

BARBADOS

PARTIES

THIS AGREEMENT is made the 1ST day of February 2019 **BETWEEN THE GOVERNMENT OF BARBADOS** acting herein through the Ministry of Energy and Water Resources (hereinafter referred to as "the Government") of the **ONE PART** and **NRG SOLAR & RENEWABLES LTD** a company incorporated under the provisions of the Companies Act Cap. 308 of the Laws of Barbados (Company No. 42045) and having its Registered Office situate at McClean Gap, Brittons Hill in the parish of Saint Michael in this Island (hereinafter called "the Contractor") of the **OTHER PART**.

RECITALS

WHEREAS the Government invited Tenders for the Design, Supply and Installation of Photovoltaic Systems to be erected at specified Government Owned buildings hereinafter called ("the Work") and the Contractor submitted a Tender which has been accepted by the Government on the terms and conditions hereinafter set forth;

AND WHEREAS the Contractor has secured the performance of this Contract by way of a surety with **FIRST EQUAL INSURANCE COMPANY LTD.** in the amount Fifty-five thousand one hundred and fifteen dollars and ninety-eight cents Barbados Currency (\$55,115.98) which is ten percent (10%) of the Contract Price.

NOW IT IS HEREBY AGREED as follows:

1. DEFINITION

1.1 The Term "Contractor" in this Agreement and the Payment Schedule has the same meaning as "Consultant" in the Conditions of Contract.

JW

AK

6.3 The Contractor shall ensure that the Performance Security is valid and enforceable until the Contractor has executed and completed the Works and remedied any defects. If the terms of the Performance Security specifies its expiry date, and the Contractor has not become entitled to receive the Taking-Over Certificate by the date 28 days prior to the expiry date, the Contractor shall extend the validity of the Performance Security until the Works have been completed and any defects have been remedied.

6.4 The Government shall not make a claim under the Performance Security, except for amounts to which the Government is entitled under the Agreement.

7. CONTRACT DOCUMENTS

7.1 The Invitation to Tender, the Tender and the Letter of Award dated the 7th day of November 2018 shall form and be deemed to be part of the Agreement as if the same were repeated herein or annexed hereto.

8. CONDITIONS OF CONTRACT

8.1 The Contractor shall carry out the Work required hereunder in accordance with the Conditions attached hereto as Appendix 3.

9. APPENDICES

9.1 The following appendices shall form an integral part of this Agreement:

Appendix 1-	Scope of Work
Appendix 2-	Payment Schedule
Appendix 3-	Conditions

10. NOTICES

10.1 For the purposes of paragraph 10 of the Conditions the following addresses are specified

hw

A.H

act or omission of the Contractor.

12.3 The warranty shall remain valid for the period of twelve (12) months.

12.4 In the event that the goods and materials are not new, used or are defective arising from any act or omission of the Contractor or arising from design, materials and workmanship, under normal use in the conditions prevailing in Barbados, the Government shall give notice to the Contractor stating the nature of any such defects together with all available evidence thereof, promptly following the discovery thereof. The Government shall afford all reasonable opportunity for the Contractor to inspect such defects.

12.5 Upon receipt of such notice, the Contractor shall, with all reasonable dispatch, repair or replace the defective materials or parts thereof, and rectify any defects in the installation process at no cost to the Government.

12.6 If having been notified, the Contractor fails to repair or replace the defective materials or remedy the defects in the installation process with reasonable dispatch, the Government may proceed to take within a reasonable period such remedial action as may be necessary, at the Contractor's risk and expense and without prejudice to any other rights which the Government may have against the Contractor under the Contract.

13. **PROGRESS REPORTS**

13.1 Monthly progress reports shall be prepared by the Contractor and submitted to the Government. The first report shall cover the period up to the end of the first calendar month following the date of signing of the Agreement. Reports shall be submitted monthly thereafter, each within 7 days after the last day of the period to which it relates.

13.2 Reporting shall continue until the Contractor has completed all work which is known to be outstanding at the completion date stated in the Taking-Over Certificate for the Works.

hw

A.H

16. REMOVAL OF SURPLUS MATERIALS AND CLEANING UP

16.1 On completion of the works and during progress of the works the Contractor shall clear away surplus plant, materials and rubbish and shall leave the site and plant clean, tidy and to the satisfaction of the Government.

