



PO Box HM2262, Hamilton HMJX, Bermuda

**MASTER SERVICE AGREEMENT FOR ENGINEERING, PROCUREMENT, CONSTRUCTION SERVICES**

**THIS MASTER SERVICE AGREEMENT FOR ENGINEERING, PROCUREMENT, CONSTRUCTION SERVICES ("Agreement") is made the   2   day of February 2021 (the "Effective Date")**

**BY AND BETWEEN:**

- (1) THE TRUSTEES OF THE NATIONAL SPORTS CENTRE** as described in Schedule 1, hereinafter referred to as the **"NSC", "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 **"Contractor" or "you"**, of the second part.

The NSC and the Contractor 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 5, sets out the terms and conditions upon which the Contractor will provide service to the NSC.

**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 **"Contractor"** 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 Engineering, Procurement and Construction 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, 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 8am – 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 either party 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 either party 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 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 Contractor 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 Contractor 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 Contractor for the System and Service provided under this Agreement;

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

**"Government"** means the Government of Bermuda"

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

**"Go Live Support"** means support provided by Contractor to the NSC after the Go Live Date;

**"in writing"** shall mean any fax, letter or purchase order on the NSC'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 Contractor and the Contractor's officers, directors, employees, agents, or subcontractors and shall be on an "occurrence basis" unless otherwise stated in Schedule 1. *"The Trustees of the National Sports Centre"* shall be endorsed as an additional insured on the required policy or policies and the insurances afforded to the NSC shall be primary insurance;

**"License"** means the right granted by the Contractor to the NSC to use the Software or Documents;

**"Licensed Software"** means the Software and Documents which is to be licensed to the NSC 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 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;

**"Officer"** means any person employed by, or acting as an agent for NSC; **"Representative"** means qualified architects, engineers and other professionals or persons employed or engaged by the Contractor;

**"Service"** means the engineering, procurement and construction of the System, completed in accordance with the Documents, subject to this Agreement;

**"System"** means the a Solar PV system, Batteries, Heat Pump, LED Lights, and Energy Monitoring System required by the NSC, 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 NSC premises; and information technology security protocols where the Contractor or the Representative accesses any NSC information technology system;

**"Software"** means all Contractor 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 NSC 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;

**"Term"** means the term of this Agreement commencing from the Effective Date and ending once the NSC 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 Contractor 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.

## **2. Provision of Service**

2.1 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:

- (a) Schedule 1;
- (b) Appendix 1, 2 and 3;
- (c) Appendix 4 in the event that training is required;
- (d) Appendix 5 in the event that maintenance and support is required; and

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

2.2 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.

2.3 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.

2.4 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.

2.5 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.

2.6 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.

2.7 You acknowledge that we will be:

- (a) relying on the Documents on the basis that they are accurate and complete in all material respects and are not misleading;
- (b) relying on your and the Representative's skills, expertise and experience concerning the provision of the Service; and
- (c) using your reports and any other advice and assistance provided under this Agreement.

2.8 Security Procedures: The Project, System or a Service shall be provided in such place and location as instructed by us.

2.9 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.

2.10 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.

2.11 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.

### 3. NSC Responsibilities

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

### 4. Additional Service

4.1 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 Officer. In such case, a Change Order shall be issued within a reasonable time thereafter.

4.2 All Change Orders are subject to the terms and conditions of this Agreement.

4.3 The Fee for additional service shall be agreed by us in writing prior to any additional service being performed.

### 5. Fees, Invoicing and Payment

5.1 We shall compensate you the Fee for the Project, System and a Service in accordance to the Payment Schedule in Appendix 1. The Fee shall be paid in US\$.

5.2 The Fee may be subject to further deductions for the following reasons:

- (a) where there has been an overpayment to you for any reason;
- (b) if you have not delivered the Project, System or a Service or any part of a Service, as required;
- (c) where we has suffered loss by your failure to follow instructions or exercise due diligence;
- (d) if you cause damage to our property, the value of replacement or repair of the damaged property;

(e) if you leave or terminate this Agreement without giving the required notice, the value of the Fee for the notice period; and

(f) any overpayments or advances of payment taken in excess of the Fee.

5.3 **Invoicing:** You shall provide a invoices in accordance with the Payment Schedule in Appendix 1.

5.4 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.

### 6. Expenses

6.1 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.

6.2 If prior approved, all air travel shall be at economy class, unless otherwise agreed in writing.

6.3 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.
- 6.4 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 the Government or to us against any Fees or Expenses.
- 6.5 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.
- 6.6 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.
- 7. Representations and Warranty**
- 7.1 You represent and warrant that you and the Representative, will perform all activities relating to providing the Project, System or a Service:
- (a) in accordance with Best Industry Practice and in a professional and lawful manner;
  - (b) 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;
  - (c) free from Viruses;
  - (d) 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
  - (e) in accordance with applicable law including PIPA, rules, regulations and guidelines or policies provided by us.
- 7.2 You represent and warrant that:
- (a) you have the right to license, assign and transfer all Intellectual Property rights in the System, Service, Software and Documents, to us; and
  - (b) 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.
- 7.3 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.
- 7.4 You declare that you shall be in possession of all Consent's necessary for the provision of the Project, System or a Service and you shall maintain such Consent's at all times while providing a Service.
- 7.5 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.
- 7.6 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.
- 7.7 You declare that all payments to the NSC and the Government, including but not limited to, taxes and social insurance, are current.
- 7.8 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.
- 7.9 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.
- 7.10 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.
- 8. Remedies**
- 8.1 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.
- 8.2 Without prejudice to any other rights available to us, you shall, at your Expense:
- (a) 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.
  - (b) 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:
    - (i) require correct Documents;
    - (ii) require, in whole or in part, the Service to be re-performed during the Term or within six (6) months of the Completion Date;
    - (iii) 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
- (iv) 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.
- 8.3 Without prejudice to any other rights available to it, we may, at your Expense:
- (a) 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
  - (b) obtain Service from another service provider and terminate this Agreement.
- 9. Progress Report**
- 9.1 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.
- 9.2 The Report will also include YTD totals for payments received and work completed (expressed in US\$).
- 9.3 Any decisions and/or actions required of the NSC 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.
- 10. Inspection and Approval of Service**
- 10.1 We shall at all times retain the right to inspect the progress of any part of the Project, System or a Service provided and we shall have the right to review, require correction or additional follow up, if necessary, to the Documents, System or a Service and accept or reject any part of the

- System, Service and any Documents submitted by you or the Representative.
- 10.2 You shall make any required corrections to the System and or 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.
- 10.3 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, or reduce the Fee in connection with such work to reflect the reduced value of Service received.
- 11. Time of the Essence**
- 11.1 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.
- 11.2 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.
- 12. License**
- 12.1 An annual license fee grants us the right to use Software and Documents to enable us to use Equipment, the System and the Service.
- 12.2 You shall ensure the continued compatibility of the Equipment with all major releases, updates, or upgrades of any Software.
- 12.3 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.
- 12.4 In the event that we no longer wish 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. Access to some online metering functions may be terminated but, the ability to use the System will continue 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 and return to availability.
- 13. Indemnity, Limitation of Liability, Insurance, Force Majeure and Business Continuity**
- 13.1 Indemnity: You shall fully indemnify, hold harmless and defend us and our Officers, 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:





- (a) notifying you in accordance with the notice provisions in this Agreement of any alleged infringement; and
  - (b) 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.
- 13.2 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.
- 13.3 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.
- 13.4 No Liability: In no event shall we or an Officer be liable to you for Loss.
- 13.5 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.
- 13.6 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.
- 13.7 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.
- 13.8 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.
- 13.9 You shall be responsible for the payment of all deductible amounts on the Insurance Policies and shall on request supply to the NSC copies of such Insurance Policies and evidence that the relevant premiums have been paid.
- 13.10 In the event that you have not paid Insurance Policies premiums, within 20 days of 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.
- 13.11 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

- NSC as a result of you or a Representative providing the Service.
- 13.12 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.
- 13.13 The policy clause "Other Insurance" or "Excess Insurance" shall not apply to any insurance coverage currently held by the NSC.
- 13.14 If you subcontract any Service, you shall ensure that each subcontractor maintains insurance coverage with policy limits of at least the amounts stated in this Agreement or is covered under your insurance policy.
- 13.15 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.
- 13.16 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.
- 13.17 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.
- 13.18 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.
- 14. 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 NSC who was involved in the delivery of the System, unless otherwise agreed to, in writing, by us.
- 15. Non-Disclosure of Confidential Information**
- 15.1 The parties must ensure that all Confidential Information held by them is protected against unauthorised access, use, copying or disclosure. They acknowledge that the improper use, copying or disclosure of such information could be unlawful.
- 15.2 You will comply with our instructions if you have access to Data as a result of providing the Service.
- 15.3 The parties may disclose information related to this Agreement to your personnel on a 'need to know' basis as required for the performance of the Service. The parties will keep strictly confidential any other Confidential Information and they shall only use such Confidential Information as required for providing the Service (and no other purpose).
- 15.4 A breach or anticipated breach of the confidentiality provisions of this Agreement, will cause us irreparable harm and the parties agree that monetary damages alone may not be an adequate remedy and, accordingly, each party will, without prejudice to any other rights or remedies that they 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.
- 15.5 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.
- 15.6 If either the NSC or their Representative fail to abide by the confidentiality provisions at any time, then such failure shall constitute a material breach of this Agreement and they shall pay the Contractor 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. The NSC and their Representative shall be jointly and severally liable to the Contractor under this section.
- 16. Ownership, Intellectual Property and Copyright**
- 16.1 We shall own Deliverables provided in accordance with this Agreement.
- 16.2 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.
- 16.3 Documents created under this Agreement shall be original works created by you or the Representative and shall:
- (a) 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
  - (b) not subject us to any claim for infringement of any Intellectual Property rights of a third party.
- 16.4 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.
- 16.5 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.
- 16.6 Copyright: Copyright and other Intellectual Property rights in the Deliverables shall belong us, which may utilise Documents freely (including by adapting, publishing and licensing).
- 16.7 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.
- 16.8 We acknowledge that you and Representative possess knowledge and expertise relating to the subject matter of the Service ("Contractor 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 Contractor Know-How, which shall remain your property.
- 16.9 To the extent that any Contractor Know-How is included in any Deliverables, you

hereby grant to the NSC a perpetual, unlimited, royalty-free, worldwide, non-exclusive right and license to use and reproduce the Contractor Know-How to the extent reasonably necessary to achieve the Objective.

16.10 NSC logo: You may not use our name or logo for any publicity or marketing purposes, unless consent for such use is provided in writing.

## **17. Term, Termination and Suspension**

17.1 The provision of a Service shall commence on the Commencement Date and continue for the Term. Upon acceptance of the System by the NSC, the Term and this Agreement shall expire unless terminated earlier in accordance with its terms.

17.2 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.

17.3 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.

17.4 Either party may terminate this Agreement immediately, if the other party:

- (a) commits an irremediable breach;
- (b) is subject to a change of control or chooses to discontinue its business;
- (c) if the other party has a lack of funding or becomes or is deemed insolvent; or
- (d) if the other party's performance is affected by a force majeure event which lasts seven (7) days or more.

17.5 In the event of termination of this Agreement, the Fee due and payable shall be paid to you.

17.6 Upon expiry or termination of this Agreement, you shall return all NSC 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.

17.7 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.

17.8 We may temporarily suspend the Project or a Service hereunder and shall confirm such instruction in writing to you.

17.9 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.
- 17.10 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.
- 17.11 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.
- 18. Data use and Transfer**
- 18.1 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.
- 18.2 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.
- 18.3 If required, you shall manage the transfer of all Data and technical assets to a service provider of our choice, at our Expense.
- 19. General**
- 19.1 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).
- 19.2 Where this Agreement refers to past or current obligations, this Agreement applies retrospectively from the Effective Date.
- 19.3 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.
- 19.4 Any amendments to this Agreement shall be made in writing and signed by each party.
- 19.5 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.
- 19.6 You will be an independent Contractor and nothing in this Agreement shall render you an employee, worker, agent or partner of the NSC and you shall not hold yourself out as such.
- 19.7 No one other than a party to this Agreement, their successors and permitted assigns, shall have any right to enforce any of its terms.
- 19.8 The doctrine of Contra Proferentem shall not be applicable in this Agreement.
- 19.9 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.

19.10 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.

19.11 You consent to us processing data relating to you for legal, administrative and management purposes.

## **20. Governance**

20.1 You will inform us promptly of all known or anticipated material problems relevant to the delivery of Service.

20.2 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.

20.3 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.

## **21. Retention of Confidential Information, Records and Audit**

21.1 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.

21.2 You shall retain all records pertinent to this Agreement for a period of three (3) years following expiration or termination hereof.

21.3 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 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.

21.4 Duly authorised 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.

21.5 You shall include the aforementioned audit and record keeping requirements in all subcontracts and assignments, if any, made in accordance with this Agreement.

## **22. 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.

**23. Governing law**

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

**24. Dispute Resolution**


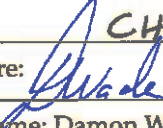
- 24.1 Where the parties are unable to resolve a dispute in accordance with this Agreement the parties, upon agreement, may submit such dispute for resolution by arbitration. The tribunal shall consist of a sole arbitrator appointed by agreement between the parties or failing such agreement by the Appointments 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
- 24.2 presently in force. The place of arbitration shall be Bermuda and Bermuda law shall apply. The language of the arbitration shall be English.
- 24.3 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.

- 24.4 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.
- 24.5 In rendering judgment, the arbitrators may not provide for punitive or similar exemplary damages.
- 24.6 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.



