**MASTER SERVICE AGREEMENT FOR DESIGN, INSTALLATION AND**

**MAINTENANCE OF SOLAR SYSTEMS**

THIS MASTER SERVICE AGREEMENT FOR DESIGN, INSTALLATION AND MAINTENANCE OF A SYSTEM (“**Agreement**”) is made the ­­­­\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 20\_\_\_ (the “**Effective Date**”)

BY AND BETWEEN:

1. The Government of Bermuda as described in Schedule 1, hereinafter referred to as the “**Government**”, “**we**”, “**our**” or “**us**”, of the first part; and
2. The supplier of service under this Agreement, whose name and contact details are set out in Schedule 1 to this Agreement and is hereinafter referred to as “**Supplier**” or “**you**”, of the second part.

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

This Agreement which consists of the General Terms and Conditions, Schedule 1 and Appendix 1 to 6, sets out the terms and conditions upon which the Supplier will provide service to the Government.

**GENERAL TERMS AND CONDITIONS**

**IN CONSIDERATION** of the premises and mutual promises in this Agreement the parties, intending to be legally bound, agree as follows:

That in this Agreement, capitalised terms have the respective meanings referred to in this Agreement, words by their context importing the plural shall include the singular and vice versa, references to either gender includes any other gender or a neutral entity where appropriate, and a reference to any statute, regulation or law means as amended from time to time and include any successor legislation, regulations or laws. Where the context requires, the word “**Supplier**” shall include the word “**you**” and vice versa.

1. **Definitions**

In this Agreement, unless the context otherwise requires, the expressions set forth below have the following meanings in any schedules or annexes hereto:

“**Acceptance**” means written confirmation by us that the System is accepted in accordance with the acceptance criteria for Acceptance, set out in Appendix 3;

“**Acceptance Tests**” means the activities to be carried out to verify that the System and Service are in accordance with the acceptance test criteria set out in Appendix 3;

“**Agreement**” means this Master Service Agreement for the Design, Installation and Maintenance of a System and includes these General Terms and Conditions, Schedule 1 and Appendix 1 to Appendix 5;

“**Appendix 1**” contains details of the design and installation specifications for the System which will comply with the Documents and the associated Fee;

“**Appendix 2**” contains details for the supply of the Goods and Service for the System and the associated Fee;

“Appendix 3” contains details of the acceptance test criteria required for the System;

“**Appendix 4**” contains details of the training program, for users of the System;

“**Appendix 5**” contains details of the maintenance and support service and the associated Fee, for the System;

“**Best Industry Practice**” means the exercise of that degree of skill, care, accuracy, quality, prudence, efficiency, foresight and adherence to timeliness as would be expected from a professional individual or leading company within the relevant industry or business sector that provides similar System and Service;

“**Business Days**” means Monday to Friday between 9am – 5pm in Bermuda;

“**Claims**” means any written or oral claims, actions or demands for money (including taxes or penalties) or service or for any allegation of a breach in rendering or failure to render any Service performed or which ought to have been performed. Claims also includes patents, trade secrets, copyright, or other intellectual property right claims, claims connected to Equipment including infringement of Software, costs, penalties, fees and expenses (including legal and professional fees, charges or expenses); “**Commencement Date**” means the date of the commencement of the use of the System following Acceptance as set out in Schedule 1;

“**Completion Date**” means the date of the completion of the development of the System prior to Acceptance as set out in Schedule 1;

“**Confidential Information**” means the terms of this Agreement as well as any information or Data disclosed to the Supplier which (i) if in tangible form, is marked clearly as proprietary or confidential, (ii) if oral, is identified as proprietary, confidential, or private on disclosure or (iii) any other information which is not in the public domain, which upon receipt by the Government should reasonably be understood to be confidential, provided, however, that such information or Data is provided under or in contemplation of this Agreement;

“**Contact**” means the Public Officer or other person appointed as our contact;

“**Consents**” means any qualifications, rights, permits, immigration approvals, licenses, authorizations or other consents required to provide the Service;

“**Data**” means logbooks, records or data files used or created pursuant to the System and the Service (including electronic storage media, Software, Source Code, any data base and data base rights, personal or personally identifiable information relating to an identified or identifiable individual voice and data transmissions including the originating and destination numbers and internet protocol addresses, date, time, duration), and other relevant data connected with the Service;

“**Deliverables**” shall include the Documents, Equipment, Software and Service provided in order for the Supplier to achieve the Objective;

“**Documents**” means written advice, project specifications, designs, manuals, drawings, plans, specifications, reports, tenders, proposals manuals, installation and maintenance instructions, training material and the standards or format in which these documents are to be supplied, related to the System, Software and Service;

“**Equipment**” means the Supplier provided equipment including any hardware, Software or cables required to provide the System and Service;

“**Expense**” means all expenses (including legal expenses), charges and costs (including all costs, fees, charges, fines and penalties related to travel and accommodation) and penalties;

“**Fee**” means the gross fee to be paid to the Supplier for the System and Service provided under this Agreement;

“**Goods**” means the goods provided for the System as set out in Appendix 2;

“**Go Live Date**” means the first time that the System can be used after Acceptance;

“**Go Live Support**” means support provided by Supplier to the Government after the Go Live Date;

“**in writing**” shall mean any fax, letter or purchase order on the Government’s letterhead, bearing the signature of an authorised person or an e-mail emanating from the personal e-mail address of an authorised person;

“**Intellectual Property**” or “**IP**” shall mean all intellectual and other intangible property rights in information, including but not limited to, Confidential Information, Software, System and Documents regardless of whether copyrightable or patentable, and including all tangible embodiments thereof;

“**Insurance Policies**” means the amounts of not less than the minimum level of insurance required by law or a regulatory body or that is required for the System or Service as set out in Schedule 1, covering the Supplier and the Supplier’s officers, directors, employees, agents, or subSuppliers and shall be on an “occurrence basis” unless otherwise stated in Schedule 1. “*The Government of Bermuda*” shall be endorsed as an additional insured on the required policy or policies and the insurances afforded to the Government of Bermuda shall be primary insurance;

“**License**” means the right granted by the Supplier to the Government to use the Software or Documents;

“**Licensed Software**” means the Software and Documents which is to be licensed to the Government together with any third-party or other proprietary software;

“**Loss**” means all losses, Claims, damages, costs, fees, charges, Expenses, disbursements, costs of investigation, litigation, settlement, judgment and interest, lost revenue, loss of opportunity to make money, loss of contracts or for the inability to fulfill customer contracts, lost or damaged data or other commercial or economic loss, whether based in contract, tort (including negligence) or any other theory of liability or other loss not limited to those contemplated at the time of entering into this Agreement and whether such loss or liabilities are direct, indirect, incidental, special, consequential whether foreseen, foreseeable, unforeseen or unforeseeable;

“**Objective**” means the targets, results and goals required by for the System;

“**Order**” means an order in writing, to be provided by us, for Goods or a specific Service;

“**PIPA**” means the *Personal Information Protection Act 2016*;

“**Project**” means the collaborative enterprise which is designed to achieve the Objective, in accordance with and subject to, this Agreement;

“**Public Officer**” means any person employed by, or acting as an agent for, the Government; “**Representative**” means qualified architects, engineers and other professionals or persons employed or engaged by the Supplier;

“**Service**” means the design, installation and maintenance of the System, completed in accordance with the Documents, subject to this Agreement;

“**System**” means the solar panel system required by the Government, incorporating Software and the Documents;

“**Schedule** 1” means the schedule which forms a part of this Agreement and contains details regarding the parties, insurance coverage and the Term;

“**Security Procedures**” means rules and regulations governing health and safety procedures while on Government premises; and information technology security protocols where the Supplier or the Representative accesses any Government information technology system;

“**Software**” means all Supplier provided software and third-party software, (including developed software, Licensed Software or configured software or any parts thereof) including any Documents, provided or licensed to the Government pursuant to this Agreement, including Source Code or computer programs in machine readable object code form and any subsequent updates, upgrades, releases, or enhancements, required for the System;

“**Source Code**” means the source code of the Software to which it relates, in the language in which the Software was written, together with all Documents, all of a level sufficient to enable the Government's personnel to understand, develop and maintain that Software;

“**Term**” means the term of this Agreement commencing from the Effective Date and ending once the Government has fully accepted the System;

“**Version**” means a new or current version of the Software for the System and which is released to us by the Supplier incorporating features, functionality or other attributes; and

“**Virus**” means any code or program which is designed to harm, disrupt or otherwise impede the operation of the System, or any other associated hardware, software, firmware, malware, computer system or network, or would disable Software or impair in any way operation of the Software, System or Service or hidden procedures, routines or mechanisms which would cause such programs to damage or corrupt Data, Equipment or communications, or otherwise interfere with our operations.

1. **Provision of Service**
   1. You agree to provide the System and perform a Service in accordance with and subject to these General Terms and Conditions and the following in order to achieve the Objective:
2. Schedule 1;
3. Appendix 1, 2 and 3;
4. Appendix 4 in the event that training is required;
5. Appendix 5 in the event that maintenance and support is required; and

we agree to pay the Fee for the Project, System and Service.

* 1. In the event of inconsistency between Schedule 1, Appendix 1 to 5 and these General Terms and Conditions, the order of precedence to resolve any such inconsistency shall be as follows: (i) Schedule 1; (ii) Appendix 1; (iii) Appendix 2; (iv) Appendix 3; (v) Appendix 5; (vi) Appendix 4; and (vii) these General Terms and Conditions.
  2. In the event that it is required and with our prior due diligence and written approval, you may appoint a Representative who shall have full authority to act and provide the Project or a Service on your behalf. Details of the Representative shall be set out in Schedule 1.
  3. You are responsible for all acts or omissions of a Representative relating to the Project, System or a Service and for ensuring their compliance with the requirements of this Agreement.
  4. You may not subcontract or outsource your obligations under this Agreement beyond using the Representative, without our prior written consent and you shall ensure that the Representative co-operates with our employees to effectively carry out your obligations under this Agreement.
  5. We may request, by notice in writing to you, the replacement of the Representative, and agreement with such request shall not be unreasonably withheld. You shall use your best endeavors to replace the Representative with another qualified individual employed by you, and such replacement shall be subject to approval by the Government.
  6. Documents: You shall provide Documents as requested or by the date as agreed between the parties and we shall have the right to take possession of and use any completed or partially completed portions of Documents notwithstanding any provisions expressed or implied to the contrary.
  7. You acknowledge that we will be:

1. relying on the Documents on the basis that they are accurate and complete in all material respects and are not misleading;
2. relying on your and the Representative’s skills, expertise and experience concerning the provision of the Service; and
3. using your reports and any other advice and assistance provided under this Agreement.
   1. Security Procedures: The Project, System or a Service shall be provided in such place and location as instructed by us.
   2. If a Service is required to be provided on our premises or you use our IT systems, you and the Representative will conduct yourselves in a professional and safe manner and you and the Representative shall at all times comply with and be subject to Security Procedures.
   3. Failure to adhere to the Security Procedures and the requirements of this section may be considered a material breach of this Agreement and may result in termination for default.
   4. We shall inform you of the Contact, i.e. whom you or the Representative shall be reporting to and who will accept the Project, System or a Service.
   5. The Project, System or a Service is provided on a non-exclusive basis to us.
4. **Government Responsibilities**

We shall disclose all necessary information and provide reasonable and agreed computer facilities and access necessary for the Supplier to provide the Project, System or a Service.

