

DATED THE

DAY OF APRIL 2018

AGREEMENT

BETWEEN

THE GOVERNMENT OF BARBADOS

AND

EVERSON R. ELCOCK & CO. LIMITED

DIVISION OF ENERGY AND TELECOMMUNICATIONS

BARBADOS

PARTIES

THIS AGREEMENT is made the 16th day of April 2018 **BETWEEN THE GOVERNMENT OF BARBADOS** acting herein through the Division of Energy and Telecommunications, Prime Minister's Office (hereinafter referred to as "the Government") of the **ONE PART** and **EVERSON R. ELCOCK & CO. LIMITED** a company incorporated under the provisions of the Companies Act Cap. 308 of the Laws of Barbados (Company No. 2987) and having its Registered Office situate at Bandstan Manor, The Garrison, in the parish of Saint Michael in this Island (hereinafter called "the Contractor") of the **OTHER PART** each individually referred to as "the Party" and collectively as "the Parties".

RECITALS

WHEREAS the Government invited Tenders for the Electrical Modifications to Photovoltaic Systems at 10 Government Primary Schools 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 **GUARDIAN GENERAL INSURANCE LIMITED** in the amount of Seven thousand five hundred and eight dollars and eighty-two cents Barbados Currency (BDS \$7,508.82) which is ten (10) percent 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.

2. APPOINTMENT OF CONTRACTOR

2.1 The Government hereby appoints the Contractor and the Contractor hereby accepts the appointment as Contractor to carry out the Work on the terms and conditions hereinafter set out.

3. SCOPE OF WORK

3.1 The Contractor shall carry out the Work as described in the Scope of Works attached hereto as Appendix 1 at the buildings listed in the Schedule herein.

4. SCHEDULING

4.1 The Contractor shall carry out the Work provided for hereunder during the period the 26th day of March 2018 to the 20th day of July 2018 or such other period as the Parties may agree in writing.

5. FEES AND METHOD OF PAYMENT

5.1 The Government will pay to the Contractor for the satisfactory carrying out the Work the sum of Seventy-Five Thousand and Eighty Eight Dollars and Fifteen Cents Barbados Currency (BDS \$75,088.15) VAT inclusive (hereinafter called the "Contract Price") in accordance with the Payment Schedule attached hereto as Appendix 2.

6. PERFORMANCE SECURITY

6.1 The Contractor shall obtain at its cost a Performance Security for proper performance of its obligations under the Agreement in the amount stated in the Invitation to Tender.

6.2 The Contractor shall deliver the Performance Security to the Government within 28 days after receiving the Letter of Acceptance or such other period as may be agreed, and shall be in the form as stipulated by the Government or in another form approved by the Government.

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, the Letter of Award dated the 24th day of January 2018 and the Letter of Acceptance dated the 26th day of January 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 of Contract

10. NOTICES

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

If to the Consultant:

Managing Director
Everson R. Elcock & Co. Ltd.
Manor Lodge Complex, Lodge hill, St. Michael
Fax: 421-6907

Email: ere@elcock.com

If to the Government:

Permanent Secretary
Division of Energy and
Telecommunications
Prime Minister's Office

Trinity Business Centre
Country Road
St. Michael
BARBADOS W.I.

Fax: (246) 429 7489

Email: wiltshire@energy.gov.bb

10.2 The period of notice for the purpose of paragraph 11.7 of the Conditions is 7 days.

11. NOMINATED AUTHORITY

11.1 The nominated authority for the purpose of paragraph 2.4 of the Conditions is the Project Coordinator.

12. WARRANTY

12.1 The Contractor warrants that all the goods and materials are new, unused and free from defects 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.

12.2 The Contractor further warrants that it will use reasonable care and skill in carrying out the installations and in accordance with industry standards. The installations shall be free from defects arising from any 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.
- 13.3 Each report shall include charts and detailed descriptions of progress, including each stage of design (if any), Contractor's Documents, procurement, manufacture, delivery to Site, construction, erection and testing; and including these stages for work by each nominated Subcontractor.

