



**MASTER SERVICE SOFTWARE DEVELOPMENT,
MAINTENANCE AND HOSTING AGREEMENT**

THIS MASTER SERVICE SOFTWARE DEVELOPMENT, MAINTENANCE AND HOSTING AGREEMENT is made the ___ day of _____ 20__

BY AND BETWEEN:

- (1) The **Government of Bermuda** as defined below and described in Schedule 1; and
- (2) The **supplier of services** under this Agreement, whose name and contact details are set out in Schedule 1 to this Agreement and is hereinafter referred to as “**Supplier**” or “**you**”.

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

This Agreement, which consists of the General Terms and Conditions, Schedule 1 to Schedule 8, sets out the terms and conditions upon which the Supplier will provide service and goods to us.

GENERAL TERMS AND CONDITIONS

IN CONSIDERATION of the premises and mutual promises in this Agreement the parties, intending to be legally bound, agree 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 and any derivatives, references to either gender includes any other gender or a neutral entity where appropriate, and a reference to any statute, regulation or law means as amended from time to time and include any successor legislation, regulations or laws. Where the context requires, the word “**Supplier**” shall include the word “**you**” and vice versa.

1. Definitions

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

“**Acceptance**” means written confirmation by the Government that the System, together with all Equipment and a Service to be provided are accepted as being in accordance with the specifications set out in the Statement of Works attached hereto as Schedule 4 and the Documents;

“**Acceptance Tests**” means the activities to be carried out to verify that the System and a Service, together with all Equipment and Software is in accordance with the acceptance test criteria set out in Schedule 4;

“**Agreement**” means this Master Service Software Development, Maintenance and Hosting Agreement

which includes these General Terms and Conditions and Schedule 1 to Schedule 8;

“**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;

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

“**Claims**” means any written or oral claims, actions or demands for money (including taxes or penalties) or services 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 and conditions of this Agreement as well as any information or Data disclosed or which you may learn, prior to, during or after the Effective Date, 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; (iii) personal information or sensitive personally information, the use of which is set out in PIPA; or (iv) any other information, which is not in the public domain, which upon receipt should reasonably be understood to be confidential;

“Contact” means the Public Officer or other person appointed as our person to initially communicate with;

“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 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;

“Default” means any breach of your obligations, including but not limited to, abandonment of this

Agreement or any other default including any act, omission, negligence or willful misconduct of the Supplier or any Representative;

“Deliverables” shall mean the Documents, Equipment, Goods, System, Software and including the implementation of other services incorporating technical specifications in order for the Supplier to achieve the Service;

“Documents” means written advice, project specifications, designs, drawings, plans, reports, tenders, proposals or other information and documents, technical specifications related to the Software, System or Service provided by the Supplier or the Representative;

“Effective Date” means the date first written above or the date when the Supplier commences provision of the Service;

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

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

“Fee” means the gross fees to be paid to the Supplier for the Service provided in accordance with the terms of this Agreement;

“Goods” means the goods as set out in Schedule 8 that will be provided by the Supplier or a Representative to us for the operation of the Service;

“Government” includes the terms **“we”**, **“our”** or **“us”** and means the Government of Bermuda as represented by the Department as set out in Schedule 1;

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

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

“in writing” shall mean any fax, letter or purchase



order on the Government's letterhead bearing the signature of an authorised person or an e-mail emanating from the personal e-mail address of an authorised person;

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

"License" means the right granted by the Supplier to us to use the System, Service or Documents;

"Licensed Software" means the Software and Documents which is to be licensed to us together with any third-party or other proprietary software;

"Loss" means all loss, 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;

"PATI" means the *Public Access to Information Act 2010*;

"PIPA" means the *Personal Information Protection Act 2016*;

"Public Officer" means any person employed by, or acting as an agent for, the Government;

"Representative" means the person providing the Goods or a Service on the Supplier's behalf;

"Schedule 1" contains details regarding the parties, Service, Fee, Commencement Date, Completion Date, Insurance Policy, Term and other special terms and conditions;

"Schedule 2" contains the specifications required for the statement of work or **"SOW"** for the System which sets out the process and procedures that shall be followed to develop and provide the System and Service which will comply with the Documents and which will integrate with other systems or software which the Government may already have or which is to be supplied by the Supplier as part of this Agreement;

"Schedule 3" contains the specifications and requirements for the System and Service;

"Schedule 4" contains the acceptance criteria for the Service;

"Schedule 5" contains the training services to be provided for the System or Service;

"Schedule 6" contains the maintenance and support services to be provided for the System and Service;

"Schedule 7" contains the hosting and support services to be provided for the System and Service;

"Schedule 8" contains terms and conditions related to the delivery, warranty period and list of the Goods;

"Security Procedures" means rules and regulations



governing health and safety procedures while on, Government premises; and information technology security protocols where the Supplier or the Representative accesses any Government information technology system or adherence to security protocols as necessary for the Service and System;

“**Security Protocols**” means security process and procedures for information and data contained in the Software and used to provide the Service;

“**Service**” means the provision of all Deliverables and includes the Goods and Equipment which is used to provide the Software and System, described in Schedule 1;

“**Standards**” means any:

- (a) standards published by BSI British Standards, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with;
- (b) standards detailed by the Government in the Order or agreed between the Parties from time to time; and
- (c) relevant Government codes of practice and guidance applicable from time to time.

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

“**Source Code**” means the programming statements that are created by a programmer with a text editor or a visual programming tool and then saved in a file, in the language in which the software was written for the Software Platform, together with all Documents, all of a level sufficient to enable the Government's personnel to understand, develop and maintain that Software platform;

“**System**” means the development of an integrated technology system as described in Schedule 1, to be used by the Government;

“**Term**” means the Service provided from the Commencement Date to the Completion Date of this Agreement as set out in Schedule 1;

“**User**” means a person who is to use the Service or System;

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

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

2. Provision of Service

2.1 You and the Representative agree to provide the System and Service in accordance with and subject to these General Terms and Conditions and the following schedules:

- (a) Schedule 1;
- (b) Schedule 2, 3 and 4;



- (c) Schedule 5 in the event that training is required;
- (d) Schedule 6 in the event that maintenance support is required;
- (e) Schedule 7 in the event that hosting services are required;
- (f) Schedule 8 in the event that Goods are required to be delivered to us; and
- the Government agrees to pay the Fee for the Service.
- 2.2 In the event of inconsistency between schedules and these General Terms and Conditions, the order of precedence to resolve any such inconsistency shall be as follows: (i) these General Terms and Conditions; (ii) Schedule 1; (iii) Schedule 2; and (iv) Schedule 3 to 8.
- 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 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 Service and for ensuring their compliance with the requirements of this Agreement. You shall remain responsible for, and liable to pay, all subcontracted or outsourced persons.
- 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 We may request, by notice in writing to you, the replacement of the Representative, and agreement with such request shall not be unreasonably withheld. You shall use your best endeavors to replace the Representative with another qualified individual employed by you, and such replacement shall be subject to approval by us.
- 2.7 Goods: The Government may submit an Order for Goods at any time. The Goods are listed in Schedule 8.
- 2.8 You shall use its best endeavours to supply the Goods within Twenty (20) Business Days of submitting an Order.
- 2.9 The Government may amend or cancel an Order in whole or in part at any time before Delivery by giving you written notice. The Government shall pay you a fair and reasonable compensation for any work in progress on the Goods at the time of termination, but such compensation shall not include any Claims or Loss.
- 2.10 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.
- 2.11 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.
- 2.12 Security Procedures: The Service shall be



provided in such place and location as we may instruct to you.

2.13 If a Service is required to be provided on the Governments' 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.

2.14 Failure to adhere to the Security Procedures or Security Protocols and the requirements of this section may be considered a material breach of this Agreement and may result in termination of this Agreement for Default.

2.15 Non-Exclusivity: Service is provided on a **non-exclusive** basis to the Government.

3. Government Responsibilities

We shall disclose all necessary information and provide reasonable and agreed computer facilities and access necessary for you to provide the Service.