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

<b>SIGNED</b> by a duly authorised officer for and on behalf of the <b>Trustees of the National Sports Centre</b>	Signature: 
	Print Name: <b>JACHE ADAMS</b>
	Title: <b>CHAIRMAN</b>
<b>SIGNED</b> by the Supplier or a duly authorised officer for and on behalf of the <b>Atlantic Energy Solutions Group Ltd.</b>	Signature: 
	Print Name: Damon Wade
	Title: Chief Executive Officer





PO Box HM2262, Hamilton HMJX, Bermuda

## 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 Contractor 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 Contractor shall also provide a Service for the System which shall meet our requirements as set out in this Agreement.
2. **The Trustees of the National Sports Centre**

Chairman:	JACHE ADAMS		
Address:			
Email address:	JACHE.ADAMS1@gmail.com		
NSC Contact:	CRAIG TYRRELL		
Tel No.:	295-8085	Mobile No.:	704-8086
Email address:	Ctyrrell@nsc.bm		

3. **Contractor and Service specific conditions:**

Contractor Name:	Atlantic Energy Solutions Group Ltd.		
Address:	17A Brunswick Street, Hamilton, HM10		
Home Tel:		Mobile No.:	441 591-7173
Email address:	info@atlanticenergysg.com		
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 #:	990240368	Social Insurance No.:	N/A
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, <del>distribution or maintenance, systems</del> 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

**4. Service provided by the Contractor**

- 4.1 The Contractor 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.
- 4.2 Changes to the Specification shall only be agreed through the Change Order procedure.
- 4.3 The Contractor agrees to cooperate fully with us during the Project to keep within our budget for this Project.
- 4.4 System Description: The Contractor and us shall cooperate with each other to provide general description for the System which shall include:
- (i) System Size (DC kW):
  - (ii) System location on NSC premises:
  - (iii) Expected modules required for the Project:
  - (iv) Expected inverter:
  - (v) 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.
  - (vi) Interface specifications with other systems and equipment in order that the System can properly function.
  - (vii) Technical standards with which compliance is required.
  - (viii) Detailed specifications of any existing or third party software to be used.

- (ix) **Equipment**, storage, memory and computer network capacity and processing power, which the Contractor proposes to use for the System.

**4.5 Maintainability**

- (ii) Specific requirements for maintenance and support.  
(ii) Support for the NSCs own maintenance and support.

**4.6 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.

**4.7 Training**

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

- 5. Materials, Equipment and Labour:** The Contractor 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.
- 6. Substitutions.** No substitutions of material from those specified in the Documents shall be made without our prior written approval.
- 7. 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.
- 8. Warranty Period and Quality:**

The Contractor shall provide warranty coverage as follows:

Description of Goods	Warranty Period: start and end date	Notes
Eniscope Meters	2 year warranty.	
Modules	20 Year Power Output warranty	
	10 year workmanship warranty	
Inverter	10 year warranty.	Plan for inverter replacement in year 11 and beyond
Batteries	10 year warranty.	
Racking (support for solar systems)	10 year warranty priority	
Installation of System	12 months warranty from time of acceptance by NSC	
Heat Pump	5 year warranty.	
LED Lights	10 year warranty.	

- (i) Unless a longer warranty is called for elsewhere in this Agreement, the Contractor, 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 NSC.
  - (ii) System PV modules used in this Project shall have a 25-year product warranty from the date of sale.
  - (iii) Power conditioning equipment for the System including inverter(s), shall have a 5-year minimum product warranty from the date of sale.
- 9. **Supervision:** The Contractor shall provide competent supervision of its personnel employed on the job Site, use of equipment, and quality of workmanship.
- 10. **Safety and Security:** The Contractor is responsible for maintaining safety in the performance of this Project. The Contractor shall be responsible to ascertain from us the rules and regulations pertaining to safety and security on each NSC premises where each System will be located ("Site").
- 11. **Hazardous Materials.** If any part of the System i.e. PV modules, using hazardous materials, are to be provided by the Contractor, 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 NSC responsibilities related to photovoltaic modules containing hazardous materials must be clearly identified.
- 12. **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.
- 13. **Inspection:** In the event that the Goods are ordered by us and arranged by the Contractor, the Contractor shall comply with Appendix 2.
- 14. **Maintenance and Support:** The Contractor shall maintain and support the System in accordance with Appendix 5. The Contractor 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 Contractor's obligations under the Maintenance Service Agreement or the Performance Guarantee.
- 15. **Correction of Errors.** Contractor 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 Contractor's failure to comply with the standard of care required herein.



## APPENDIX 1

### DESIGN AND INSTALLATION OF THE SYSTEM

#### 1. Fee for the Design and Installation for the System

Construction Estimate Task Construction: Activity, Equipment, and Material		Extended Cost
Microgrid System (Solar & Batteries)		\$2,134,625.99
Heat Pump		\$495,602.77
LED Sports Lighting		\$446,068.93
Eniscope Metering System		\$158,654.38
<b>Total</b>		<b>\$3,234,952.07</b>

#### 2. Payment schedule:

- (i) The Contractor shall be paid subject to staged payments e.g. when Contractor has completed a certain stage of the Project and following Acceptance by us, the Contractor is then entitled to be paid.
- (ii) The stages are as follows:
  - a. Mobilization (31%) - Data Collection, Permitting, Procurement of heat Pump, LED Lighting & Eniscopes.
  - b. Procurement (67%) - Procurement of Microgrid and Installation of Major Components.
  - c. Testing & Commissioning (2%) - System Testing, Commissioning.
- (iii) 5% of the gross Fee shall be retained until Acceptance criteria has been met.
- (iv) Following acceptance, 2.5% of the gross Fee will be released to the Contractor following the satisfactory completion of the Contractor's initial six (6) month Warrant Period.
- (v) The remaining amount of the gross Fee, being the entire unpaid balance of the Fee, shall be released to the Contractor upon the satisfactory completion of the Project, subject to the reasonable satisfaction and acceptance of the Project manager or their nominated representative.

#### 3. Design and Specifications of the System

- 3.1 Design service shall be performed by the Contractor. The Contractor may use Representatives to provide the Service. The professional obligations of such Representatives shall be undertaken and performed in the interest of the Contractor. Any installation service shall be performed by qualified Representatives, selected and paid by the Contractor and acting in the interest of the NSC. Nothing contained herein shall create any contractual relationship between any Representative and the NSC.
- 3.2 If Contractor is not licensed as an architect or engineer suitably qualified in Bermuda and is not authorized by law to perform design service, the Contractor will provide a Representative and will furnish and warrant the Service provided. Prior to designating a Representative to perform any of the Service, the Contractor 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 NSC, and receive prior approval to use the Representative, in writing.
- 3.3 The Contractor 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 Contractor 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.
- 3.4 The Contractor 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.
- 3.5 The Documents for the Project shall include, but not be limited to:
- (i) Any changes made to the technical proposal for the Project;
  - (ii) defining the proposed scope of works for the System;
  - (iii) All plans including proposed movable equipment and furnishings and exterior elevations;
  - (iv) Proposed architectural finish schedule, HVAC, plumbing, and electrical fixture schedules;
  - (v) Outline specifications for the System;
  - (vi) Elevations, including detailed material notes, vertical dimensions as appropriate;
  - (vii) Building sections with information in sufficient detail to define the basic building structure and any additional scope;
  - (viii) An updated Project schedule, including a timetable for submission of any other designs required due to change orders or Value Engineering;
  - (ix) An updated scope narrative.
- 3.6 The Contractor 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).
- 3.7 Upon our review and approval of the design development submittal, the Contractor 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 Contractor's final statement of work for the Project.
- 3.8 The Contractor shall schedule and conduct as needed progress meetings at which the Contact and the Contractor can discuss jointly such matters as procedures, progress, schedule, costs, quality control and problems to be resolved.
- 3.9 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.
- 3.10 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.

#### 4. Requirements of a Project Plan

- 4.1 The Contractor shall carry out the activities and deliver the System and a Service, in accordance with the Project plan for the development of the System.
- 4.2 The example of the Project plan below are for project management purposes and the Contractor should set out the key milestone dates that the Contractor aims to meet.

##### Project Timeline

Task Name	Duration	Work
<b>National Stadium Energy Solution Project</b>	<b>123 days</b>	<b>4,662.8 hrs</b>
EPC Contract Award Sign Off (Satisfaction Date)	Zero + 10 days	94.4 hrs
Development of the O&M Agreement	Zero + 15 days	36 hrs
Secure Financing	Zero + 20 days	20 hrs
<b>Equipment Order and Procurement</b>	<b>70 days</b>	<b>376 hrs</b>
Eniscopes	Zero + 25 days	40 hrs
Heat Pump	Zero + 90 days	56 hrs
LED Lighting	Zero + 34 days	28 hrs
Microgrid (Solar PV & Batteries)	Zero + 41 days	252 hrs
Optimize Microgrid	Zero + 30 days	120 hrs
Planning Submission	Zero + 45 days	1,040 hrs
<b>Equipment Installation</b>	<b>80 days</b>	<b>2,754.4 hrs</b>
Eniscopes	Zero + 55 days	288 hrs
LED Lights	Zero + 104 days	840 hrs
Heat Pump	Zero + 104 days	750.4 hrs
Microgrid	Zero + 71 days	876 hrs
<b>Equipment Testing and Commissioning</b>	<b>55 days</b>	<b>206 hrs</b>
Eniscopes	Zero + 60 days	40 hrs
LED Lights	Zero + 106 days	16 hrs
Heat Pump	Zero + 109 days	20 hrs
Microgrid	Zero + 76 days	130 hrs
Project Sign Off	Zero + 120 days	8 hrs
Project Handover	Zero + 120 days	8 hrs

**5. Project Procedures**

- 5.1 The Contractor shall schedule and coordinate the Project of all of its Subcontractors on the Project including their use of the site. The Contractor shall keep the Subcontractors informed of the Project construction schedule to enable the Subcontractors to plan and perform the Service properly.
- 5.2 The Contractor, 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.
- 5.3 The Contractor 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.
- 5.4 The Contractor shall perform the Service for the System within the identified times of the most recent schedule and consistent with the established Project time.
- 5.5 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.
- 5.6 The Contractor 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 Contractor shall submit at least two (2) copies of all submittals, and shop drawings, unless more copies are required in accordance with the scope of works. No approval of any drawings, specifications, or product data by the Contact shall relieve the Contractor of responsibility for any deviation from the requirements of the Documents unless the Contractor has specifically informed the Contact in writing at the time of submission that such deviation exists and has identified the deviation to the Contact.
- 5.7 The Contractor 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.
- 5.8 The Contractor 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.
- 5.9 The Contractor shall record and distribute minutes of all construction meetings.

**6. Delivery of Software for the System**

- 6.1 Contractor shall make available to us all fixes, modifications, software changes and revised documentation that it requires for the System and a Service and the Contractor shall provide assistance in installation of the same, as necessary.
- 6.2 Contractor 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.
- 6.3 Contractor 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.



## 7. 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:	

Resource	Contact Details	Role
	Tel Number:	
	Mobile Number:	
	email:	
	Tel Number:	
	Mobile Number:	
	email:	
	Tel Number:	
	Mobile Number:	
	email:	

Resource	Contact Details	Role
	Tel Number:	
	Mobile Number:	
	email:	
	Tel Number:	



	Mobile Number:	
	email:	
	Tel Number:	
	Mobile Number:	
	email:	

Resource	Contact Details	Role
	Tel Number:	
	Mobile Number:	
	email:	
	Tel Number:	
	Mobile Number:	
	email:	
	Tel Number:	
	Mobile Number:	
	email:	

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 THE EPC FOR THE 750KW MICROGRID PV SOLAR SYSTEM, ENERGY MONITORING SYSTEM, LED REPLACEMENT LIGHTS, AND POOL HEAT PUMP SYSTEM:**

**SECTION I**

**1. SCOPE OF SERVICES**

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

**1.1 750KW Microgrid PV Solar System**

The Contractor shall develop a design for a new photovoltaic system. It is the responsibility of the Contractor to assess the geological structural integrity and shading limitations for the new carport installation.

**1.2 The Contractor shall cause the following:**

- (a) The System shall comprise of 3 separately metered systems all below the 500KW limit. The carport system design needs to meet applicable local building code requirements with respect to wind factors. In addition, the batteries shall be connected in accordance with regulations and should maximize annual savings.
- (b) System shall be fixed tilt with an orientation that maximizes annual savings.
- (c) System layout shall meet local fire department, code and ordinances required for roof access.

**1.3 Design, Engineering and Permitting**

- (a) Design and engineer the System to occupy the space available as detailed on the site plans.
- (b) 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.
- (c) The design of the System will be subject to final approval by our electrical engineer ("Engineer").
- (d) The Contractor may not proceed with construction until designs have received final approval and the Engineer has issued a formal construction Notice to Proceed.
- (e) The Contractor shall maintain a set of drawings for the System and related Service, with all (Engineer approved) design changes made during construction.
- (f) Upon completion of construction, the Contractor shall submit final design documents, including, at a minimum, drawings that are updated to reflect all changes, with details of PV system structural support, 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 electronic copies of all documents.

**1.4 Contractor should provide design documents that provide the following minimum information:**

- (a) Timeline/Project Schedule.
  - (b) System description.
  - (c) Key equipment details and description.
  - (d) Layout of the installation.
  - (e) Detailed one-line diagram based on specific recommended equipment.
  - (f) Layout of supporting equipment.
  - (g) Specifications for equipment procurement and installation.
  - (h) Solar Panel Power production and Battery Warranty documentation.
  - (i) Solar Panel Workmanship and Battery Warranty documentation.
  - (j) All engineering associated with structural and mounting details.
  - (k) Performance of equipment components, and subsystems including the efficiency rating of the proposed solar PV panels.
  - (l) Integration of solar PV system and Battery with other power sources.
  - (m) Electrical grid interconnection requirements.
  - (n) Controls, monitors, and instrumentation.
  - (o) System performance monitoring.
  - (p) Estimated production simulation, including all factors and assumptions applied to model output.
- 1.5 The Contractor should identify the area for the solar PV inverter equipment and its related components and environmental control systems that will meet the following criteria:
- (a) Meet local Planning requirements.
  - (b) Meet local Building Code requirements.
  - (c) Meet the Bermuda Fire and Rescue Service requirements.
  - (d) Ease of maintenance and monitoring.
  - (e) All PV hardware, rack components and mountings/fixings shall be of corrosion-proof materials, high grade stainless steel, aluminum, hot-dipped galvanized steel.
  - (f) Efficient operation.
  - (g) Low operating losses.
  - (h) Secured location and hardware.
  - (i) Compatibility with existing facilities.
  - (j) Visual harmony (where applicable).
- 1.6 The Contractor 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.

