of Bermuda, and this Airport Development Agreement has been duly executed and delivered by Bermuda and constitutes a legal, valid and binding obligation of Bermuda enforceable in accordance with its terms;
- (c) at its sole risk and cost, Bermuda shall satisfy, comply with, undertake and perform all of the requirements that are imposed on Bermuda in the Entrustment Letter; and,
- (d) no other authorization, approval or consent of, and no filing or registration with, the Government of the United Kingdom is required on the part of Bermuda for the execution or delivery by Bermuda of, or for the performance and incurrence by Bermuda of any of its obligations and liabilities under, this Airport Development Agreement or the Core Project Documents or to implement the Project as contemplated herein.

17. **Dispute Resolution**

- 17.1 If a dispute of any kind whatsoever arises between the Parties in connection with, or arising out this Airport Development Agreement, any Party may notify the other Party of the existence of such dispute, and the Parties will use their best efforts to settle amicably such dispute. To that end, a senior executive officer of each Party will meet and endeavour to resolve such dispute between them for a period of thirty (30) days from the date of receipt of notification of the dispute. If the senior executive officers do not meet or are unable to agree to the resolution of the dispute within the thirty (30) day period referenced above, then the dispute may be referred to arbitration pursuant to Section 17.2.

- 17.2 Any dispute arising out of or in connection with this Airport Development Agreement that cannot be settled amicably pursuant to Section 17.1, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the London Court of International Arbitration (LCIA) rules, which rules are deemed to be incorporated by reference into this clause. Such arbitration shall be before a single arbitrator recommended to the LCIA either by the mutual agreement of the Parties, or otherwise appointed pursuant to the LCIA rules applicable at the time of commencement of the arbitration. The seat, or legal place, of arbitration shall be London, United Kingdom or such other place as may be agreed upon by the Parties. The language to be used in the arbitral proceedings shall be English. Unless all Parties to the dispute agree otherwise, no arbitrator appointed pursuant to this provision shall be a citizen or resident of the British Overseas Territory of Bermuda or an employee or agent or former employee or agent of any of the Parties. The decision of the arbitrator with respect to the dispute shall be final and binding on the Parties.

18. Confidentiality; Ownership

- 18.1 Subject to Section 18.1(b), each Party will hold in confidence any Confidential Information received from any other Party, except that this Section 18.1 will not restrict:
- (a) each Party from disclosing or granting access to such information to its professional advisers and consultants, to an arbitrator appointed under Section 17.2, and to governmental authorities, to the extent necessary, to enable it to perform (or to cause to be performed) or to enforce its rights or obligations under this Airport Development Agreement, and provided further that CCC or Bermuda may:
 - (i) provide to Aecon Concessions, Aecon Constructors, the Senior Lenders and other potential lenders, equity providers, rating agencies, underwriters, arrangers, investment dealers, monoline insurers and their respective advisors such Confidential Information as may be reasonably required by them in connection with raising financing for the Project or complying with the terms of the proposed Financing Documents, Core Project Documents or related agreements; and
 - (ii) provide to proposed Subcontractors and their respective advisors, or provide or cause to be provided to other third parties, Confidential Information which is necessary to enable Project Co to perform (or to cause to be performed) its obligations under this Airport Development Agreement or the Project Agreements,

provided that prior to the provision of such Confidential Information, the disclosing party obtains such from any such recipient its agreement to keep such Confidential Information confidential on the terms and conditions contained in this Section 18.1.

- (b) The obligation to maintain the confidentiality of the Confidential Information does not apply to Confidential Information:
 - (i) which the Party that disclosed the Confidential Information confirms in writing is not required to be treated as Confidential Information;
 - (ii) which is or comes into the public domain otherwise than through any disclosure prohibited by this Airport Development Agreement; or
 - (iii) to the extent any Person is required to disclose such Confidential Information by applicable Law, in which case the Party under such duty of disclosure shall provide the other Party with immediate notice of such duty.

18.2 Except with respect to:

- (a) any Confidential Information of Bermuda;
- (b) any studies, forecasts and designs that Bermuda has paid CCC or any member of the CCC Team for; and
- (c) the Airport Project Concept;

any proposal, concept, designs, materials and work product of any kind developed by CCC or the CCC Team pursuant to this Airport Development Agreement (the "**CCC Work Product**") will remain the sole and exclusive property of CCC or such CCC Team member. On receipt of payment from Bermuda pursuant to Section 15.2, all CCC proposals, concepts, designs, materials and work product of any kind developed by CCC or the CCC Team pursuant to this Airport Development Agreement capable of assignment by CCC or the CCC Team shall be licensed to Bermuda on a royalty free, non-exclusive, personal and non-transferable basis to use for its own purposes (and not for the benefit of any other Person). Such work product shall not be disclosed to any other Person without the applicable CCC Team member's written consent (not to be unreasonably withheld) and if consent is so received, disclosure by Bermuda to such Person shall be made solely on a non-reliance basis and subject to confidentiality by such Person.

19. **General**

19.1 Exclusivity

During the Term, CCC and Aecon Concessions will have the exclusive right to develop the Project, subject to the terms set forth in this Airport Development Agreement and as otherwise agreed by the Parties.

19.2 Notices

(a) All notices, communications and statements ("**Notices**") required, permitted or contemplated hereunder or hereby, must be given in writing and will be sufficiently given and received if:

- (i) personally delivered prior to 4:00 p.m. local time during normal business hours of the addressee at the address set forth below (personally delivered Notices will be deemed received by the addressee when actually delivered), or
- (ii) sent by facsimile transmission, on the date of dispatch, provided that the sender's facsimile machine produces a printed confirmation of successful transmission and further provided that if the transmission is not completed prior to 4:00 p.m., local time, at the recipient's address, the Notice will be deemed received at the commencement of normal business hours at the recipient's address on the Business Day next following the completion of such transmission,

(b) The addresses of the Parties for receipt of Notices are as set forth below:

(i) **Canadian Commercial Corporation**

Attention: Christian DeChamplain, Senior Account Executive,
Business Development and Sales
Fax: (613) 995-2121
Telephone: (613) 996-0034
Email: cdechamp@ccc.ca

Address:
50 O'Connor Street, 11th Floor
Ottawa, Ontario K1A 0S6

With a Copy to:

Vice President Legal Services and General Counsel
Tel: (613) 992-4419
Fax: (613) 992-2134
Email: trybkin@ccc.ca

Address:
50 O'Connor Street, 11th Floor
Ottawa, Ontario K1A 0S6

(ii) **Bermuda Government**

Attention: Anthony Manders, Financial Secretary
Telephone: (441) 295-5151 ext. 1501
Email: amanders@gov.bm

Address:
c/o Ministry of Finance
Government Administration Building
2nd Floor, 20 Parliament Building
Hamilton HM 12
Bermuda

With a Copy to:

General Manager, L.F. Wade International Airport, Department of Airport
Operations

Tel: (441) 299-4850
Fax: (441) 293-5677
Email: atadderley@gov.bm

Address:
3 Cahow Way
St. George's GE CX
Bermuda

19.3 **Entire Agreement**

This Airport Development Agreement and the instruments and documents to be executed and delivered pursuant to it constitute the entire agreement between the Parties, expressly superseding all prior agreements and communications (both oral and written) between the Parties hereto with respect to all matters contained herein or therein, and except as stated herein or the instruments and documents to be executed and delivered pursuant hereto, contains all the representations and warranties of the respective Parties.

19.4 **Waivers and Consents in Writing**

- (a) no waiver of any provision of this Airport Development Agreement; and
- (b) no consent required pursuant to the terms of this Airport Development Agreement, is binding or effective unless it is in writing and signed by the Party providing such waiver or consent.

19.5 **Assignment**

- (a) CCC will not assign, transfer, novate or otherwise dispose of any interest in this Airport Development Agreement except to Aecon Concessions or its Affiliate, and unless (i) Aecon Concessions and its Affiliate assume joint and several liability for

all of the obligations of CCC under this Airport Development Agreement; and
(ii) CCC acknowledges to Bermuda it is not released from any of its obligations hereunder.

- (b) Bermuda will not assign, transfer, novate or otherwise dispose of any interest in this Airport Development Agreement except to Airport Quango, and unless, prior to such assignment:
 - (i) Bermuda delivers to CCC the ADA Bermuda Guarantee and ensures that the ADA Bermuda Guarantee remains in force and effect until the Expiry Date; and
 - (ii) Airport Quango assumes all the obligations of Bermuda under this Airport Development Agreement.
- (c) CCC will not be obligated to exhaust its remedies against Airport Quango or any insurer before demanding and being entitled to performance under the ADA Bermuda Guarantee.

19.6 Governing Law

This Airport Development Agreement shall be exclusively governed by and in accordance with the laws of the British Overseas Territory of Bermuda.

19.7 Survival

Notwithstanding any other provision of this Airport Development Agreement, the provisions of Section 13 [Indemnities], Section 15 [Early Termination], Section 16 [Representations, Warranties and Covenants], Section 18 [Confidentiality; Ownership], Section 17 [Dispute Resolution] and Section 19.6 [Governing Law] will survive the expiry or any earlier termination of this Airport Development Agreement.

19.8 Counterparts

This Airport Development Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and this has the same effect as if the signatures on the counterparts were on a single copy of this Airport Development Agreement so that it will not be necessary in making proof of this Airport Development Agreement to produce or account for more than one such counterpart.

IN WITNESS WHEREOF the Parties have executed this Airport Development Agreement as of the Effective Date.

CANADIAN COMMERCIAL CORPORATION

By: 

Martin Zablocki
President and Chief Executive Officer

BERMUDA GOVERNMENT

By: _____
The Hon. Everard Bob Richards, JP, MP
Deputy Premier & Minister of Finance