4. Additional Service

4.1 Additional services or variations in a Service may be required after the date of execution of this Agreement and may be performed upon our prior written approval. Such written approval shall be evidenced by a change authorisation order ("**Change Order**") or such other written authorisation as approved and signed by the Contact or a duly authorised Public Officer. In such case, a Change Order shall be issued within a reasonable time thereafter.

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

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

5. Goods

5.1 You shall ensure that the Goods:

(a) correspond with their description, Documents and any applicable Specifications;

(b) be of satisfactory quality (within the meaning of the *Sale of Goods Act 1978*, *Supply of Goods and Services (Implied Terms) Act 2003*, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by the Government expressly or by implication, and in this respect the Government relies on the Supplier's skill and judgement;

(c) where they are manufactured products, be free from defects in design, material and workmanship and remain so for twelve (12) months after Government receives the Goods; and

(d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

5.2 The Government has the right to inspect and test the Goods at any time before receipt of the Goods.

5.3 If following such inspection or testing the Government considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings in this section, the Government shall inform you and you shall immediately take such remedial action as is necessary to ensure compliance.

5.4 Notwithstanding any such inspection or testing, you shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under this Agreement



and the Government shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

6. Fees, Invoicing and Payment

6.1 We shall compensate you the Fee for the Service, thirty (30) days in arrears, during the Term. The Fee shall be set out in Schedule 1 and paid in Bermuda Dollars.

6.2 The Fee has been calculated to take account of payroll tax and social insurance contributions that, as a non-employee, you are required to pay in full.

6.3 We may dispute an invoice within thirty (30) days of receipt, however, we reserve the right to dispute payments, made on an invoice at any time if we suspect fraud or willful misconduct on your part (“**Faults**”). In the event that any Faults are discovered in relation to payments made to you, we reserve the right to recover such payments from you, at your cost (which shall include all legal and collection fees and expenses) or to set off any disputed amounts against unpaid invoices.

6.4 Your failure to submit a proper invoice in a timely manner may result in a delay in payment by us. 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.

6.5 **Fee Deductions:** The Fee will be subject to deductions by law in the event that you have not registered as a service provider with the relevant Government department.

6.6 The Fee will be subject to further deductions for the following reasons:

(a) if you have not delivered a Service or any part of the Service, as required;

(b) where there has been a mistake of payment made to you;

(c) where we have 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;

(f) when you no longer provide a Service to us, there will be a deduction of any overpayments or advances of payment taken in excess of the Fee; and

(g) where there has been an overpayment to you for any reason.

6.7 **Invoicing:** You shall provide a monthly invoice for the Service as set forth herein, with supporting documentation and itemising the following:

(a) Supplier name, invoice date and invoice number;

(b) Change Order number, if applicable;

(c) Details of Service performed;

(d) Time and Service rendered in hourly (or less than daily) increments with sufficient detail to determine appropriate expenditure of hourly efforts;

(e) Other supporting documentation (including copies of any invoices or receipts for reimbursable expenditures as provided for herein);

(f) Mailing address and the person to whom payment is to be sent or the banking institution and full account information for payment by wire transfer (unless such



information has previously been provided to us); and

- (g) Your telephone number, fax number and e-mail address.

6.8 You will only be paid the Fee for the hours that you provide a Service. For the avoidance of doubt, you will not be paid during any time that you do not provide Service or if you provide additional service which have not been prior approved in writing from an authorised Public Officer. In addition, you will not be paid for public holidays and in the event that you provide Service on a public holiday or provide additional service without prior written approval, such amounts will not be paid or if paid, will be deducted from the Fee, unless otherwise agreed in writing.

6.9 You shall be responsible to pay the Representative for the provision of the Service.

7. Expenses

7.1 You, or the Representative, are not allowed to incur Expenses associated with the provision of the Service without having received our prior written consent. You shall be liable for all Expenses not prior approved in writing.

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

7.3 While performing a Service in or from Bermuda, you or 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.

7.4 Except for the Fee and any approved Expenses, no other amounts are payable by us to you. We may set off any amounts owed by you to us against any Fees or Expenses.

7.5 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.

7.6 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.

8. Taxes

8.1 You shall be responsible to register with the appropriate department of the Government in order to pay for all taxes associated with the provision of a Service, including, but not limited to, payroll tax and social insurance contributions (“Taxes”) and you consent to us deducting due or outstanding Taxes from the Fee on your behalf, at our option. Your Tax numbers shall be set out in Schedule 1.

8.2 In the event that we have not made deductions on your behalf, you shall provide us with proof of payment of amounts due such as any Taxes and all other receivables, prior to you receiving your final payment. In the event that you do not provide written proof, we shall have the right to deduct any outstanding amounts owed, including any Taxes, from final payment of the Fee.



9. Representations and Warranties

9.1 You represent and warrant that you and the Representative, will perform all activities relating to a Service or for the order of the Goods:

- (a) in accordance with Best Industry Practice and in a professional and lawful manner;
- (b) if applicable, 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 in order to achieve the Governments objectives; and
- (e) in accordance with applicable law including PIPA, rules, regulations and guidelines or policies provided by us.

9.2 You represent and warrant that:

- (a) you have the right to license, assign and transfer all intellectual property rights in a Service, Software and Documents to us;
- (b) 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;

9.3 you declare that you are in possession of all Consents necessary for the provision of Service and you will maintain such Consents at all times while providing Service;

9.4 you 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 the Government's Confidential Information (held in electronic form) owned by or under the control of, or used by, the Government;

9.5 you have the right to license, assign and transfer all intellectual property rights in the Goods and all related documents or technical specifications, to the Government;

9.6 the Software and Service will be compatible with existing equipment and software on Government systems and upon installation of the Goods, the Software and Service will meet all the Objectives and that when used, the Goods will perform substantially as described in the Documents and this Agreement;

9.7 you are not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Agreement;

9.8 that all payments to the Government, including but not limited to, taxes and social insurance, are current. In the event that any payments are delinquent, the Government may deduct, in part or in full, any payments made to it under this Agreement;

9.9 you shall inform the Government promptly of all known or anticipated material problems relevant to the delivery of Goods or Service;

9.10 you shall procure the benefit of any warranties or guarantees in respect of Goods you supply to us and provide copies of such warranties or guarantees;

9.11 you confirm that all payments to us, including but not limited to, Taxes, are current. In the event that any payments are delinquent, we may deduct, in part or in full, any payments made to you under this Agreement;



9.12 you shall provide information or sign any other agreements necessary or as requested by us, in order that either you or us can fulfill each of our obligations under this Agreement;

9.13 you represent and warrant that the Goods, Software or a 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;

9.14 you acknowledge and warrant that you are fully satisfied as to the scope and nature of the 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, the Agreement;

9.15 each of the representations and warranties set out in Section 9.1 and Section 9.2 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;

9.16 if at any time a party becomes aware that any representation or warranties given by it under this section 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; and

9.17 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 the Government may have in respect of breach of that provision by you which constitutes a material Default.

10. Remedies

10.1 If the 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 the Government with an alternative means of accomplishing the desired performance.

10.2 Without prejudice to any other rights available to the Government, you shall, at your Expense:

(a) repair or replace Equipment where the Equipment is damaged as a result of your, or the Representative's negligence, error, omission or willful misconduct in providing the Service; or

(b) if the Documents are inaccurate or misleading or a 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 or Service and deduct that value from amounts that we are required to pay you; or

(iv) obtain service and related documents from another service provider and you will be required to pay all amounts payable by us in obtaining alternative documentation or service from another service provider to make good the defective Documents or Service.

11. Progress Report

11.1 If required, you shall submit progress reports in connection with the Service ("**Reports**") on at



least a monthly basis, or as otherwise required, to the Government. The Reports shall include a summary of the activities and accomplishments during the previous reporting period.