17 NOTICE TO CORRECT

17.1 If the Contractor fails to carry out any obligation under the Agreement, the Government may by notice require the Contractor to make good the failure and to remedy it within a specified reasonable time.

18. TIME FOR COMPLETION

18.1 The Contractor shall complete the whole of the Works in accordance with the Scheduling for the Works at paragraph 4, including completing all work which is stated in the Agreement as being required for the Works to be considered to be completed for the purposes of taking over.

18.2 The Contractor shall submit a detailed time programme to the Project Coordinator within 28 days after the entering into the Agreement. The Contractor shall also submit a revised programme whenever the previous programme is inconsistent with actual progress or with the Contractor's obligations. Each programme shall include:

(a) the order in which the Contractor intends to carry out the Works, including the anticipated timing of completion of each location, Contractor's Documents, procurement, manufacture of plant, delivery to site, construction, erection and testing,

(b) each of these stages for work by each nominated Subcontractor (if any);

(c) the sequence and timing of inspections and tests as agreed by the Parties, and

hw

A.H

18.7 Unless the Project Coordinator notifies otherwise, the Contractor shall adopt these revised methods, which may require increases in the working hours and/or in the numbers of Contractor's Personnel and/or Goods, at the risk and cost of the Contractor. If these revised methods cause the Government to incur additional costs, the Contractor shall pay these costs to the Government, in addition to delay damages (if any) under paragraph 19 below.

19 DELAY DAMAGES

- 19.1 If the Contractor fails to comply with paragraph 18.1, the Contractor shall subject to notice under paragraph 10 pay delay damages to the Government for this default. These delay damages shall be One hundred and fifty dollars Barbados currency (\$150.00 Bds) which shall be paid for every day which shall elapse between the relevant time for completion and the date stated in the Taking-Over Certificate.
- 19.2 These delay damages shall be the only damages due from the Contractor for such default, other than in the event of termination under paragraph 11 and 12 of the Conditions of this Agreement prior to completion of the Works. These damages shall not relieve the Contractor from his obligation to complete the Works, or from any other duties, obligations or responsibilities which he may have under the Contract.
- 19.3 For the avoidance of doubt and subject to paragraph 7.5 of Appendix 3, delay caused by persons or entities other than the Contractor or its servants or agents shall not count towards the time for completion of the work and the computation of delay damages.

20. COMMISSIONING AND HAND OVER

- 20.1 The systems will be deemed complete when
- (i) the systems have passed inspections by the GEED and the issuing of inspection certificates;

- Eunice Gibson Polyclinic - 15.3kWp
- Randal Philips Polyclinic - 13.1kWp
- Maurice Byer Polyclinic - 15.3kWp
- Glebe Polyclinic - 13.1kWp
- Edgar Cochrane Polyclinic - 13.1kWp
- St. John Polyclinic - 50.4kWp
- Brandford Taitt Polyclinic - 15.3kWp
- St. Philip Polyclinic - 15.3kWp
- Winston Scott Polyclinic - 20.0kWp

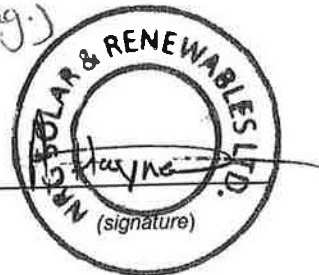
IN WITNESS WHEREOF the said parties hereto have executed this Agreement on the date hereinbefore written.

SIGNED by JEHO WILTSHIRE
(print name)
 Permanent Secretary, Ministry of Energy)
 and Water Resources for and on behalf)
 of the Government in the presence of:)

J. Wiltshire
(signature)

Signature (of Witness): [Signature]
 Name (print): DARA HAYNES
 Address: ASHTON HALL, ST. PETER
 Occupation: TECHNICAL OFFICER 1 (ag.)

SIGNED BY AKEIL HAYNES
(print name)
 Director/Authorised Officer for and on)
 behalf of NRG Solar & Renewables Ltd.,)
 the Contractor in the presence of)



Signature (of Witness): [Signature]
 Name (print): Shakeena Rock
 Address: #89 Womell's Way, Bakers Terrace, St. Peter
 Occupation: Sales Manager

JW

A.H

APPENDIX 2

PAYMENT SCHEDULE

The total fee to be paid to the Contractor is Five hundred and fifty-one thousand one hundred and fifty-nine dollars and seventy-nine cents Barbados Currency (BDS \$551,159.79) VAT inclusive with payment to be made as follows:

Mobilization Fee-	- \$55,115.98
On the delivery and acceptance of:	
Eunice Gibson Polyclinic	- \$35,659.85
Randal Philips Polyclinic	- \$34,302.56
Maurice Byer Polyclinic	- \$36,137.80
Glebe Polyclinic	- \$31,977.46
Edgar Cochrane Polyclinic	- \$34,228.84
St. John Polyclinic	- \$127,320.47
Brandford Taitt Polyclinic	- \$35,233.75
St. Philip Polyclinic	- \$36,137.80
Winston Scott Polyclinic	- \$42,371.32
On the delivery and acceptance of the Operation and Maintenance Manuals	- \$27,557.98
Defects Liability Period of twelve (12) months	- <u>\$55,115.98</u>
TOTAL	\$551,159.79

Payments will be processed within thirty (30) working days of receipt of invoice and supporting documents for payment.

Late Payments

Late payments will accrue interest at a rate of 1% per month or part thereof.



- 2.2 The Consultant shall not engage directly or indirectly in any other business or professional activities in conflict with the performance of its duties under the Agreement or which, in the opinion of the Government, hinder the performance of its duties under the Agreement.
- 2.3 The Consultant shall submit such plans, reports and other documentation as may be required pursuant to the Terms of Reference or other contract document or for the proper execution of the Services.
- 2.4 The Consultant shall liaise with the Permanent Secretary or his nominee during the period of the Agreement. All input of the Consultant shall be carried out with and under the overall supervision of the Permanent Secretary.

3 INDEMNITY

- 3.1 The Consultant shall save and keep harmless and indemnified from and against all claims, losses, damages, costs, expenses, actions and other proceedings made, sustained or brought against the Government which are occasioned by or attributable to any injury, infringement or damage arising from any negligent act or omission of the Consultant in the performance or purported performance of its functions and duties pursuant to the Agreement but not including acts or omissions of servants or agents of the Government.

4. UNDERTAKINGS OF THE GOVERNMENT

- 4.1 The Government agrees to, where necessary-
- (a) Facilitate the acquisition of access to such persons, locations and data as may be required to enable the Consultant to carry out the Services;
 - (b) Use its best endeavours to facilitate the Consultant's work by coordinating inter-departmental reviews and other inputs into the Services under the Agreement;
 - (c) Forward to the Consultant its observations and comments on the Consultant's plans, reports and other documentation submitted as may be required by the Terms of Reference or other contract document within a reasonable period of receipt of the respective plans, reports and documentation.

this Clause be deemed to constitute a variation of the Works, if confirmed by the Contractor in accordance with paragraph (a) hereof.

- 6.3 The Contractor shall not act upon an unconfirmed order for the variation of the Works which is directly received by him from any party. If the Contractor shall receive any such direct order, he shall forthwith inform the Project Coordinator or his agent or foreman in charge of the Works thereof and shall supply him with a copy of such direct order, if given in writing. The Contractor shall only act upon such order as directed in writing by the Project Coordinator, but the Project Coordinator shall give his directions thereon with all reasonable speed.
- 6.4 Save as aforesaid the Contractor shall not make any alteration in or modification of the Works.
- 6.5 Variations carried out in accordance with this Clause shall be valued at fair market value and payment made in accordance with Clause 7 below.

7 VALUATION OF VARIATIONS

- 7.1 All authorized variations of the works shall be valued in the manner provided by this Clause and the value thereof shall be added to or deducted from the price specified in the Third Schedule hereto or as the case may require.
- 7.2 The value of all authorized variations shall be ascertained by reference to the rates and prices (if any), specified in the Tender for the like or analogous work, but if there are no such rates and prices, or if they are not applicable, then such value shall be such as is fair and reasonable in all the circumstances.
- 7.3 Where an authorized variation of the Works is measured by the Project Coordinator thereunder, the Contractor shall permit the Sub-Contractor (if any) to attend any measurement made on behalf of the Project Coordinator and such measurement made shall also constitute the measurement of the variation for the purposes of this Contract and it shall be valued accordingly.
- 7.4 In any bill of quantities or price breakdown submitted by a Sub-Contractor (if any) and forming part of the Contractor's quantities stated therein shall be taken to define and limit the extent of any work to be done by the Contract in the execution and completion of the Works.

sw

A.H

that the recipient has received the facsimile message to the party to which it is required to be given or made at such party's address specified at paragraph 10 of the Agreement or at such other address as the party shall have specified in writing to the party giving such notice or making such request.

11. ENTRY INTO FORCE, ASSIGNMENT, MODIFICATION, DEFAULT AND TERMINATION

Entry into Force

11.1 The Agreement shall become effective on the date of signature by the parties unless otherwise specified in the Agreement.

Assignment

11.2 The Consultant shall not without the prior written consent of the Government assign, sub-contract or transfer any benefits or obligations arising under the Agreement or any part thereof.

11.3 Neither Party shall assign the whole or any part of the Agreement or any benefit or interest in or under the Agreement. However, either Party:

- (a) may assign the whole or any part with the prior agreement of the other Party, at the sole discretion of such other Party, and
- (b) may, as security in favour of a bank or financial institution, assign its right to any moneys due, or to become due, under the Agreement.

Modification

11.4 If circumstances arise which call for modification of the Agreement such modification shall be by mutual consent given in writing.

Default and Termination

11.5 Should the Consultant default in fulfilling any of its obligations under the Agreement the Government shall issue to the Contractor a Notice to Correct in accordance with paragraph 13 of this Agreement. Where the Contractor fails, refuses, neglects or is unable to make good the failure and to remedy it within the specified time, the Government may be entitled to determine the Agreement in which case the provisions of paragraph 12.2 below shall apply

use any Goods, Contractor's Documents and other design documents made by or on behalf of the Contractor.

- 12.4 The Government shall then give notice that the Contractor's Equipment will be released to the Contractor at or near the Site. The Contractor shall promptly arrange their removal, at the risk and cost of the Contractor. However, if by this time the Contractor has failed to make a payment due to the Government, these items may be sold by the Government in order to recover this payment. Any balance of the proceeds shall then be paid to the Contractor.

13. NON-DISCLOSURE

- 13.1 Any information acquired by the Consultant in the course of carrying out the Work under the Agreement regarding the policy or processes of the Government shall be treated as secret and confidential and such "Confidential Information" shall not be disclosed to any person, firm or company without the prior authority in writing from the Government.
- 13.2 "Confidential Information" shall not include information which is or becomes public knowledge through no fault, unlawful or wrongful act of the Consultant or is disclosed pursuant to law, court order, or duly authorized subpoena.
- 13.3 This restriction shall continue to apply after the termination of the Agreement without limit in point of time unless and until such policy or processes shall become public knowledge.

14. GENERAL

- 14.1 Any and all rights, powers, authorities and discretions expressed in the Agreement to be conferred upon or vested in the Government may be exercised by the Permanent Secretary or Head of Department of the Ministry or Department named in the parties clause of the Agreement or any other person designated in writing for that purpose by the said Permanent Secretary or Head of Department.
- 14.2 Any provision hereof which is prohibited, unlawful or unenforceable under the applicable law shall be ineffective without affecting any other provision, or shall be deemed to be severed or modified to conform with such law and the remaining provisions hereof shall remain in full force, provided that the purpose of the Agreement thereby can be effected.

hw

A.H

DATED THE DAY OF 2019

AGREEMENT

BETWEEN

THE GOVERNMENT OF BARBADOS

AND

NRG SOLAR & RENEWABLES LTD.

MINISTRY OF ENERGY AND WATER RESOURCES

A-11