- 1.7 The Contractor will assist with securing from Statutory agencies and BELCO all required rights, permits, approvals, and interconnection agreements. We will be the signatory on applications, permits, and utility agreements.

## **2. Installation**

- 2.1 The Contractor 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:

- (a) Mechanical Equipment and Installation
- (b) Furnish and install all mounting equipment for deploying modules on the carport. The Contractor 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.
- (c) Inspect and survey the structural materials and solar panels for manufacturing flaws and defects before installing.
- (d) Inspect and survey the structure.
- (e) Clean the work area at the job site upon completion.

## **2.2 Electrical Equipment and Installation**

- (a) Include all necessary equipment installation and wiring for a complete and whole system.
- (b) Furnish and install transition boxes at the end of each source circuit to transition from exterior wire on panels to conduit.
- (c) Furnish and install equipment necessary for proper grounding and arching.
- (d) Field wire the solar panels, arrays, etc. and install to identified sources.
- (e) Mount power conditioning equipment which includes all inverters, meters, and transformers as required for a complete and whole system.

## **2.3 Start up and System Testing**

- (a) Start-up and test the System in accordance with the acceptance testing criteria set out in this Agreement, subsequent to demonstration to us.
- (b) Provide demonstration of System operation to us.
- (c) Provide training to our staff in accordance with the Appendix 5.

## **3. Electrical Interconnections**

- 3.1 Supply and install all equipment required to interconnect the solar PV system to the Electrical distribution system.



- 3.2 The Contractor 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 NSC.

**4. 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:

- (a) Installing and starting up each System until it achieves the optimum performance requirements
- (b) Conducting the performance testing over a consecutive twenty-four (24) hour period.
- (c) Conducting the successful delivery of power within thirty (30) days following completion of the system, meeting each benchmark.

**5. Operation and Maintenance Manuals and As-Built Drawings**

- (a) The Contractor 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.
- (b) Provide three (3) sets of as-built drawings as CAD and PDF files. These requirements shall be delivered prior to acceptance of the System.

**6. 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:

- (a) System performance
- (b) System availability
- (c) Average and accumulated output
- (d) Capacity factor
- (e) Degradation
- (f) Cost avoidance



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## SECTION II

### 1. SCOPE OF SERVICES

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

#### 1.1 Energy Monitoring System

The Contractor shall install 15 strategically placed Eniscopes to provide real-time information on your usage including month-to-date kWh, real-time demand, and the associated cost.

#### 1.2 The Contractor shall cause the following:

- (a) The System shall comprise of 15 strategically placed Eniscopes to provide real-time information on your usage including; month-to-date kWh, real-time demand, and the associated cost.
- (b) The data collected will enable you to forecast what you will spend for the billing period. This knowledge gives you the opportunity to make informed decisions about how you will operate the facility prior to receiving your next bill.
- (c) You will also be able to eliminate operational realities like "out of hours" consumption and/or unusual consumption behaviors currently invisible to facility personnel.

#### 1.3 Design, Engineering and Permitting

- (a) Design and engineer the System to capture the most effective data points to ensure maximum savings and operational decision-making.
- (b) The Contractor shall maintain a set of drawings for the System and related Service, with all (Engineer approved) design changes made during construction.
- (c) Upon completion of construction, the Contractor shall submit final design documents, including, at a minimum, drawings that are updated to reflect all changes, with details of 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 electronic copies of all documents.

#### 1.4 Contractor should provide design documents that provide the following minimum information:

- (a) Timeline/Project Schedule.
- (b) System description.
- (c) Key equipment details and description.
- (d) Layout of the installation.
- (e) Detailed one-line diagram based on specific recommended equipment.
- (f) Specifications for equipment procurement and installation.
- (g) Equipment Warranty documentation.
- (h) Equipment Workmanship Warranty documentation.

- 1.5 The Contractor should identify the equipment location and its related components that will meet the following criteria:
  - (a) Meet local Planning requirements.
  - (b) Meet local Building Code requirements.
  - (c) Meet the Bermuda Fire and Rescue Service requirements.
  - (d) Ease of maintenance and monitoring.
  - (e) Secured location and hardware.
  - (f) Compatibility with existing facilities.
  - (g) Visual harmony (where applicable).
- 1.6 The Contractor 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. Installation**
  - 2.1 The Contractor 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:
    - (a) Mechanical Equipment and Installation
    - (b) Furnish and install all mounting equipment for deploying modules on the roof. The Contractor 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.
    - (c) Clean the work area at the job site upon completion.
  - 2.2 **Electrical Equipment and Installation**
    - (f) Include all necessary equipment installation and wiring for a complete and whole system.
    - (g) Furnish and install transition boxes at the end of each source circuit to transition from exterior wire on panels to conduit.
    - (h) Furnish and install equipment necessary for proper grounding and arching.
  - 2.3 **Start up and System Testing**
    - (a) Start-up and test the System in accordance with the acceptance testing criteria set out in this Agreement, subsequent to demonstration to us.
    - (b) Provide demonstration of System operation to us.
    - (c) Provide training to our staff in accordance with the Appendix 5.
  - 2.4 **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:

- (a) Installing and starting up each System until it achieves the optimum performance requirements
- (b) Conducting the performance testing over a consecutive twenty-four (24) hour period.

## **2.5 Operation and Maintenance Manuals and As-Built Drawings**

- (a) The Contractor 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.
- (b) Provide three (3) sets of as-built drawings as CAD and PDF files. These requirements shall be delivered prior to acceptance of the System.

## **3. Monitoring**

The regularly collected data should reflect, but not be limited to, the following:

- (a) Month-to-date kWh
- (b) Real-time demand
- (c) Real-time Cost
- (d) Cost avoidance
- (e) Analytics



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### SECTION III

#### 1. SCOPE OF SERVICES

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

#### 1.2 LED Replacement lights

The Contractor shall replace as many of the existing sports lights as the budgets allows with LED alternatives. It is the responsibility of the Contractor to assess the pole and mounting arms for structural integrity.

#### 1.3 The Contractor shall cause the following:

- (a) Replacement of as many of the existing sports lights as the budgets allows with LED alternatives.
- (b) Enable approximately 33% savings on energy consumption for the lights changed.
- (c) Extend the equipment life and running hours.
- (d) Reduce maintenance costs.

#### 1.4 Design, Engineering and Permitting

- (a) Design and engineer the System to meet the specific sporting regulation performance and luminance standards.
- (b) The design of the System will be subject to final approval by our electrical engineer ("Engineer").
- (c) The Contractor may not proceed with construction until designs have received final approval and the Engineer has issued a formal construction Notice to Proceed.
- (d) The Contractor shall maintain a set of drawings for the System and related Service, with all (Engineer approved) design changes made during construction.
- (e) Upon completion of construction, the Contractor shall submit final design documents, including, at a minimum, drawings that are updated to reflect all changes, with details electrical single-line diagrams, and complete product literature for review by the Engineer. A professional electrical engineer shall sign and stamp the electrical drawings. Three hard copies shall be submitted, as well as electronic copies of all documents.

#### 1.5 Contractor should provide design documents that provide the following minimum information:

- (a) Timeline/Project Schedule.
- (b) System description.
- (c) Key equipment details and description.
- (d) Layout of the installation.
- (e) Detailed one-line diagram based on specific recommended equipment.
- (f) Layout of supporting equipment.
- (g) Specifications for equipment procurement and installation.



- (h) Equipment Warranty documentation.
  - (i) Equipment Workmanship Warranty documentation.
  - (j) All engineering associated with structural and mounting details.
  - (k) Controls, monitors, and instrumentation.
  - (l) System performance monitoring.
- 1.6 The Contractor should identify the number and location of all the lights replaced that will meet the following criteria:
  - (h) Meet local Planning requirements.
  - (i) Meet local Building Code requirements.
  - (j) Meet the Bermuda Fire and Rescue Service requirements.
  - (k) Ease of maintenance and monitoring.
  - (l) Efficient operation.
  - (m) Low operating losses.
  - (n) Secured location and hardware.
  - (o) Compatibility with existing facilities.
  - (p) Visual harmony (where applicable).
- 1.7 The Contractor 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. Installation**
- 2.1 The Contractor 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:
  - (a) Mechanical Equipment and Installation
  - (b) Furnish and install all mounting equipment for deploying light on the pole. The Contractor is to coordinate with us ensuring that the System is placed on our Premises in accordance with the limitations presented.
  - (c) Inspect and survey the structural materials for manufacturing flaws and defects before installing.
  - (d) Inspect and survey the structure.
  - (e) Clean the work area at the job site upon completion.
- 2.2 **Electrical Equipment and Installation**
  - (a) Include all necessary equipment installation and wiring for a complete and whole system.

- (b) Furnish and install transition boxes at the end of each source circuit to transition from exterior wire on panels to conduit.
- (c) Furnish and install equipment necessary for proper grounding and arching.

### **2.3 Start up and System Testing**

- (a) Start-up and test the System in accordance with the acceptance testing criteria set out in this Agreement, subsequent to demonstration to us.
- (b) Provide demonstration of System operation to us.
- (c) Provide training to our staff in accordance with the Appendix 5.

### **3. 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:

- (a) Installing and starting up each System until it achieves the optimum performance requirements
- (b) Conducting the performance testing over a consecutive twenty-four (24) hour period.
- (c) Conducting the successful delivery of power within thirty (30) days following completion of the system, meeting each benchmark.

### **4. Monitoring**

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

- (a) System performance
- (b) System availability
- (c) Average and accumulated electricity consumption
- (d) Cost avoidance



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## **SECTION IV**

### **1. SCOPE OF SERVICES**

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

#### **1.1 Heat Pump System**

The Contractor shall specify, procure, and install a new Heat Pump/ Chiller System. It is the responsibility of the Contractor to assess the existing system electrical, mechanical, and structural specifications to ensure the new system meets or exceeds previous performance.

#### **1.2 The Contractor shall cause the following:**

- (a) Specify, procure, and install a new Heat Pump/ Chiller System.
- (b) The new system shall meet or exceed previous system performance related to energy consumption and reliability.
- (c) All access points for the System shall be securely locked at the end of each day.
- (d) System layout shall meet local fire department, code and ordinances required.

#### **1.3 Design, Engineering and Permitting**

- (a) Design and engineer the System to occupy the same location as the existing unit as detailed on the site plans.
- (b) The design of the System will be subject to final approval by our electrical engineer ("Engineer").
- (c) The Contractor may not proceed with construction until designs have received final approval and the Engineer has issued a formal construction Notice to Proceed.
- (d) The Contractor shall maintain a set of drawings for the System and related Service, with all (Engineer approved) design changes made during construction.
- (e) Upon completion of construction, the Contractor shall submit final design documents, including, at a minimum, drawings that are updated to reflect all changes, diagrams, and complete product literature for review by the Engineer. A mechanical professional engineer shall sign and stamp the mechanical drawings, and a professional electrical engineer shall sign and stamp the electrical drawings. Three hard copies shall be submitted, as well as electronic copies of all documents.

#### **1.4 Contractor should provide design documents that provide the following minimum information:**

- (a) Timeline/Project Schedule.
- (b) System description.
- (c) Key equipment details and description.
- (d) Layout of the installation.
- (e) Detailed one-line diagram based on specific recommended equipment.
- (f) Layout of supporting equipment.

- (g) Specifications for equipment procurement and installation.
  - (h) Equipment Warranty documentation.
  - (i) Equipment Workmanship Warranty documentation.
  - (j) All engineering associated with structural and mounting details.
  - (k) Controls, monitors, and instrumentation.
  - (l) System performance monitoring.
- 1.5 The Contractor should identify the area for the Heat Pump equipment and its related components and environmental control systems that will meet the following criteria:
- (a) Meet local Planning requirements.
  - (b) Meet local Building Code requirements.
  - (c) Meet the Bermuda Fire and Rescue Service requirements.
  - (d) Ease of maintenance and monitoring.
  - (e) Efficient operation.
  - (f) Low operating losses.
  - (g) Secured location and hardware.
  - (h) Compatibility with existing facilities.
  - (i) Visual harmony (where applicable).
- 1.6 The Contractor proposal shall provide evidence that the proposed technology and equipment would meet or exceed all currently applicable and proposed safety standards. The equipment must meet existing facility structural and fire safety requirements.
- 2. Installation**
- 2.1 The Contractor will be required to supply all equipment, materials and labor necessary for the Project to install the System and integrate it with the existing system. Installation includes, but is not limited to, the following:
- (a) Mechanical Equipment and Installation
  - (b) Furnish and install all mounting equipment. The Contractor is to coordinate with us ensuring that the System is placed on our Premises in accordance with the limitations presented.
  - (c) Inspect and survey the equipment for manufacturing flaws and defects before installing.
  - (d) Inspect and survey the structure.
  - (e) Clean the work area at the job site upon completion.
- 2.2 **Electrical Equipment and Installation**
- (a) Include all necessary equipment installation and wiring for a complete and whole system.
  - (b) Furnish and install transition boxes at the end of each source circuit to transition from exterior wire on panels to conduit.

- (c) Furnish and install equipment necessary for proper grounding and arching.

### **2.3 Start up and System Testing**

- (a) Start-up and test the System in accordance with the acceptance testing criteria set out in this Agreement, subsequent to demonstration to us.
- (b) Provide demonstration of System operation to us.
- (c) Provide training to our staff in accordance with the Appendix 5.

### **3. 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:

- (a) Installing and starting up each System until it achieves the optimum performance requirements
- (b) Conducting the performance testing over a consecutive twenty-four (24) hour period.
- (c) Conducting the successful delivery of the desired temperatures within thirty (30) days following completion of the system, meeting each benchmark.