11.2 The Report will also include year-to-date totals for payments received and work completed (expressed in BMD\$).

11.3 Any decisions and/or actions required of us 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.

12. Contact, Inspection and Approval of Service

12.1 We shall inform you of the Contact, i.e. whom you or the Representative shall be reporting to and who will accept the Service.

12.2 We shall at all times retain the right to inspect the Service or Goods provided by you or the Representative and you consent to visits to your premises in order to inspect the Service or Documents and we shall have the right to review, require correction or additional follow up, if necessary, and accept or reject a Service, Goods and any Documents submitted by you or the Representative.

12.3 You shall make any required corrections promptly at no additional charge and return a revised copy of the written work product to the Government within fourteen (14) 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 a Service, such change shall be implemented within a reasonable time, as determined by us in consultation with you.

12.4 Your failure to proceed with reasonable promptness to make necessary corrections shall be a Default. If your corrected performance or

written work product remains unacceptable, we may terminate this Agreement, reduce the Fee and/or reject the hours submitted in connection with such work to reflect the reduced value of Service received.

13. Time of the Essence

13.1 You are responsible for managing time in order to complete your obligations under this Agreement and shall complete any portion or portions of the Service in such order as we may require rather than providing a Service during a specified amount of time and you recognise that providing a Service outside of Business Days may be necessary in order to fulfil your obligations and responsibilities without additional compensation of any kind.

13.2 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 a Service.

14. License

14.1 Until we pay the Fee, you grant to us a non-exclusive, unlimited and royalty-free license to use Software and Documents to enable us to use Equipment and a Service.

14.2 The License granted herein includes all major releases, updates or upgrades of Software.

14.3 Until we pay the Fee, you retain title and property rights to the Software. Unless specifically stated in the Agreement, we neither own nor will acquire any right of ownership to any Software or Equipment, including, but not limited to, copies, and any related patents, copyrights, trademarks, or IP addresses assigned to you.



14.4 You shall ensure the continued compatibility of the Equipment with all major releases, updates, or upgrades of any Software.

14.5 In the event you are not able to support Software update, upgrade, version or new release that changes major functionality and is not compatible with the Equipment or a Service, you shall use your best efforts to resolve such issues and to provide optimal functionality of the Equipment or the Service.

14.6 If required by us, you shall maintain and keep current human and computer readable copies of the Source Code and you shall provide us with copies of all Source Code.

14.7 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 the Government has will crystalize at that time with that application code and cap any further updates going forward. This will allow us the ability to use the System in perpetuity. If, however, in the future we wish to obtain support or upgrades then the current year's enhancement fee(s) and support and maintenance fee(s) will be payable in order to bring the version of the Software or Service, current.

15. **Indemnity, Limitation of Liability, Insurance, Force Majeure and Business Continuity**

15.1 **Indemnity:** You shall fully indemnify, hold harmless and defend us and our Public Officers, Ministers, agents and subcontractors, (collectively referred to as "**Indemnified Party**") from and against any Loss arising from or incurred by reason of any Intellectual Property Rights 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.

15.2 You shall indemnify and keep indemnified the Indemnified Party against all Loss whatsoever, during the period that we are deprived of the use of the System, Service or Deliverables or any portion thereof.

15.3 You shall defend, indemnify, hold and keep harmless the Indemnified Party from all Loss hereunder; provided that the Government provides 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.

15.4 **No Liability:** In no event shall the Indemnified Party be liable to you for Loss.

15.5 **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 three (3) months immediately preceding the date the on which the latest Claim(s) or Loss first arose or the coverage limits of any insurance policy that may be required to respond to a Claim or Loss, whichever is the greater.
- 15.6 Nothing in this Agreement shall exclude or limit any liability which cannot be limited or excluded by law and you shall accordingly maintain the Insurance Policy in full force and effect during the Term.
- 15.7 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.
- 15.8 Insurance: If required, you shall maintain an Insurance Policy. The Insurance Policy 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 we require by shall entitle us to either obtain or maintain the Insurance Policy 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.
- 15.9 You shall be responsible for the payment of all deductible amounts on such policy or policies and shall on request supply to us a copy of the Insurance Policy and evidence that the relevant premiums have been paid.
- 15.10 In the event that you have not paid Insurance Policy premiums, upon signing this Agreement,
- you consent to us either deducting the Insurance Policy premium from the Fee, or otherwise making such Insurance Policy premium payment, on your behalf and recouping such payment from you, at our sole discretion.
- 15.11 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 Government as a result of you or a Representative providing the Service.
- 15.12 You shall notify us forthwith of any changes to any of the policies, or of any claims or potential claims which have arisen to which the insurer(s) of the above policy or policies may be required to respond.
- 15.13 The policy clause "*Other Insurance*" or "*Excess Insurance*" shall not apply to any insurance coverage currently held by The Government of Bermuda, or to the Government of Bermuda's Self-Insured Retentions of whatever nature.
- 15.14 If you subcontract or outsource any Service, you shall ensure that each subcontractor maintains insurance coverage with policy limits of at least the amounts stated above.
- 15.15 The insurance requirements set forth in this Agreement do not in any way limit the amount or scope of your liability under this Agreement. The Insurance Policy amount only indicates the minimum amount of insurance coverage that we are willing to accept to help ensure full performance of all terms and conditions of this Agreement.
- 15.16 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 Policy or any policies of insurance that are secured and



maintained by you.

15.17 **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, epidemic, pandemic, labour dispute, act of terrorism, war, embargo, government order or other event beyond either parties' 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.

15.18 **Business Continuity:** 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.

16. Non-Solicitation

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

17. Non-Disclosure of Confidential Information

17.1 You must ensure that all Confidential Information held by you is protected against unauthorised access, use, copying or disclosure. You acknowledge that the improper use, copying or disclosure of such information could be unlawful.

17.2 You will comply with our instructions if you have access to Data as a result of providing the Service.

17.3 You may disclose information related to this Agreement to your personnel on a 'need to know' basis as required for the performance of the Service. You will keep strictly confidential any other Confidential Information and you shall only use such Confidential Information as required for providing the Service (and no other purpose).

17.4 A breach or anticipated breach of the confidentiality provisions of this Agreement, will cause us irreparable harm and you agree that monetary damages alone may not be an adequate remedy and, accordingly, either party may, without prejudice to any other rights or remedies that either party 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.

17.5 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 the Government under this section.

18. Security of Information and Data

18.1 **Information and Data:** You warrant and represent that access, collection, storage and disposal of Confidential Information does and shall comply with applicable statutes and regulations. Without limiting your obligations pursuant to this Agreement, you shall implement administrative, physical and technical safeguards for protection of Confidential Information that are no less



rigorous than acceptable industry practices and shall ensure that all such safeguards comply with applicable data protection and privacy laws, statutes and regulations. During the term of this Agreement, you shall at all times cause Representatives to abide strictly by your obligations pursuant to this Agreement, and our internal policies and procedures, copies of which can be provided and be incorporated by reference into this Agreement.

18.2 Data Breach or Data Incident Procedures:

In the event of a Data breach or Data incident, you shall (i) notify us of a Data breach as soon as practicable, but no later than **2 hours** after you become aware of the Data breach and (ii) notify us of a Data incident promptly after you determine that the Data incident did not rise to the level of a Data breach. Immediately following your notification to us of a Data breach, each party shall coordinate with each other to investigate the Data breach. You shall bear all Expense of the investigation and reporting of Data breach caused by you, and shall cooperate with our personnel, including any insurance carriers to which we have to report the incident, fully, including, without limitation, by providing access to our and/or our personnel or carriers, to relevant records, logs, files, data reporting or other materials requested. You expressly agree that you shall not inform any third party, including law enforcement, consumer reporting agencies, or affected employees or consumers, of any Data breach without first notifying us, other than to inform a complainant that the matter has been forwarded to our counsel. We shall have the sole right to determine whether notice of the Data breach shall be reported to third parties, including law enforcement, consumer reporting agencies or as otherwise required, and we shall have the sole discretion over the

contents of any such notice. You shall undertake any instructed notice at your sole expense.

18.3 Compliance Oversight: Upon our written request, you shall confirm compliance with this Agreement and any applicable industry standards, and shall promptly provide us a fully completed written information security questionnaire regarding your information technology resources, Security Protocols and applicable policies. Failure to provide such information shall be grounds for us to terminate this Agreement immediately.

19. Ownership, Intellectual Property and Copyright

19.1 Upon payment of the Fee, we shall own Deliverables provided in accordance with this Agreement.

19.2 Intellectual Property: You represent and warrant to us that you or the Representative have created the Documents for and on our behalf or you have obtained a written and valid Consent and assignment of all existing and future Intellectual Property Rights in the Documents.

19.3 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 (including the right to use such intellectual property for the purposes of this Agreement); and
- (b) not subject us to any claim for infringement of any Intellectual Property Rights of a third party.

19.4 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.
- 19.5 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.
- 19.6 **Copyright:** Copyright and other intellectual property rights in the Deliverables shall belong to us, and we may utilise Documents freely (including by adapting, publishing and licensing).
- 19.7 Deliverables shall not be used or copied for direct or indirect use by you or a Representative during the Term or following expiry or termination of this Agreement without our express written consent.
- 19.8 We acknowledge that you and Representative possess knowledge and expertise relating to the subject matter of a Service (“**Supplier Know-How**”), which may include intellectual property rights in certain pre-existing tools and materials used by you in performing a Service. Nothing in this Agreement is intended to transfer to us any rights in the Supplier Know-How, which shall remain your property.
- 19.9 To the extent that any Supplier Know-How is included in any Deliverables, you hereby grant to us a perpetual, unlimited, royalty-free, non-exclusive right and license to use and reproduce the Supplier Know-How to the extent reasonably necessary to achieve the Objective.
- 19.10 **Government logo:** You may not use the Government’s name or logo for any publicity or marketing purposes, unless consent for such use is provided in writing.
- 20. Term, Termination and Suspension**
- 20.1 This Agreement shall be effective from the Effective Date for the Term.
- 20.2 The Service shall commence on the Commencement Date and continue until the Completion Date, whereupon this Agreement shall expire unless terminated earlier in accordance with its terms.
- 20.3 You shall not commence any additional services in the event of notification of termination of this Agreement, however, in the event that services are provided to us beyond the Completion Date, the terms and conditions of this Agreement shall continue on a day-to-day basis terminable without cause upon 24 hours’ prior written notice by either party to the other.
- 20.4 Either party may terminate a Service or this Agreement, in part or in whole, during the Term upon prior written notice without cause in accordance with the termination notice period as set out in Schedule 1.
- 20.5 We may terminate this Agreement at any time based upon your 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.
- 20.6 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 you or your parent entity ceases or threatens to cease to trade (either in whole, or as to any part or division involved in the performance of your obligations under this Agreement), or becomes or is deemed insolvent, is unable to pay your debts as they fall due, has a receiver, administrative receiver, administrator or manager appointed of the whole or any part of your assets or business, makes any composition or arrangement with your creditors or an order or resolution is made for its dissolution or liquidation (other than for the purpose of solvent amalgamation or reconstruction), or you take or suffers any similar or analogous procedure, action or event in consequence of debt in any jurisdiction; or
- (d) if the other party's performance is affected by a force majeure event which lasts seven (7) days or more.

20.7 In the event of termination of this Agreement, all Fees due and payable shall be paid to you.

20.8 Upon expiry or termination of this Agreement, you shall return all Government property or information or you shall irretrievably delete, as commercially practicable as possible, all Confidential Information, stored in any way using any device or application and all matter derived from such sources which is in your possession, custody or power and provide a signed statement that you have fully complied with your obligations under this section, save for any back-up required by law or as required

in accordance with your record retention policy.

20.9 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.

20.10 We may temporarily suspend the Service hereunder and shall confirm such instruction in writing to you.

20.11 Upon any such suspension, we shall pay all Fees and Expenses up until the time of such suspension of Service. If, following suspension of the 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.

20.12 We may issue a written order to resume the provision of Service within six (6) months of suspension in accordance with the terms and conditions of this Agreement.

20.13 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.

21. Data use and Transfer

21.1 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.



- 21.2 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.
- 21.3 If required, you shall manage the transfer of all Data and technical assets to a service provider of our choice, at your Expense.
- 21.4 You shall guarantee that the Source Code shall be fully source controlled with a complete history of all changes. The Source Code shall adhere to professional standards in terms of quality and organisation where necessary to allow us to be able to access and use the Source Code.

22. General

- 22.1 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).
- 22.2 Where this Agreement refers to past or current obligations, this Agreement applies retrospectively from the Effective Date.
- 22.3 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.
- 22.4 Any amendments to this Agreement shall be made in writing and signed by each party.
- 22.5 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.
- 22.6 You will be an independent contractor and nothing in this Agreement shall render you an employee, worker, agent or partner of the Government and you shall not hold yourself out as such.
- 22.7 No one other than a party to this Agreement, their successors and permitted assigns, shall have any right to enforce any of its terms.
- 22.8 The doctrine of *Contra Proferentem* shall not be applicable in this Agreement.
- 22.9 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.
- 22.10 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. Neither the presentation nor payment or non-payment of an invoice shall constitute a settlement of a



dispute, an accord and satisfaction, a remedy of account stated, or otherwise waive or affect the rights of the parties hereunder.

22.11 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.

22.12 You consent to us processing data relating to you for legal, administrative and management purposes. We may make such information available to those who provide services to us (such as advisers and payroll administrators), regulatory authorities and governmental or quasi-governmental organisations including those outside of Bermuda.

23. Governance

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

23.2 You agree to provide us (and, if we request in writing, our auditors and competent regulatory authorities) with full information on the provision and delivery of a Service in an open and cooperative way and attend our meetings to discuss the Service and this Agreement. We may disclose any information relating to this Agreement to a regulator, auditor or in accordance with PATI.

23.3 You shall provide details of all persons with an ownership stake in the Supplier, which shall include persons who are your direct shareholders as well as person who are shareholders of other companies in which you hold an ownership stake.

23.4 Such statement shall be provided at least annually or if there is any change in your interests.

24. Anti-Corruption

24.1 You represent, warrant and covenant that, in connection with activities performed under this Agreement or on our behalf, you have not and will not offer, promise, authorise, pay, or act in furtherance of an offer, promise, authorization, or payment of anything of value, directly or indirectly, to a Government Official (as hereinafter defined), political party or party official, candidate for political office, or official of a public international organisation, in order to obtain or retain business, to secure an improper advantage or benefit of any kind or nature to person(s) related, associated or linked to the Government Official, or to secure or influence discretionary action, inaction or a decision of a Government Official(s). For purposes of this Agreement, the term "**Government Official**" shall mean and include any official, Public Officer or employee of the Government, as well as an official or employee in the judicial, legislative, or military, anyone acting in an official capacity of the Government, or any immediate family member of such persons.

24.2 You represent, warrant, and covenant that you have complied and will comply with *The Bribery Act 2016* and all other applicable laws of any relevant jurisdiction in connection with the performance of your obligations under this Agreement. Without limiting the generality of the foregoing, you represent, warrant, and covenant that you have not and will not take any action that would cause the Government, or anyone acting on its behalf to violate or be subjected to penalties under *The Bribery Act 2016*, or the applicable anti-corruption laws of other countries.

24.3 You acknowledge and agree that in the event that we believe, in good faith, that you have breached this section, we shall have the right to immediately terminate this Agreement and any



or all other agreements that we may have with you.

25. Retention of Confidential Information, Records and Audit

25.1 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 any Documents, at any time during this period. We must be notified, in writing, prior to any of the Documents being destroyed.

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

25.3 You shall establish and maintain books, records, and documents (including electronic storage media) in accordance with Generally Accepted Accounting Principles and practices in Bermuda which sufficiently and properly reflect all revenues and expenditures of funds provided by the Government, including all receipts, invoices, payroll records and/or other documentation used to substantiate requests for payment hereunder. At any time or times before final payment and for three (3) years thereafter, we may cause your records to be audited by a duly authorized Public Officer. Records required to resolve an audit shall be maintained for a period of not less than three (3) years following resolution of the audit or any arbitration or litigation arising hereunder.

25.4 We reserve the right to conduct periodic visit your premises to perform audits after the commencement of this Agreement to ensure continued compliance.

25.5 Duly authorised Public Officers shall have full access to and the right to examine any

Documents and any of the records pertinent to this Agreement, at all reasonable times for as long as such records are required to be retained hereunder.

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

26. Electronic Communication

Communications may take place by email. The internet is not secure and messages sent by email can be intercepted. Each party shall use best efforts to keep its security procedures current and all communications by email secure.

27. Governing law

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

28. Dispute Resolution

28.1 Where the parties are unable to resolve a dispute in accordance with this Agreement the parties, upon agreement, may submit such dispute for resolution by arbitration. The tribunal shall consist of a sole arbitrator appointed by agreement between the parties or failing such agreement by the Appointments Committee of the Chartered Institute of Arbitrators, Bermuda Branch. The procedure to be followed shall be that as laid down in the *Bermuda International Conciliation and Arbitration Act 1993* and the UNCITRAL Arbitration Rules presently in force. The place of arbitration shall be Bermuda and Bermuda law shall apply. The language of the arbitration shall be English.

28.2 The decision and award of the arbitrator shall be delivered within three (3) months of his or



her appointment, unless otherwise agreed between the parties, and shall be final and binding on the Parties and enforceable in any court of competent jurisdiction. Nothing in this section prevents or in any way restricts either party from seeking specific performance, injunctive relief or any other form of equitable remedy. The parties shall continue to perform their respective obligations during the dispute resolution process set out in this section, unless and until this Agreement is terminated in accordance with its terms.

28.3 The costs of the arbitration, including administrative and arbitrators' fees, shall be shared equally by the parties and each party shall bear its own costs and attorneys' and

witness' fees incurred in connection with the arbitration unless the arbitrator determines that it is equitable to allocate such costs and fees differently and so orders in rendering judgment.

28.4 In rendering judgment, the arbitrator may not provide for punitive or similar exemplary damages.

28.5 The arbitration proceedings and the decision shall not be made public without the joint consent of the parties and each party shall maintain the confidentiality of such proceedings and decision unless otherwise permitted by the other party, except as otherwise required by applicable law or statutes

[signature page follows]



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.

SIGNED by a duly authorised officer for and on behalf of the Government	Signature:
	Print Name:
	Title:
SIGNED by the Supplier or a duly authorised officer for and on behalf of the Supplier	Signature:
	Print Name:
	Title:



SCHEDULE 1

This Schedule 1 is incorporated into the Agreement. Capitalised terms used but not defined in this Schedule 1 will have the meanings given to them in the Agreement. If a term in this schedule conflicts with a term in the Agreement, the provisions of this Schedule 1 will prevail to the extent of such conflict.

1. The Government

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

2. Supplier and Service specific conditions:

Supplier Name:			
Address:			
Home Tel:		Mobile No.:	
Email address:			
Commencement Date:			
Completion Date:			
Go Live Date:			
Termination Notice Period:		30 days	
Professional Service hourly Fee payable in arrears:		BMD\$	
Software License Fee:		BMD\$	
System Installation Fee (one time):		BMD\$	
System Maintenance Fee:		BMD\$	
Special Conditions related to the Fee:			
Payroll Tax #:		Social Insurance No.:	
Insurance Coverage:		Minimum Coverage Amount	
Professional Liability:		BMD\$2,000,000	
Commercial General Liability:		BMD\$2,000,000	



<p>Technology Errors and Omissions for damages arising from computer-related services, including the following: Consulting, data processing, programming, system integration, software development, installation, distribution or maintenance, systems analysis or design, training, staffing or other support services, and the use of any electronic equipment, computer hardware or software developed, manufactured, distributed, licensed, marketed or sold:</p>	<p>BMD\$2,000,000</p>
<p>Intellectual Property Insurance:</p>	<p>BMD\$2,000,000</p>
<p>Data Privacy Protection Insurance:</p>	<p>BMD\$2,000,000</p>

3. Service provided by the Supplier

The Government of Bermuda represented by the Judiciary of Bermuda (the “**Judiciary**”) requires an electronic judicial case management system (“**CMS**”). The CMS must be able to facilitate a wide range of judicial functions common to judicial case management systems, including all aspects of case management, document management, court calendaring and financial functions within the judicial and administrative functions of the Judiciary.

4. The Platform

4.1 The Government provides the electronic platform (the “**Platform**”) for the information technology needs of Government ministries and departments by way of the Department of Information and Digital Technology (“**IDT**”). This includes the provision of hardware, software, networks, security and general expertise.

4.2 The CMS for the Judiciary will be housed on the Platform. Any implementation of a CMS is in consultation with IDT and is obliged to meet all standards and requirements established by IDT.

5. External Partners

The Judiciary operates in conjunction with a number of external partners. Some of those external partners have their own case management systems and are based on the Platform, for example the Transport Control Department which manages vehicles which are licensed to be operated on the roads of Bermuda. Other external partners can be Government organizations, for example, the Bermuda Police Service (“**BPS**”) which operates its own electronic platform and its own case management systems. In either case, the CMS will be required to interface with the case management systems of various external partners.



SCHEDULE 2
Statement of Work

1. Details of Statement of Work

- 1.1 Supplier shall create a Statement of Work (“SOW”) which will detail the development and installation of the System and Service.
- 1.2 The SOW shall include a project plan and set out work to be undertaken in order to finalise details for the specification of the System and the Service together with the functions, service levels and performance requirements that the Service shall meet.
- 1.3 Example of what the SOW should include:
 - (a) the matters set out in the Version of the Bermuda Government Data Management Application;
 - (b) a description of the specifics of the provision of the System or Service;
 - (c) a project plan for the development, implementation and delivery of the Service;
 - (d) proposed applicable Fees and/or proposed fees; and
 - (e) any other applicable terms.
- 1.4 Except in circumstances beyond your control or variations in the requirements or other instructions of the Government which prevent you from completing the SOW within the time as set out in this Agreement, it is a condition of this Agreement that the SOW shall be delivered by you to us at the time required by us.
- 1.5 Upon delivery of the SOW to us, we shall, within fourteen (14) days following delivery of the SOW:
 - (a) approve the SOW;
 - (b) reject the SOW, in which case the Agreement may be subject to termination; or
 - (c) request variations to and/or explanations of any aspect or aspects of the SOW.
- 1.6 If we make no request within the time specified under Section 3. of this schedule, then the SOW shall be deemed to be approved.
- 1.7 If we request variations to the SOW then, upon your reply, the same conditions shall apply as in this schedule with the addition that we may withdraw such requests for a change in the SOW.
- 1.8 The terms of the SOW shall be and are hereby imported as terms of this Agreement.
- 1.9 For the avoidance of doubt, time is of the essence for the Supplier when providing the deliverables under the SOW and any other deliverables in connection with this Agreement.
- 1.10 Acceptance of the Service shall be subject to Schedule 4 of this Agreement.

2. Representative



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

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

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

**SCHEDULE 3****SYSTEM SPECIFICATION REQUIREMENTS****1. Specification**

- (a) You 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.
- (b) If required by us, you shall also deliver a training plan.
- (c) Changes to the Specification shall only be agreed through the Change Order procedure.

(This Schedule sets out the common headings of the content of a typical Systems specification. In writing the Specification it is important to make a clear distinction between the Government's mandatory requirements that must be delivered and any optional or desirable requirements that are of less significance.)

- (d) You shall provide specific requirements in the Documents as required by us, as follows:

1.1 Systems Environment

- (a) The System architecture within which the Licensed (and developed) Software will operate.
- (b) A detailed list of existing systems and interfaces for the Software and the Equipment and the existing and planned new equipment and software which may be in place and with which the System is to operate.
- (c) Any other software, system and technical standards that are to be complied with.

1.2 User environment and any constraints

You shall provide the physical conditions and any special considerations, energy or cooling or other environmental constraints required for the System.

1.3 The functional requirements for the System

- (a) Specific business functions in accordance with our requirements.
- (b) Any legal or statutory regulations that may apply.
- (c) Optional requirements in addition to mandatory features.

1.4 The performance requirements

- (a) Response times of the System for Users for specified transactions.
- (b) Availability (i.e. 24 hours, 7 days a week).
- (c) Error rates, mean time between failures and mean time to fix faults.
- (d) Batch processing times.
- (e) Volumes of transactions within a given period within performance parameters.
- (f) Success in processing the volumes.
- (g) Scalability for future growth in business and System enhancement.

1.5 Development Methodology requirements

- (a) Any standard or methodology with which the Software development work is to comply – either with our own standards, those of the Supplier or a recognized published standard.
- (b) Productivity standards to be achieved.
- (c) Quality standards.

1.6 Technical requirements

- (a) Avoid technical details which are not essential.
- (b) Interface specifications with other systems and equipment.



- (c) Technical standards with which compliance is required.
- (d) Detailed specifications of any existing or third party software to be used.
- (e) Specific specifications agreed between us and you for other parts of the System environment with which the licensed and developed Software will be required to operate.
- (f) Equipment, storage, memory and computer network capacity and processing power, which the Supplier proposes to run the given volume of transactions. Notwithstanding, you shall be responsible for ensuring that the delivered Equipment, storage, memory and computer network capacity and processing power will meet all of the requirements specified in the System specifications.

1.7 Maintainability

- (a) Specific requirements for maintenance and support.
- (b) Support for our own maintenance.

1.8 Documents

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

1.9 Training

A description of the training to be provided by the Supplier

2. **Service for System Integration and Implementation**

2.1 System Development

- (a) You shall develop the System to provide the facilities and functions and performance set out in the specification and the detailed design to meet our requirements for the System. The System shall comply with the best practice of the software and computer services industry and to the structured programming and documentation standards set out in the Documents.
- (b) You shall verify that the specification and all Documents provided are accurate and complete and shall agree with us any changes that we may consider to be necessary under the Change Order procedure.
- (c) You shall keep all work, data and Documents safe and secure from loss or damage and maintain up-to-date back-up copies in a separate and secure location.

2.2 Delivery of the System

- (a) You shall deliver System and Documents and install the Software on the System by the date in the Project plan.
- (b) You shall deliver all Versions of the System to us within ten (10) Business Days of its general availability and provide all necessary support and documentation for its installation and use.
- (c) You shall deliver the System in machine readable format and install the Software on the System and provide us with copies of all Documents before installation of the Software is complete.

2.3 Delivery of Equipment and upgrades

- (a) You shall ensure that the System and Equipment are capable of operating under the latest version of the operating system software that it is required to execute or we are entitled to use in accordance with the SOW specification.
- (b) You shall make available to us all fixes, modifications, Software changes and revised documentation that it requires for the Equipment and shall provide assistance in installation as necessary.
- (c) You shall supply upgrades to the Equipment which are available and required by us under these terms and conditions and at a price which shall be set out in the Fee schedule less the discount as agreed with us, whichever shall be the lower.



(d) You shall supply on our written request such supplies of parts, any documentation and diagnostics or other support software that may be necessary for us or a third party contracted to us to maintain and support the Equipment. The terms of such supply shall be reasonable and on no worse terms than those made available to other customers.

3. Specification and Design services

- 3.1 You shall be responsible for the System and the Service described in the Agreement and shall deliver all Documents describing the deliverables accurately and in detail. Deliverables shall meet the requirements set out in the Agreement.
- 3.2 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 agreement.
- 3.3 If not already set out in the SOW, you shall develop a detailed plan for the development, test integration and installation of the System to meet the specified requirements of the Government including an agreed date for completion of the Software and Service taking into account reasonable standards of productivity and an assessment of the likely risks.
- 3.4 You shall develop detailed technical and design specifications to comply with our specification and our stated requirements and agree these with us. You shall be responsible for ensuring the completeness and accuracy of the detailed design for the System 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 If the result of preparing a detailed plan and detailed specification result in changes to the provision of Service, these shall result in changes to the SOW 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 plan and specification for the Service shall be included in the Agreement as appendices.

4 Requirements of a Project Plan

- 4.1 The Supplier shall carry out the activities and deliver the System and a Service in accordance with the Project plan for the development of the System, an example of the information required is set out below.
- 4.2 The critical dates for delivery and which shall be firm contractual obligations on the Supplier are set out below. The Supplier shall be responsible for taking all action necessary that complies with the terms of the Agreement to ensure that these dates are achieved.
- (a) Commence development.
 - (b) Complete draft for project plan of System.
 - (c) Deliver System ready for Acceptance Tests.
 - (d) Achieve Acceptance.
- 4.3 The example of the project plan below are for project management purposes and the Supplier should set out the key milestone dates that the Supplier aims to meet.



Example of Project Plan

Activity	Responsibility Resources	Commencement	Completion
Appoint Project Managers			
Develop Detailed Plan			
Agree Detailed Plan			
Develop Specification			
Agree Specification			
Commence implementation of Service			
Provide facilities on Site			
Develop detailed design			
Agree detailed design			
Deliver development environment			
Licensed Software for development			
Develop and Plan Acceptance Tests			
Develop Phase X			
Test Phase X			
Deliver Phase X			
Integrate all Phases			
System test			
Design and deliver Acceptance			
Test Software			
Design and Plan Training			
Design and Plan Implementation			
Deliver Equipment and test			
Deliver System ready for Acceptance Tests			
Perform Acceptance Tests			
Confirm Acceptance			
Install the Live System			
Agree Maintenance and Support			
Service Level Agreement			
Correct all errors found			
Confirm completion of live running period			

**SCHEDULE 4****ACCEPTANCE TEST AND ACCEPTANCE CERTIFICATE****1. Delivery, Testing and Acceptance**

System: You shall, within thirty (30) days after the Effective Date, make the System available to us and deliver to us a master copy of the Software licensed hereunder in object code form, suitable for reproduction in accordance with this Agreement, in electronic files unless otherwise requested by us. All Government license keys, usernames, and passwords shall be authenticated by the Supplier and perform according to the SOW.

Service: You shall complete all services required in connection with the installation and integration of the System as provided in this Agreement.

Documents: You shall deliver copies of the Documents to us concurrently with delivery of the System, and thereafter shall promptly provide any updated Documents as it becomes available during the term of this Agreement. You represent and warrant that the Documents are of sufficient quality and completion to enable a competent User to operate the Software efficiently and in accordance with the schedules and appendices to this Agreement. We have the right to copy and modify the Documents as it deems necessary for its own internal use.

2. Acceptance Test

- 2.1 You and us 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 of our required specifications and following such Acceptance Tests, we may accept the System or a Service prior to the Go Live Date.
- 2.2 The details of the tests and the responsibilities of both parties are set out in this schedule. 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.
- 2.3 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.
- 2.4 All plans, data and results produced for the purposes of the Acceptance Tests shall be made available for scrutiny 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 tests.
- 2.5 By the date in the plan we or you shall prepare the data for use in Acceptance Tests and a statement of the results with which the Service are 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.
- 2.6 You shall carry out unit and system tests on each part of the System as they are completed. Any faults identified shall be rectified prior to delivery of the System or a Service to us.
- 2.7 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.
- 2.8 You shall carry out all Acceptance Tests on the System and a Service prior to delivery and after installation to ensure that it is working properly in accordance with the Documents.



- 2.9 You shall confirm, in writing to us, prior to, or at the time the System or a Service is delivered and installed, that you have carried out tests and that in your opinion, the System and a Service are in accordance with the specifications and Documents.
- 2.10 We shall carry out the Acceptance Tests to the dates or time scales set out in the plan after delivery of the System or a Service.
- 2.11 You shall provide all necessary assistance to us to perform the Acceptance Tests.
- 2.12 If the System, a 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 schedule.
- 2.13 You shall re-test all or parts of the System or a Service before delivering the corrected System or a Service to us for repeat Acceptance Tests.
3. **Final Acceptance Testing:** There shall be a testing period during which we shall determine whether the System or a Service: (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.
- 3.1 The testing period shall commence on the first Business Day after you have informed us in writing that you have completed the System, a Service or Deliverables required to be performed prior to testing and that the System or a Service are ready for testing, and the testing period shall continue for a period of up to thirty (30) days.
- 3.2 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.
- 3.3 We shall notify you in writing of your final Acceptance or rejection of the System or a Service, or any part thereof, within fifteen (15) days after the end of the testing period, or as same may be extended by us. If we reject the System, a Service or any part thereof, we shall provide notice identifying the criteria for final Acceptance that the System or a 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, a Service or any portion thereof, the testing period shall re-commence consistent with the procedures set forth above in this section.
- 3.4 In the event you fail to remedy the reason(s) for our rejection of the System, a 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 a Service as it then exists or to reject the System or a Service and terminate the Agreement.
- 3.5 If we elect to accept the System or a 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 at 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 a 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 a Service and to terminate the Agreement on the terms stated above in this paragraph.
- 3.6 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.



4. ACCEPTANCE CERTIFICATE

- 4.1 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
- 4.2 If the System or a Service shall fail to pass the Acceptance Tests and any repeat Acceptance Tests as provided for in this schedule 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 or a Service subject to a reasonable abatement of the Fee to take account of the loss to the Government caused by the failure of the System or a 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 schedule, as shall be determined by an expert appointed under the Agreement.
 - c) Accept that part of the System or a Service, which has passed the Acceptance Tests, and reject that part of the System or a Service, 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 System or Service rejected as may be agreed by the parties within fourteen (14) days of the notice issued by us under this schedule, or in default of agreement, as shall be determined by the expert appointed under this Agreement.
 - d) Reject the System or a Service as not being in conformity with the Agreement and terminate the Agreement for Default by you, in accordance with the terms of this Agreement.

**SCHEDULE 5****1. Training and Documents**

- 1.1 You shall provide training to a sufficient number of our personnel to secure the satisfactory operation of the Software 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 Software through a combination of documentation, in-person seminars, recorded video and various online methods as required by the Government.
- 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 the Users may access and use the System or Service such that any reader of the Documents can 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 Government.

1.5 Example

- (a) Develop and provide a training programme for ongoing use of the System ("**Training Programme**") that will result in the employees or other Users obtaining an applicable qualification provided by you as required by us. The qualification is to be made up of a wide range of units covering core management skills such as, understanding how to organise and delegate, plus skills in communication, team leadership, change, innovation and managing people and relationships. The Training Programme allows for flexibility in unit choice which in turn means that the qualification can be tailored to meet the needs of the employee and employer.
- (b) The Training Programme will be developed and provided to us for:
 - (i) employees seeking to move up to the next level of management; and
 - (ii) managers who need to lead employees through organisational change, budget cuts or other pressures.
- (c) The benefits of this Training Programme are as follows:
 - (i) Gain a range of key management skills and put them into practice in the employees own role.
 - (ii) Build employee leadership capabilities – motivate and engage teams, manage relationships confidently.
 - (iii) Develop employee leadership and management skills using employees own knowledge, values and motivations.
 - (iv) Develop effective and confident first-line managers.
 - (v) Develop better relationships and communication in teams.
 - (vi) Enhance managers' experience with the tools to develop their own skills and abilities.
- (d) Proven skills: In order to complete the Training Programme, Users will need to show that they have developed the required skills and have met the necessary requirements of the Training Programme.

**SCHEDULE 6****MAINTENANCE AND SUPPORT SERVICES**

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

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

Maintenance Service

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.
2. Service levels for responding to reports of defects and fixing defects or faults will be provided as a separate document to this schedule.
3. All changes and corrections made by you shall be documented and revised Documents shall be supplied to us.
4. You shall be responsible for delivering corrected programs or instructions to correct the defect so that the System can be restored to operational use with least possible delay. You may be required by us to provide on-site or other support for reinstallation and recovery of the System.
5. If a defect has no material impact on the use of the System by us, you and us shall agree a reasonable period within which the fault will be fixed and incorporated into a generally available version or release.
6. All corrections made by you shall be free from Viruses and shall execute and/or operate without further defect or impact on other parts of the System.
7. Intellectual Property Rights in any correction, enhancement or modification, made to the System or any new tool or technique or know-how developed as a consequence of correcting a defect shall be the property



- of the Government except where the intellectual property is an inherent part of the System and is to be made available to other licensees of the System.
8. You shall be responsible at your own Expense for the maintenance and support of any part of the System which is supplied prior to acceptance and is required for use by the Government or you, as part of the System.
 9. You shall correct any fault which may be caused by our act or omission in not using the System or a Service in accordance with the Documents and shall be entitled to charge us a reasonable fee at the rate set out in the Fee and payment schedule for such work.
 10. If any part of the System or Service is terminated due to your un-remedied Default of the System or at your request, then you shall provide all Documents of the System and internal maintenance instructions to allow us to maintain the System itself or to allow us to engage a third party to carry out the maintenance of the System. All such transfer of Software, Data or other information shall be made subject to this Agreement and at your Expense.

For System specifically:

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



SCHEDULE 7

HOSTING SERVICES TERMS AND CONDITIONS

1. If required by the Government, you shall provide hosting services including providing the physical environment, security, HVAC and power for the required server hardware and the Government software residing thereon. Supplier also provides internet connectivity, by being responsible for network operation and availability of internet access and related services for the Government website (“**Site**”) in accordance with and subject to applicable terms and conditions of this Agreement. You will host the Site initially whilst the System is under development and you will continue to host the System in your private and secure cloud until the Government and Supplier can agree on a hosting location.
2. Specific hosting services shall include but not be limited to:
 - (a) collocation for the Government server hardware;
 - (b) integration testing of the server hardware and the Government software residing thereon and any Government supplied components as required;
 - (c) installation and testing of the Software on the server hardware;
 - (d) 7 day by 24 hour real-time surveillance and monitoring of the physical environment and server hardware;
 - (e) 24 hour on-site security staff; video surveillance; biometric authentication;
 - (f) All necessary power and HVAC, including redundancy;
 - (g) firewall protection of Supplier website servers.
 - (h) back-up of Government data daily or as required;
 - (i) maximum use of mbps in bandwidth as required for hard disc storage space; and
 - (j) providing Reports as required.
3. Hosting fees will be incurred initially for implementation and then monthly from the start of the build phase, through live date and until the system is moved elsewhere. Wherever hosting is to occur, while the Government uses your cloud or other environment, you shall remain responsible for managing and maintaining your cloud or other environment and for providing redundancy services in the event of failure or intermittent fault or interruptions of your cloud or other environment.
4. Additionally, you shall provide technical and support services for the hosting services (“**Support Service**”) to the Government on a 24-hour basis via telephone hotline support, however the Support Service shall be limited to providing matters pertaining to your servers, internet connection, your corporate policies and this Agreement.

The fees will be paid monthly in arrears while the Site is hosted by Supplier:

Hosting Details	Fee
One time implementation of Hosting service	BMD\$
Monthly Hosting Fee	BMD\$
Support Service Fee	BMD\$
Professional service fee	BMD\$ ____ hourly rate in arrears
Total	BMD\$

5. Security

- (a) You shall provide the Government with a firewall to help prevent unauthorized access to the Site, which will consist of hardware and software designed and configured to control or limit access to our computer and network resources.
- (b) You shall configure that firewall, provide intrusion testing, and upgrade and update the fire wall throughout the Term. You shall immediately notify the Government of any breach of the firewall detected by the Supplier or the Government.

6. Back-Up Data and Disaster Recovery

- (a) You shall back up the Site and Data daily and retain those back-ups on or off, the Site.
- (b) In the event that the Data is lost from the Government's servers, you shall restore the back- up Data to the Government's servers. The Government may wish to mirror the Data and/or its Site in another location.
- (c) You shall not be responsible for files that cannot be recovered due to *force majeure*, unless such loss is due to your error, omission to act, negligence or willful misconduct.

7. Client Access

- (a) If required, you shall provide the Government with the ability to access the Site and Data on the Site and make changes to that data. You shall provide the Government with the ability to set a password for access to the Site.
- (b) The Government's connection will be secured by the firewall referred to in Section 5 of this schedule or by a separate dedicated virtual private network solution.



SCHEDULE 8

GOODS: Terms, Conditions and Special Instructions

1. **List and cost of Goods:** The Supplier will provide the following goods, tasks and ancillary services which support the provision of the Goods in order to achieve the Objective.

Description of Goods to be supplied	Delivery Date	Fee	Warranty Period – start date and end date

2. **Tasks and ancillary Service for the Goods:** The Supplier will provide the following, tasks and ancillary services which support the provision of the Goods.
 - (a) Technical Support: Provide free technical support regarding the Goods to Government workers as required.
 - (b) Training: Train Government workers on how to install/maintain/use the Goods and update the applicable software for the Goods.
 - (c) Unloading: Provide free unloading of the Goods to the Government as required.
 - (d) Storage: Provide free storage of Goods for and on behalf of the Government as required.
 - (e) Special Service: Provide free special services to the Government as required.

3. WARRANTY OF THE GOODS

- 3.1 The Supplier hereby guarantees the Goods for the Warranty Period as set out in this schedule against faulty Goods and workmanship and any errors, omissions or wilful misconduct during installation of the Goods or Service.



3.2 If the Government shall within the Warranty Period give notice in writing to the Supplier of any defect in any of the Goods as may have arisen during such Warranty Period under proper and normal use, the Supplier shall (without prejudice to any other rights and remedies of the Government howsoever arising) promptly remedy such faults or defects (whether by repair or replacement as the Government shall elect) at its own Expense.

4. OBLIGATION TO REMEDY DEFAULT IN THE SUPPLY OF THE GOODS

Subject to the Indemnity Section and without prejudice to any other rights and remedies of the Government howsoever arising in this Agreement, the Supplier shall remedy any breach of its obligations in this Agreement within three (3) Business Days of becoming aware of the relevant Default or being notified of the Default by the Government or within such other time period as may be agreed with the Government (taking into account the nature of the breach that has occurred) and the Supplier shall meet all the Expenses in the performance of such remedial work.

5. ADDITIONAL GOODS

5.1 Additional goods or service, if any, may be required after the date of execution of this Agreement and may be performed upon prior written approval of the Government. Such written approval shall be evidenced by an authorization for changes in the service ("**Change Order**") or such other written authorization as approved by the Government. In such case, a Change Order shall be issued within a reasonable time thereafter.

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

5.3 Fees for additional goods or service shall be agreed by the Parties in writing prior to any additional goods or services being provided.

6. DELIVERY

6.1 Time is of the essence in connection with the delivery of the Goods. The Supplier shall perform expeditiously to meet the requirements hereunder and shall deliver the Goods to the Government during the Delivery Date or such other time as specified by the Government. In the event that the Supplier is unable to provide the Goods within the required time, the Supplier shall notify the Government the time the request is made or promptly thereafter to allow the Government sufficient time to purchase from an alternative supplier.

6.2 The Supplier 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 Supplier requires the Government to return any packaging material to the Supplier, that fact is to be clearly stated on the delivery note. Any such packaging material shall be returned to the Supplier at the Supplier's Expense.

6.3 The Supplier shall deliver the Goods specified in each Order:



- (a) on or before its relevant Delivery Date;
- (b) at the Delivery Location; and
- (c) during the Government's normal business hours, or as instructed by the Government.

6.4 Delivery of Goods is completed on the completion of unloading of those Goods at the Delivery Location.

6.5 If the Supplier delivers more or less than the quantity of Goods ordered, and the Government accepts the delivery, a pro rata adjustment shall be made to the invoice for the Goods.

6.6 If the Supplier:

- (a) delivers less than 50% of the quantity of Goods ordered, the Government may reject the Goods; and
- (b) delivers more than 105% of the quantity of Goods ordered, the Government may at its discretion reject the Goods or the excess Goods.

6.7 If the Government rejects any Goods they are returnable at the Supplier's Expense. If the Supplier fails to collect rejected Goods within a reasonable period after notification of the rejection, the Government may charge the Supplier storage costs and sell or dispose of the rejected Goods. The Government will account to the Supplier for the proceeds of sale (if any) after deducting the purchase price paid for the Goods, storage costs and its reasonable costs and expenses in connection with the sale.

6.8 The Supplier shall not deliver Orders in instalments without the Government prior written consent.

6.9 Continuing Obligation to Provide the Goods:

- (a) The Supplier shall continue to perform all of its obligations under this Agreement and shall not suspend the provision of the Goods, notwithstanding:
 - (1) any withholding or deduction by the Government of any sum due to the Supplier pursuant to the exercise of a right of the Customer to such withholding or deduction under this Agreement;
 - (2) the existence of an unresolved dispute; and/or
 - (3) any failure by the Government to pay any Fees or Expenses,

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

7. INSPECTION AND ACCEPTANCE

7.1 The Government shall at all times retain the right to inspect the Goods provided by the Supplier and shall have the right to review, require correction or additional follow up, if necessary, and accept the Goods or Service.

7.2 The Government will notify the Supplier of its contact who shall be responsible for reviewing, inspecting and approving Delivery of the Goods and Service.

7.3 The Government 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 Supplier at the time the order for the Goods was placed; or



- (c) the Goods, or any portion thereof, are not in conformance with the Documents; or
 - (d) the Supplier fails to deliver the Goods within the time specified by Government following receipt of the Order or such other time as specified by the Government.
- 7.4 Upon such rejection of the Goods, the Supplier shall arrange for return of the Goods to the Supplier, at the Supplier's risk and Expense, and the Supplier shall promptly reimburse the Government for any payments made in connection with the delivery and return of the rejected Goods or any part of the Goods.
- 7.5 Following rejection of any Goods in accordance with this Section, the Government shall have the right to require the Supplier to make another delivery of Goods which conform to this Agreement, Documents and/or the Specifications provided or, to purchase the Goods and Service or substitutes thereof from alternative sources. The Supplier shall reimburse the Government, upon demand, all additional Expense incurred by the Government, if any, in obtaining the Goods and Service or substitutes thereof.
- 7.6 The Government may confirm, in writing, acceptance of the Goods at the time of Delivery or at any time thereafter.
- 7.7 Written acceptance of the Goods by the Government shall release the Supplier from any obligation to remedy any nonconformity of the accepted Goods or reimburse the Government for any additional costs incurred in obtaining other Goods or substitutes thereof but does not relieve Supplier from any warranty, guarantees or service obligations. The Government shall have the right to inspect the Goods prior to, or at the time of Delivery or within thirty (30) days following Delivery for compliance with this Agreement and other Specifications required by the Government.
- 7.8 Supplier's failure to proceed with reasonable promptness to make necessary corrections shall be a Default. If Supplier fails to provide corrected Goods or Supplier fails to correct performance of Service within a timeframe as set by Government, the Government 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.

8. OWNERSHIP AND RISK OF GOODS

- 8.1 Without prejudice to any other rights or remedies of the Government howsoever arising title to the Goods shall pass to the Government upon Delivery to the Government at the Delivery Location.
- 8.2 In the event that an advance payment is made, title to the Goods shall not pass to the Government and all risk in the Goods remain with the Supplier until Government has accepted the Goods in writing.
- 8.3 Risk of loss or damage to the Goods shall only pass to the Government at the time of acceptance of the Goods by the Government.