14. PROTECTION, CLEANING AND REMEDIAL WORK

- 14.1 The Contractor must suitably cover up and protect where practicable all work carried out and materials provided by it to minimize the risk of damage during the progress of the works and shall remove such protection as and when directed.
- 14.2 The Contractor shall take all necessary precaution to avoid damage by its workmen to other work. The cost of such damage, should it occur

will be debited to the Contractor, notwithstanding the precautions taken.

14.3 Any damaged work during the Contract period shall be remedied using perfect materials and methods which must be approved by the Government.

14.4 Any defective work, or any work which, in the opinion of the Government, does not comply with specification or drawings shall be rectified by and at the expense of the Contractor.

15. REMOVAL OF SURPLUS MATERIALS AND CLEANING UP

15.1 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.

16. NOTICE TO CORRECT

16.1 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.

17. TIME FOR COMPLETION

17.1 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.

17.2 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 lot, 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

(d) a supporting report which includes:

(i) a general description of the methods which the Contractor intends to adopt, and of the major stages, in the execution of the Works, and

(ii) details showing the Contractor's reasonable estimate of the number of each class of Contractor's Personnel and of each type of Contractor's Equipment, required on the Site for each stage.

17.3 The Contractor shall promptly give notice to the Project Coordinator of specific probable future events or circumstances which may adversely affect the Work, increase the Contract Price or delay the execution of the Works. The Project Coordinator may require the Contractor to submit an estimate of the anticipated effect of the future event or circumstances, and/or a proposal for a variation.

17.4 If, at any time, the Project Coordinator gives notice to the Contractor that a programme fails (to the extent stated) to comply with the Agreement or to be consistent with actual progress and the Contractor's stated intentions, the Contractor shall submit a revised programme to the Project Coordinator.

17.5 If, at any time:

(a) actual progress is too slow to complete within the stipulated time for Completion, and/or

(b) progress has fallen (or will fall) behind the current programme other than as a result of a cause listed in paragraph 17.3 then the Project Coordinator may instruct the Contractor to submit a revised programme and supporting report describing the revised methods which the Contractor proposes to adopt in order to expedite progress and complete within the Time for Completion.

17.6 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 18 below.

18 DELAY DAMAGES

- 18.1 If the Contractor fails to comply with paragraph 17.1, the Contractor shall subject to notice under paragraph 10 pay delay damages to the Government for this default. These delay damages shall be twenty dollars Barbados currency (Bds \$20.00) 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.
- 18.2 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.
- 18.3 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.

19. GOVERNING LAW

19.1 This Agreement shall be governed by the Laws of Barbados.

20 CONFLICT

20.1 In case of any conflict between the Agreement and any other document herein referred or incorporated, the terms of this Agreement shall prevail.

SCHEDULE

The Contractor shall carry out electrical modifications to the photovoltaic systems in the following buildings

- All Saints Primary
- Charles F. Broome Primary
- Good Shepherd Primary
- Grantley Prescod Primary
- Hilda Skeene Primary
- Hillaby Turners Hall Primary
- Luther Thorne Primary
- Reynold Weekes Primary
- St. Albans Primary
- St. Matthew's Primary.

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

SIGNED by JEHU WILTSHIRE)
(print name)
Permanent Secretary, Division of Energy)
and Telecommunications for and on behalf)
of the Government in the presence of:)

J. Wiltshire
(signature)

Signature (of Witness): [Signature]
Name (print): DARA HAYNES
Address: DIVISION OF ENERGY & TELECOMMUNICATIONS
Occupation: TECHNICAL OFFICER (ag.)

SIGNED BY ANTHONY E. ELCOCK)
(print name)
Director/Authorised Officer for and on)
behalf EVERSON R. ELCOCK & CO. LTD.)
the Contractor in the presence of)

[Signature]

EVERSON R. ELCOCK & CO. LTD.
P.O. BOX 47B,
"MANOR LODGE COMPLEX"
LODGE HILL, ST. MICHAEL BB14000

Signature (of Witness): Destine Gay
Name (print): DESTINE GAY
Address: DIVISION OF ENERGY & TELECOMMUNICATIONS
Occupation: PROJECT COORDINATOR

APPENDIX 1

SCOPE OF WORKS

The works described herein shall consist of the transfer of some lighting and outlets circuits responsible for the telephone system from the main distribution panel into the emergency panel powered by the solar system and its batteries. The works shall be confined to ten primary schools where the solar systems have already been installed under a separate contract in 2014.