### **4. Operation and Maintenance Manuals and As-Built Drawings**

- (a) The Contractor 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.
- (b) Provide three (3) sets of as-built drawings as CAD and PDF files. These requirements shall be delivered prior to acceptance of the System.

### **5. Monitoring**

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

- (a) System performance.
- (b) System availability.
- (c) Cost avoidance.





## APPENDIX 2

### SUPPLY OF GOODS AND SERVICE FOR THE SYSTEM

#### **1. Orders and Scope of Service**

- 1.1 If mutually agreed, the Contractor 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 NSC.
- 1.2 The Contractor 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.
- 1.3 We may amend or cancel an Order in whole or in part at any time before the shipping of the Goods by giving the Contractor written notice. We shall pay the Contractor 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.

#### **2. Representation and Warranty**

##### **2.1 The Contractor represents and warrants that:**

- (i) the Goods and Service shall comply with the Documents and System specifications and in accordance with Best Industry Practice;
- (ii) as at the Effective Date, all written statements and representations in any written submissions made by the Contractor 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;
- (iii) 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;
- (iv) 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;
- (v) 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 NSC; and
- (vi) 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.

##### **2.2 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.**

##### **2.3 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 Contractor which constitutes a material default.**

**2.4 The Contractor acknowledges that:**

- (a) we have delivered or made available to the Contractor all of the information and documents that the Contractor considers necessary or relevant for the performance of its obligations under this Agreement;
- (b) it has undertaken all necessary due diligence and has entered into this Agreement in reliance on its own due diligence alone;
- (c) it acknowledges and warrants that it is fully satisfied as to the scope and nature of the duties and obligations under this Agreement; and
- (d) it shall not be excused from the performance of any of its obligations under this Agreement on the grounds of, nor shall the Contractor be entitled to recover any additional costs or charges, arising as a result of any:
  - (i) misinterpretation of an Order, without due diligence as to the requirements of the Order;
  - (ii) failure by the Contractor to satisfy itself as to the accuracy and/or adequacy of the due diligence of information elsewhere in this Agreement; and/or
  - (iii) failure by the Contractor to undertake its own due diligence.

**3. Goods**

- 3.1 The Contractor 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 Contractor or made known to the Contractor by the NSC expressly or by implication, and in this respect the NSC relies on the Contractor's skill and judgement.
- 3.2 We have the right to inspect and test the Goods at any time before receipt of the Goods.
- 3.3 If following such inspection or testing we consider that the Goods do not conform or are unlikely to comply with the Contractor's undertakings in this Appendix, we shall inform the Contractor and the Contractor shall immediately take such remedial action as is necessary to ensure compliance.
- 3.4 Notwithstanding any such inspection or testing under this Agreement, the Contractor 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 Contractor's obligations under this Agreement and we shall have the right to conduct further inspections and tests after the Contractor has carried out its remedial actions.

**4. Software License**

- 4.1 In the event that the Contractor 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 Contractor shall use its best efforts to resolve such issues and to provide optimal functionality of the Goods or the Service.
- 4.2 The Contractor 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 Contractor or for which the Software of Contractor is intended. In that case, we will impose the above obligations and restrictions on the third party.

**5. Warranty of the Goods**

- 5.1 The Contractor 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.
- 5.2 If we shall, within the Warranty Period, give notice in writing to the Contractor of any defect in any of the Goods as may have arisen during such Warranty Period under proper and normal use, the Contractor 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.

**6. 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 Contractor 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 Contractor shall be liable and pay for all the Expenses in the performance of such remedial work.

**7. Additional Goods**

- 7.1 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 NSC. 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.
- 7.2 All Change Orders are subject to the terms and conditions of this Agreement.
- 7.3 Fees for additional goods or service shall be agreed by the Parties in writing prior to any additional goods or service being provided.

**8. Delivery**

- 8.1 Time is of the essence in connection with the delivery of the Goods. The Contractor shall perform expeditiously to meet the requirements hereunder and shall deliver the Goods to the NSC on the date as specified by us ("Delivery Date"). In the event that the Contractor is unable to provide the Goods within the required time, the Contractor shall notify us at the time the request is made or promptly thereafter to allow sufficient time to purchase from an alternative Contractor.
- 8.2 The Contractor shall ensure that:
- (a) 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;
  - (b) 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
  - (c) if the Contractor requires us to return any packaging material to the Contractor, that fact is to be clearly stated on the delivery note. Any such packaging material shall be returned to the Contractor at the Contractor's Expense.

- 8.3 The Contractor shall deliver the Goods specified in each Order:
- (a) on or before the Delivery Date;
  - (b) at the delivery location as instructed by us ("**Delivery Location**"); and
  - (c) during our normal business hours, or as instructed by us.
- 8.4 Delivery of Goods is completed on the completion of unloading of those Goods at the Delivery Location on the Delivery Date.
- 8.5 If the Contractor 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.
- 8.6 If the Contractor:
- (a) delivers less than 50% of the quantity of Goods ordered, we may reject the Goods; and
  - (b) delivers more than 105% of the quantity of Goods ordered, we may at our discretion reject the Goods or the excess Goods.
- 8.7 If we reject any Goods they are returnable at the Contractor's Expense. If the Contractor fails to collect rejected Goods within a reasonable period after notification of the rejection, we may charge the Contractor storage costs and sell or dispose of the rejected Goods. We will account to the Contractor 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.
- 8.8 The Contractor shall not deliver Orders in instalments without our prior written consent.
- 8.9 Where it is agreed that Orders may be delivered by instalments, such instalments shall be invoiced separately. However, failure by the Contractor 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.
- 8.10 Continuing Obligation to Provide the Goods:
- (a) The Contractor shall continue to perform all of its obligations under this Agreement and shall not suspend the provision of the Goods, notwithstanding:
    - (i) any withholding or deduction by us of any sum due to the Contractor pursuant to the exercise our right to such withholding or deduction under this Agreement;
    - (ii) the existence of an unresolved dispute; and/or
    - (iii) any failure by us to pay any Fees or Expenses,unless the Contractor is entitled to terminate this Agreement as a result of our failure to pay undisputed Fees.
- 9. Inspection and Acceptance**
- 9.1 We shall at all times retain the right to inspect the Goods provided by the Contractor and shall have the right to review, require correction or additional follow up, if necessary, and accept the Goods or Service.
- 9.2 We will notify the Contractor of its contact who shall be responsible for reviewing, inspecting and approving delivery of the Goods and Service.
- 9.3 We shall have the right to reject the Goods or refuse acceptance of the Goods if:
- (a) the Goods, or any portion thereof, are not in conformance with this Agreement;
  - (b) the Goods, or any portion thereof, are not in conformance with the Specifications provided to the Contractor at the time the order for the Goods was placed;

- (c) the Goods, or any portion thereof, are not in conformance with the Documents; or
  - (d) the Contractor fails to deliver the Goods within the time as specified by us, following receipt of the Order or such other time as specified us.
- 9.4 Upon such rejection of the Goods, the Contractor shall arrange for return of the Goods to the Contractor, at the Contractor's risk and Expense, and the Contractor 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.
- 9.5 Following rejection of any Goods in accordance with this Section, we shall have the right to require the Contractor 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 Contractor shall reimburse us, upon demand, all additional Expense incurred by us, if any, in obtaining the Goods and Service or substitutes thereof.
- 9.6 We may confirm, in writing, acceptance of the Goods at the time of Delivery or at any time thereafter.
- 9.7 Written acceptance of the Goods by us shall release the Contractor 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 Contractor 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.
- 9.8 The Contractor's failure to proceed with reasonable promptness to make necessary corrections shall be a Default. If the Contractor 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.
- 10. Ownership and Risk of Goods**
- 10.1 Risk and ownership in relation to the Goods:
  - (a) Without prejudice to any of our rights or remedies howsoever arising title to the Goods shall pass to the NSC 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.
  - (b) In the event that an advance payment is made, all risk in the Goods remain with the Contractor until we have accepted the Goods, in writing.
  - (c) Risk of loss or damage to the Goods shall only pass to us at the time of acceptance of the Goods by us.
- 11. NSC Remedies**
- 11.1 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:
  - (a) terminate the Agreement;



- (b) reject the Goods (in whole or in part) and return them to the Contractor at the Contractor's own risk and Expense;
  - (c) require the Contractor to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
  - (d) refuse to accept any subsequent delivery of the Goods which the Contractor attempts to make;
  - (e) recover from the Contractor any costs suffered or incurred by us in obtaining substitute goods from a third party; and
  - (f) claim damages for any other Loss suffered or incurred by us which are in any way attributable to the Contractor's failure to carry out its obligations under this Agreement.
- 11.2 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 Contractor shall pay to us the sum of **BDM\$50 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.
- 11.3 This Agreement shall apply to any repaired or replacement Goods supplied by the Contractor.
- 11.4 Our rights and remedies under this Agreement are in addition to its rights and remedies implied by statute and common law.

**12. List and cost of Goods**

Description of Goods	Delivery Date	Fee	Notes
<b>Eniscopes</b>			
<b>Heat Pump</b>			
<b>LED Lights</b>			
<b>Inverters</b>			
<b>PV Panels</b>			
<b>Batteries</b>			
<b>Racking</b>			



### APPENDIX 3

#### ACCEPTANCE TEST AND ACCEPTANCE CERTIFICATE

##### **1. Testing and Acceptance of the System**

- 1.1 You and the NSC 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 NSC specifications and following such Acceptance Tests, we may accept the System or Service prior to the Go Live Date.
- 1.2 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.
- 1.3 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.
- 1.4 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.
- 1.5 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.
- 1.6 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.
- 1.7 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.
- 1.8 We shall carry out the Acceptance Tests to the dates or time scales set out in the Project plan after delivery of the System.
- 1.9 You shall provide all necessary assistance to us to perform the Acceptance Tests.
- 1.10 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.
- 1.11 You shall re-test all or parts of the System or Service before delivering the corrected System or Service to the NSC for repeat Acceptance Tests.

##### **2. Final Acceptance Testing**

- 2.1 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.

- 2.2 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.
- 2.3 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.
- 2.4 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.
- 2.5 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.
- 2.6 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.
- 2.7 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.

### **3. ACCEPTANCE CERTIFICATE**

- 3.1 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
- 3.2 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:
  - a) 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.

- b) 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.
- c) 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.
- d) 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

- 1.1 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").
- 1.2 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.
- 1.3 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.
- 1.4 All Documents and training materials supplied to us shall be the property of the NSC.

#### APPENDIX 5

##### MAINTENANCE AND SUPPORT

The parties recognize that the O&M strategy of a Microgrid system will play a significant role in the future performance of the system and will impact (among other things); equipment outages, equipment life-cycle cost, and equipment lifespan. The Maintenance and Support Service ("Maintenance Service") shall commence from the Go Live Support date. A separate O&M contract will be executed, however; the minimum requirements are presented below.

##### Maintenance Service

- 1. The Maintenance Service shall be provided as set out below:

- 1.1 provide such maintenance service to ensure that we can continue to use the System as set out in any Service specifications;
- 1.2 make available to us any information, tools or software necessary to carry out first line fault diagnosis and resolution of a problem;
- 1.3 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;
- 1.4 the parties shall agree the implementation and operation of any remote diagnostic tools, which you may make available from time to time;
- 1.5 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*];
- 1.6 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.





Dated 24<sup>th</sup> May 2021

Trustees of the National Sports Centre

65 Roberts Avenue

Devonshire

Bermuda, DV 01

THIS IS AN IMPORTANT CONTRACT. THE BANK STRONGLY  
RECOMMENDS THAT YOU SEEK INDEPENDENT LEGAL ADVICE  
BEFORE YOU ENTER INTO THIS CONTRACT.

Attention: Mr. Adams and Mr. Tyrrell

Dear Sirs,

Re: Fixed Term Loan Facility in the amount of US\$3,235,000.00

HSBC Bank Bermuda Limited (Bank) is pleased to offer a fixed term loan facility to the Trustees of the National Sports Centre, a body corporate established under the terms and conditions, including the Schedules, set out in this Facility Letter.

