

CONTRACT FOR SERVICES
For the
Technical Consultant for Integrated Resource Plan Evaluation

THIS CONTRACT FOR ENERGY POLICY AND LEGISLATIVE CONSULTING SERVICES (this “**Contract**”) is made effective on the [] day of [] (“**Effective Date**”), by and between the Government of Bermuda, acting by and through the Department of Energy within the Ministry of Transport and Regulatory Affairs, with its office located at Government Administration Building, 3rd Floor, 30 Parliament Street, Hamilton HM12 Bermuda (hereinafter called the “**Government**”) and [] called the “**Consultant**”). The Government and the Consultant are collectively referred to herein as the “**Parties**”.

WHEREAS, the Government would like expert technical advice on the evaluation of the Integrated Resource Plan Proposal as published by the Regulatory Authority on 2nd of May, 2018 (the “**Project**”); and

WHEREAS, in order to complete the Project, the Government will need to procure professional consultation and advisory services; and

WHEREAS, the Consultant is a firm or individual that provides professional consulting and advisory services; and

WHEREAS, the Government wishes to procure the services of the Consultant as further detailed in the Scope of Services attached hereto as **Error! Reference source not found.** (the “**Services**”).

NOW THEREFORE, in consideration of the foregoing recitals and the promises and representations contained herein, which the Parties acknowledge to be good and valuable consideration, the Parties hereby agree as follows:

ARTICLE 1 - SCOPE OF SERVICES

- 1.1 The Consultant shall provide all Services as detailed in **Error! Reference source not found.** (Scope of Services [TBD]).
- 1.2 Any documents or plans prepared by the Consultant for the Government may be used by the Government for any purpose with respect to the Project.
- 1.3 The Consultant shall submit progress reports, on a bi-weekly basis, to the Government. The progress reports shall include a summary of the activities and accomplishments of the Consultant during the previous reporting period, as well as the proposed activities for the upcoming reporting period. Any decisions and/or actions required of the Government during the upcoming reporting period(s) should be included in the progress report. The specified format and date for submission of the progress reports for the reporting period shall be determined by the Parties.
- 1.4 The Consultant shall perform all Services in a good and businesslike manner, with reasonable skill, care and diligence, and in accordance with the terms and conditions provided herein.

ARTICLE 2 - ADDITIONAL SERVICES

- 2.1 Additional services or variations in the Services may be required after the date of execution of this Contract, and may be performed upon written approval of the Government. Such written approval shall be evidenced by a Project Change Authorization (“**Change Order**”) or such other written

authorization as approved by the Director of the Department of Energy (“**Director**”). In such case, a Change Order shall be issued within a reasonable time thereafter.

- 2.2 All Change Orders are subject to the terms and conditions of this Contract.
- 2.3 Fees for additional services shall be agreed by the Parties in writing prior to any additional services being performed.
- 2.4 Only services which are not required for performance of the Services to be provided hereunder shall be deemed additional services.

ARTICLE 3 - INSPECTION AND ACCEPTANCE

- 3.1 The Government shall at all times retain the right to review the work. The Government shall also have the right to require correction or additional follow up, if necessary, and accept the Services and any written work product submitted by the Consultant. Review(s) of any written work product shall be carried out within thirty (30) days of receipt, unless extended to a date certain by the Government, so as not to impede the work of the Consultant.
- 3.2 The Consultant shall make any required corrections promptly at no additional charge and return a revised copy of the written work product to the Government within seven (7) days of notification or a later date if extended by the Government. In the event that the Consultant is required to implement changes with respect to its performance of Services, the Government and the Consultant shall negotiate in good faith to determine a reasonable time within which such changes shall be implemented.
- 3.3 Failure by the Consultant to proceed with reasonable promptness to make necessary corrections shall be a default. If the Consultant’s corrected performance or written work product remains unacceptable, the Government may terminate this Contract, reduce the contract price and/or reject the hours submitted in connection with such work to reflect the reduced value of services received.