It includes the supply of all labour, transport, permits, approvals, testing, and all materials necessary for the works as described herein.

The works include but are not limited to the supply and installation of all materials required to perform the itemized tasks shown below. These works include: -

- (i) Re-positioning of the 12 circuit emergency panel connected to the output register of the Schneider grid tied inverter with battery backup to facilitate the transfer of the designated emergency circuits into the 12 circuit panel.
- (ii) Circuit tracing and identification of the following circuits for transfer from the main distribution panel into the emergency panel powered by the grid tied inverter
 - a) lighting circuits for the main hall or such area(s) where in the event of disaster the general population will be held;
 - b) lighting circuits for the administrative offices of the school;
 - c) 110 volt outlet circuit or circuits which powers the telephone systems for the compound.
- (iii) Supply and installation of all conduits, fittings and accessories for the provision of adequate containment of the cables to be transferred from the main panel into the emergency panel.
- (iv) Supply and installation of all cables (#10 AWG, #12 AWG, #14 AWG) required for the transfer of circuits from the main distribution panel to emergency panel.
- (v) Testing and adjusting of system to ensure correct operation in the event of utility failure.
- (vi) Replacement of corroded meter bases at All Saint's Primary and Reynold Weekes Primary Schools. Excessive corrosion has been observed on the meter base housing and terminal points as well as heavy condensation. This shall include any builders work and the notification of Barbados Light & Power Ltd. (BL&P) to turn off the power on the agreed day.

Acceptance

All electrical work must be done to the satisfaction of the Chief Electrical Officer.

An electrical inspection certificate must be submitted before final payment is made.

The Primary Schools

The primary schools whose solar systems have been installed and have been designated for the modification to the wiring from the emergency output of the inverter are as follows:-

1. Charles F Broomes Primary, Government Hill, St Michael.
2. Grantley Prescod Primary School, St Barnabas, St Michael
3. Luther Thorne Primary, Wildey, St Michael
4. St Mathew's Primary, Jackmans, St Michael
5. Good Shepherd Primary, Prospect Road, Fitz Village, St James
6. All Saints Primary, Pleasant Hall, St Peter
7. St Alban's Primary, Lower Carlton, St James
8. Hillaby Turners Hall Primary, Dunscombe, St Thomas
9. Hilda Skeene Primary, Jezrel, St Philip
10. Reynold Weekes Primary, Four Roads, St Philip

Site Visits

Site visits are being facilitated through the Division of Energy and the Ministry of Education. Project Manager and primary contact shall be Ms. Destiny Gay at the Division of Energy. Telephone number for Ms. Gay is 535-2558.

Emergency Breaker Panel

At some schools the emergency panel is not situated in the most ideal position for the transfer of existing circuits from the main distribution panel.

The Contractor shall be given two options with respect to the emergency panel.

- Option 1: To allow the 12 circuit panel to remain in its present location and to extend those circuits identified for transfer from the main distribution panel to the emergency panel.
- Option 2: To relocate the 12 circuit panel closer to the main panel to facilitate an easier transfer of circuits from the main distribution panel to the emergency panel. This option however will require a #8 AWG feeder cable or greater from the output register of the inverter to the new panel location and a 40 amp disconnect within this panel.

Circuit Identification & Transfer

The Contractor shall be required to identify and locate the following circuits within the main distribution panelboard in each of the respective schools for transfer into the emergency panel:

- a) lighting circuits for the main hall or other such areas where in the event of disaster the general population will be held;
- b) lighting circuits for the administrative offices of the school;
- c) 110 or 220 volt outlet circuit or circuits which powers the telephone systems for the compound.

The circuits shall be joined within the *main* distribution panel using an appropriate wiring splice or connection devices. The circuits shall be installed in an approved raceway for electrical containment and this raceway shall be continuous from main distribution panel to emergency panel.

Drawings

- (a) The contractor shall provide "Red Line" mark ups of the Issued for Construction (IFC) drawings showing the deviation or modification done on site during the modification. These markups shall also show the exact location of any fixtures and equipment added.
- (b) The Tenderer shall update the panel schedules where necessary to reflect changes made to the schools circuitry.
- (c) If directed by the Project Coordinator, the Tenderer shall, without extra charge, make reasonable modifications in the layout as needed for the proper execution of the work.

APPENDIX 2

PAYMENT SCHEDULE

The total fee to be paid to the Contractor is Seventy-five thousand and eighty-eight dollars and fifteen cents Barbados Currency (BDS \$75,088.15) VAT inclusive with payment to be made as follows:

Mobilization Fee- - 10%

On the delivery and acceptance of each photovoltaic system and approval of the systems by the Chief Electrical Officer:

-Hilda Skeene Primary	-8.5%
-Luther Thorne Primary	-8.5%
-Charles F. Broome	-8.5%
-All Saints Primary	-8.5%
-Good Shepherd Primary	-8.5%
-Hillaby Turners Hall Primary	-8.5%
-St. Alban's Primary	-8.5%
-St. Matthew's Primary	-8.5%
-Grantley Prescod Primary	-8.5%
-Reynold Weekes Primary	-8.5%
Defects Liability Period of six (6) months	<u>- 5.0%</u>
TOTAL	100%

APPENDIX 3

CONDITIONS

DEFINITIONS AND INTERPRETATION

1. "Agreement" means the Agreement annexed hereto.
"Consultant" means the person, firm or company named in the Agreement.
"Force Majeure" shall mean Acts of God, strikes, and other labour disputes, lockouts or other industrial disturbances, acts of the public enemy, wars whether declared or not, blockades, insurrections, riots, epidemics, landslides, hurricanes, earthquakes, storms, lightning, floods, washouts, civil disturbances, explosions, any event or situation that cannot be circumvented or avoided by the Consultant through economic means which makes it impossible for the Consultant to carry out its contractual obligations in whole or in part, for a defined or undefined period of time and other similar events not within the control of either party and which by the exercise of due diligence neither party is able to overcome.
"Permanent Secretary" means the person for the time being bearing that title in the Ministry or Department named in the parties clause of the Agreement.
"Work" means the work or any part of it described in the Invitation to Tender and Scope of Works.
- 1.2 Unless the context otherwise requires:
 - (a) words in the singular shall include the plural and words in the plural shall include the singular;
 - (b) words denoting the masculine gender shall include the feminine and neuter gender also and vice versa;
 - (c) the headings shall not limit, alter or affect the meaning of any provision.

2. OBLIGATIONS AND DUTIES OF THE CONSULTANT

- 2.1 The Consultant shall exercise all reasonable skill, care and diligence in the discharge of its duties under the Agreement in accordance with generally accepted standards of professional competence.

- 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.

5. PROPERTY IN MATERIALS AND PLANT

- 5.1 Where it is provided that the property in any Contractor's Equipment, Temporary Works, materials or things whatsoever shall in certain events vest in the Government or re-vest in the Contractor, then in so far as such Contractor's Equipment, Temporary Works, materials or things are to be provided by the Sub-Contractor (if any) in connection with the works, the property therein shall pass from the Sub-Contractor to the Contractor immediately before it is due to vest in the Government—and shall re-pass from the Contractor to the Sub-Contractor immediately after it has re-vested in the Contractor.
- 5.2 For greater certainty, the property in the equipment, materials, temporary works or things shall vest in the Government where the Contractor has failed to complete the Works in accordance with paragraph 17 of the Agreement.
- 5.3 Without prejudice to the generality of paragraph 3 of the Agreement, the Sub-Contractor shall comply with the requirements of the Government as to the bringing on to an removal from the Site of Sub-Contractor's Equipment, Temporary Works, materials and other things and in so far as any items thereof are hired by the Sub-Contractor, he shall comply with all the requirements of the Government as to the terms of such hirings and as to the giving of information and certificates in relation thereto.
- 5.4 The copyright and all other proprietary rights whatsoever of all plans, reports documentation or other material developed by the Contractor for the execution of its obligations under the Agreement vest in and are the absolute property of the Government.

6. VARIATIONS

- 6.1 The Government shall make such variations of the Works, whether by way of addition, modification or omission, as may be:
- a) ordered by the Project Coordinator and confirmed in writing to the Contractor; or
 - b) agreed to be made by the Project Coordinator and confirmed in writing to the Project Coordinator by the Contractor

6.2 Any order relating to the Works which is validly given by the Project Coordinator and constitutes a variation thereunder shall for the purposes of 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.

8. OUTSTANDING WORK AND DEFECTS

8.1 Provided always that if any defect or imperfection made good by the Sub-Contractor under this sub-clause is caused by the act, neglect or default under the Sub-Contract of the Contractor, his servant or agents, the Sub-Contractor shall be entitled to be paid by the Contractor his reasonable costs of making good such defect or imperfection.

9. DISPUTE RESOLUTION

9.1 In the event of any dispute, difference, claim, controversy or question between the parties, directly or indirectly arising at any time under, out of, in connection with or in relation to this Agreement (or the subject matter of this Agreement) or any term, condition or provision hereof, including without limitation any of the same relating to the validity, interpretation, construction, performance and enforcement of this Agreement (a "Dispute"), the parties shall first endeavour to settle such Dispute by consultation and negotiation. If such Dispute is not settled within thirty (30) Business Days after one party has informed the other party about the existence of such Dispute or such longer period that the parties may agree, either party may refer the matter for resolution by arbitration pursuant to paragraph 9.2.

9.2 All Disputes between the parties to this Agreement with respect to any matter or thing arising out of or relating to the Agreement which are not settled by negotiation or other agreed method of settlement shall, after written notice by either party to the Agreement to the other party, be referred to one arbitrator to be agreed to by the Government and the Contractor in accordance with the provisions of the Arbitration Act, Chapter 110 of the Laws of Barbados.

9.3 The existence of a Dispute shall not relieve either party from performance of its obligations under this Agreement that are not the subject of such Dispute.

10 NOTICES AND CLAIMS

10.1 Any notice or request required or permitted to be given or made under the Agreement shall be in writing and signed by the party giving such notice and may be hand-delivered or sent by registered mail, postage prepaid or by facsimile with electronic confirmation or uninterrupted transmission by transmission report or the recipient's confirmation by telephone to the sender 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 without prejudice to its rights to claim damages from the Consultant if there are grounds for so doing.

11.6 Neither party shall be liable for any default due to an event of force majeure. Provided that the Government shall be entitled to terminate or suspend the Agreement if the Consultant is unable to perform its duties under the Agreement by reason of any event aforesaid.

11.7 Notwithstanding anything contained in the Agreement, the Government may, at any time by notice in writing, suspend or terminate the Agreement in whole or in part by requiring the Consultant to stop performing the Services or any part thereof. The period of notice shall be prescribed in the Agreement.

11.8 The Government shall, in the case of termination or suspension, owe the Consultant or its successors and assigns surrender of any documents required or necessary for the continuation of the Works, in so far as they are available, such part of the remuneration as corresponds to the state of the Works of the Consultant under the Agreement.

12. TERMINATION FOR CORRUPTION

12.1 The Government may summarily terminate the Agreement in cases where there is evidence that:

- (a) the Consultant or its agent has offered or given to any person any gift or consideration of any kind as an inducement or reward for doing, or forbearing to do or having done or forborne to do in relation to the obtaining or execution of the Agreement;

- (b) the Consultant has shown favour or disfavour to any person in relation to the Agreement;
- (c) the Consultant or its agent in relation to any Government contract has committed an offence under the Prevention of Corruption Act, Cap. 144 or any Act replacing the same.

12.2 In the event that the Agreement is terminated in accordance with paragraphs 11 and 12 above the Consultant shall be liable for any loss or damage resulting from such termination, notwithstanding any criminal liability which may thereby be incurred.

12.3 After termination, the Government may complete the Works and/or arrange for any other entities to do so. The Government and these entities may then 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.

14.3 The Agreement and any annexes or appendices thereto shall supersede all documents or agreements, written or verbal, in respect of the subject matter thereof and represents the entire agreement between the parties thereto.