## 1 Capitalised terms

### 1.1 Defined Terms

Capitalised terms used in this Facility Letter and not otherwise defined in this Facility Letter (including the Schedules) shall have the following meaning:

<b>Account</b>	means the account maintained by the Borrower with the Bank;
<b>Applicable Law</b>	mean with respect to any Person, property, transaction or event or other matter, any law, rule, statute, regulation, order, judgment, decree, treaty or other requirement having the force of law relating or applicable to such Person, property, transaction or event or other matter, and also includes, where appropriate, any interpretation of the law (or any part) by any Person having jurisdiction over it, or charged with its administration or interpretation;
<b>Arrangement Fee</b>	has the meaning set out in Clause 3.1 of this Facility Letter;
<b>Availability Period</b>	means the period from and including date of this Facility Letter up to and including the date that falls on 5 <sup>th</sup> anniversary of such date.
<b>Breakage Costs</b>	(a) the amount of interest which the Bank should have received for the period from the date of a prepayment of all or a portion of the Facility through to the end of the Term had the principal amount of the Facility (or prepaid portion thereof) been paid in accordance with the repayment schedule set out in Clause 2.6, exceeds:  (b) the amount which the Bank would have been able to obtain by placing an amount equal to the principal amount of the Facility which was prepaid on deposit with a leading bank in the London interbank market (or an alternative thereof) for a period starting on the day of prepayment and ending on the last day of the current Term;
<b>Building Contract</b>	means the contract to complete and install the Works, in the agreed form, between the Borrower and the Contractor dated 7 September 2018;

<b>Budgeted Costs</b>	means the budget prepared by the Borrower and accepted by the Bank set out in Schedule 5 as may be updated by agreement between the Borrower and the Bank.	
<b>Business Day</b>	means a day of the year (not being a Saturday, Sunday or a public holiday) on which banks are open for business and not required or authorised to close in Bermuda;	
<b>Capital Expenditure</b>	means any expenditure that, in accordance with GAAP, is treated as capital expenditure;	
<b>Closing</b>	means the completion of the transaction contemplated hereby;	
<b>Companies Act</b>	means the Companies Act 1981;	
<b>Completion Certificate</b>	means the certified copy of the certificate/written statement of Practical Completion to be provided to the Bank by the Borrower upon completion of the Works;	
<b>Conditions Precedent</b>	means those conditions precedent set out in Schedule 3 of this Facility Letter;	
<b>Consents and Approvals</b>	means any consents, approvals, agreements, permissions, authorisations, whether oral or written (as required) from any Person;	
<b>Contractor</b>	means Atlantic Energy Solutions Group Ltd ;	
<b>Guarantor</b>	has the meaning set out in Clause 4.1 of this Facility Letter;	
<b>Court</b>	means a court of competent jurisdiction in Bermuda or any other jurisdiction applicable to the Borrower or any Guarantor (as applicable;	
<b>Debt</b>	means, relative to any Person, and without duplication: (a) indebtedness for borrowed money incurred by such Person; (b) obligations of such Person evidenced by bonds, debentures, notes or other similar instruments; (c) all other items which, in accordance with GAAP, would be included as liabilities on the liability side of the balance sheet of such Person as at the date at which Debt is determined (including, without limitation, net liabilities of such Person under swap, rate cap, collar, future, forward, option or other similar agreements or arrangements); and (d) obligations of such Person under direct or indirect guarantees in respect of, and obligations (contingent or otherwise) to purchase or otherwise acquire, or otherwise to assure a creditor against loss in respect of, indebtedness or obligations of others of the kind referred to in paragraphs (a) through (c), inclusive, above;	
<b>Debt Service Coverage Ratio</b>	means with respect to the Borrower, for any period, the ratio of (a) EBITDA of said Borrower, on a consolidated basis for the Relevant Period, to (b) the Debt Service Requirements of said Borrower on a consolidated period for such Relevant Period.	
<b>Debt Service Requirements</b>	means with respect to the Borrower, on a consolidated basis for any Relevant Period, (a) all permanent principle repayments in respect of Debt made or required to be made during such Relevant Period, and (b) Interest Expenses for such Relevant Period.	
<b>Default Rate</b>	means a rate of interest equal to two percent (2%) per annum above the Interest Rate;	

<b>"Depreciation, Amortisation and Accretion"</b>	means the amount attributable to the depreciation, amortisation, accretion or impairment of assets of the Borrower as determined in accordance with GAAP.
<b>Dollars or \$</b>	means the lawful currency of the United States of America;
<b>Drawdown Request</b>	means the request for a Loan under the Facility in the form attached as Schedule 4 hereto;
<b>EBITDA</b>	means, in respect of any Relevant Period, the Net Earnings of the Borrower before taking into account: <p>(a) Interest Expenses;</p> <p>(b) corporation tax (or any other tax levied on or measured by reference to profits or gains) on the profits earned and gains realised in such period;</p> <p>(c) Depreciation, Amortisation and Accretion;</p> <p>(d) profits or gains attributable to minority interests in any Subsidiary undertakings;</p> <p>(e) any extraordinary and exceptional items or prior year adjustments.</p>
<b>Facility</b>	has the meaning set out in Clause 2.1 of this Facility Letter;
<b>Facility Letter</b>	means this facility letter, together with the Schedules thereto, as the same may be amended, modified, supplemented, restated or otherwise varied, from time to time;
<b>Finance Documents</b>	means collectively, this Facility Letter, the Business Account Operating Agreement and the Security Document, as the same may be amended, modified, supplemented, restated or otherwise varied from time to time;
<b>GAAP</b>	means generally accepted accounting principles in effect in Bermuda on the date of this Facility Letter, consistently applied;
<b>Governmental Authority</b>	means any government or any governmental, semi-governmental, administrative, municipal, fiscal or judicial body, ministry, department, commission, authority, tribunal, agency or any entity which is tasked with providing regulatory approvals or permissions under any legislation in effect from Bermuda from time to time;
<b>Guarantor</b>	means the Guarantor any Person who has guaranteed the obligations of the Borrower under any of the Finance Documents;
<b>HSBC Group</b>	means HSBC Holdings PLC, and any entity which from time to time is a subsidiary or an associated entity of HSBC Holdings PLC, and their respective successors and assigns;
<b>Insolvency Event</b>	means the occurrence of any of the following events: <p>(a) an application is made to the Court for the granting of a winding-up order in relation to the Borrower or any Guarantor (as applicable) and that application is not withdrawn or dismissed within fourteen (14) days of it being made, or an order is made, that it be wound up;</p> <p>(b) a liquidator or provisional liquidator is appointed pursuant to the Companies Act, the relevant provisions of the Supreme Court Act 1905, or other relevant legislation in Bermuda in respect of such the Borrower or any Guarantor (as applicable) or its assets and that appointment is not vacated within</p>

Loan Application	means the loan application submitted by the Borrower to the Bank.
Interest Rate	(a) LIBOR Rate; and (b) Margin; during the Term the interest rate shall be the aggregate of the:
Interest Period	means the period commencing upon the expiry of the Interest Only Period up to and including the date that is the expiry of the Term.
Interest Expense	means any interest, commission, fees, discounts, prepayment fees, premiums or charges and other finance payments whether paid, payable or capitalise by the Borrower (calculated on a consolidated basis).
Interest Only Period	means the period commencing on the date of the initial Drawdown and expiring on the date that falls 180 days thereafter.
Insurances	means contractors all risk insurance for the value of the Works with the Banks interest noted as mortgagee on all such policies;
	<p>(c) if any distress, execution, sequestration or other legal process is levied or enforced or sued out against any of the assets or undertaking of the Borrower or any Guarantor (as applicable) or a receiver, receiver and manager or custodian is appointed in respect of it or any of its assets;</p> <p>(d) the Borrower or any Guarantor (as applicable) enters into, proposes to enter into or resolves to enter into a scheme of compromise or arrangement, or applies to the Court for a meeting pursuant to Section 99 (1) of the Companies Act or any other relevant legislation;</p> <p>(e) the Borrower or any Guarantor (as applicable) resolves to wind itself up or otherwise dissolve itself or gives notice of its intention to do so or ceases or threatens to cease to carry on in the normal course all or any material part of its business;</p> <p>(f) the Borrower or any Guarantor (as applicable) is, states that it is, or becomes unable to pay its liabilities as they become due or is deemed unable to pay its Debts as they become due under Section 162 (or otherwise) of the Companies Act or any other applicable legislation;</p> <p>(g) the Borrower or any Guarantor (as applicable) resolves or takes steps to obtain the protection of the Court or any other court of competent jurisdiction in any other jurisdiction, or is granted protection, from the creditors of the Borrower or any Guarantor (as applicable) under any relevant legislation;</p> <p>(h) without limiting the generality of the foregoing, there is a moratorium of the Debts of the Borrower or any Guarantor (as applicable) or an official assignment or a composition or an arrangement, formal or informal, with the its creditors, or any of them, or any similar proceeding or arrangement by which the Borrower or any Guarantor (as applicable) is submitted to the control of its creditors is applied for, ordered or declared;</p> <p>(i) if any other Person, whether pursuant to a Lien or otherwise, takes possession of all or a material part of the property, assets or undertakings of the Borrower or any Guarantor (as applicable); or</p> <p>(j) any similar events occur in any other jurisdiction with respect to the Borrower or any other Guarantor, as applicable.</p>

<b>LIBOR Rate</b>	means the interest rate the Bank is offered funds in the London InterBank Market as of 11:00am London time on the Quotation Day in the approximate amount of monies and currency drawn or to be drawn by the Borrower and for a period equal in length to the Interest Period of the Loan.
<b>Lien</b>	means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other) charge or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement and any financing lease involving substantially the same economic effect as any of the foregoing) and any filing of any financing statement, registration, recordation or other filing with respect thereto by or under authority of the Person granting such Lien under the Applicable Law of any jurisdiction;
<b>Licences and Permits</b>	means all licenses, permits, permissions or consents required from any Governmental Authority in connection with the ownership, property, assets and undertakings or the operation of any business;
<b>Loan</b>	has the meaning set out in Clause 2.3 of this Facility Letter;
<b>Margin</b>	means 2.70%
<b>Party</b>	means a party to this Facility Letter and any reference to a Party includes its successors and permitted assigns, and <b>Parties</b> means every Party;
<b>Person</b>	means an individual, partnership, company, organisation, trust, unincorporated association, joint venture, Governmental Authority, or any similar entity;
<b>Practical Completion</b>	means the date on which: the Completion Certificate confirming the date of practical completion (or the equivalent evidence of practical completion of works) of the Works issued in accordance with the terms of the Building Contract;
<b>Progress Certificate</b>	means a certificate issued to the Bank by a Relationship Manager, in form and substance satisfactory to the Bank, containing the information required by clause 2.3(d);
<b>Progress Report</b>	means the monthly report prepared by the Contractor for the Borrower pursuant to clause 9 of the Building Contract;
<b>Property</b>	means the property and buildings municipally described as the National Sports Centre, 65 Roberts Avenue, Devonshire, Bermuda, DV 01;
<b>Relationship Manager(s)</b>	means either of Monique Simons and Wayne Newhook or such other member of the Borrower's Bank relationship management team as may be appointed from time to time during the Term;
<b>Relevant Period</b>	means each period of twelve (12) months ending on or about the last day of each financial and financial half-year of the Borrower.
<b>Quotation Day</b>	means in relation to any period for which an Interest Rate is to be determined, the date that is two business days prior to the first day of such Interest Period.
<b>Security Document</b>	has the meaning as set out in Clause 4.1 of this Facility Letter, and as the same may be amended, modified, supplemented or restated from time to time;

<b>Taxes</b>	means all land taxes, charges, annual government fees, fees, levies, imposts, value added taxes, stamp duty and any other duties, charges, assessments, payroll tax, social insurance payments, employee benefits payments and premiums, withholding, employee insurance payments, corporation taxes, pension payments or contributions, income, sales, use, value added, goods and services, workers' compensation or any other tax of any kind whatsoever (including any interest, fines and penalties) imposed by any Person;
<b>Term</b>	means a period of 5 years from the date of this Facility Letter;
<b>Withholding</b>	has the meaning set out in Clause 2.9 of this Facility Letter;
<b>Works</b>	means the works associated with the installation of the new solar panel renewable energy system and associated heating system to the swimming pool and LED lighting at the Property as more particularly described in the Building Contract.

## 1.2 Headings

The division of this Facility Letter into sections, clauses and paragraphs are for convenience of reference only and will not affect the construction or interpretation of this Facility Letter.

## 1.3 Number and Gender

Unless the context requires otherwise, words importing the singular include the plural and vice versa, and words importing gender include all genders.

## 1.4 Clause and Schedule References

Unless the context requires otherwise, references in this Facility Letter to Clauses or Schedules are to Clauses or Schedules of this Facility Letter.

## 1.5 Statute References

Any reference in this Facility Letter to any statute or any section thereof will, unless otherwise expressly stated, be deemed to be a reference to such statute or section as amended, restated or re-enacted from time to time.

## 1.6 Schedules

The following Schedules are attached hereto and form an integral part of this Facility Letter:

Schedule 1:	Representations and Warranties
Schedule 2:	Covenants
Schedule 3:	Conditions Precedent
Schedule 4:	Drawdown Request
Schedule 5:	Waiver of Independent Legal Advice

## 2 Loan Details

### 2.1 Type and Amount

A fixed Term Loan Facility in the amount of three million two hundred and thirty five thousand Dollars only (\$3,235,000.00) (**Facility**).

### 2.2 Purpose

The Facility shall be used by the Borrower for:

- (a) paying all costs associated with the Works in accordance with the Budgeted Costs; and
- (b) paying interest, fees, costs and expenses payable by the Borrower under the Finance Documents.



The Borrower covenants and agrees that the proceeds of the Facility shall only be used for the purpose(s) above and for no other purpose. The Bank is not required to monitor or verify the use of any amount borrowed by the Borrower under this Facility Letter.

## 2.3 Availability

Subject to the satisfaction or waiver of the Conditions Precedent, the Facility shall be available in seven (7) drawdowns (each a Loan) up to the maximum aggregate amount of the Facility during the Availability Period provided that each request for a Loan shall be subject to the following additional requirements;

- (a) no Event of Default shall have occurred and be continuing, or would result from the making of such Loan; and
- (b) the Borrower shall have delivered a Drawdown Request not less than two (2) Business Days prior to the date for advance of the requested Loan; and
- (c) all Insurances furnished to the Bank by the Borrower are valid and in full force and effect. To Borrower's knowledge no notice has been given and no grounds presently exist to cancel or void any of such policies or to reduce the coverage provided thereby; and
- (d) each Drawdown Request shall include a Progress Certificate from a Relationship Manager and shall include (but are not limited to) confirmation:

- (i) that they have attend the Property;
- that they have reviewed a budget analysis in respect of the costs of those Works for which the Drawdown Request is being delivered;
- (ii) that the Works incurred have been completed in accordance with the terms and conditions of the Building Contract;
- (iii) of the total costs remaining to complete the Works;
- (iv) that any increased costs required to complete the Works have been identified;
- (v) of the adequacy of the remaining budget with reference to the undrawn portion of the Facility;
- (vi) that the timeframe remaining to completion of the Works is on schedule; and
- (vii) that copies of all invoices and/or schedules in respect of the Works are attached to said Drawdown Request.

Any amount of the Facility which remains undrawn at the end of the Availability Period shall be cancelled and shall no longer be available for drawing.

## 2.4 Evidence of Indebtedness

The Bank shall maintain accounts evidencing the amounts from time to time lent or made available by or owing to it under this Facility Letter and the other Finance Documents. In any legal action or proceeding arising out of or in connection with this Facility Letter or the other Finance Documents, the entries made in the accounts maintained by the Bank shall be prima facie evidence of the existence and amount due and owing by the Borrower and any Guarantor (as applicable) to the Bank. A certificate or determination by the Bank of any amount payable to it under this Facility Letter or the other Finance Documents shall, in the absence of manifest error, be conclusive and binding on the Borrower and any Guarantor (as applicable).