1. **Additional Service**
   1. Additional service or variations in the Service may be required after the date of execution of this Agreement and may be performed upon our prior written approval. Such written approval shall be evidenced by a change authorisation order (“**Change Order**”) or such other written authorisation as approved and signed by the Contact or a duly authorised Public Officer. In such case, a Change Order shall be issued within a reasonable time thereafter.
   2. All Change Orders are subject to the terms and conditions of this Agreement.
   3. The Fee for additional service shall be agreed by us in writing prior to any additional service being performed.
2. **Fees, Invoicing and Payment** 
   1. We shall compensate you the Fee for the Project, System and a Service in arrears during the Term. The Fee shall be set out in an appendix and paid in BMD$. The Fee has been calculated to take account of payroll tax and social insurance contributions that, as a non-employee, you are required to pay in full.
   2. The Fee will be subject to deductions by law in the event that you have not registered as a service provider with the relevant Government department.
   3. The Fee will be subject to further deductions for the following reasons:
3. where there has been an overpayment to you for any reason;
4. if you have not delivered the Project, System or a Service or any part of a Service, as required;
5. where we has suffered loss by your failure to follow instructions or exercise due diligence;
6. if you cause damage to our property, the value of replacement or repair of the damaged property;
7. if you leave or terminate this Agreement without giving the required notice, the value of the Fee for the notice period; and
8. any overpayments or advances of payment taken in excess of the Fee.
   1. You will only be paid the Fee for the hours that you provide a Service. For the avoidance of doubt, you will not be paid during any time that you do not provide Service and you will not be paid for public holidays.
   2. Invoicing: You shall provide a monthly invoice for the Project, System or a Service, as set forth herein, with supporting documentation and itemising the following:
9. Supplier name, invoice date and invoice number;
10. Change Order number, if applicable;
11. Details of the Service performed;
12. Time and Service rendered in hourly (or less than daily) increments with sufficient detail to determine appropriate expenditure of hourly efforts;
13. Other supporting documentation (including copies of any invoices or receipts for reimbursable expenditures as provided for herein);
14. Mailing address and the person to whom payment is to be sent or the banking institution and full account information for payment by wire transfer (unless such information has previously been provided to us); and
15. Your telephone number, fax number and e-mail address.
    1. We shall pay the Fee and/or undisputed invoices thirty (30) days in arrears. We may dispute an invoice within 30 days of receipt, however, the we reserve the right to dispute payments, made on an invoice at any time if it suspects fraud or willful misconduct on your part (“**Faults**”). In the event that any Faults are discovered in relation to payments made to you, we reserve the right to recover such payments from you, at your cost (which shall include all legal and collection fees and expenses) or to set off any disputed amounts against unpaid invoices.
    2. Your failure to submit a proper invoice in a timely manner may result in a delay in payment to you. You agree that we are not responsible, nor will we be liable to you or under law or equity for any interest or expenses that you may incur resulting from any delays in payment caused by your failure to comply with your obligations under this Agreement.
16. **Expenses** 
    1. You, or the Representative, are not allowed to incur Expenses associated with the provision of the Project, System or a Service without having received prior written consent from us. You shall be liable for all Expenses not prior approved in writing.
    2. If prior approved, all air travel shall be at economy class, unless otherwise agreed in writing.
    3. While performing the Project, System or a Service in or from Bermuda, the Representative may require accommodation in connection with the provision of a Service. In the event that accommodation is required, we may assist you or the Representative in acquiring accommodation but we shall not be liable to pay for such accommodation. You shall be liable for all Expenses and utility fees (including water, telephone and other charges) incurred by residing or otherwise staying at a property of your own choosing. You agree to abide by the rules and regulations of the property owner and you shall indemnify us against any losses the property owner may suffer as a result of you, or the Representative, residing or staying at that property.
    4. Except for the Fee and any approved Expenses, no other amounts are payable by us to you. We may set off any amounts owed by you to us against any Fees or Expenses.
    5. We shall pay by direct transfer into your bank account. It is your responsibility to inform us of your current contact and bank details in order that we can contact and make payment to you.
    6. Without prejudice to Section 5.1, we reserve the right to refuse to pay an invoice in the event that the invoice is presented six (6) months after the time when it should have been presented for payment.
17. **Taxes** 
    1. You shall be responsible to register with the appropriate department of the Government in order to pay for all taxes associated with the provision of the Project, System or a Service, including but not limited to payroll tax and social insurance contributions (“**Taxes**”) and you consent to us deducting due or outstanding Taxes from the Fee on your behalf, at our option. Your Tax numbers shall be set out in Schedule 1.
    2. In the event that we have not made deductions on your behalf, you shall provide us with proof of payment of amounts due to us such as any Taxes and all other receivables to us, prior to you receiving your final payment. In the event that you do not provide written proof of payments due, we shall have the right to deduct any outstanding amounts owed, including any Taxes, from final payment of the Fee.
18. **Representations and Warranty**
    1. You represent and warrant that you and the Representative, will perform all activities relating to providing the Project, System or a Service:
19. in accordance with Best Industry Practice and in a professional and lawful manner;
20. using appropriately skilled and experienced Representative’s whose identity, address and right to live and work in Bermuda and (to the maximum extent permissible) whose absence of relevant criminal records have been verified;
21. free from Viruses;
22. in strict accordance with the standards, specifications and timelines as set out in Schedule 1 and the appendices in order to achieve the Objectives; and
23. in accordance with applicable law including PIPA, rules, regulations and guidelines or policies provided by us.
    1. You represent and warrant that:
24. you have the right to license, assign and transfer all Intellectual Property rights in the System, Service, Software and Documents, to us; and
25. the System and Service will be compatible with existing equipment and software on our systems and upon installation, the Software, System, Equipment and Service will meet all the Objectives and that when used, will perform substantially as described in the Documents and this Agreement.
    1. You represent and warrant that this Agreement is executed by you or your duly authorised Representative and that you have obtained all required authorisations and capacity in order that you can fulfill your obligations.
    2. You declare that you are in possession of all Consent’s necessary for the provision of the Project, System or a Service and you will maintain such Consent’s at all times while providing a Service.
    3. You represent and warrant that you are not subject to any contractual obligation, compliance with, which is likely to have a material adverse effect on your ability to perform your obligations under this Agreement.
    4. You shall procure the benefit of any warranties or guarantees in respect of goods and materials you supply to us and provide copies of such warranties or guarantees.
    5. You declare that all payments to us, including but not limited to, taxes and social insurance, are current.
    6. You shall provide information or sign any other agreements necessary or as requested by us, in order that either you or us can fulfill their obligations under this Agreement.
    7. You represent and warrant that the Software or Service to be provided pursuant to this Agreement does not and will not infringe or misappropriate any patent, copyright, or any trade secret or other intellectual or proprietary right of a third party or a breach of any law or obligation applicable to it.
    8. You acknowledge and warrant that you are fully satisfied as to the scope and nature of the Project, System or a Service and of your obligations under this Agreement and that you have the corporate power and authority to enter into, and perform your obligations under this Agreement.
26. **Remedies**
    1. If the System or a Service does not conform to the representations and warranties as set out in this Agreement, you shall, at your Expense, use best efforts to correct any such non-conformance or non-availability promptly, or provide us with an alternative means of accomplishing the desired Objective.
    2. Without prejudice to any other rights available to us, you shall, at your Expense:
27. repair or replace Equipment or otherwise fix the System where damage has occurred as a result of your, or the Representative’s negligence, error, omission or willful misconduct.
28. if the Documents are inaccurate or misleading or the Service is not performed in accordance with this Agreement, then we, in our sole discretion, may:
29. require correct Documents;
30. require, in whole or in part, the Service to be re-performed during the Term or within six (6) months of the Completion Date;
31. carry out an assessment of the value of the defective Documents, System or Service and deduct that value from amounts that we are required to pay you; or
32. obtain similar Service or Documents from another service provider and you will be required to pay all amounts payable by us in obtaining such alternative documentation or service from another service provider to make good the defective Document, System or Service.
    1. Without prejudice to any other rights available to it, we may, at your Expense:
33. repair, replace or otherwise fix the Service where the Equipment is damaged as a result of your, or any person providing Service on your behalf, negligence, error, omission or willful misconduct; or
34. obtain Service from another service provider and terminate this Agreement.
35. **Progress Report** 
    1. If required, you shall submit progress reports in connection with the Service (“**Reports**”) on at least a monthly basis, or as otherwise required, to us. The Reports shall include a summary of the activities and accomplishments during the previous reporting period.
    2. The Report will also include YTD totals for payments received and work completed (expressed in BMD$).
    3. Any decisions and/or actions required of the Government during the upcoming reporting period(s) should be included in the Report. The specified date for submission of the Reports for the reporting period shall be determined by us.
36. **Inspection and Approval of Service** 
    1. We shall at all times retain the right to inspect the progress of any part of the Project, System or a Service provided and you consent to visits to your premises in order to inspect the Documents, System or a Service and we shall have the right to review, require correction or additional follow up, if necessary, and accept or reject any part of the System, Service and any Documents submitted by you or the Representative.
    2. You shall make any required corrections to the System and a Service promptly at no additional charge and return a revised copy of the written work product to us within seven (7) days of notification or a later date if extended by us. In the event that you are required to implement changes with respect to your performance of the Project, System or a Service, such change shall be implemented within a reasonable time, as determined by us in consultation with you.
    3. Your failure to proceed with reasonable promptness to make necessary corrections shall be a default. If your corrected performance or written work product remains unacceptable, we may terminate this Agreement, reduce the Fee and/or reject the hours submitted in connection with such work to reflect the reduced value of Service received.
37. **Time of the Essence**
    1. You are responsible for managing time in order to complete your obligations under this Agreement and shall complete any portion or portions of the Project, System or a Service in such order as we may require rather than providing Service during a specified amount of time and you recognise that providing Service outside of Business Days may be necessary in order to fulfil your obligations and responsibilities without additional compensation of any kind.
    2. We shall give due consideration to all Documents submitted by you or the Representative, and shall make any decisions which are required to be made in connection therewith within a reasonable time so as not to delay the progress of the Project.
38. **License**
    1. You grant to us a non-exclusive, unlimited, royalty-free, worldwide license to use Software and Documents to enable us to use Equipment, the System and the Service.
    2. You shall ensure the continued compatibility of the Equipment with all major releases, updates, or upgrades of any Software.
    3. In the event you are not able to support Software updates, upgrades, Versions or new releases that changes major functionality and is not compatible with the Equipment, the System or a Service, you shall use your best efforts to resolve such issues and to provide optimal functionality of the Equipment, the System or the Service.
    4. You shall maintain and keep current human and computer readable copies of the Source Code and you shall provide copies of all Source Code to us.
    5. In the event that we no longer wishes to pay an annual enhancement fee or an annual support and maintenance fee after the first year from the Go Live Date, then the Version of Software that we have will crystalize at that time with that application code and cap any further updates going forward. This will allow us the ability to use the System in perpetuity. If, however, in the future we wish to obtain support or upgrades then the current year’s enhancement fee(s) and support and maintenance fee(s) will be payable in order to bring the version of the Software current.
39. **Indemnity, Limitation of Liability, Insurance, Force Majeure and Business Continuity** 
    1. Indemnity: You shall fully indemnify, hold harmless and defend us and our respective Public Officers, Ministers, agents and sub-contractors, (collectively, for the purpose of this section “**Indemnified Party**”) from and against any Loss arising from or incurred by reason of any of your use of Intellectual Property rights or by the use or possession of any part of the Deliverables provided by you or licensed by you under this Agreement subject to us:
40. notifying you in accordance with the notice provisions in this Agreement of any alleged infringement; and
41. allowing you, at your Expense to conduct negotiations for settlement or litigation including defending the Claim, provided that if you shall fail to take over the conduct of negotiations or litigation then we may do so at your Expense, in which case you shall indemnify us against all Expense.
    1. You shall indemnify us against all Loss whatsoever, during the period that we are deprived of the use of the System, Service or Deliverables or portion thereof.
    2. You shall defend, indemnify, hold and keep us harmless from all Loss hereunder; provided that we provide you with: (a) prompt notice of such Loss; (b) sole control over the defense and/or settlement of any Claims (provided that any settlement requiring any act or omission by us shall be subject to our consent, not to be unreasonably withheld or delayed); and (c) all assistance reasonably required (at your expense) for the defense of such Loss.
    3. No Liability: In no event shall we or a Public Officer be liable to you for Loss.
    4. Limitation of Liability: Without limiting the provisions of this Section, each party’s maximum aggregate liability, for all Claims or Loss in connection with this Agreement or the performance thereof arising during its entire term shall be limited to the Fees paid to you under this Agreement for the six (6) months immediately preceding the date the on which the latest Claim(s) or Loss first arose.
    5. Nothing in this Agreement shall exclude or limit any liability for wrongful use of Confidential Information, misrepresentation, fraud, willful misconduct or any liability which cannot be lawfully limited or excluded and you shall accordingly maintain in full force and effect during the Term, the Insurance Policies.
    6. All Claims against us must be commenced in court within one (1) year after the cause of action has accrued or the act, omission or event occurred from which the Claim arises, whichever is earlier, without judicial extension of time, or said Claim is barred, time being of the essence.
    7. Insurance: If required by us, you shall maintain Insurance Policies. The Insurance Policies shall be evidenced by delivery to us of certificate(s) of insurance executed by the insurer(s) listing coverages and limits, expiration dates and terms of the policy or policies and all endorsements, and upon request a certified copy of each policy including all endorsements. Failure to provide acceptable proof of insurance as required by us shall entitle us to either obtain or maintain the Insurance Policies on your behalf at your sole cost and expense, or to terminate this Agreement without prejudice to any other of our rights or remedies in connection with this Agreement.
    8. You shall be responsible for the payment of all deductible amounts on the Insurance Policies and shall on request supply to the Government copies of such Insurance Policies and evidence that the relevant premiums have been paid.
    9. In the event that you have not paid Insurance Policies premiums, upon signing this Agreement, you consent to us either deducting the Insurance Policy premium from the Fee, or otherwise making such Insurance Policy premium payment, on your behalf and recouping such payment from you, at our sole discretion.
    10. At our sole option, all monies payable under the Insurance Policy shall be applied in making good or recouping expenditure, loss or damage suffered or incurred by the Government as a result of you or a Representative providing the Service.
    11. You shall notify us immediately of any changes to any of the Insurance Policies, or of any claims or potential claims which have arisen to which the insurer(s) of the Insurance Policies may be required to respond.
    12. The policy clause "*Other Insurance*" or “*Excess Insurance*” shall not apply to any insurance coverage currently held by The Government of Bermuda, or to the Government of Bermuda’s Self‑Insured Retentions of whatever nature.
    13. If you subcontract any Service, you shall ensure that each subSupplier maintains insurance coverage with policy limits of at least the amounts stated in this Agreement.
    14. The insurance requirements set forth above do not in any way limit the amount or scope of your liability under this Agreement. The amounts listed indicate only the minimum amounts of insurance coverage that we are willing to accept to help ensure full performance of all terms and conditions of this Agreement.
    15. Waiver of Rights of Recovery: You hereby waive all rights of recovery against us which you may have or acquire because of deductible clauses in or inadequacy of limits of the Insurance Policies or any policies of insurance that are secured and maintained by you.
    16. Force Majeure: Neither of the parties shall be liable for failure or delay to perform obligations under this Agreement to the extent that this delay is caused by flood, fire and other event beyond its reasonable control (not caused by its own act or negligent omission) (“**force majeure**”) but each party shall use its best efforts to perform its obligations notwithstanding the force majeure event.
    17. Business Continuity: Where applicable, you shall maintain, test and where appropriate implement business continuity procedures to reduce the risk of force majeure impacting the provision of the Service and upon request, provide such evidence to us.
42. **Non-Solicitation**