ARTICLE 4 - TERM

- 4.1 The term of this Contract shall commence upon the Effective Date and shall remain in effect until six months later, unless earlier terminated as set forth in Article 10 of this Contract. The Government reserves the right to extend the term of this Contract for a period up to one (1) year or a fraction thereof, unless earlier terminated in accordance with Article 10.
- 4.2 Article 9, Confidential or Proprietary Information; Article 13, Indemnification and Insurance; and Article 14, Limitation of Liability, shall survive the term of this Contract.

ARTICLE 5 - INVOICES AND PAYMENT

- 5.1 Within thirty (30) days following receipt of a proper invoice, the Government shall compensate the Consultant for Services under this Contract at the prices set forth in **Error! Reference source not found.** Invoices shall be submitted to:

Department of Energy
P.O. Box HM 101
Hamilton, HMAX

Bermuda
Attn: Jeane Nikolai

- 5.2 A proper invoice and supporting documentation must include:
- (1) the Consultant's name, invoice date and invoice number;
 - (2) Change Order number, if applicable;
 - (3) Details of services performed consistent with the Contract requirements, particularly mentioning the milestone for payment;
 - (4) Other supporting documentation (including copies of any invoices or receipts for reimbursable expenditures as provided for herein);
 - (5) Mailing address and the person to whom payment is to be sent or the banking institution and account information for a payment by wire transfer (unless such information has previously been provided to the Government); and
 - (6) Telephone number, fax number and e-mail address.
- 5.3 Invoices must be submitted upon the accomplishment of each milestone, as laid out in Appendix B. Advance payments will not be made unless specifically authorized by the Director of Energy in writing.
- 5.4 The Consultant's failure to timely submit a proper invoice as set forth in this Article may result in a delay in payment by the Government. No interest shall be paid with regard to any late payment to the Consultant resulting from the Consultant's failure to submit a proper invoice or otherwise comply with the terms of this Article. The Consultant agrees that the Government is not responsible, nor will it be liable to the Consultant under law or equity for any and all expenses that the Consultant may incur resulting from any delays in payment caused by the Consultant's failure to comply with the terms of this Article.
- 5.5 The Consultant shall have the right to suspend or terminate delivery of Services for non-payment of undisputed and proper invoices remaining unpaid for more than sixty (60) days following the due date upon ten (10) days' notice delivered to the Government at the address provided herein for notices.

ARTICLE 6 - EXPENSES

The Government shall reimburse expenses incurred by the Consultant in the performance of Services hereunder as part of the lump sum specified in Appendix B.

ARTICLE 7 – INTENTIONALLY LEFT BLANK

ARTICLE 8- CONTRACT ADMINISTRATION

- 8.1 The Government's representative and Project Manager for the Project is Jeane Nikolai. All deliverables and inquiries regarding the Project and the Services hereunder shall be submitted to the Project Manager at the address provided in section 5.1 above.

- 8.2 The Consultant shall appoint a representative for administration of the Services hereunder who shall have full authority to act on behalf of the Consultant. The Government may request, by notice in writing to the Consultant, the replacement of the appointed person. The Consultant shall use best efforts to promptly replace the appointed person with another qualified individual employed by the Consultant, and such replacement shall be subject to approval by the Government.
- 8.3 The Consultant will secure at its own expense all personnel required to perform the Services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the Government. All of the Services required hereunder will be performed by the Consultant or under its supervision, and all personnel engaged in the work shall be fully qualified to perform such Services.
- 8.4 Time is of the essence with respect to performance of the Services.
- 8.4.1 The Consultant shall perform the Services expeditiously to meet the requirements of the Government and shall complete any portion or portions of the Services in such order as the Government may require. The Government shall have the right to take possession of and use any completed or partially completed portions of the work notwithstanding any provisions expressed or implied to the contrary.
- 8.4.2 The Government shall give due consideration to all designs, drawings, plans, specifications, reports, tenders, proposals and other information submitted by the Consultant, and shall make any decisions which are required to be made in connection therewith within a reasonable time so as not to delay the work of the Consultant.