## 2.5 Interest

Interest is payable monthly in arrears by way of a standing order debit to the Account. In the event that the Borrower fails to pay the Bank any amount which is payable to the Bank in accordance with this Facility Letter on its due date, the Borrower shall be liable to pay interest on such amount at the Default Rate from such due date until actual payment, both before and after any Event of Default, expiration of the Term, demand or judgment.

Interest shall accrue from day to day and shall be calculated on the basis of a year of 360 days, both before and after any Event of Default, expiration of the Term, demand or judgment, and shall be payable at the Interest Rates set out in this Facility Letter.

#### A. Benchmark Replacement Setting

(a) Notwithstanding anything to the contrary herein for purposes of this clause 2.5, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then (i) if a Benchmark Replacement is determined in accordance with clause (1) or (2) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under this Facility Agreement in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Facility Agreement and (ii) if a Benchmark Replacement is determined in accordance with clause (3) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under this Facility Agreement in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Bank without any amendment to, or further action or consent of any other party to, this Facility Agreement.

(b) In connection with the implementation of a Benchmark Replacement, the Bank will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement

(c) The Bank will promptly notify the Borrower of (i) any occurrence of a Benchmark Transition Event and its related Benchmark Replacement Date, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes, (iv) the removal or reinstatement of any tenor of a Benchmark pursuant to clause 2.5(d) below and (v) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Bank pursuant to this clause 2.5(c), including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Facility Agreement, except, in each case, as expressly required pursuant to this clause 2.5(c).

(d) Notwithstanding anything to the contrary herein at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including Term SOFR or USD LIBOR) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Bank in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is or will be no longer representative, then the Bank may modify the definition of "Interest Period" for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is or will no longer be representative for a Benchmark (including a Benchmark Replacement), then the Bank may modify the definition of "Interest Period" for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(e) Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any request for a US dollar borrowing of, conversion to or continuation of US dollar Loan(s) to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to ABR Loans. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of ABR based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of ABR.

In this clause 2.5:

"ABR" means alternate base rate.

**"Available Tenor"** means, as of any date of determination and with respect to the then-current Benchmark, as applicable, any tenor for such Benchmark or payment period for interest calculated with reference to such Benchmark, as applicable, that is or may be used for determining the length of an Interest Period pursuant to this Facility Agreement as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of "Interest Period" pursuant to clause 2.5(d).

**"Benchmark"** means, initially, USD LIBOR, provided that if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to USD LIBOR or the then-current Benchmark, then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to clause 2.5(a)

**"Benchmark Replacement"** means, for any Available Tenor, the first alternative set forth in the order below that can be determined by the Bank for the applicable Benchmark Replacement Date: (1) the sum of: (a) Term SOFR and (b) the related Benchmark Replacement Adjustment; (2) the sum of: (a) Daily Simple SOFR and (b) the related Benchmark Replacement Adjustment; (3) the sum of: (a) the alternate benchmark rate that has been selected by the Bank and the Borrower as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for U.S. dollar-denominated syndicated credit facilities at such time and (b) the related Benchmark Replacement Adjustment; provided that, in the case of clause (1) above, such Unadjusted Benchmark Replacement is displayed on a screen or other information service that publishes such rate from time to time as selected by the Bank in its reasonable discretion. If the Benchmark Replacement as determined pursuant to clauses (1), (2) or (3) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Facility Agreement.

**"Benchmark Replacement Adjustment"** means, with respect to any replacement of the then current Benchmark with an Unadjusted Benchmark Replacement for any applicable Interest Period and Available Tenor for any setting of such Unadjusted Benchmark Replacement: (1) for purposes of clauses (1) and (2) of the definition of "Benchmark Replacement," the first alternative set forth in the order determined by the Bank.

**"Benchmark Replacement Conforming Changes"** means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "ABR," the definition of "Interest Period," timing and frequency of determining rates and making payments of interest and other administrative matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of the Benchmark Replacement exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement).

**"Benchmark Replacement Date"** means the date and time of the Business Day notified by the Bank to the Borrower as the date and time at which the amendments to be effected pursuant to this clause 2.5 become effective and, if there is more than one Loan, the Bank may specify Benchmark Replacement Dates for each Loan.

**"Benchmark Transition Date"** means the earlier to occur of (a) 1 January 2022 or any earlier date agreed between the Bank and the Borrower and (b) the date of the occurrence of one or more of the following events with respect to the Benchmark:

(i) an official public statement which states that the Benchmark has ceased to be published permanently or indefinitely; or

(ii) a public statement by the regulatory supervisor for the administrator of USD LIBOR announcing that Benchmark is no longer representative.

**"Benchmark Transition Event"** means the occurrence of one or more of the following events with respect to LIBOR: (1) a public statement or publication of information by or on behalf of the administrator of LIBOR announcing that such administrator has ceased or will cease to provide LIBOR, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide LIBOR; (2) a public statement or publication of information by the regulatory supervisor for the administrator of LIBOR, the U.S.

Federal Reserve System, an insolvency official with jurisdiction over the administrator for LIBOR, a resolution authority with jurisdiction over the administrator for LIBOR, or a court or an entity with similar insolvency or resolution authority over the administrator for LIBOR, which states that the administrator of LIBOR has ceased or will cease to provide LIBOR permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide LIBOR; or (3) a public statement or publication of information by the regulatory supervisor for the administrator of LIBOR announcing that LIBOR is no longer representative.

**"Benchmark Unavailability Period"** means the period (if any) (i) beginning at the time that a Benchmark Replacement Date pursuant to clauses (1) or (2) of that definition has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder in accordance with this clause 2.5 and (ii) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder in accordance with this clause 2.5.

**"Corresponding Tenor"** with respect to any Available Tenor means, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as such Available Tenor.

**"Daily Simple SOFR"** means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Bank in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining

**"Floor"** means the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to USD LIBOR.

**"Reference Time"** with respect to any setting of the then-current Benchmark means (1) if such Benchmark is USD LIBOR, 11:00 a.m. (London time) on the day that is two London banking days preceding the date of such setting, and (2) if such Benchmark is not USD LIBOR, the time determined by the Bank in its reasonable discretion.

**"Relevant Governmental Body"** means the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or any successor thereto.

**"SOFR"** means, with respect to any Business Day, a rate per annum equal to the secured overnight financing rate for such Business Day published by the SOFR Administrator on the SOFR Administrator's Website on the immediately succeeding Business Day.

**"SOFR Administrator"** means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

**"SOFR Administrator's Website"** means the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

**"Term SOFR"** means, for the applicable Corresponding Tenor as of the applicable Reference Time, the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

**"Unadjusted Benchmark Replacement"** means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

**"USD LIBOR"** means the London interbank offered rate for U.S. dollars.

This Clause 2.5 shall apply notwithstanding any other provision of this Agreement.

## 2.6 Repayment

During the Interest-Only Period the Facility will be subject to interest only payment and accrued interest will be payable monthly in arrears in the amount of seven thousand six hundred dollars only (\$7600.00) by the Borrower.

Without otherwise limiting the Bank's right to make demand under this Facility Letter, the Facility is to be repaid by way of monthly blended payments of principal and interest in the amount of thirty



three thousand six hundred and fifty eight Dollars only (\$33,658.00) (Regular Payment) commencing in the month immediately following the expiry of the Interest-Only Period. For the purposes of establishing the amount of the monthly payments, a calculation has been made based on an amortisation period equal to the length of the ten (10) years. Regular Payments will be debited to the Account on a standing order basis.

Subject to the terms and conditions of this Facility Letter, on the last day of the Term, the then outstanding principal amount of the Facility, together with any accrued and unpaid interest and all other fees, costs and expenses owing to the Bank under this Facility Letter and the other Finance Documents, shall be payable to the Bank, without any demand therefore. At that time, the Bank may, in its sole discretion, offer to renew the Facility for another term.

The Bank may annually review the Regular Payment on each anniversary of the Loan and more frequently following either (i) a change to the Interest Rate due to a change in the Interest Rate or (ii) any prepayment of the Loan by the Borrower in accordance with Clause 2.7. Following such review, the Bank may adjust the Regular Payment amount to ensure that the Loan is repaid together with all accrued interest by no later than the last day of the Term.

## 2.7 Prepayment

During the Term, and subject to the continuation of the repayment schedule detailed in Clause 2.6, the Borrower may prepay the principal of the Facility or any Loan under the Facility in the minimum amount of three hundred and twenty three thousand, five hundred Dollars \$323,500.00, or multiples thereof without penalty provided that:

- (a) the Bank receives two (2) Business Days' prior notice of the Borrower's intention to do so;
- (b) the Borrower concurrently pays to the Bank any Breakage Costs payable in connection with the prepayment, as calculated by the Bank; and
- (c) any sums repaid or prepaid may not be redrawn.

## 2.8 Additional Mandatory Repayments

In the event that the outstanding amount under the Facility at any time exceeds the maximum amount of the Facility, the Borrower shall make an immediate repayment equal to such excess, without the need of demand therefor. The Bank shall be entitled to charge the Default Rate on the amount of the excess.

## 2.9 Payments Generally

All payments to be made to the Bank under this Facility Letter or any of the other Finance Documents shall be made in Dollars by standing order to the Account or otherwise by immediately available funds by 10:00 am (Bermuda time) on the due date. Any payment which is due on a day which is not a Business Day shall be made on the next Business Day. The Borrower will make all payments in respect of the Facility or pursuant to any of the Finance Documents without set-off or counterclaim, and free and clear of any withholding or deduction for Taxes or any other reason.

If at any time any Applicable Law requires a deduction or withholding be made from a payment due under this Facility Letter for or on account of Taxes, imposts, duties or levies of any nature whatsoever (each a **Withholding**), then the amount of any such payment to the Bank shall be automatically revised to an amount such that after applying the **Withholding**, the net payment is equal to the amount which the Bank would have received had no such **Withhold** been made.

The Borrower shall promptly notify the Bank if it is (or anticipates it will be) required to make a **Withholding** under Applicable Law, and (i) procure payment of the relevant **Withholding** to the applicable Governmental Authority within the permitted timeframe, and (ii) deliver to the Bank a receipt issued by the applicable Governmental Authority evidencing the payment of the **Withholding** within thirty (30) days of making or procuring the payment.

## 2.10 Illegality

If, in the Bank's opinion, any Applicable Law or change thereof, makes it unlawful for the Bank to make available or maintain all or part of the Facility or to perform any of its obligations in relation to this Facility Letter or any Finance Documents, then the Bank will give notice to this effect to the Borrower and the Bank shall then be discharged from its obligations to make available, renew or maintain the Facility and the Borrower shall pay to the Bank on demand, or, if later, on the date specified by the Bank as being the latest date for compliance with the relevant Applicable Law, the

amount of the Facility then outstanding together with all other sums due and to become due under this Facility Letter.

### 3 Costs and Expenses

#### 3.1 Arrangement Fee

An Arrangement Fee of eight thousand and eighty seven Dollars and fifty cents \$8,087.50, shall be paid by the Borrower to the Bank on the date of first drawdown under the Facility and shall be debited from the Account on such date.

#### 3.2 Legal and Other Costs and Expenses

Regardless of whether any Loans are made by the Bank or the transactions contemplated in this Facility Letter are completed, all costs incurred by the Bank relating to the preparation and execution of this Facility Letter and each of the Finance Documents, and in the protection, perfection or the enforcement of any its rights under this Facility Letter and each of the Finance Documents, (including, but not limited to, legal fees (which are capped at US\$8000.00), expenses and disbursements) shall be the sole responsibility of the Borrower and shall be debited from the Account upon the first drawdown of the Facility or receipt by the Bank of the relevant invoices for such costs.

#### 3.3 Registration Costs and Stamp Duties

Regardless of whether any Loans are made by the Bank or the transactions contemplated in this Facility Letter are completed, the Borrower shall be responsible for the payment of all Taxes, imposts, duties, fees, stamp duties, levies, registrations costs, any related disbursements, any other amounts payable in connection with this Facility Letter or the other Finance Documents, or any other such amounts payable in connection with the transactions contemplated in this Facility Letter. If the Bank pays any such amounts for and on behalf of the Borrower, the amount paid shall be debited from the Account by the Bank.

### 4 Security

#### 4.1 Security Document

The liability, indebtedness and obligations of the Borrower under this Facility Letter and in respect of the Facility shall be secured by the following document (the **Security Document**) a limited guarantee in the amount of three million two hundred and thirty five thousand Dollars only \$3,235,000.00 duly executed by the Government of Bermuda (**Guarantor**) guaranteeing the obligations of the Borrower in favor of the Bank (**Guarantee**).

#### 4.2 Form of Security Document

The Security Document required to be delivered under this Facility Letter shall be in a form and substance acceptable to the Bank and its legal counsel.

#### 4.3 Registration

The Security Document will be registered in all jurisdictions and at all registries or public offices as the Bank may determine necessary to perfect or protect its interests and priority under the Security Documents. Unless otherwise specifically agreed to by the Bank under this Facility Letter or otherwise in writing, upon registration of the Security Documents, the Security Document (and the Liens created by them) shall rank in priority to any other document or Lien.

#### 4.4 Negative Pledge

The Borrower and any Guarantor (as applicable) shall not create, assume, incur or permit to exist any Lien or any other agreement having the effect of conferring security over and in respect of any of their property, assets or undertakings, other than those in favour of the Bank under the Finance Documents.

#### 4.5 Valuations and Inspections

The Borrower or any Guarantor (as applicable) shall, at the request of the Bank and at the Borrower's cost, obtain a valuation of the business operations, property, assets or undertakings of the Borrower or any Guarantor (as applicable), provided that the Bank shall not be entitled to



require a valuation more than once every twelve (12) months. Where the Bank requests such a valuation, the Borrower or any Guarantor (as applicable) shall have the valuation completed and delivered to the Bank within thirty (30) days of such request or a longer period as the Bank may agree in writing.