During the Term and for a period of twelve (12) months after expiration or termination of this Agreement, you shall not solicit (whether directly or indirectly) any employee or consultant of the Government who was involved in the delivery of the System, unless otherwise agreed to, in writing, by us.

1. **Non-Disclosure of Confidential Information** 
   1. You must ensure that all Confidential Information held by you is protected against unauthorised access, use, copying or disclosure. You acknowledge that the improper use, copying or disclosure of such information could be unlawful.
   2. You will comply with our instructions if you have access to Data as a result of providing the Service.
   3. You may disclose information related to this Agreement to your personnel on a ‘*need to know*’ basis as required for the performance of the Service. You will keep strictly confidential any other Confidential Information and you shall only use such Confidential Information as required for providing the Service (and no other purpose).
   4. A breach or anticipated breach of the confidentiality provisions of this Agreement, will cause us irreparable harm and you agree that monetary damages alone may not be an adequate remedy and, accordingly, we will, without prejudice to any other rights or remedies that it may have, be entitled, without proof of special damages and without the necessity of giving an undertaking in damages, to seek an injunction or specific performance together with all other remedies as may be available in law or equity.
   5. If either you or the Representative fail to abide by the confidentiality provisions at any time, then such failure shall constitute a material breach of this Agreement and you shall pay us the equivalent of the Fee paid to you for a three (3) month period as liquidated damages, in addition to any attorney’s fees and costs of enforcement. You and the Representative shall be jointly and severally liable to us under this section.
2. **Ownership, Intellectual Property and Copyright** 
   1. We shall own Deliverables provided in accordance with this Agreement.
   2. Intellectual Property: You represent and warrant to us that you or the Representative have created the Documents for and on our behalf or have obtained a written and valid Consent and assignment of all existing and future Intellectual Property rights in the Documents.
   3. Documents created under this Agreement shall be original works created by you or the Representative and shall:
3. not include Intellectual Property rights owned by or licensed to a third party except for Intellectual Property which you have the right to use; and
4. not subject us to any claim for infringement of any Intellectual Property rights of a third party.
   1. You shall do all things necessary to assign to us all Deliverables and their existing and future Intellectual Property rights to the fullest extent permitted by law. Insofar as such rights do not so vest automatically by operation of law or under this Agreement, you shall hold legal title in such rights on trust for us.
   2. You and the Representative agree that all Documents and other works created in full or in part by you or the Representative may be maintained, changed, modified and/or adapted by us without the consent of either you or the Representative. Notwithstanding the foregoing, you and us may agree in writing that certain identified and designated intellectual property rights will remain with you.
   3. Copyright: Copyright and other Intellectual Property rights in the Deliverables shall belong us, which may utilise Documents freely (including by adapting, publishing and licensing).
   4. Deliverables shall not be used or copied for direct or indirect use by you or a Representative after expiry or termination of this Agreement without our express prior written consent.
   5. We acknowledge that you and Representative possess knowledge and expertise relating to the subject matter of the Service (“**Supplier Know-How**”), which may include Intellectual Property rights in certain pre-existing tools and materials used by you in performing the Service. Nothing in this Agreement is intended to transfer to us any rights in the Supplier Know-How, which shall remain your property.
   6. To the extent that any Supplier Know-How is included in any Deliverables, you hereby grant to the Government a perpetual, unlimited, royalty-free, worldwide, non-exclusive right and license to use and reproduce the Supplier Know-How to the extent reasonably necessary to achieve the Objective.
   7. Government logo: You may not use our name or logo for any publicity or marketing purposes, unless consent for such use is provided in writing.
5. **Term, Termination and Suspension**
   1. The provision of a Service shall commence on the Commencement Date and continue for the Term. Upon acceptance of the System by the Government, the Term and this Agreement shall expire unless terminated earlier in accordance with its terms.
   2. You shall not commence any additional service in the event of notification of termination of this Agreement, however, in the event that any additional service is provided to us beyond the Term, or another date as provided by us, then the terms and conditions of this Agreement shall continue on a day-to-day basis terminable without cause upon twenty (24) hours prior written notice by either party to the other.
   3. We may terminate the Project, or a Service or this Agreement, in part or in whole, during the Term upon prior written notice without cause in accordance with the termination notice period as set out in Schedule 1.
   4. We may terminate this Agreement at any time based upon the default of your obligations under this Agreement. We, in our sole discretion, may provide you with a notice to cure (“**Cure Notice**”) the breach that would otherwise amount to a basis to terminate this Agreement as a result of your failure to fulfill your obligations hereunder. You shall respond to any such Cure Notice within a reasonable time or within such time as provided therein, and you shall either cure the specified breach or provide assurances to cure the same which we, in our sole discretion, deem adequate.
   5. Either party may terminate this Agreement immediately, if the other party:
6. commits an irremediable breach;
7. is subject to a change of control or chooses to discontinue its business;
8. if the other party has a lack of funding or becomes or is deemed insolvent; or
9. if the other party’s performance is affected by a force majeure event which lasts seven (7) days or more.
   1. In the event of termination of this Agreement, the Fee due and payable shall be paid to you.
   2. Upon expiry or termination of this Agreement, you shall return all Government property or information or you shall irretrievably delete, as commercially practicable as possible, all Confidential Information, stored in any way using any device or application and all matter derived from such sources which is in your possession, custody or power and provide a signed statement that you have fully complied with your obligations under this section, save for any back-up required by law or as required in accordance with your record retention policy.
   3. Upon expiry or termination of this Agreement, you shall provide us with all such assistance as may be reasonably necessary in order to end the relationship in a manner which causes the least inconvenience to us including assisting with the transfer of Data.
   4. We may temporarily suspend the Project or a Service hereunder and shall confirm such instruction in writing to you.
   5. Upon any such suspension, we shall pay all Fees and Expenses up until the time of such suspension of the Project or a Service. If, following suspension of the Project or a Service, there is no resumption within six (6) months, this Agreement may be terminated by you, and we shall make a payment of all outstanding Fees and Expenses in accordance with this Agreement if such amounts are due.
   6. We may issue a written order to resume the provision of the Project or a Service within six (6) months of suspension in accordance with the terms and conditions of this Agreement.
   7. The rights arising under this termination section represent your sole remedy and excludes common law rights to terminate and claim damages for Loss you may suffer under this Agreement.
10. **Data use and Transfer** 
    1. Upon our request, prior to or within sixty (60) days after the effective date of termination, you will make available to us a complete and secure (i.e. encrypted and appropriately authenticated) file of Data in a format to be agreed at the time including all schematics and transformation definitions and/or delimited text files with documented, detailed schematic definitions along with attachments in their native format.
    2. You will be available throughout this transfer of Data period to answer questions about all elements of the Data transfer process so that we may fully access and utilize the transferred Data.
    3. If required, you shall manage the transfer of all Data and technical assets to a service provider of our choice, at your Expense.
    4. You shall guarantee that the Source Code shall be fully source controlled with a complete history of all changes. The Source Code shall adhere to professional standards in terms of quality and organisation where necessary to allow us to be able to access and use the Source Code.
11. **General**
    1. Any notice or other communication required to be given under this Agreement shall be duly given or served if it is in writing (for the purposes of this section, a notice shall be deemed to be in writing if it is in the form of a printed or hand-written letter or other document, or in the form of an e-mail message), signed and delivered by hand or sent by prepaid recorded post to the address of the party as first set out above (or such other address as is notified in writing to the other party from time to time); or sent by e-mail to the e-mail address of the party as provided by that party (or such other e-mail address as is notified in writing to the other party from time to time).
    2. Where this Agreement refers to past or current obligations, this Agreement applies retrospectively from the Effective Date.
    3. This Agreement together with any documents referred to in it supersedes, extinguishes and replaces all previous agreements, promises, assurances, warranties, representations and understandings, whether written or oral including whether in invoices, emails or otherwise between the parties relating to the Service and is the complete agreement between the parties.
    4. Any amendments to this Agreement shall be made in writing and signed by each party.
    5. You may not assign or transfer any rights or obligations under this Agreement (for example assigning or factoring invoices) without our prior written consent. Any such transfer by you in breach of this section shall be void and be an irremediable material breach of this Agreement. We may transfer our rights and obligations under this Agreement.
    6. You will be an independent Supplier and nothing in this Agreement shall render you an employee, worker, agent or partner of the Government and you shall not hold yourself out as such.
    7. No one other than a party to this Agreement, their successors and permitted assigns, shall have any right to enforce any of its terms.
    8. The doctrine of Contra Proferentem shall not be applicable in this Agreement.
    9. Expiry or termination of this Agreement in any manner shall not release you or a Representative from any liability or responsibility with respect to any representation or warranty. Sections related to indemnification, limitation of liability, non-disclosure of information and intellectual property shall survive termination of this Agreement.
    10. Waiver of any breach of this Agreement must be in writing to be effective and shall not be a waiver of any subsequent breach, nor shall it be a waiver of the underlying obligation. Should any court determine that any provision of this Agreement is not enforceable, such provision shall be modified, rewritten or interpreted to include as much of its nature and scope as will render it enforceable.
    11. You consent to us processing data relating to you for legal, administrative and management purposes. We may make such information available to those who provide service to it (such as advisers and payroll administrators), regulatory authorities and governmental or quasi-governmental organisations including those outside of Bermuda.
12. **Governance**
    1. You will inform us promptly of all known or anticipated material problems relevant to the delivery of Service.
    2. You agree to provide us (and, if we request in writing, its auditors and competent regulatory authorities) with full information on the provision and delivery of the Service in an open and cooperative way and attend meetings with us to discuss the Service and this Agreement. We may disclose any information relating to this Agreement to a regulator or auditor.
    3. You will notify us immediately if you have any actual or potential conflict of interest which might affect your ability to provide the System and Service.
13. **Retention of Confidential Information, Records and Audit**
    1. You will retain any part of, or all, Confidential Information during the Term and following expiry or termination of this Agreement until all appeals processes are complete in the event of any litigation in connection with the Service. We will have full access to and the right to examine Documents connected to the Service, at any time during this period. We must be notified, in writing, prior to any of the aforementioned Documents being destroyed.
    2. You shall retain all records pertinent to this Agreement for a period of three (3) years following expiration or termination hereof.
    3. You 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 us, 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, we may cause your records to be audited by a duly authorized Public Officer. Records required to resolve an audit shall be maintained for a period of not less than three (3) years following resolution of the audit or any arbitration or litigation arising hereunder.
    4. We reserve the right to conduct periodic visits to your premises and/or audits after the commencement of this Agreement to ensure continued compliance.
    5. Duly authorised Public Officers shall have full access to and the right to examine any Documents and any of the records pertinent to this Agreement at all reasonable times for as long as such records are required to be retained hereunder.
    6. You shall include the aforementioned audit and record keeping requirements in all subcontracts and assignments, if any, made in accordance with this Agreement.
14. **Electronic Communication**

We may communicate with you by email. The internet is not secure and messages sent by email can be intercepted. You shall use your best efforts to keep your security procedures current and all communications by email secure.

1. **Governing law**

This Agreement is subject to Bermuda law and you and the Government submit to the exclusive jurisdiction of the Bermuda courts in relation to this Agreement.

1. **Dispute Resolution**
   1. Where the parties are unable to resolve a dispute in accordance with this Agreement the parties, upon agreement, may submit such dispute for resolution by arbitration. The tribunal shall consist of a sole arbitrator appointed by agreement between the parties or failing such agreement by the Appointments Committee of the Chartered Institute of Arbitrators, Bermuda Branch. The procedure to be followed shall be that as laid down in the *Bermuda International Conciliation and Arbitration Act 1993* and the UNCITRAL Arbitration Rules presently in force. The place of arbitration shall be Bermuda and Bermuda law shall apply. The language of the arbitration shall be English.
   2. The decision and award of the arbitrator shall be delivered within three (3) months of his or her appointment, unless otherwise agreed between the parties, and shall be final and binding on the Parties and enforceable in any court of competent jurisdiction. Nothing in this section prevents or in any way restricts either party from seeking specific performance, injunctive relief or any other form of equitable remedy. The parties shall continue to perform their respective obligations during the dispute resolution process set out in this section, unless and until this Agreement is terminated in accordance with its terms.
   3. The costs of the arbitration, including administrative and arbitrators’ fees, shall be shared equally by the parties and each party shall bear its own costs and attorneys’ and witness’ fees incurred in connection with the arbitration unless the arbitrator determines that it is equitable to allocate such costs and fees differently and so orders in rendering judgment.
   4. In rendering judgment, the arbitrators may not provide for punitive or similar exemplary damages.
   5. The arbitration proceedings and the decision shall not be made public without the joint consent of the parties and each party shall maintain the confidentiality of such proceedings and decision unless otherwise permitted by the other party, except as otherwise required by applicable law or statutes.

**SCHEDULE 1**

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

1. **Objective**: We require the Supplier to provide the System which shall meet our requirements as set out in Appendix 1, 2, 3, 4 and 5 and satisfy the Acceptance Tests. The Supplier shall also provide a Service for the System which shall meet our requirements as set out in this Agreement.
2. **The Government**

|  |  |  |  |
| --- | --- | --- | --- |
| **Ministry:** | |  | |
| **Department:** | |  | |
| **Address:** | |  | |
|  | |
| **Tel No.:** |  | **Mobile No.:** |  |
| **Email address:** | |  | |
| **Government Contact:** | |  | |
| **Tel No.:** |  | **Mobile No.:** |  |
| **Email address:** | |  | |

1. **Supplier and Service specific conditions:**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Supplier Name:** | | |  | | |
| **Address:** | | |  | | |
|  | | |  | | |
| **Home Tel:** |  | | **Mobile No.:** |  | |
| **Email address:** | | |  | | |
| **Commencement Date:** | | |  | | |
| **Completion Date:** | | |  | | |
| **Go Live Date:** | | |  | | |
| **Termination Notice Period:** | | | **30 days** | | |
| **Warranty Period:** | | | **As set out in Section 8 of this Schedule.** | | |
| **Professional Service Fee payable in arrears:** | | | **See relevant appendix** | | |
| **Payroll Tax #:** | |  | **Social Insurance No.:** | |  |
| **Insurance Coverage:** | | | **Minimum Coverage Amount** | | |
| **Professional Liability:** | | | **BMD$2,000,000** | | |
| **Commercial General Liability:** | | | **BMD$2,000,000** | | |
| **Technology Errors and Omissions** for damages arising from computer-related service for the System, including the following: Consulting, data processing, programming, system integration, software development, installation, distribution or maintenance, systems analysis or design, training, staffing or other support service, and the use of any electronic equipment, computer hardware or software developed, manufactured, distributed, licensed, marketed or sold: | | | **BMD$2,000,000** | | |
| **Workers Compensation Insurance**: | | | **BMD$2,000,000** | | |

1. **Service provided by the Supplier**
   1. The Supplier shall deliver the System and the Service in accordance with the Documents and with the requirements set out in the SOW in order to achieve the Objective.
   2. Changes to the Specification shall only be agreed through the Change Order procedure.
   3. The Supplier agrees to cooperate fully with us during the Project to keep within our budget for this Project.
   4. System Description: The Supplier and us shall cooperate with each other to provide general description for the System which shall include:
2. System Size (DC kW):
3. System location on Government premises:
4. Expected modules required for the Project:
5. Expected inverter:
6. Additionally, provide assessment and advice regarding:

* including network access/high speed internet connection;
* Modifications to existing structures required to accommodate the System, including structural enhancements;
* Re-roofing of existing structures, maintaining existing roof warranty;
* Electrical service or cabinet transfer upgrades required to accommodate PV system;
* Main electrical panel enhancements;
* Hazardous waste removal;
* Blocking of traffic for installation of System;
* Any necessary plumbing, lighting, fire suppression, painting, interior finish, fixtures, sealing, site-work, structural construction.

1. Interface specifications with other systems and equipment in order that the System can properly function.
2. Technical standards with which compliance is required.
3. Detailed specifications of any existing or third party software to be used.
4. Equipment, storage, memory and computer network capacity and processing power, which the Supplier proposes to use for the System.
   1. Maintainability
5. Specific requirements for maintenance and support.
6. Support for the Governments own maintenance and support.
   1. Documents

A description of the Documents, manuals, installation and maintenance instructions and any training material and the standards or format in which they are to be supplied.

* 1. Training

A description of the training program to be provided by the Supplier

1. **Materials, Equipment and Labour:** The Supplier shall furnish all tools, equipment, apparatus, facilities, transportation, labour and material necessary to provide the System, at its own Expense. The System shall be performed at such times and places as directed by and subject to our approval.
2. **Substitutions.** No substitutions of material from those specified in the Documents shall be made without our prior written approval.
3. **Photovoltaic Modules**. Proposed photovoltaic modules (“**PV**”) must be (i) Monocrystalline or Polycrystalline, (ii) eligible under Bermuda law; and (iii) in compliance with Best Industry Practise.
4. **Warranty Period and Quality:**

The Supplier shall provide warranty coverage as follows**:**

|  |  |  |
| --- | --- | --- |
| **Description of Goods** | **Warranty Period: start and end date** | **Notes** |
| Modules | 25 Year Power Output warranty |  |
| 10 year workmanship warranty |  |
| Inverter | 10 year warranty. | Provide a price and/or plan for inverter replacement in year 11 and beyond |
| Racking (support for solar systems) | 10 year warranty priority |  |
| Installation of System | 12 months warranty from time of acceptance by Government |  |
| Commence development |  |  |

1. Unless a longer warranty is called for elsewhere in this Agreement, the Supplier, manufacturer, or their assigned agents shall guarantee the workmanship, product or System performed against defective workmanship, defects or failures of materials for a minimum period of one (1) year from acceptance by the Government.
2. SystemPV modules used in this Project shall have a 25-year product warranty from the date of sale.
3. Power conditioning equipment for the System including inverter(s), shall have a 5-year minimum product warranty from the date of sale.
4. **Supervision:** The Suppliershall provide competent supervision of its personnel employed on the job Site, use of equipment, and quality of workmanship.
5. **Safety and Security:** The Supplier is responsible for maintaining safety in the performance of this Project. The Supplier shall be responsible to ascertain from us the rules and regulations pertaining to safety and security on each Government premises where each System will be located (“**Site**”).
6. **Hazardous Materials.** If any part of the System i.e. PV modules, using hazardous materials, are to be provided by the Supplier, then the environmental impact of the hazardous material usage must be discussed, including any special maintenance requirements and proper disposal/recycling of the modules at the end of their useful life. PV modules containing hazardous materials must comply with the environmental landfill disposal requirements. Any additional Expense and/or Government responsibilities related to photovoltaic modules containing hazardous materials must be clearly identified.
7. **Clean Up:** Debris shall be removed from the Site. The Site shall be in order at all times when Service is not actually being performed and the Site shall be maintained in a reasonably clean condition.
8. **Inspection:** In the event that the Goods are ordered by us and arranged by the Supplier, the Supplier shall comply with Appendix 2.
9. **Maintenance and Support**: The Supplier shall maintain and support the System in accordance with Appendix 5. The Supplier shall be responsible for providing no-cost repair and component replacement not covered by the manufacturers of the components of the Systems for a period of 10 years after the installation of the Systems and controls necessary to ensure performance levels for the System set forth in the Performance Guarantee. This provision does not reduce any of Supplier’s obligations under the Maintenance Service Agreement or the Performance Guarantee.
10. **Correction of Errors.** Supplier shall perform, at its own cost and expense and without reimbursement from us, any work necessary to correct errors or omissions which are caused by the Supplier’s failure to comply with the standard of care required herein.
11. **Payment Bond and Performance Bond**