ARTICLE 9 - CONFIDENTIAL OR PROPRIETARY INFORMATION

- 9.1 Confidential or Proprietary Information is any information that is:
- 9.1.1 Disclosed by the Consultant in a written or tangible form, clearly marked as such, bearing any appropriate notice indicating the sensitive nature of such information, or if disclosed orally or visually and confirmed as such in writing by the disclosing party within thirty (30) days of such disclosure, or identified as proprietary or confidential at the time of disclosure or information that is provided under circumstances reasonably indicating that it is confidential or proprietary; and
- 9.1.2 The Government's information, including but not limited to Project plans, financing plans, site plans, records, data or financial statements and/or any other information regarding the Government which is provided or available or known to the Consultant, whether or not so identified at the time the information or data is made available to the Consultant.
- 9.2 All work product prepared by or received from the Consultant in accordance with this Contract, shall be Government property and the Government shall not be subject to Confidential or Proprietary restrictions with respect to the same. The Consultant's work product shall only be protected as Confidential or Proprietary Information if a written opinion prepared by the Attorney General's Chambers for the Government of Bermuda has been provided to the Parties opining the same. The Consultant shall treat its work product as Confidential Information.
- 9.3 The Parties shall only use the Confidential or Proprietary Information disclosed under the terms of this Contract for the purposes of this Contract. Neither party shall disclose to any third party, publish, or otherwise use for its own benefit or the benefit of a third party the Confidential or

Proprietary Information without the prior written consent of the other party. Any disclosure of Confidential or Proprietary Information to a third party, after written approval from the other party, shall be done only under an agreement that fully protects the rights of the Government as described in this Contract.

- 9.3.1 Notwithstanding the foregoing, either party may, upon written notice to the other party, disclose Confidential or Proprietary Information revealed pursuant to this Contract to the extent required by a judicial order or other legal obligation.
- 9.4 The Parties shall receive and hold any Confidential or Proprietary Information in confidence, and shall take all reasonable and necessary care to maintain the confidentiality of such information. The Parties shall limit the disclosure of such information to employees or representatives who need to know the Confidential or Proprietary Information for performance hereunder.
- 9.5 Within thirty (30) days of either expiration or termination of this Contract, the Consultant shall collect all Confidential or Proprietary Information applicable hereto and received and/or created under this Contract, and shall either return the Confidential or Proprietary Information to the Government, or dispose of the Confidential or Proprietary Information in accordance with the written direction of the Government.
- 9.6 Any violation of this Article by the Consultant shall constitute a material breach of this Contract and shall be a basis for termination of this Contract for default.

ARTICLE 10 - TERMINATION AND SUSPENSION

- 10.1 The Government may terminate this Contract and the Services hereunder in whole, or in part, upon thirty (30) days' written notice to the Consultant. Upon receipt of such notice, the Consultant shall: (1) immediately take the necessary actions to discontinue all Services affected as of the effective date of termination (unless the notice directs otherwise), and (2) deliver to the Government all information, reports, papers and other materials which are deliverable hereunder.
- 10.2 In the event that termination by the Government is based upon the lack of available funding, the notice requirement for termination shall be reduced to fifteen (15) days' notice.
- 10.3 The Government may terminate this Contract at any time based upon a default by the Consultant. The Government, in its sole discretion, may provide the Consultant with a notice to cure ("**Cure Notice**") any conditions that would otherwise amount to a basis to terminate this Contract as a result of the Consultant's failure to fulfill its obligations hereunder. The Consultant shall respond to any such Cure Notice within a reasonable time or within such time as provided therein, and the Consultant shall either cure the specified conditions or provide assurances to cure the same which the Government, in its sole discretion, deems adequate.
- 10.4 The Government may temporarily suspend the Project or Services hereunder and shall confirm such instruction in writing to the Consultant. Upon any such suspension, the Government shall make a payment in accordance with section 11.1 below. If, following suspension of the Project or Services, there is no resumption within six (6) months, this Contract may be terminated by the Consultant, and the Government shall make a payment in accordance with section 11.1, if any such amounts are due.

- 10.5 If the duties of the Consultant cannot be discharged for reasons outside the control of the Government or the Consultant, the Contract shall be treated as terminated by mutual agreement, and the Consultant shall be entitled to appropriate payment under section 11.1 below.
- 10.6 In no event shall the Government be liable to the Consultant for damages or otherwise, including the loss of present or prospective commissions, revenues or lost profits, or for expenditures, investments, forgone opportunities, or for the inability to fulfill customer contracts or otherwise based on the Government's exercise of rights to terminate this Contract or to suspend the Project or any portion of the Services.
- 10.7 Any disputes with regard to this Article are expressly made subject to the terms and conditions of Article 12.
- 10.8 The rights and remedies of the Parties provided in this Article are in addition to any other rights and remedies provided by law or under this Contract.

ARTICLE 11 - PAYMENT FOLLOWING TERMINATION OR SUSPENSION

- 11.1 Following termination by the Government under sections 10.1 or 10.2 above or suspension of the Consultant's duties under section 10.4 or as otherwise specifically stated herein, the Government shall pay to the Consultant, upon receipt of a proper invoice and subject to the terms and conditions herein, all undisputed amounts payable for Services rendered prior to the effective date of termination or suspension as calculated in accordance with **Error! Reference source not found..**
- 11.2 The Government may issue a written order to resume the Services hereunder within six (6) months of suspension in which case the pricing shall be as provided in **Error! Reference source not found..**

ARTICLE 12 - DISPUTES

- 12.1 If a dispute arises out of this Contract, the Government and the Consultant shall attempt to agree to a settlement in good faith.
- 12.2 If a dispute is not resolved by the Parties, either the Government or the Consultant may at any time give notice to the other in writing that they wish to refer the dispute to mediation. The mediation shall be conducted by a mediator appointed upon mutual agreement of the Parties, or if no agreement can be reached, then by the President of the Chartered Institute of Arbitrators (Bermuda Branch).
- 12.3 If agreement cannot be reached through the mediator, then the dispute may be determined by agreement between the Parties, or the dispute may be referred at the instance of either party to arbitration. The arbitration shall be conducted by an arbitrator appointed upon mutual agreement of the Parties or by the President of the Chartered Institute of Arbitrators (Bermuda Branch). The provisions of the Arbitration Act 1986, as amended from time to time, shall apply.
- 12.4 Notwithstanding the forgoing, no person shall be appointed to act as a mediator or arbitrator who is in any way interested, financially or otherwise, in the conduct of the Services to be performed in support of the Project or the business affairs of the Consultant.

ARTICLE 13 - INDEMNIFICATION AND INSURANCE

- 13.1 Subject to the limitations of liability as provided herein, the Consultant shall be liable for and shall indemnify the Government against any expense, liability, loss, claim or proceedings in respect of any loss of or injury or damage to any property, real or personal insofar as such loss injury or damage arises out of or in the course of or by reason of the negligent performance of the Services hereunder and to the extent that the same is due to any negligent breach of legal duty, omission or default of the Consultant, its employees or agents or of any person employed or engaged by the Consultant upon or in connection with the performance of the said Services or any part thereof by its employees or agents.
- 13.2 The Consultant shall at all times during the performance of Services hereunder maintain in effect such policies of insurance as required below with reputable insurers or underwriters approved by the Government and shall fully insure and indemnify the Government against all insurable liabilities which may be incurred under the indemnity provided herein.
- 13.3 The Consultant shall provide the following insurance:
- (a) Professional Liability Insurance with a limit of Five Million Dollars (\$5,000,000); and
 - (b) Public Third Party Insurance with a limit of Five Million Dollars (\$5,000,000).
- 13.4 The Consultant shall ensure that the Services performed hereunder are included in the activities covered under the required policies.
- 13.5 The Consultant shall provide copies of insurance certificates to the Government prior to the commencement of the Services hereunder.
- 13.6 The Consultant shall ensure that coverage provided by the required insurances will not be materially changed or materially amended in any way nor cancelled by the Consultant until sixty (60) days after written notice of such change or cancellation has been personally delivered to the Government. Notwithstanding any change, amendment or cancellation of such insurance and in accordance with section 13.2 above, the Consultant shall maintain the minimum amounts of insurance required hereunder at all times during the term of this Contract.

ARTICLE 14 - LIMITATION OF LIABILITY

- 14.1 No Public Officer shall, in any way, be personally bound or liable for acts or obligations of the Consultant under this 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. As used herein, the term "Public Officer" includes any person employed by, or acting as an agent for, the Government of Bermuda. The Government shall not be liable for any injuries or damages suffered by the Consultant during the performance of its obligations under this Contract.
- 14.2 Except as specifically provided herein, neither party shall be liable for any special, indirect, punitive or consequential damages, including but not limited to, loss of data, profits, revenue or goodwill, lost opportunities or failure to realize expected savings, arising out of, resulting from, or in any way connected with the performance or breach of this Contract.
- 14.3 The Consultant's total liability to the Government, whether for negligence or anything else, shall be limited to two times our total fees under this contract.

ARTICLE 15 - NOTICES

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

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

15.2 Notices shall be deemed to have been duly given:

- (a) if by personal delivery, on the date of such delivery;
- (b) if by prepaid mail, seven (7) days after the date of posting; or
- (c) if by facsimile or electronic mail, one (1) day after the date of transmission to the facsimile number or electronic mail address provided in writing by the party receiving the notice.

15.3 Notices shall be delivered as follows:

If delivered to the Government:

Department of Energy
Government Administration Building, 3rd Floor,
30 Parliament Street
Hamilton, HM12
Bermuda
Attn: Jeane Nikolai
Email: jnikolai@gov.bm

If delivered to the Consultant:

[Address]

Attention: []
Tel. No.: []
E-mail: []

ARTICLE 16 - FORCE MAJEURE

16.1 Notwithstanding any other provision in this Contract, no default, delay or failure to perform on the part of either party shall be considered a breach of this Contract if such default, delay or failure to perform is shown to be due entirely to causes beyond the reasonable control of the party charged with such default including, but not limited to causes such as strikes, lock-outs or other labour disputes, riots, civil disturbances, actions of Governmental authorities or suppliers, epidemics,

wars, embargoes, storms, floods, fires, earthquakes, acts of God, of the public enemy, computer downtime or the default of a common carrier (hereinafter called the "Force Majeure Event").

16.2 If the Consultant is prevented from performing the Services due to the Force Majeure Event, it shall notify the Government of the fact in writing promptly after discovery of the Force Majeure Event.

16.3 If the circumstances preventing the performance of the Services are still continuing fourteen (14) days from and including the date when the Consultant sends a notice in accordance with section 16.2, then either party may give written notice to the other terminating the Contract. Such written notice must be received while the Force Majeure Event is still continuing.

16.3.1 Notwithstanding the forgoing, the Consultant shall forthwith notify the Government of the commencement of any strike or lock-out and the Government, based upon any delay caused thereby, may grant such extension of time as it considers reasonable without prejudice to the right of the Government to exercise any other right or power hereunder.

16.4 If this Contract is terminated as a result of a Force Majeure Event, the Consultant shall refund any payment which the Government has already made, if any, for Services which have not yet been rendered.

ARTICLE 17 - GOVERNING LAW; COMPLIANCE WITH LAW

17.1 This Contract shall be governed by and construed in accordance with the laws of Bermuda.

17.2 The Parties hereto shall comply with all applicable laws, statutes or rules including the Financial Instructions issued by the Accountant General of the Government of Bermuda and, upon ratification thereof, the Code of Practice.

ARTICLE 18 - EXAMINATION AND RETENTION OF RECORDS

18.1 The Consultant shall retain all records pertinent to this Contract for a period of three (3) years following expiration or termination hereof. The Consultant shall establish and maintain books, records, and documents (including electronic storage media) in accordance with Canadian Generally Accepted Accounting Principles and practices which sufficiently and properly reflect all revenues and expenditures of funds provided by the Government, including all receipts, invoices, payroll records and/or other documentation used to substantiate requests for payment hereunder. At any time or times before final payment and for three (3) years thereafter, the Government may cause the Consultant's records to be audited by a duly authorized Public Officer (as defined in section 14.1 above). Records required to resolve an audit shall be maintained for a period of not less than three (3) years following resolution of the audit or any arbitration or litigation arising hereunder.

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

18.3 Duly authorized Public Officers shall have full access to and the right to examine any of the records pertinent to this Contract at all reasonable times for as long as such records are required to be retained hereunder.

- 18.4 The Consultant shall include the aforementioned audit and record keeping requirements in all subcontracts and assignments, if any, made in accordance with this Contract.

ARTICLE 19 - INTERPRETATION AND CONSTRUCTION

- 19.1 The title designations of the numbered Articles and provisions to this Contract are for convenience only and shall not affect the interpretation or construction of this Contract.
- 19.2 Every right or remedy conferred by this Contract upon or reserved to the Parties shall be cumulative and shall be in addition to every right or remedy now or hereafter existing at law or in equity, and the pursuit of any right or remedy shall not be construed as an election.
- 19.3 The failure of a party to insist upon the performance of any provision of this Contract or an attachment hereto, or to exercise any right or privilege granted hereunder, shall not be construed as waiving any such provision, and the same shall continue in force.
- 19.4 The rights and obligations of this Contract which by their nature extend beyond its expiration or termination shall remain in full force and effect and shall bind the Parties and their legal representatives, successors, heirs, and assigns.

ARTICLE 20 - INDEPENDENT CONSULTANT STATUS

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

ARTICLE 21 - MISCELLANEOUS

- 21.1 This Contract contains the entire understanding and agreement between the Parties with respect to the matters contained herein and supersedes any prior written or oral agreements between them.
- 21.2 This Contract shall not be modified or amended in any way except by mutual agreement of the Parties evidenced in writing and signed by the Parties.
- 21.3 This Contract may not be assigned by either party without the express written consent of the non-assigning party. All terms and conditions of this Contract shall be binding upon, inure to the benefit of, and be enforceable by the Parties hereto and their respective legal representatives, successors and assigns.
- 21.4 If any provision of this Contract shall be declared invalid, unenforceable or illegal, the remaining provisions shall continue in full force and effect and such invalid, unenforceable or illegal provision shall be deemed as no longer a part of this Contract.
- 21.5 The Appendices referred to above and attached hereto are hereby incorporated into this Contract.
- 21.6 This Contract may be executed in counterparts, each separately and together constituting one and the same document. Execution and delivery of this Contract by facsimile or electronic mail shall be sufficient for all purposes and shall be binding on any party to the Contract.

- 21.7 The Consultant acknowledges and warrants that it is fully satisfied as to the scope and nature of the Services and of the obligations under this Contract.
- 21.8 The Consultant acknowledges and warrants that the individual executing this Contract on its behalf is the Consultant's officer, agent or employee and possesses the requisite authority to execute this Contract on behalf of the Consultant.
- 21.9 The Consultant acknowledges and agrees that the Government shall not be obligated to procure the services of the Consultant for the completion of any project (other than the Project) during or subsequent to the term of this Contract.

Signatures Appear on the Next Page.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract and caused it to be effective as of the date first written above.

Signed on behalf of the **Government of Bermuda**
By a duly authorized representative of the Department of Energy
within the Ministry of Transport and Regulatory Affairs

Date

Print Name & Position

Date

Witness

Date

Print Name & Position

Date

Signed on behalf of **CONSULTANT**

PROJECT LEAD

Print Name & Position

Date