The Borrower or any Guarantor (as applicable) shall allow the Bank (or any authorised representative) to visit and inspect, or value the assets or property of the Borrower or Guarantor (as applicable), at any reasonable time on reasonable notice (except in case of emergency)

#### 4.6 Additional Security

Whenever, in the Bank's opinion, either the market value or the actual value of the assets, or property of the Borrower or any Guarantor (as applicable) is insufficient to provide an adequate margin of security with respect to the Borrower's obligations and liabilities to the Bank, the Bank shall have the right to call for additional security.

### 5 Representations, Warranties and Covenants

#### 5.1 Representations and Warranties

By signing and delivering this Facility Letter, the Borrower and any Guarantor (as applicable) hereby represent and warrant to the Bank that upon acceptance of this Facility Letter and so long as there remains any amount payable from the Borrower to the Bank under this Facility Letter or any of the Finance Documents, the Borrower and any Guarantor (if applicable) shall comply with and perform all of the obligations set forth in Schedule 2.

The Borrower and any Guarantor (if applicable) covenant to the Bank upon acceptance of this Facility Letter and so long as there remains any amount payable from the Borrower to the Bank under this Facility Letter or any of the Finance Documents, the Borrower and any Guarantor (if applicable) shall comply with and perform all of the obligations set forth in Schedule 2.

In the event that the Borrower or any Guarantor (as applicable) fails to comply with any of the financial covenants contained in Schedule 2, each of the Borrower or any Guarantor (as applicable) hereby undertakes to procure that the shareholders of the Borrower or the Guarantor (as applicable) sufficiently capitalise the Borrower or applicable Guarantor to sufficient level to effect compliance within ten (10) Business Days of non-compliance. It is agreed that failure to do so will be an Event of Default.

### 6 Conditions Precedent

No Loan or any subsequent drawdowns under the Facility shall be made by the Bank until it receives all of the documents and confirmations of the matters set out in Schedule 3 to its satisfaction.

### 7 Events of Default and Remedies

#### 7.1 Events of Default

Without limiting the right of the Bank to terminate or demand repayment of the Facility), or to cancel or restrict the availability of any unused portion of the Facility, each of the following events shall constitute an event of default (each an **Event of Default**):

(a) if the Borrower fails to pay any amount payable when due under this Facility Letter or any of the other Finance Documents to which it is a party, or any other sum due and payable to the Bank;

(b) if the Borrower or any Guarantor (as applicable) neglects to carry out or observe any covenant, term or condition, other than those relating to the payment of any sum payable under this Facility Letter or under any of the Finance Documents, provided that the Borrower or the Guarantor (as applicable) shall have ten (10) days following receipt of written notice from the Bank to make good such default before the Borrower shall be in default;

(c) if any representation, warranty or statement made by the Borrower or any Guarantor (as applicable) contained in this Facility Letter or any of the other Finance Documents, or otherwise in writing, is incomplete, incorrect or misleading;

(d) the occurrence of an Insolvency Event;

(e) the Borrower or any Guarantor (as applicable) breaches any Applicable Law, which breach has or in the opinion of the Bank is likely to have a material adverse effect on the financial condition or corporate status of the Borrower or any Guarantor (as applicable);

(f) if any judgment or order for the payment of money is made against the Borrower or any Guarantor (as applicable) by the Court which is not discharged or validly appealed by the Borrower or Guarantor (as applicable) within fourteen (14) days;

(g) if the Borrower or any Guarantor (as applicable) is in breach of any provision of this Facility Letter or any of the Finance Documents, to which each is a party, or any other written agreement entered into in favor of the Bank at any time; and

(h) if there shall, in the opinion of the Bank occur any change of circumstance in the assets or condition of the Borrower or any Guarantor (as applicable) from that existing at the date of this Facility Letter which has, or is likely to have a material adverse effect on the financial condition of the Borrower or any Guarantor (as applicable) or materially imperil, delay or prevent fulfillment by the Borrower or any Guarantor (as applicable) of their obligations under this Facility Letter or any of the Finance Documents.

## 7.2 Remedies on Default

Without limiting any right of the Bank to terminate, cancel or restrict any portion of the Facility under this Facility Letter, upon the occurrence of an Event of Default (in addition to any rights and remedies under this Facility Letter or under the Finance Documents) the Bank may:

(a) demand that the Borrower provide further information and access to the Borrower's records, premises and management, and undertake, in good faith, to remedy the Event of Default on terms approved by the Bank in its sole discretion; and/or

(b) cancel the Facility; and/or

(c) demand immediate payment of the Borrower's liabilities and obligations due and owing to the Bank (in which case such liabilities and obligations shall become immediately due and payable by the Borrower) or declare that such liabilities and obligations shall become due and payable on demand; and/or

(d) enforce and exercise any or all of its rights, remedies, powers or discretions under any of the Finance Documents or as available to a secured party at law or in equity; and/or

(e) apply the Default Rate for unsettled amounts due to the Bank under this Facility Letter to all liabilities and obligations of the Borrower and any Guarantor (as applicable) to the Bank.

## 7.3 Waivers

No failure to exercise, nor any delay in exercising, on the part of the Bank, any right or remedy under this Facility Letter or any of the Finance Documents shall operate as a waiver of such right or remedy, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise of such right or remedy or the exercise of any other right or remedy.

## 7.4 No Presentation

The Bank may take any or all of the actions referred to in Clause 7.2 without demand or performance or other demand, presentation, protest, advertisement or notice of any kind (except any notice required by Applicable Laws) to or upon the Borrower or any Guarantor (as applicable) and the Borrower and any Guarantor (as applicable) hereby waives all of such demands, presentations, protests, advertisements and notices to the extent permitted by Applicable Law.

## 7.5 Remedies Not Cumulative

Each of the remedies available to the Bank is entitled to be a separate remedy and in no way is a limitation on any one or more of the other remedies available to the Bank. The rights and remedies

specified herein or in the Security Documents are cumulative and not exclusive of any rights or remedies provided by Applicable Laws. The Bank may exercise any and all rights, powers, remedies and recourses available under this Facility Letter or under the Security Documents or any other remedy available to it, and such rights powers and remedies and recourse may be exercised concurrently or individually without the necessity of an election.

## **8 Miscellaneous Provisions**

### **8.1 Legal Advice**

Prior to the execution of any of the Finance Documents to which it is a party, the Bank strongly recommends that the Borrower and any Guarantor (as applicable) seek independent legal advice regarding the transactions contemplated in this Facility Letter. Should the Borrower or any Guarantor (as applicable) decide against obtaining independent legal advice, a waiver of independent legal advice in the form attached as Schedule 5 hereto must be provided to the Bank.

### **8.2 External Legal Counsel**

The Bank shall appoint external legal counsel to prepare, negotiate and register any of the Finance Documents for and on behalf of the Bank. Regardless of whether any Loans are made by the Bank or the transactions contemplated in this Facility Letter are completed, all legal costs including, but not limited to, stamp duty, filing fees, and legal fees, will be the sole responsibility of the Borrower.

### **8.3 Further Assurances**

Each Party will, at the expense of the Borrower, promptly do, execute, deliver or cause to be done, executed and delivered all further acts, documents and things in connection with this Facility Letter that the other Party may reasonably require for the purposes of giving effect to this Facility Letter.

### **8.4 Severability**

If at any time any one or more of the provisions of this Facility Letter is or becomes invalid, illegal or unenforceable in any respect, such provision shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable, and the validity, legality or enforceability of the remaining provisions of this Facility Letter will not in any way be affected or impaired.

### **8.5 Governing Law**

This Facility Letter shall be governed and construed in accordance with the laws of Bermuda and the Courts of Bermuda will have exclusive jurisdiction in relation to any matters relating to this Facility Letter and the other Finance Documents.

### **8.6 Notices**

Any notice or communication to or between the Parties:

- (a) will be in writing and will be effectively given and made if delivered personally, sent by email, or sent by prepaid courier service or mail; and

- (b) will be deemed delivered on the day of delivery if delivered personally, sent by email, provided that such day is a Business Day and the communication is so delivered prior to 4.30 pm (Bermuda time). Otherwise such communication will be deemed delivered on the following Business Day. Any such communication sent by prepaid courier service or mail will be deemed delivered two (2) Business Days following the mailing thereof.

### **8.7 Amendments**

No amendment or variation of this Facility Letter shall be effective unless it is in writing and signed by duly authorized representatives of the Bank and the Borrower and, if the obligations of any Guarantor is affected, the signature of an authorized representative of the Guarantor.

### **8.8 Set-off**

The Borrower authorises the Bank (without prior notice) to (i) apply any credit balance in any currency (whether or not then due) which is at any time held by the Bank to the account of the Borrower at any office of the Bank in any country in or towards satisfaction of any amount then due from the Borrower to the Bank under this Facility Letter or the other Finance Documents, (ii)

combine any accounts in the name of the Borrower, and (iii) use all or any part of any such credit balance in any account to buy such other currencies as may be necessary to effect such application.

#### 8.9 Assignment

Neither the Borrower nor any Guarantor (as applicable) shall assign or transfer any of its rights, benefits and obligations under this Facility Letter or the other Finance Documents. The Bank may at any time assign, transfer or sub-participate all or any of its rights and obligations under this Facility Letter or the other Finance Documents without prior notice to the Borrower or Guarantor (as applicable).

#### 8.10 Credit Reference

The Borrower hereby undertakes and covenants with the Bank that so long as any amount payable under this Facility Letter or any of the other Finance Documents remains outstanding from the Borrower to the Bank, the Bank (without prior notice) is hereby authorized to obtain information about the Borrower from any bank, Credit Bureau, consumer reporting agency, or any other Person in connection with any other dealings within the HSBC Group.

#### 8.11 Paramountcy

Unless otherwise stated in this Facility Letter, to the extent that any term, condition, covenant or other provision in any of the other Finance Documents is at any time inconsistent or conflicts with any term, condition, covenant or other provision in this Facility Letter, this Facility Letter shall govern and prevail, to the extent necessary to resolve such conflict or inconsistency.

#### 8.12 Basis for Facility Commitment

The Borrower hereby acknowledges that the Bank has made the commitments contained in this Facility Letter based upon the information supplied by the Borrower to the Bank, and such commitments are subject to the accuracy of all information, representations, exhibits or other materials submitted by the Borrower in connection with its request for the Loan. Any material adverse effect to such information prior to Closing will, at the option of the Bank, void all of the obligations of the Bank under this Facility Letter. The Borrower must immediately notify the Bank of any such material adverse effect. The Bank reserves the right to continue its credit investigation and to rescind the commitments contained in this Facility Letter in the event of a material adverse effect occurring, in which case the Bank shall have no obligations under this Facility Letter.

#### 9 Acceptance

This Facility Letter is open for acceptance by the Borrower and any Guarantor (as applicable) for twenty-eight (28) days from the date of this Facility Letter, after which time this Facility Letter shall expire unless the Borrower and any Guarantor (as applicable) execute and deliver a fully executed copy of this Facility Letter to the Bank, which shall constitute an agreement between the Parties.

Yours sincerely,

Cora McLaren  
Head of Wholesale Banking  
Wholesale Banking

Louise Twiss-West  
Head of Financial Institutions Group  
Global Banking

We agree to the terms and conditions of this Facility Letter:

**BORROWER – NATIONAL SPORTS CENTRE**

By:

Director/Officer

**GUARANTOR – GOVERNMENT OF BERMUDA**

By:

**MINISTER OF FINANCE**

Date:

26 May 2024

Date:

26 May 2021

# SCHEDULE 1

## REPRESENTATIONS AND WARRANTIES

### A. BORROWER

The Borrower hereby represents and warrants to the Bank as follows:

- (a) it has been duly established organised under Section 3 of the National Sports Centre Trustees Act 1988 and is validly existing and in good standing under the laws of Bermuda and has the corporate power and authority to own its assets;

- (b) it has all the necessary power and authority to borrow the Facility and enter into, perform, and comply with its obligations under this Facility Letter and each of the other Finance Documents to which it is a party and to take all action as may be necessary to complete the transactions contemplated by them; no limit of its powers will be exceeded as a result of the borrowing or grant of security contemplated in the Finance Documents;

- (c) the terms of each of the Finance Documents to which the Borrower is a party, do not conflict with: (i) any agreement or instrument to which the Borrower is a party, or (ii) any Applicable Law;

- (d) all financial information and statements relating to the Borrower that have been delivered to the Bank, including, but not limited to, the information contained in the Loan Application was at the time, and remains true, correct, and accurate;

- (e) there is no fact known to the Borrower, that has not been disclosed to the Bank which amounts to a material adverse effect or in the future may (so far as the Borrower can reasonably foresee) amount to a material adverse effect on the business, the prospects, or the financial condition of the Borrower;

- (f) that the Borrower's ability to perform its obligations under this Facility Letter or any of the other Finance Documents to which the Borrower is a party, each of the Facility Letter and the other Finance Documents to which the Borrower is a party, when executed, will constitute valid and legally binding obligations of the Borrower enforceable against the Borrower in accordance with its respective terms;

- (g) all Consents and Approvals required in order for the Borrower to enter into the Facility Letter and the other Finance Documents to which it is a party and perform its obligations thereunder have been obtained;

- (h) it is not engaged in any litigation or arbitration proceedings whether civil or criminal or otherwise under the law of any jurisdiction, whether plaintiff, prosecutor, appellant, respondent, or defendant, and to the best of its knowledge, no such proceedings are pending or threatened, nor it is not aware of anything likely to give rise to such proceedings. There is no judgment or order of any Court outstanding against the Borrower;

- (i) the Borrower will have no other Debts aside from obligations and liabilities to the Bank pursuant to the terms of the Finance Documents or as otherwise disclosed in the Loan Application;

- (j) it has paid all Taxes payable in respect of its business (including employees) when due;

- (k) there are no Liens on its property, assets or undertaking including the Property;

### B. GUARANTOR

The Guarantor hereby represents and warrants to the Bank as follows:

- (a) It is a corporate sole by virtue of Section 44 of the Interpretation Act 1951, and has the power and authority to own its assets;