The Suppliershall not commence the Project until it has provided to the Government, in a form acceptable to us, a Performance Bond, in an amount equivalent to one hundred percent (100%) of the Fee issued by a surety licensed to issue bonds in Bermuda. **(Not Applicable)**

**APPENDIX 1**

**DESIGN AND INSTALLATION OF THE SYSTEM**

* + - 1. **Fee for the Design and Installation for the System**

|  |  |
| --- | --- |
| **System Design Fee, paid in accordance with payment schedule at Section 2 below:** | **BMD$** |
| **One-Time System Installation Fee:** | **BMD$** |

* + - 1. **Payment schedule:**

1. The Supplier shall be paid subject to staged payments e.g. when Supplier has completed a certain stage of the Project and following Acceptance by us, the Supplier is then entitled to be paid.
2. 10% of the gross Fee shall be retained until Acceptance criteria has been met.
3. Following acceptance, 2.5% of the gross Fee will be released to the Supplier following the satisfactory completion of the Supplier’s initial twelve (12) month Warrant Period.
4. The remaining amount of the gross Fee, being the entire unpaid balance of the Fee, shall be released to the Supplier upon the satisfactory completion of the Project, subject to the reasonable satisfaction and acceptance of the Project manager or their nominated representative.
   * + 1. **Design and Specifications of the System**
   1. Design service shall be performed by the Supplier. The Supplier may use Representatives to provide the Service. The professional obligations of such Representatives shall be undertaken and performed in the interest of the Supplier. Any installation service shall be performed by qualified Representatives, selected and paid by the Supplier and acting in the interest of the Government. Nothing contained herein shall create any contractual relationship between any Representative and the Government.
   2. If Supplier is not licensed as an architect or engineer suitably qualified in Bermuda and is not authorized by law to perform design service, the Supplier will provide a Representative and will furnish and warrant the Service provided. Prior to designating a Representative to perform any of the Service, the Supplier shall submit the name, together with a resume of the Representative which shall include, training and experience in the work of like character and magnitude to the Service being contemplated, to the Government, and receive prior approval to use the Representative, in writing.
   3. The Supplier shall submit to the Contact a preliminary Project plan for the design and installation of the System and a proposed schedule for completion of the Project. In preparation for the development of the System, the Supplier shall lead a design development review which shall resolve outstanding issues with the preliminary design and shall fix all design elements of the Project for final review by the Project manager.
   4. The Supplier shall be responsible for ensuring the completeness and accuracy of the detailed design and shall not be entitled to additional payment for any matter or fact relating to the requirement that could reasonably have been verified before entering into the Agreement or during the detailed design stage.
   5. The Documents for the Project shall include, but not be limited to:
5. Any changes made to the technical proposal for the Project;
6. defining the proposed scope of works for the System;
7. Floor/roof plans including proposed movable equipment and furnishings and exterior elevations;
8. Proposed architectural finish schedule, HVAC, plumbing, and electrical fixture schedules;
9. Outline specifications for the System;
10. Elevations, including detailed material notes, vertical dimensions as appropriate;
11. Building sections with information in sufficient detail to define the basic building structure and any additional scope;
12. An updated Project schedule, including a timetable for submission of any other designs required due to change orders or Value Engineering;
13. An updated scope narrative.
    1. The Supplier shall provide a complete set of Documents as necessary to fully illustrate the design development documents to us and for our approval. The Documents may be provided in electronic format (.dwg) and (.pdf).
    2. Upon our review and approval of the design development submittal, the Supplier shall prepare, for our final review and approval, a 100% complete construction Documents submittal and all drawings and specifications necessary for completion of the Project. This submittal shall also include the Supplier’s final statement of work for the Project.
    3. The Supplier shall schedule and conduct as needed progress meetings at which the Contact and the Supplier can discuss jointly such matters as procedures, progress, schedule, costs, quality control and problems to be resolved.
    4. We will agree deliverables within an agreed period or notify you of any changes it requires and which you shall incorporate into revised deliverables for our review and agreement.
    5. If the result of preparing a detailed plan and detailed specification result in changes to the provision of a Service, these shall result in changes to the Project timetables and the Documents and these amended versions shall be included in this Agreement as appendices and shall replace or amend the current appendices describing the requirements for the software development plan and any specifications for the Service. Otherwise additional details to the Project and specification for the Service shall be included in the Agreement as appendices.
       * 1. **Requirements of a Project Plan**
    6. The Supplier shall carry out the activities and deliver the System and a Service, in accordance with the Project plan for the development of the System.
    7. The example of the Project plan below are for project management purposes and the Supplier should set out the key milestone dates that the Supplier aims to meet.

Example of Project plan

|  |  |  |  |
| --- | --- | --- | --- |
| **Activity** | **Responsibility Resources** | **Start** | **End** |
| Appoint Project Managers |  |  |  |
| Develop Detailed Plan |  |  |  |
| Agree Detailed Plan |  |  |  |
| Develop Specification |  |  |  |
| Agree Specification |  |  |  |
| Commence development |  |  |  |
| Recruit development team |  |  |  |
| Develop detailed design for the System |  |  |  |
| Agree detailed design for the System |  |  |  |
| Develop and Plan Acceptance Tests for the System |  |  |  |
| Install and test System |  |  |  |
| Deliver System ready for Acceptance Tests |  |  |  |
| Design and Plan Training for the System |  |  |  |
| Perform Acceptance Tests |  |  |  |
| Confirm Acceptance for the System |  |  |  |
| Perform System corrections and fixes |  |  |  |
| Agree Maintenance and Support for the System |  |  |  |
| Service Level Agreement |  |  |  |

* + - 1. **Project Procedures**
  1. The Supplier shall schedule and coordinate the Project of all of its subSuppliers on the Project including their use of the site. The Supplier shall keep the subSuppliers informed of the Project construction schedule to enable the subSuppliers to plan and perform the Service properly.
  2. The Supplier, shall prepare and submit a construction schedule to the Contact for the Project which shall provide for the expeditious and practicable execution of the Service. The schedule shall be consistent with previously issued schedules, not to exceed time limits current under the Documents and shall be related to the entire Project to the extent required by the Documents.
  3. The Supplier shall prepare and keep current, for the Contact’s approval, a time schedule of design and construction submittals which is coordinated with the construction schedule and allows the Contact a reasonable time to review submittals.
  4. The Supplier shall perform the Service for the System within the identified times of the most recent schedule and consistent with the established Project time.
  5. The schedules shall be revised monthly with a copy thereof to be submitted with each invoice for payment of the Fee. In addition to the monthly update, the schedules shall also be revised at appropriate intervals as required by the conditions of the Project with a copy submitted to the Contact.
  6. The Supplier shall propose and implement an approved procedure for processing and tracking requests for clarifications, submittals and shop drawing review for review and approval by the Contact. The Supplier shall submit at least two (2) copies of all submittals, shop drawings and samples of all exterior building materials and interior finishes, unless more copies are required in accordance with the scope of works. No approval of any drawings, specifications, samples, or product data by the Contact shall relieve the Supplier of responsibility for any deviation from the requirements of the Documents unless the Supplier has specifically informed the Contact in writing at the time of submission that such deviation exists and has identified the deviation to the Contact.
  7. The Supplier shall assist in developing and implementing a system for the preparation, processing and tracking of modifications, amendments and Change Orders and recommend necessary or desirable changes to the Contact.
  8. The Supplier shall develop and monitor an effective system of Project cost control, incorporate approve changes as they occur and develop cash flow reports and forecasts as required and allow the Contact to review all such reports (including financial reports) and documents, as requested.
  9. The Supplier shall record and distribute minutes of all construction meetings.
     + 1. **Delivery of Software for the System**
  10. Supplier shall make available to us all fixes, modifications, software changes and revised documentation that it requires for the System and a Service and the Supplier shall provide assistance in installation of the same, as necessary.
  11. Supplier shall supply upgrades to the Software for the System which are available and required by us under these terms and conditions and at a price which shall be set out in the Fee for the System less the discount as agreed by us, whichever shall be the lower.
  12. Supplier shall supply upon our written request such supplies of parts, any documentation and diagnostics or other support that may be necessary for us or a third party contracted to us to maintain and support the System. The terms of such supply shall be reasonable and on no worse terms than those made available to other customers.
      + 1. **Representative**

The following person(s) have been designated as the Representative and will be providing the Service to us:

|  |  |  |
| --- | --- | --- |
| **Resource** | **Contact Details** | **Role** |
|  | Tel Number: |  |
| Mobile Number: |
| email: |
|  | Tel Number: |  |
| Mobile Number: |
| email: |
|  | Tel Number: |  |
| Mobile Number: |
| email: |

You agree to promptly inform us promptly should there be any changes to the listed Representatives.

**SCOPE OF WORKS FOR ROOFTOP PV SOLAR SYSTEM DESIGN, INSTALLATION AND MAINTENANCE AT THE FOLLOWING VARIOUS BUILDINGS:**

* + - 1. **General Post Office. Building: 56 Church Street, Hamilton HM 12 Building #0371.**
      2. **Government Administration. Building: 30 Parliament Street, Hamilton HM 11, Building #0372.**
      3. **Transport Control Department. 11 North Street, City of Hamilton, HM 17, Building #0773.**
      4. **Fort Langton Bus Depot. Garage Building, 26 Palmetto Road, Devonshire DV 05, Building #0434.**

**SECTION I**

## SCOPE OF SERVICES

The Supplier should use the following guidelines in respect of the Project for the System.

* 1. **Rooftop Solar**

The Supplier shall develop a design for a new photovoltaic system. It is the responsibility of the Supplier to assess the buildings structural integrity, roof condition and shading limitations.

* 1. The Supplier shall cause the following:

1. The System shall comprise of waterproof and anchored mechanical fasteners. Mounting System design needs to meet applicable local building code requirements with respect to wind factors. Solar system installation should not void the roof warranty.
2. Conduit penetrations shall be minimized.
3. System shall be fixed tilt with an orientation that maximizes annual savings.
4. All roof access points for the System shall be securely locked at the end of each day.
5. System layout shall meet local fire department, code and ordinances required for roof access.
   1. **Design, Engineering and Permitting**
      * + 1. Design and engineer the System to occupy the available roof areas to the building footprints as detailed on the site plans.
          2. The System solar arrays shall not exceed the dimensions of the areas provided. All proposals should provide the exact dimensions of the installed arrays so that it is clear the arrays will not exceed the allotted space. No Exceptions. The system should also be designed taking into consideration the electrical demand and load patterns, the illustrated installation location, available solar resources, existing site conditions, and other relevant factors.
          3. The design of the System will be subject to final approval by our electrical engineer (“**Engineer**”).
          4. The Supplier may not proceed with construction until designs have received final approval and the Engineer has issued a formal construction Notice to Proceed.
          5. The Supplier shall maintain a set of drawings for the System and related Service, with all (Engineer approved) design changes made during construction.
          6. Upon completion of construction, the Supplier shall submit final design documents, including, at a minimum, drawings that are updated to reflect all changes, with details of PV system structural support, all roof penetrations, electrical single-line diagrams, and complete product literature for review by the Engineer. A structural professional engineer shall sign and stamp the structural drawings, and a professional electrical engineer shall sign and stamp the electrical drawings. Three hard copies shall be submitted, as well as a CD with electronic copies of all documents.
   2. Supplier should provide design documents that provide the following minimum information:
6. Timeline/Project Schedule.
7. System description.
8. Key equipment details and description.
9. Layout of the installation.
10. Detailed one-line diagram based on specific recommended equipment.
11. Layout of supporting equipment.
12. Specifications for equipment procurement and installation.
13. Solar Panel Power production Warranty documentation.
14. Solar Panel Workmanship Warranty documentation.
15. All engineering associated with structural and mounting details.
16. Performance of equipment components, and subsystems including the efficiency rating of the proposed solar PV panels.
17. Integration of solar PV system with other power sources.
18. Electrical grid interconnection requirements.
19. Controls, monitors, and instrumentation.
20. System performance monitoring.
21. Estimated production simulation, including all factors and assumptions applied to model output.
    1. The Supplier should identify the area for the solar PV inverter equipment and its related components and environmental control systems that will meet the following criteria:
22. Meet local Planning requirements.
23. Meet local Building Code requirements.
24. Meet the Bermuda Fire and Rescue Service requirements.
25. Ease of maintenance and monitoring.
26. All PV hardware, rack components and mountings/fixings shall be of corrosion-proof. materials, high grade stainless steel, aluminum, hot-dipped galvanized steel.
27. Efficient operation.
28. Low operating losses.
29. Secured location and hardware.
30. Compatibility with existing facilities.
31. Visual harmony (where applicable).
    1. The Supplier proposal shall provide evidence that the proposed technology and equipment would meet or exceed all currently applicable and proposed safety and interconnection standards. All equipment must be UL certified and meet existing facility structural and fire safety requirements.
    2. The Supplier will secure from Statutory agencies and BELCO all required rights, permits, approvals, and interconnection agreements at no additional cost to us. We will become the signatory on applications, permits, and utility agreements only where necessary and at our sole discretion.
32. **Installation** 
    1. The Supplier will be required to supply all equipment, materials and labor necessary for the Project to install the System and integrate it with other power sources. Installation includes, but is not limited to, the following:
    2. Mechanical Equipment and Installation
    3. Furnish and install all mounting equipment for deploying modules on the roof. The Supplier is to coordinate with us ensuring that the System is placed on our Premises in accordance with the limitations presented. Furnish and install all solar modules, inverters and other conditioning equipment and other required materials in order to have a complete and whole System.
    4. Where roof penetrations are made they shall be properly sealed and waterproofed. The number and design of all roof penetrations and attachments, including the waterproofing of the same is subject to final approval by our Structural Engineer.
    5. The GAB and GPO Buildings are comprised of TPO roof coverings applied over Plycem onto the existing flat concrete roofs. These roofs are still under warranty by the roofing supplier: **J. W. Gray and Co. Ltd.** and the Supplier will be expected to sub-contract to J. W. Gray and Co. Ltd. to ensure water tightness of all new roof penetrations and to maintain the balance of the existing roof warranty at the completion of the project. All mountings are therefore to be waterproofed by J. W. Gray and Co. Ltd.
    6. The Supplier shall design the system for the minimal building penetrations necessary to meet the wind loading of the System.
    7. The Fort Langton Bus Depot roof is comprised of a pitched corrugated metal roof covering supported by a steel frame.
    8. The Transport Control Department Roof is comprised of a pitched corrugated metal roof and a pitched Plycem SKB roof all supported by a steel frame.
    9. Raise all necessary materials to be mounted on the roof.
    10. Inspect and survey the structural materials and solar panels for manufacturing flaws and defects before installing.
    11. Inspect and survey the structure.
    12. Clean the work area at the job site upon completion.
    13. **Electrical Equipment and Installation**
33. Include all necessary equipment installation and wiring for a complete and whole system.
34. Furnish and install transition boxes at the end of each source circuit to transition from exterior wire on panels to conduit.
35. Furnish and install equipment necessary for proper grounding and arching.
36. Field wire the solar panels, arrays, etc. and install to identified sources.
37. Mount power conditioning equipment which includes all inverters, meters, and transformers as required for a complete and whole system.
    1. **Start up and System Testing**
38. Start‐up and test the System I accordance with the acceptance testing criteria set out in this Agreement, subsequent to demonstration to us.
39. Provide demonstration of System operation to us.
40. Provide training to our staff in accordance with the Appendix 5.
    1. Any installation such as, but not limited to, roof penetrations as well as roof loading must be preapproved by us and must not void any existing warranties of any of oursystems or Service.
41. **Electrical Interconnections**
    1. Supply and install all equipment required to interconnect the solar PV system to the Electrical distribution system.
    2. The Supplier will fulfill all applications, studies, and testing to complete the interconnection process for the System. All costs and expenses (including legal expenses) associated with utility interconnection shall be borne by the Supplier with the exclusion of any licensing requirements of the Regulatory Authority.
42. **Commissioning & Acceptance Testing**

During the installation of the System, we and/or our Engineer of consultant, shall observe and verify each System performance. Required commissioning and acceptance test include:

1. Installing and starting up each System until it achieves the optimum performance requirements
2. Conducting the performance testing over a consecutive twenty-four (24) hour period.
3. Conducting the successful delivery of power within thirty (30) days following completion of the system, meeting each benchmark.
4. **Operation and Maintenance Manuals and As-Built Drawings**
5. The Supplier will provide three (3) sets of operation, maintenance, and parts manuals for the System as PDF files. The manual shall cover all components, options, and accessories supplied. It shall include maintenance, trouble-shooting, and safety precautions specific to the supplied equipment. It shall also delineate responsibilities of both parties, during the term of any agreement that may be agreed to.
6. Provide three (3) sets of as-built drawings as CAD and PDF files. These requirements shall be delivered prior to acceptance of the System.
7. **Monitoring**

The solar system should be fitted with monitoring equipment capable of monitoring, analyzing, and displaying historical and live solar electricity generation data. The regularly collected data should reflect, but not be limited to, the following:

1. System performance
2. System availability
3. Average and accumulated output
4. Capacity factor
5. Degradation
6. Cost avoidance
7. **Operation and Maintenance** 
   1. All respondents must be able to perform all required maintenance activities, including warranty repair work and equipment replacement including, but not limited to, inverter replacement in order to keep the system operational and performing to production guarantees.
   2. All respondents must offer a comprehensive onsite operation and maintenance service program for the PV system operations, safety and maintenance activities. The operations and maintenance service program should provide the following minimum requirements:
   3. Annual on-site system inspection, (time stamped photos are required to be provided) including:
8. System testing (operating current of each electrical string).
9. Routine preventive maintenance.
10. Repair and/or replacement of defective parts (including equipment and labor).
11. Cleaning of System PV panels.
    1. Daily system monitoring by Supplier, including:
12. Prompt reporting of problems to our Buildings Manager.
13. Prompt dispatch of resources for expeditious resolution of problems.

**APPENDIX 2**

**SUPPLY OF GOODS AND SERVICE FOR THE SYSTEM**

* + - 1. **Orders and Scope of Service**
  1. We may submit an Order for Goods at any time.
  2. If mutually agreed, the Supplier shall order the Goods and we shall pay for the Goods. In this event, the ownership and risk for the Goods shall be with the Government.
  3. The Supplier shall use its best efforts to supply Goods and Service in accordance with the Best Industry Practice, with the terms and conditions provided herein, and in accordance with an Order.
  4. We may amend or cancel an Order in whole or in part at any time before the shipping of the Goods by giving the Supplier written notice. We shall pay the Supplier fair and reasonable compensation for any work in progress on the Goods and Service at the time of termination, but such compensation shall not include any Claims or Loss.
     + 1. **Representation and Warranty**
  5. The Supplier represents and warrants that:
     + 1. the Goods and Service shall comply with the Documents and System specifications and in accordance with Best Industry Practise;
       2. as at the Effective Date, all written statements and representations in any written submissions made by the Supplier as part of the procurement process, its tender, its response to a request for proposal and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Agreement;
       3. it has the right to license, assign and transfer all intellectual property rights in the Goods, Service and all related documents or technical specifications, to us;
       4. it shall take all commercially reasonable steps, in accordance with Best Industry Practice, to prevent the introduction, creation or propagation of any disruptive elements (including any virus, worms and/or trojans, spyware or other malware) into systems, data, software or our Confidential Information (held in electronic form) owned by or under the control of, or used, by us;
       5. the System and Service will be compatible with existing equipment and software on our systems and upon installation of the Goods, the Software and Service will meet all the objectives associated with this Agreement and that when used, the Goods will perform substantially as described in the Documents and this Agreement;
       6. it shall procure the benefit of any warranties or guarantees in respect of Goods and Service and provide copies of such warranties or guarantees to the Government; and
       7. Each of the representations and warranties set out in Section 2 of this Appendix shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any undertaking in this Agreement.
  6. If at any time a Party becomes aware that a representation or warranty given by it under Section 2 of this Appendix has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
  7. For the avoidance of doubt, the fact that any provision within this Agreement is expressed as a warranty shall not preclude any right of termination we may have in respect of breach of that provision by the Supplier which constitutes a material default.
  8. The Supplier acknowledges that:

1. we have delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this Agreement;
2. it has undertaken all necessary due diligence and has entered into this Agreement in reliance on its own due diligence alone;
3. it acknowledges and warrants that it is fully satisfied as to the scope and nature of the duties and obligations under this Agreement; and
4. it shall not be excused from the performance of any of its obligations under this Agreement on the grounds of, nor shall the Supplier be entitled to recover any additional costs or charges, arising as a result of any:
5. misinterpretation of an Order, without due diligence as to the requirements of the Order;
6. failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the due diligence of information elsewhere in this Agreement; and/or
7. failure by the Supplier to undertake its own due diligence.
   * + 1. **Goods**
   1. The Supplier shall ensure that the Goods shall be of satisfactory quality (within the meaning of *the Sale of Goods Act 1978*, *Supply of Goods and Services (Implied Terms) Act 2003*, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by the Government expressly or by implication, and in this respect the Government relies on the Supplier's skill and judgement.
   2. We have the right to inspect and test the Goods at any time before receipt of the Goods.
   3. If following such inspection or testing we consider that the Goods do not conform or are unlikely to comply with the Supplier's undertakings in this Appendix, we shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.
   4. Notwithstanding any such inspection or testing under this Agreement, the Supplier shall remain fully responsible for the Goods until they have been accepted by us and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under this Agreement and we shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.
      * 1. **License Grant**
   5. Supplier grants us a non-exclusive, unlimited, royalty free right to use the Software and Documents exclusively for the operation of the Goods intended or supplied.
   6. In the event that the Supplier is not able to support any Software update, upgrade, version or new release that changes major functionality and is not compatible with the System or a Service, the Supplier shall use its best efforts to resolve such issues and to provide optimal functionality of the Goods or the Service.
   7. The Supplier grants to us the right to transfer to third parties, the right to use the Software which has been granted to us. We may transfer the right to use the Software to third parties together with the Goods only which we acquired together with the Software from Supplier or for which the Software of Supplier is intended. In that case, we will impose the above obligations and restrictions on the third party. 
      * 1. **Warranty of the Goods**
   8. The Supplier hereby guarantees the Goods for the Warranty Period as set out in Schedule 1 against faulty Goods and workmanship and any errors, omissions or willful misconduct during installation of the Goods or Service.
   9. If we shall, within the Warranty Period, give notice in writing to the Supplier of any defect in any of the Goods as may have arisen during such Warranty Period under proper and normal use, the Supplier shall (without prejudice to any other rights and remedies we have howsoever arising) promptly remedy such faults or defects (whether by repair or replacement as we shall elect) at our own Expense.
      * 1. **Obligation to Remedy Default in the Supply of the Goods**

Subject to the Indemnity Section under the General Terms and Conditions and without prejudice to any other rights and remedies we have, howsoever arising in this Agreement, the Supplier shall remedy any breach of its obligations under this Appendix within ten (10) Business Days of becoming aware of the relevant Default or being notified of the Default by us or within such other time period as may be agreed by us in writing (taking into account the nature of the breach that has occurred) and the Supplier shall be liable and pay for all the Expenses in the performance of such remedial work.

* + - 1. **Additional Goods**
  1. Additional goods or service, if any, may be required after the date of execution of this Agreement and may be performed upon prior written approval of the Government. Such written approval shall be evidenced by an authorisation for changes in the service ("Change Order") or such other written authorisation as approved by us. In such case, a Change Order shall be issued within a reasonable time thereafter.
  2. All Change Orders are subject to the terms and conditions of this Agreement.
  3. Fees for additional goods or service shall be agreed by the Parties in writing prior to any additional goods or service being provided.
     + 1. **Delivery**
  4. Time is of the essence in connection with the delivery of the Goods. The Supplier shall perform expeditiously to meet the requirements hereunder and shall deliver the Goods to the Government on the date as specified by us (“**Delivery Date**”). In the event that the Supplier is unable to provide the Goods within the required time, the Supplier shall notify us at the time the request is made or promptly thereafter to allow us sufficient time to purchase from an alternative supplier.
  5. The Supplier shall ensure that:

1. the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition and in accordance with the Documents and Specifications;
2. each delivery of Goods is accompanied by a delivery note which shows the order number, the type and quantity of Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the relevant Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
3. if the Supplier requires us to return any packaging material to the Supplier, that fact is to be clearly stated on the delivery note. Any such packaging material shall be returned to the Supplier at the Supplier’s Expense.
   1. The Supplier shall deliver the Goods specified in each Order:
4. on or before the Delivery Date;
5. at the delivery location as instructed by us (“**Delivery Location**”); and
6. during our normal business hours, or as instructed by us.
   1. Delivery of Goods is completed on the completion of unloading of those Goods at the Delivery Location on the Delivery Date.
   2. If the Supplier delivers more or less than the quantity of Goods ordered, and we accept the delivery, a pro rata adjustment shall be made to the invoice for the Goods.
   3. If the Supplier:
7. delivers less than 50% of the quantity of Goods ordered, we may reject the Goods; and
8. delivers more than 105% of the quantity of Goods ordered, we may at our discretion reject the Goods or the excess Goods.
   1. If we reject any Goods they are returnable at the Supplier's Expense. If the Supplier fails to collect rejected Goods within a reasonable period after notification of the rejection, we may charge the Supplier storage costs and sell or dispose of the rejected Goods. We will account to the Supplier for the proceeds of sale (if any) after deducting the purchase price paid for the Goods, storage costs and its reasonable costs and expenses in connection with the sale.
   2. The Supplier shall not deliver Orders in instalments without our prior written consent.
   3. Where it is agreed that Orders may be delivered by instalments, such instalments shall be invoiced separately. However, failure by the Supplier to deliver any one instalment on time or at all, or any defect in an instalment, shall entitle us to use any of its remedies as set out in this Agreement.
   4. Continuing Obligation to Provide the Goods:
   5. The Supplier shall continue to perform all of its obligations under this Agreement and shall not suspend the provision of the Goods, notwithstanding:
9. any withholding or deduction by us of any sum due to the Supplier pursuant to the exercise our right to such withholding or deduction under this Agreement;
10. the existence of an unresolved dispute; and/or
11. any failure by us to pay any Fees or Expenses,

unless the Supplier is entitled to terminate this Agreement as a result of our failure to pay undisputed Fees.

* + - 1. **Inspection and Acceptance**
  1. We shall at all times retain the right to inspect the Goods provided by the Supplier and shall have the right to review, require correction or additional follow up, if necessary, and accept the Goods or Service.
  2. We will notify the Supplier of its contact who shall be responsible for reviewing, inspecting and approving delivery of the Goods and Service.
  3. We shall have the right to reject the Goods or refuse acceptance of the Goods if:
     + - 1. the Goods, or any portion thereof, are not in conformance with this Agreement;
         2. the Goods, or any portion thereof, are not in conformance with the Specifications provided to the Supplier at the time the order for the Goods was placed;
         3. the Goods, or any portion thereof, are not in conformance with the Documents; or
         4. the Supplier fails to deliver the Goods within the time as specified by us, following receipt of the Order or such other time as specified us.
  4. Upon such rejection of the Goods, the Supplier shall arrange for return of the Goods to the Supplier, at the Supplier's risk and Expense, and the Supplier shall promptly reimburse us for any payments made in connection with the delivery and return of the rejected Goods or any part of the Goods.
  5. Following rejection of any Goods in accordance with this Section, we shall have the right to require the Supplier to make another delivery of Goods which conform to this Agreement, Documents and/or the Specifications provided or, to purchase the Goods and Service or substitutes thereof from alternative sources. The Supplier shall reimburse us, upon demand, all additional Expense incurred by us, if any, in obtaining the Goods and Service or substitutes thereof.
  6. We may confirm, in writing, acceptance of the Goods at the time of Delivery or at any time thereafter.
  7. Written acceptance of the Goods by us shall release the Supplier from any obligation to remedy any nonconformity of the accepted Goods or reimburse us for any additional costs incurred in obtaining other Goods or substitutes thereof but does not relieve the Supplier from any warranty, guarantees or service obligations. We shall have the right to inspect the Goods prior to, or at the time of delivery of the Goods or within thirty (30) days following delivery of the Goods for compliance with this Agreement and other Specifications required by us.
  8. The Supplier’s failure to proceed with reasonable promptness to make necessary corrections shall be a Default. If the Supplier fails to provide corrected Goods or fails to correct performance of a Service within a timeframe as set by us, we may terminate this Agreement, reduce the Fee and/or reject the hours submitted in connection with such work to reflect the reduced value of Goods and Service received.
     + 1. **Ownership and Risk of Goods**
  9. Risk and ownership in relation to the Goods:
     + - 1. Without prejudice to any of our rights or remedies howsoever arising title to the Goods shall pass to the Government upon delivery to us at the Delivery Location, unless the Goods have been paid for by us, in which case, title to the Goods shall pass at the time of purchase of the Goods.
         2. In the event that an advance payment is made, all risk in the Goods remain with the Supplier until we have accepted the Goods, in writing.
         3. Risk of loss or damage to the Goods shall only pass to us at the time of acceptance of the Goods by us.
       1. **Invoices and Payment**
  10. Within sixty (60) days following receipt of a proper and correct invoice, we shall compensate the Supplier for Goods and Service provided under this Agreement in accordance with the prices as set forth in Schedule 1. Invoices for each order shall be submitted to our designated representative.
  11. A proper and correct invoice and supporting documentation must include:
      + - 1. the Supplier's name and address;
          2. invoice date and invoice number;
          3. Government's name and address where the Goods were delivered;
          4. total amount payable and cost per unit;
          5. a description of the Goods supplied including specific quantities consistent with the Agreement requirements and orders placed;
          6. a description of the Service provided related to the Goods;
          7. mailing address and the person to whom payment is to be sent or the banking institution and account information for a payment by wire transfer (unless such information has previously been provided and processing has been confirmed by us); and
          8. contact telephone number, facsimile number and e-mail address.
  12. Invoices must be submitted within sixty (60) days of the Delivery Date of the Goods. Advance payments will not be made unless specifically authorised in writing by the Accountant General.
  13. The Supplier's failure to timely submit a proper invoice as set forth in this Section may result in a delay in payment by us. We shall not pay interest on any late payment to the Supplier resulting from the Supplier's failure to submit a proper or timely invoice or otherwise comply with the terms of this Section. The Supplier agrees that we are not responsible, nor will we be liable to the Supplier under law or equity for any and all Expenses that the Supplier may incur resulting from any delays in payment caused by the Supplier’s failure to comply with the terms of this Section.
  14. Proper invoices remaining unpaid for more than sixty (60) days following the due date shall bear interest at the rate of 12% per annum. The Supplier shall have the right to suspend or terminate delivery of the Goods for non-payment of such invoices upon fourteen (14) Business Days' written notice delivered to us at the address provided herein for notices.
  15. No additional expenses shall be allowed for reimbursement under this Agreement. The Supplier shall deliver the Goods at its own expense.
      + 1. **Government Remedies**
  16. If the Goods are not delivered on the relevant Delivery Date at the Delivery Location, or does not comply with the undertakings set out in the Representation and Warranty section then, without limiting any of its other rights or remedies, and whether or not it has accepted the Goods, we may exercise any one or more of the following remedies:

1. terminate the Agreement;
2. reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and Expense;
3. require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
4. refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
5. recover from the Supplier any costs suffered or incurred by us in obtaining substitute goods from a third party; and
6. claim damages for any other Loss suffered or incurred by us which are in any way attributable to the Supplier's failure to carry out its obligations under this Agreement. 
   1. If the Goods are not delivered on the Delivery Date, we may, at our option (i) claim or deduct 20% per cent of the price of the Goods for each week's delay in delivery by way of liquidated damages, up to a maximum of 50% per cent of the total price of the Goods; or (ii) if the Project is not substantially completed on the Completion Date, the Supplier shall pay to us the sum of **BDM$150 per day, or part thereof,** for each calendar day of inexcusable delay as liquidated damages, until the Project, System or a Service is substantially completed to our satisfaction.
   2. This Agreement shall apply to any repaired or replacement Goods supplied by the Supplier.
   3. Our rights and remedies under this Agreement are in addition to its rights and remedies implied by statute and common law.
      * 1. **List and cost of Goods**

|  |  |  |  |
| --- | --- | --- | --- |
| **Description of Goods** | **Delivery Date** | **Fee** | **Notes** |
| **Photovoltaic Modules** |  |  |  |
| **Cables** |  |  |  |
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**APPENDIX 3**

**ACCEPTANCE TEST AND ACCEPTANCE CERTIFICATE**

**Testing and Acceptance of the System**

* 1. You and the Government shall carry out acceptance tests at regular intervals as required by us to confirm that each part of the System is provided and implemented in accordance with any required Government specifications and following such Acceptance Tests, we may accept the System or Service prior to the Go Live Date.
  2. The details of the tests and the responsibilities of both parties are set out in this appendix. In the event that the Acceptance Tests have not been agreed by the date set out in the Agreement then either we or you shall prepare Acceptance Test specifications and plans for agreement with the other party within ninety (90) days of the date set out in any SOW or System plan.

In the event of any dispute, our requirements shall prevail. Any changes to the Acceptance Test plan shall be subject to the Change Order procedure.

* 1. All plans, data and results produced for the purposes of the Acceptance Tests shall be made available for review by both parties and either party shall be entitled to be present at any tests and be given reasonable notice of the intention to carry out such tests.
  2. By the date in the Project plan, we or you shall prepare the data for use in Acceptance Tests and a statement of the results with which the System and the Service is expected to comply. Either party may request changes to the data and the expected results provided that no change may be agreed without our prior written approval.
  3. You shall carry out system and unit tests on the System and Service at specified stages as required by us prior to delivery to verify that the System is operating in accordance with specifications as set out in the Documents. Any faults identified shall be rectified prior to delivery of the System to us.
  4. You shall carry out unit and system tests on each part of the System as they are completed. You shall carry out all Acceptance Tests on the System and Service prior to delivery and after installation to ensure that it is working properly in accordance with the Documents. Any faults identified shall be rectified prior to delivery of the System or Service to us.
  5. You shall confirm, in writing to us, prior to, or at the time the System or Service is delivered and installed, that you have carried out tests and that in your opinion, the System and the Service are in accordance with the specifications and Documents.
  6. We shall carry out the Acceptance Tests to the dates or time scales set out in the Project plan after delivery of the System.
  7. You shall provide all necessary assistance to us to perform the Acceptance Tests.
  8. If the System, Service or any part of them shall fail then a repeat of the Acceptance Tests shall be carried out in accordance with the provisions of this appendix.
  9. You shall re-test all or parts of the System or Service before delivering the corrected System or Service to the Government for repeat Acceptance Tests.

**Final Acceptance Testing**

* 1. There shall be a testing period during which we shall determine whether the System: (i) properly functions on the Equipment and with any applicable operating software; (ii) provides the capabilities as stated in this Agreement and in the Documents; and (iii) to the extent stated, meets the acceptance criteria**.** In the event of a conflict between the acceptance criteria and the Documents, the acceptance criteria shall prevail.
  2. The testing period shall commence on the first Business Day after you have informed us in writing that you have completed the System, Service or Deliverables required to be performed prior to testing and that the System or Service are ready for testing, and the testing period shall continue for a period of up to sixty (60) days.
  3. During the testing period, we may notify you in writing of any error or defect in the System so that you may make any required modifications or repairs. If you so elect in writing, testing will cease until you resubmit for final Acceptance testing, at which time the testing period shall be reset to that of a first submission for testing.
  4. We shall notify you in writing of your final Acceptance or rejection of the System or Service, or any part thereof, within thirty (30) days after the end of the testing period, or as same may be extended by us. If we reject the System, Service or any part thereof, we shall provide notice identifying the criteria for final Acceptance that the System or Service failed to meet. Following such notice, you shall have thirty (30) days to (a) modify, repair, or replace the System, Service or any portion thereof, or (b) otherwise respond to our notice. If you modify, repair, or replace the System, Service or any portion thereof, the testing period shall re-commence consistent with the procedures set forth above in this section.
  5. In the event you fail to remedy the reason(s) for our rejection of the System, Service or any portion thereof, within thirty (30) days after our initial notice of rejection, we may elect, in writing, to either accept the System or Service as it then exists or to reject the System or Service and terminate the Agreement.
  6. If we elect to accept the System or Service as it then exists (partial acceptance), you shall continue to use your best efforts to remedy the items identified in the applicable notice of rejection. If, despite such continuing best efforts, you fail to remedy the issue(s) identified by us within a reasonable time as determined by us, then we shall be entitled upon our sole option, to a refund of the sums paid to you or to deduct from future sums due under the Agreement the value of the rejected portion of the System or Service as mutually determined by the parties. If the parties cannot agree upon such value, we shall have the right to reject the System or Service and to terminate the Agreement on the terms stated above in this paragraph.
  7. We shall have final say on: i) criteria for Acceptance Test; and ii) whether you have passed any phase of the Acceptance Test procedure, including Final Acceptance.

**ACCEPTANCE CERTIFICATE**

* 1. When the System has been completed in accordance with the Agreement and has passed the Acceptance Tests, you shall be entitled to apply to us for the issue of an Acceptance certificate (“**Certificate**”) and we shall issue the Certificate within seven (7) days of an application which you are entitled to make. Minor cosmetic errors or errors for which fixes can be delivered prior to operational use will not prevent the issue of the Certificate but all such errors shall be identified on the Certificate and corrected within the time periods specified in the Certificate
  2. If the System shall fail to pass the Acceptance Tests and any repeat Acceptance Tests as provided for in this appendix then we shall be entitled by written notice to you to exercise at its sole option any of the following rights:

1. To require you to carry out all or any of the Acceptance Tests at such rate as we shall require at your sole cost and otherwise on the same terms and conditions as the repeat tests. If the System shall pass such Acceptance Tests, then you may then apply for the issue of the Certificate. If the System fails all or any of such Acceptance Test then we shall have the further rights set out in this clause.
2. Accept the System subject to a reasonable abatement of the Fee to take account of the loss to us caused by the failure of the Service or any part thereof to conform to the requirements specified in the Acceptance Tests. The amount of such loss shall be agreed between the parties or, in default of agreement within fourteen (14) days of the notice issued by us under this appendix, as shall be determined by an expert appointed under the Agreement.
3. Accept that part of the System, which has passed the Acceptance Tests, and reject that part of the System, which has failed the Acceptance Tests. You shall then be entitled to a partial Certificate in respect of that part which has been accepted. Such partial rejection shall not constitute termination of the Agreement but you shall be liable to us for such compensation for the part of the Service rejected as may be agreed by the parties within 14 days of the notice issued by us under this appendix, or in default of agreement, as shall be determined by the expert appointed under this Agreement.
4. Reject the System as not being in conformity with the Agreement and terminate the Agreement for default by you, in accordance with the terms of this Agreement.

**APPENDIX 4**

* + - 1. **Training and Documents**
  1. You shall provide training to a sufficient number of our personnel to secure the satisfactory operation of the System and to enable our personnel to be able to train other Users (“**Train the Trainer**”).
  2. The training format will be for you to Train the Trainer in the use of the configured version of the System through a combination of documentation, in-person seminars, recorded video and various online methods as required by us.
  3. In addition to the Train the Trainer training above, the Documents will describe in detail and in a completely self-contained manner how users may access and use the System such that any user can read the Documents and access, use and maintain all of the functionality of the System and Service, without the need for further instruction.
  4. All Documents and training materials supplied to us shall be the property of the Government.

**APPENDIX 5**

**MAINTENANCE AND SUPPORT**

The Maintenance and Support Service (“**Maintenance Service**”) available from you shall commence from the Go Live Support date and continue for at least one (1) year until terminated by us giving not less than three (3) months’ notice to you.

Charges for the Maintenance Service shall commence following the time that all defects identified during the Final Acceptance Test and which were not corrected at the time of acceptance testing are corrected and are in accordance with the System specifications required by us.

**Maintenance Service**

The Maintenance Service shall be provided as set out below:

* 1. provide such maintenance service to ensure that we can continue to use the System as set out in any Service specifications;
  2. make available to us any information, tools or software necessary to carry out first line fault diagnosis and resolution of a problem;
  3. provide a specified number of persons skilled and experienced in the design and use of the Service and our use of the System to provide the maintenance service. These persons will be made available to us, at previously agreed charge rates to provide expert consultancy and advice, enhancement development service or training and onsite support as reasonably required by us. Such engagements shall be subject to further agreements;
  4. the parties shall agree the implementation and operation of any remote diagnostic tools, which you may make available from time to time;
  5. provide a telephone help desk or on-line service to receive and log calls for assistance and provide an initial fault diagnosis and resolution service. The fault diagnosis and resolution service shall be provided by sufficient competent people for 24 hours per day, 7 days per week [*or during working days between 0800 and 1800*];
  6. as soon as a defect which has a significant effect on the use of the System or Service is reported by us or you become aware of the defect, you shall promptly commence work on diagnosing the defect and providing a report detailing requirements and cost to fix the defect and continue to work diligently until a fix of the defect can be successfully implemented on any part of the System.

Service levels for responding to reports of defects and fixing defects or faults will be provided as a separate document to this Appendix.

All changes and corrections made by you shall be documented and revised Documents shall be supplied to us.

You shall be responsible for delivering corrected programs or instructions to correct the defect so that the System can be restored to operational use with least possible delay. You may be required by us to provide on-site or other support for reinstallation and recovery of the System.

1. If a defect has no material impact on the use of the System by us, you and us shall agree a reasonable period within which the fault will be fixed and incorporated into a generally available version or release.
2. All corrections made by you shall be free from Viruses and shall execute and/or operate without further defect or impact on other parts of the System.
3. Intellectual Property Rights in any correction, enhancement or modification, made to the System or any new tool or technique or know-how developed as a consequence of correcting a defect shall be the property of the Government except where the intellectual property is an inherent part of the System and is to be made available to other licensees of the System.
4. You shall be responsible at your own Expense for the maintenance and support of any part of the System which is supplied prior to acceptance and is required for use by the Government or you, as part of the System.
5. You shall correct any fault which may be caused by our act or omission in not using the System or a Service in accordance with the Documents and shall be entitled to charge us a reasonable fee at the rate set out in the Fee and payment schedule for such work.
6. If any part of the System or Service is terminated due to your un-remedied default of the System or at your request, then you shall provide all Documents of the System and internal maintenance instructions to allow us to maintain the System itself or to allow us to engage a third party to carry out the maintenance of the System. All such transfer of Software, Data or other information shall be made subject to this Agreement and at your Expense.

**For System specifically:**

1. You shall accept a request from us to recommence previously terminated maintenance and support service at a later date provided that we pay a reasonable additional fee for the installation of current versions or releases of the System which shall be compatible with our systems or software.
2. We shall not be required to install any new Version of the System for which additional payment is required provided that any new Version is fully compatible with the System or Service and meets our functional and performance requirements and the fee proposed by you can be demonstrated to reasonably reflect the increased value of the new Version.
3. You shall promptly make available under the terms of this Agreement all Versions (including upgrades and releases) of the System provided under the maintenance and support service.
4. You shall continue to provide support on request for a Version of the System in use by us.
5. You shall keep up to date and, on request, provide an accurate plan for the release of Versions of the Software.
6. **Fee for the Maintenance and Support of the System**

|  |  |
| --- | --- |
| **Annual System Maintenance and Support Fee:** | **BMD$** |
| **Special Conditions related to the Fee:** | This fee is payable quarterly in arrears |

**SCOPE OF MAINTENANCE AND SUPPORT SERVICE**

**Preventative Maintenance**

|  |  |  |
| --- | --- | --- |
| **Item Number** | **Service Description** | **Frequency/Response Time** |
| 1. | Remotely monitor the System data to proactively provide a solution to any System operational errors. | Continuously |
| 2. | Visual inspection of overall structure of the System for damage or fatigue and any support for the System. Also confirm that base is stable to manufacturer’s recommended standard. | 1x per year |
| 3. | Visual inspection of System panels, load center and electrical systems including ensuring that System wiring is secure, ground connections are intact, control box is sealed and dry and conduit is undamaged. | 1x per year |
| 4. | Visual inspection of hydraulic systems for the System including tilt cylinder, yaw motor, hoses and fittings. Check for leaks and top off hydraulic fluid. | 1x per year |
| 5. | Calibrate System tracker alignment. | 1x per year |
| 6. | Visual inspection of non‐Government owned transformers and electrical panels. | 1x per year |
| 7. | Visual inspection of general site conditions. Document vegetation or environmental conditions impeding System operations, movement or site access. Note any erosion or shading concerns. | 1x per year |
| 8. | Record meter readings. | 1 x per year |
| 9. | Perform preventive maintenance on System parts per manufacturer's operating guidelines such as cleaning cooling fins and screens. | 1 x per year |
| 10. | Perform upgrades to System solar tracker per manufacturer recommendations. | As needed |
| 11. | Document annual inspection, copy of inspection to be made available to Government, upon request. | 1x per year |