- (b) the Guarantor has the necessary power and authority to guarantee the obligations of the Borrower under this Facility Letter and to enter into, perform, and comply with its obligations under each of the Finance Documents to which it is a party and to take all action as may be necessary to complete the transactions contemplated by them, and the granting of the Guarantee as security for the Facility is for the commercial benefit of the Guarantor;



- (c) the terms of each of the Finance Documents to which the Guarantor is a party, do not conflict with: (i) the provisions of the Memorandum of Association or Bye-Laws of the Guarantor, (ii) any agreement or instrument to which the Guarantor is a party, or (iii) any Applicable Law;
- (d) all financial information and statements relating to the Guarantor that have been delivered to the Bank, including, but not limited to, the information contained in the Loan Application was at the time, and remains true, correct, and accurate;
- (e) there is no fact known to the Guarantor, that has not been disclosed to the Bank which materially adversely affects or in the future may (so far as the Guarantor can reasonably foresee) adversely affect the business or the prospects or financial condition of the Guarantor, or the Guarantor's ability to perform its obligations under this Facility Letter or any of the other Finance Documents to which the Guarantor is a party;
- (f) each of this Facility Letter and the other Finance Documents to which the Guarantor is a party, when executed, will constitute valid and legally binding obligations of the Guarantor enforceable against the Guarantor in accordance with its respective terms;
- (g) it acknowledges that the Guarantor has had the opportunity to obtain independent legal advice with respect to the Corporate Guarantee, and the other Finance Documents to which it is a party, and that the Guarantor knows that the Guarantor's liabilities under this Facility Letter and the other Finance Documents to which it is a party are onerous;
- (h) it is not engaged in any litigation or arbitration proceedings whether civil or criminal or otherwise under the law of any jurisdiction and whether plaintiff, prosecutor, appellant, respondent, or defendant and to the best of its knowledge, no such proceedings are pending or threatened, it is not aware of anything likely to give rise to such proceedings.
- (i) There is no judgment or order of any Court outstanding against the Guarantor;
- (j) the Guarantor will have no other Debts aside from obligations and liabilities to the Bank pursuant to the terms of the Finance Documents to which it is party or otherwise disclosed in the Loan Application submitted by the Borrower;
- (k) all Consents and Approvals required in order for the Guarantor to enter into the Facility Letter and the other Finance Documents to which it is a party and perform its obligations thereunder have been obtained;
- (l) the Guarantor is the sole legal and beneficial owner of and has good and marketable title to, and is lawfully possessed of, the Property free and clear of all liens, interests, charges and encumbrances except those to be given by the Guarantor in favour of the Bank pursuant to the terms of the Finance Documents;



## SCHEDULE 2

### COVENANTS

#### 1.1 Positive Covenants

Each of the Borrower and any Guarantor (as applicable) hereby covenant and agree with the Bank that it shall:

(a) apply the proceeds of the Facility in accordance with the terms and conditions of this Facility Letter and for no other purpose;

(b) notify the Bank immediately of the occurrence of an Event of Default (or a known event of Default) or in the event or occurrence of any matter or incident that has an effect upon the Borrower's ability to meet its obligations under this Facility Letter or any of the Finance Documents to which it is a party;

(c) promptly notify the Bank in writing if the Borrower or any Guarantor (as applicable) is in default under its constitutional documents, or the provisions of any agreement evidencing, guaranteeing or relating to any outstanding indebtedness or liability;

(d) promptly notify the Bank in writing of any material adverse effect on the financial condition or business prospects of the Borrower from that shown in the latest unaudited financial statements delivered to the Bank, or if there occurs any material adverse effect to the net asset value of the Borrower since the latest valuation from that shown in the latest unaudited financial statements delivered to the Bank;

(e) comply at all times with all Applicable Law;

(f) obtain and retain all necessary licenses, permits, leases, Consents and Approvals, and other businesses, necessary to conduct its business;

(g) maintain all assets, property, plant and equipment, in good order  
(h) pay all Debts as they become due, except those obligations which are being contested in good faith;

(i) pay or cause to be paid any Taxes to which the Borrower or any Guarantor (as applicable) is subject before such charges become delinquent, with the exception of any such Taxes which the Borrower or any Guarantor (as applicable) is contesting in good faith by appropriate proceedings provided that the Borrower or any Guarantor (as applicable) shall have set up on its books such reserve with the amount of contested Taxes, as shall be dictated by sound accounting practices;

(j) establish and maintain at the Bank all of the Borrower's Accounts;

(k) maintain at all times adequate insurance to the satisfaction of the Bank against such risks of loss as are customarily insured against in amounts customarily carried by Persons owning, leasing or operating similar businesses and assets; to be adequately insured at all times against liability on account of injury to Persons or property, and to comply with the insurance provisions of all worker's compensation laws; that it will effect all such insurance under valid and enforceable policies insured by insurers of recognised responsibility; and with the Bank noted as first loss payee in respect of any insurance over property, assets and undertakings; and

(l) allow any Person designated by the Bank to enter into or upon the Property or any other business premises or premises where property, assets or undertakings of the Borrower or any Guarantor (as applicable) are maintained to inspect any or all records, property and assets of the Borrower or any Guarantor (as applicable) to verify authenticity of financial statements and actual physical conditions.

#### 1.2 Negative Covenants

Each of the Borrower and any Guarantor (as applicable) hereby covenants and agrees with the Bank that it shall not, without the prior written consent of the Bank to be granted in the Bank's sole discretion:

- (a) make any advances or loans to Trustees, directors, officers, employees or other third parties;
- (b) create, assume or suffer to exist any Lien over any of the assets, property or undertakings of the Borrower or Guarantor, as applicable;
- (c) sell, dispose of, or attempt or agree to part with, the whole or any part of its assets except by way of sale in the usual and ordinary course of business and for the purpose of carrying on its business as now conducted;

- (d) grant, issue or extend any guarantee or indemnity, or enter into any other form of contractual undertaking, assumption, or arrangement of similar effect in respect of any other Person's Debts except in the usual and ordinary course of trading and for the purpose of carrying on the relevant business of the Borrower or Guarantor (as applicable) as now conducted;
- (e) directly or indirectly borrow funds from any third party (other than normal trade credit and borrowings from an entity within the HSBC Group);

- (f) make or permit, directly or indirectly, the making of any change in management, legal or beneficial ownership of the Borrower or any Guarantor (as applicable);
- (g) merge, amalgamate, reorganise or consolidate with any other Person (whether by one (1) or a series of transactions), continue to a different jurisdiction, file a scheme or arrangement, or participate in any other type of corporate reorganisation, or otherwise directly or indirectly permit any of the foregoing;
- (h) permit or consent to the amendment, supplement or modification to any term or provision contained in or applicable to the Memorandum of Association, bye-laws or other governing documents of the Borrower or any Guarantor (as applicable); or
- (i) enter into any agreement, instrument, document or other arrangement containing any provision that would breach any of the obligations of the Borrower or any Guarantor (as applicable) under any of the Finance Documents.

### 1.3 Financial Covenants

The Borrower hereby covenants and agrees with the Bank that it shall:

- (a) ensure that the aggregate Capital Expenditure does not exceed, \$250,000.00 in any Relevant Period during the Term without the express prior written approval of the Bank; and
- (b) from the 31 March 2023 up to and including the date of expiry of the Term, maintain a Debt Service Coverage Ratio of not less than 1.0x.

### 1.4 Reporting Covenants

Each of the Borrower and any Guarantor (as applicable) hereby covenant and agree with the Bank that it shall:

- (a) within five (5) days of receipt by the Borrower from the Contractor, provide the Bank with a certified copy of the monthly Progress Report;
- (b) within four (4) months of each financial year-end, provide the Bank with annual unaudited management prepared financial statements of the Borrower and any Guarantor (as applicable) prepared according to GAAP;
- (c) within one (1) month of each financial quarter-end, provide quarterly operating reports comparing actual results with budgeted results of the preceding quarter;
- (d) prior to the each drawdown and thereafter within three (3) months of each financial year-end, provide the Bank with a schedule indicating all Insurances are in force;
- (e) provide to the Bank a certified copy of the Completion Certificate on Practical Completion; and
- (f) within ten (10) Business Days, provide such other financial information as the Bank may reasonably require from time to time.

### SCHEDULE 3

#### CONDITIONS PRECEDENT

No portion of the Facility, including any subsequent drawdowns, shall be available to the Borrower unless the Bank receives each of the following documents and confirmations of the matters set out to its satisfaction:

- (a) a copy of this Facility Letter and each of the other Finance Documents and all ancillary documents required under any of the Finance Documents duly executed by the Borrower and the Guarantor (as applicable) or other Person, as applicable;
- (b) receipt of the Arrangement Fee;
- (c) a certificate in a form satisfactory to the Bank issued and delivered by independent legal counsel of the Borrower confirming the terms of this Facility Letter and the other Finance Documents have been explained to the Borrower who professes to understand fully and accept the same;
- (d) evidence satisfactory to the Bank that the Property is insured for its full insurable value with the Bank noted as first loss payee;
- (e) receipt and satisfactory review of the unaudited financial statements of the Borrower and any Guarantor (as applicable) including an income statement, balance sheet and listing of the location and value of all assets and property of the Borrower and any Guarantor (as applicable);

- (f) in the absence of financial statements for the Borrower, certification that the Borrower is solvent and will have no Debt as at Closing in a form satisfactory to the Bank;
- (g) evidence of insurance in the name of the Borrower or any Guarantor (as applicable) noting the Bank as first loss payee and confirming that the insurance policies accord with the terms of this Facility Letter and any other Finance Documents (as applicable);
- (g) a copy, certified as a true, complete and up-to-date by an officer of the Borrower of the National Sports Centre Trustees Act 1988 of the Borrower;

- (h) a certified copy of the written resolutions or minutes of a meeting of the Trustees of the Borrower approving and authorising the execution and delivery of this Facility Letter and each of the other Finance Documents to which it is party in accordance with its respective terms, and designating the officer(s) authorised to execute all of the Finance Documents to which it is party and any other actions taken on behalf of the Borrower that may be required by the Bank in connection with the transactions contemplated in this Facility Letter;

- (i) an opinion of counsel to each of the Borrower and the Guarantor confirming various corporate matters, including that: (i) the Borrower and the Guarantor are in good standing under Applicable Law, (ii) the Borrower and the Guarantor have the power and authority to enter into, and perform their obligations under, this Facility Letter and the other Finance Documents to which they are a party, and (iii) each of Finance Documents has been duly executed and delivered, and constitute valid and binding obligations of the Borrower and the Guarantor enforceable against them in accordance with its respective terms;

- (j) a certified copy of the prior written approval from the Minister and Minister of Finance as required pursuant to section 10 Borrowing and Section 11 Funds from Legislature under the National Sports Centre Trustees Act 1988;

- (k) unless the Bank permits this condition to be fulfilled after Closing, evidence of registration of any or all of the Security Documents in all offices, registers and indices that the Bank deems necessary or desirable; and

- (l) a certificate, signed by two directors of the Borrower confirming that, (i) all representations and warranties are true and correct as of the date of the Drawdown Request, (ii) all covenants in this Facility Letter and the Finance Documents have been complied with, and (iii) no Event of Default (or event which with the giving of notice or passage of time, or both, would constitute an Event of Default) has occurred and is continuing

SCHEDULE 4

DRAWDOWN REQUEST

TO: HSBC Bank Bermuda Limited (Bank)  
FROM: \_\_\_\_\_ (Borrower)  
DATE: \_\_\_\_\_  
RE: Facility Letter entered into by the Borrower, the Guarantor and the Bank as lender, dated [date] (Facility Letter)

Pursuant to the Facility Letter, the Borrower hereby requests the following Loan [advance]:

Amount Required: \$ \_\_\_\_\_  
Date Required: \_\_\_\_\_  
Account Name to Credit: \_\_\_\_\_  
Account Number to Credit: \_\_\_\_\_

The Borrower hereby represents and confirms as follows:

- (a) capitalized terms used herein and not otherwise defined have the meaning set out in the Facility Letter;
- (b) the representations and warranties made in the Facility Letter remain true, correct, and accurate; and
- (c) no Event of Default has occurred and is continuing, and no event has occurred, or will occur upon the making of the requested Loan, which, with the giving of notice or the passage of time, or both, would constitute an Event of Default.

[NAME OF BORROWER]

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SCHEDULE 5

WAIVER OF INDEPENDENT LEGAL ADVICE

I, \_\_\_\_\_, hereby declare that:

A. I was strongly advised by HSBC Bank Bermuda Limited (**Bank**) to obtain independent legal advice in relation to all the rights, obligations, and liabilities that I may have with respect to the lending transaction that the Bank is entering into with **[borrower]** pursuant to which I will enter into several finance documents, which include, but are not limited to, a Facility Letter dated **[date]** (**Facility Letter**) pursuant to which the Bank agreed to establish a credit facility in favour of the Borrower (**Transaction**) and the Finance Documents (as defined in the Facility Letter) to which I am a party (**Transaction Documents**).

B. I decline to obtain independent legal advice in relation to all the rights and obligations that I may have with respect to the Transaction and my execution and delivery of the Facility Letter and the Transaction Documents.

C. I confirm that I have reviewed the Facility Letter and the Transaction Documents, and understand their terms fully and my obligations thereunder, and that such obligations are onerous.

D. Notwithstanding that I have declined to obtain independent legal advice regarding the Transaction, the Facility Letter and the Transaction Documents, I waive all conflicts that might otherwise arise in respect of the Bank preparing all necessary documentation to allow me to enter into the Facility Letter and the Transaction Documents.

E. I, for myself and on behalf of my heirs, executors and administrators, indemnify and hold harmless the Bank and its employees, officers, directors and agents and their respective heirs, executors, administrators, successors and assigns from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind and nature whatsoever which may be imposed on, incurred by or asserted against the Bank as a result of my refusal to obtain independent legal advice regarding the Transaction and the Transaction Documents.

\_\_\_\_\_  
[Name]  
Date: \_\_\_\_\_

\_\_\_\_\_  
Witness Name:

\_\_\_\_\_  
Address:

\_\_\_\_\_  
Occupation: