GOVERNMENT OF BERMUDA

SERVICE AGREEMENT

THIS SERVICE AGREEMENT ("**Agreement**") is made the ___ day of _____ 20 ___

BY AND BETWEEN:

(1) The Government of Bermuda as described in Schedule 1, hereinafter referred to as the "**Government**", ; 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 the "**Supplier**" ".

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, Schedule 2 and Schedule 3, sets out the terms and conditions upon which the Supplier will provide services to the Government of Bermuda.

GENERAL TERMS AND CONDITIONS

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

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

Definitions

In this Agreement unless the context otherwise requires, the expressions set forth below have the following meanings in Schedule 1, Schedule 2 and Schedule 3 hereto:

"**Agreement**" means this Service Agreement and includes these General Terms and Conditions, Schedule 1 and Schedule 2;

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

"**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 in Bermuda or in the U.K.;

"**Claims**" means any written or oral actions, claims or demands for money including taxes or penalties or service or for any allegation of a breach in rendering or failure to render any Services performed or which ought to have been performed, patents, trade secrets, copyright, or other intellectual property rights connected to any 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 Services as set out in Schedule 1;

"**Completion Date**" means the date of the completion of the use of the Services 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 the Supplier 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 the Government's person to initially communicate with;

"**Consent(s)**" means any qualifications, rights, permits, licenses, immigration approvals, authorisations or other consents;

"**Data**" means logbooks, records or data files, including, but not limited to: 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 address, date, time and duration, created, used or connected with the Service;

"**Documents**" means written advice, project specifications, designs, drawings, plans, specifications, reports, tenders, proposals or other information and documents, technical specifications created for or related to, the Software 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 Services;

"**Equipment**" means the Supplier provided equipment including any mobile devices, hardware, Software or cables used to provide any Services;

"**Expense**" means all expenses including legal expense, charges and costs including all costs, fees, charges, fines and penalties related to travel, accommodation, penalties and fines;

"**Fee**" means the gross fee to be paid for the Services provided in accordance with the terms of this Agreement;

"**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;

"**Insurance Policy**" means an amount of not less than the minimum level of insurance required by law or a regulatory body or that is required to cover for similar services as provided in this Agreement or the amount as set out in Schedule 1, whichever is greater, covering the Supplier and its officers, directors, employees, agents, or subcontractors for professional negligence, errors and omissions which shall be on an "*occurrence basis*". "*The Government of Bermuda*" shall be endorsed as an additional insured on the required policy and the insurances afforded to the Government of Bermuda shall be the primary insurance;

"**Loss**" means all Claims, damages, 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 or consequential, whether foreseen, foreseeable, unforeseen or unforeseeable;

"**License**" means the non-exclusive, unlimited, royalty-free right granted by the Supplier to the Government ;

"**Objective**" means the plan and effort necessary in order to successfully achieve the result desired by the Government;

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

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

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

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

"**Rules**" means policies, procedures or other instructions, including policies related to bullying, harassment and sexual harassment; and health and safety rules, procedures and protocols;

"**Services**" means the provision of any of the deliverables contemplated under this Agreement and includes the use of any Equipment and Software;

"**Security Procedures**" means rules and regulations governing health and safety procedures while on, Government premises; and information technology security protocols where the Supplier or its Representative accesses any Government information technology system or adherence to security protocols as necessary for the Services;

"**Security Protocols**" means security process and procedures for information and data contained in the Software and used to provide the Service, set out in Schedule 3;

"**Schedule 1"** contains details of the Parties, the Fee, Term, Insurance Policy and other special conditions;

"**Schedule 2**" contains the Statement of Work or "**SOW**";

"**Schedule 3**" contains the Security Protocols;

"**Software"** means the Supplier provided software including modified software, third party software, artificial intelligence and bespoke software used for the Equipment and the Service;

"**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; and

"**Taxes**" means payroll tax, social insurance contributions and other taxes payable by the Supplier for its Representatives;

"**Term**" means from the Commencement Date to the Completion Date, as set out in Schedule 1.

2. Provision of Services

2.1 The Supplier shall perform the Services in order to complete the Objective, in accordance with and subject to, these General Terms and Conditions, Schedule 1, Schedule 2 and Schedule 3 and we agree to pay the Fee.

2.2 In the event of conflict between Schedule 1, Schedule 2 and Schedule 3 and these General Terms and Conditions, the order of precedence to resolve any such conflict shall be as follows: (i) these General Terms and Conditions; (ii) Schedule 1; (ii) Schedule 3, and (iii) Schedule 2.

2.3 In the event that it is required and with the Government's prior due diligence and written approval, the Supplier may appoint a Representative who shall have full authority to act and provide the Services on its behalf. Details of the Representative shall be set out in Schedule 1.

2.4 The Supplier is responsible for all acts or omissions of its Representative relating to any of its Services and for ensuring its compliance with the requirements of this Agreement.

2.5 The Supplier may not subcontract or outsource its obligations under this Agreement beyond using its Representative, without the Government's prior written consent and the Supplier shall ensure that, its Representative co-operates with the Government' employees to effectively carry out the obligations under this Agreement.

2.6 The Government may request, by notice in writing to the Supplier , the replacement of its Representative, and agreement with such request shall not be unreasonably withheld. The Supplier shall use its best endeavors to replace its Representative with another qualified individual and such replacement shall be subject to approval by the Government.

2.7 <u>Documents</u>: The Supplier shall provide Documents as requested or by the date as agreed between the Parties and the Government shall have the right to take possession of and use any portions of the Documents notwithstanding any provisions expressed or implied to the contrary.

2.8 The Supplier acknowledges that the Government 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 the Supplier's and its Representative's skills, expertise and experience concerning the provision of the Services; and

(c) relying on any other advice and assistance provided under this Agreement.

2.9 Security Procedures: The Services shall be provided in such place and location as instructed by the Government.

2.10 If the Services are required to be provided on the Government's premises or to use Government IT systems, the Supplier and its Representative will conduct themselves in a professional and safe manner and the Supplier and its Representative shall at all times comply with and be subject to Security Procedures.

2.11 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 for default.

2.12 The Government shall inform the Supplier of the Contact, i.e. whom the Supplier or its Representative shall be reporting to and who will accept the Services.

2.13 The Services are provided on a non-exclusive basis to the Government , unless otherwise informed in writing.

3. Government Responsibilities

The Government shall disclose all information and provide reasonable and agreed computer facilities and access necessary for the Supplier to provide the Services, unless otherwise informed in writing.

4. Additional Services

4.1 Additional Service or variations in the Services 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 the 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 The Fee for additional Services shall be agreed by the Government in writing prior to any additional services being performed.

5. Fee, Invoicing and Payment

5.1 The Government shall pay the Fee and/or undisputed invoices thirty (30) days in arrears. The Fee shall be set out in Schedule 1 and paid in Bermuda Dollars.

5.2 The Fee has been calculated to take account of payroll tax and social insurance contributions that, as a non-employee, the Supplier is required to pay in full for it and its Representatives.

5.3 The Government may dispute an invoice within thirty (30) days of receipt, however, it reserves the right to dispute payments, made on an invoice at any time if it suspects fraud or willful misconduct on the Supplier's part ("**Fault**"). In the event that any Fault is discovered in relation to payments made to the Supplier , the Government reserves the right to recover such payments from the Supplier , at its cost (which shall include all legal and collection fees and expenses) or to set off any disputed amounts against unpaid invoices.

5.4 The Supplier's failure to submit a proper invoice in a timely manner may result in a delay in payment by the Government The Supplier agrees that the Government is not responsible, nor will it be liable to the Supplier or under law or equity for any

interest or expenses that the Supplier may incur resulting from any delays in payment caused by its failure to comply with its obligations under this Agreement.

5.5 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.

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

(a) where there has been an overpayment to the Supplier for any reason;

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

(c) if the Supplier has not delivered the Services or any part of the Services, as required;

(d) where the Government has suffered loss by its failure to follow instructions or exercise due diligence;

(e) if the Supplier causes damage to Government property, the value of replacement or repair of the damaged property;

(f) if the Supplier leaves or terminates this Agreement without giving the required notice, the value of the Fee for the notice period; and

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

5.7 Invoicing: The Supplier shall provide a monthly invoice for the Services as set forth herein, with supporting documentation and itemising the following:

(a) The Supplier's 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) The Supplier's telephone number, fax number and e-mail address.

5.8 The Supplier will only be paid the Fee for the time that it provides Services. For the avoidance of doubt, the Supplier will not be paid during any time that it does not provide any Services or if it provides additional services which have not been prior approved in writing from the Public Officer. In addition, the Supplier will not be paid for public holidays and in the event that it provides Services on a public holiday or provide additional services without prior written approval, such amounts will not be paid or if paid, will be deducted from the Fee, unless otherwise agreed in writing.

5.9 The Supplier shall be responsible to pay its Representative for the provision of the Services.

6. Expenses

6.1 Neither the Supplier , nor its Representative, are allowed to incur Expenses associated with the provision of the Services without having received the Government's prior written consent. The Supplier shall be liable for all Expenses not prior approved.

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

6.3 While performing the Services in or from Bermuda, the Representative may require accommodation. In the event that accommodation is required, the Government may assist the Supplier or its Representative in acquiring accommodation but the Government shall

not be liable to pay for such accommodation. The Supplier shall be liable for all Expenses and utility fees including but not limited to: water; internet or other communication access; access to use a telephone; and other charges incurred by residing or otherwise staying at a property of its own choosing. The Supplier agrees to abide by the rules and regulations of the property owner and it shall indemnify the Government against any loss the property owner may suffer as a result of the Supplier' or its Representative, residing or staying at that property.

6.4 Except for the Fee and any approved Expenses, no other amounts are payable to the Supplier. The Government may set off any amounts owed by the Supplier to it against any Fees or Expenses.

6.5 The Government shall pay the Fee and approved Expenses by direct transfer into the Supplier's bank account. It is the Supplier responsibility to inform the Government of its current contact and bank details in order that we can contact and make payment to the Supplier.

6.6 Without prejudice to Section 5.1, the Government reserves the right to refuse to pay an invoice in the event that the invoice is presented six (6) months after the time when it should have been presented for payment.

7. Taxes

7.1 The Supplier shall be responsible to register with the appropriate department of the Government in order to pay for all Taxes and it consents to the Government deducting due or outstanding Taxes from the Fee on its behalf, at the Government's option. The Supplier's Tax numbers shall be out in Schedule 1.

7.2 In the event that the Government has not made deductions on the Supplier's behalf, the Supplier shall provide the Government with proof of payment of amounts due to the Government such as any Taxes and all other receivables to it, prior to the Supplier receiving its final payment. In the event that the Supplier does not provide proof in writing, the Government shall have the right to deduct any outstanding amounts owed, including any Taxes, from final payment of the Fee.

8. Representations and Warranty

8.1 The Supplier represents and warrants that it and its Representative, will perform all activities relating to the Service:

(a) in accordance with Best Industry Practice and in a professional and lawful manner;

(b) if applicable, using appropriately skilled and experienced Representatives whose identity, address and right to live and work in Bermuda and to the maximum extent permissible, whose absence of relevant criminal records has been verified;

(c) in strict accordance with the standards and timelines set out in Schedule 1, Schedule 2 and Schedule 3, free of defects, errors or faults, in order to meet the Objective; and

(d) in accordance with applicable laws including PIPA; and the Rules.

8.2 The Supplier represents and warrants that:

(a) upon installation, the Equipment will be compatible with existing equipment and software on the Government's systems and the Equipment will meet all the technical documentation and requirements required to operate the Services in accordance with the Government's requirements and objectives; and

(b) The Supplier has the right to license all intellectual property rights in the Services, Software and Documents, to the Governments.

8.3 The Suppliers represents and warrants that it is not subject to any contractual obligation, compliance with which is likely

to have a material adverse effect on its ability to provide the Services and it will notify the Government immediately if it has any actual or potential conflict of interest which might affect its ability to provide the Services.

8.4 The Supplier represents and warrants that this Agreement is executed by it or by its duly authorized Representative and that it has obtained all required authorizations and capacity in order that it can fulfill its obligations.

8.5 You declare that you are in possession of all Consents necessary for the provision of a Service and you will maintain such Consents at all times while providing the Service.

8.6 You shall procure the benefit of any warranties or guarantees in respect of goods and materials you supply to us and provide copies of such warranties or guarantees.

8.7 You declare that all payments to us, including Taxes, are current.

8.8 You shall provide information or sign any other agreements necessary or as requested by the Government , in order that either of the Parties s can fulfill their obligations under this Agreement.

8.9 The Supplier represents and warrants that the Services do not infringe or misappropriate any patent, copyright, trade secret or other intellectual property right of a third party or breach of any applicable law.

8.10 The Supplier represents and warrants that it is fully satisfied as to the scope and nature of the Services and of its obligations under this Agreement and that it has the corporate power and authority to enter into, and perform its obligations under, the Agreement.

9. Remedies

9.1 If the Services do not conform to the representation and warranty as set out in this Agreement, the Supplier shall, at its Expense, use its 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.

9.2 Without prejudice to any other rights available to the Government , the Supplier shall, at its Expense:

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

(b) if the Documents are inaccurate or misleading or the Services are not performed in accordance with this Agreement, then the Government , in its sole discretion, may:

(i) require correct Documents;

(ii) require, in whole or in part, the Services 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 defective Services and deduct that from the; or

(iv) obtain Documents or the Services from another service provider and the Supplier will be required to pay all amounts paid by the Government in obtaining alternative Documents or the Services from another service provider to make good the defective Documents or defective Services.

9.3 Without prejudice to any other rights available to the Government , it may, at the Supplier's Expense:

(a) repair, replace or otherwise fix the Services where the Equipment is damaged as a result of the Supplier , or its Representative's negligence, error, omission or willful misconduct; or

(b) obtain the Services from another

service provider and terminate this Agreement.

10. Progress Report

10.1 If required, the Supplier shall submit progress reports in connection with the Services being provided ("**Report**") on at least a monthly basis, or as the Government may require. The Report shall include a summary of the activities and accomplishments during the previous reporting period.

10.2 The Report will also include year-to-date totals for payments received and work completed expressed in Bermuda Dollars.

10.3 Any decisions and/or actions required of the Government during the upcoming reporting period(s) should be included in the Report. The specified date for submission of the Report for the reporting period shall be determined by the Government.

11. Inspection and Approval of Service

11.1 The Government shall at all times retain the right to inspect the Services provided by the Supplier or its Representative and the Supplier and / or its Representative consents to visits to its premises in order to inspect the Services or Documents and the Government shall have the right to review, require correction or additional follow up, if necessary, and accept or reject the Services and any Documents submitted by the Supplier or its Representative.

11.2 The Supplier shall make any required corrections promptly at no additional charge and return a revised copy of the written work product to the Government within seven (7) days of notification or a later date if extended by it. In the event that the Supplier is required to implement changes with respect to its performance of the Services, such change shall be implemented within a reasonable time, as determined by the Government , in consultation with the Supplier.

11.3 The Supplier's failure to proceed with reasonable promptness to make necessary corrections shall be a default. If the Supplier's corrected performance or written work product remains unacceptable, the Government may terminate this Agreement, reduce the Fee and/or reject the hours submitted in connection with the Services to reflect the reduced value of Services received.

12. Time of the Essence

12.1 The Supplier is responsible for managing time in order to complete its obligations under this Agreement and shall complete any portion or portions of the Services in such order as the Government may require rather than providing the Services during a specified amount of time. The Supplier recognizes that providing the Services outside of Business Days may be necessary in order to fulfil its obligations and responsibilities without additional compensation of any kind.

12.2 The Government shall give due consideration to all Documents submitted by the Supplier or its Representative, and shall make any decisions which are required to be made in connection therewith within a reasonable time so as not to delay the progress of the Services.

13. Grant of License

13.1 The Supplier shall grant us a License for the Software and Documents, to enable us to use Equipment and a Service.

13.2 The Supplier retains title and property rights to the Software. Unless specifically stated in the Agreement, the Government neither owns 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 the Supplier .

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

13.4 The Supplier shall ensure the continued compatibility of the Equipment with all major releases, updates, or upgrades of any Software.

13.5 In the event the Supplier is 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, it shall use its best efforts to resolve such issues and to provide optimal functionality of the Equipment or the Services.

13.6 If required by the Government , the Supplier shall maintain and keep current human and computer readable copies of the Source Code and it shall provide the Government with copies of all Source Code.

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

14.1 Indemnity: The Supplier and /or its Representatives shall indemnify, keep indemnified and defend the Government against:

(a) any Claim or Loss arising from any breach of this Agreement by you or the Representative; or

(b) any Claim or Loss arising from a third party as a result of negligent act, errors, omission or willful misconduct by it or its Representative.

14.2 The Government may satisfy such indemnity (in whole or in part) by way of deduction from any payment due to the Supplier .

14.3 If the use of a Service is enjoined as a result of a Claim or Loss, in addition to the indemnity set forth above, the Supplier shall (at its Expense): (i) obtain for the Government the right to use the infringing Service; (ii) modify such Service or Software in a manner that does not infringe any third party intellectual property rights; or (iii) substitute equivalent software or services that are acceptable to the Government and does not infringe any third party intellectual property rights.

14.4 No Liability: In no event shall the Government or a public officer be liable to the Supplier for any Loss.

14.5 Limitation of Liability: Without limiting the provisions of this Section, either Party's proven maximum aggregate liability to the other party, for all Claims or Loss in connection with this Agreement or the performance thereof arising during the Term shall be limited to the Fee paid to the Supplier under this Agreement for the three (3) months immediately preceding the date the on which the latest Claim 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.

14.6 Nothing in this Agreement shall exclude or limit any liability which cannot be limited or excluded by law and the Supplier shall accordingly maintain the Insurance Policy in full force and effect during the Term.

14.7 All Claims against the Government 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.

14.8 Insurance: If required, the Supplier shall maintain an Insurance Policy in the minimum amounts set forth in Schedule 1. The Insurance Policy shall be evidenced by delivery to the Government or its Representative 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 the Government with acceptable proof of insurance shall entitle it to either obtain or maintain the Insurance Policy on the Supplier's behalf at its sole cost and

expense, or to terminate this Agreement without prejudice to any other rights or remedies in connection the Government has under this Agreement.

14.9 The Supplier shall be responsible for the payment of all deductible amounts on the Insurance Policy and upon the Government's request, the Supplier shall supply the Government with copies of such Insurance Policy and evidence that the relevant premiums have been paid.

14.10 In the event that the Supplier has not paid Insurance Policy premiums, upon signing this Agreement, it consents to the Government either deducting the Insurance Policy premium from the Fee, or otherwise making such Insurance Policy premium payment, on its behalf and recouping such payment from it at our sole discretion.

14.11 At the Government's sole option, all monies payable under the Insurance Policy shall be applied in making good or recouping Loss suffered or incurred by it as a result of the Supplier or its Representative providing the Service.

14.12 The Supplier shall notify the Government forthwith of any changes to any of the Insurance Policy, or of any claims or potential claims which have arisen to which the insurer(s) of the Insurance Policy may be required to respond.

14.13 The policy clause "*Other Insurance*" or "*Excess Insurance*" shall not apply to any insurance coverage currently held by The Government of Bermuda, or to our self-insured retentions of whatever nature.

14.14 If the Supplier subcontracts any of the Services, it shall ensure that each subcontractor maintains insurance coverage with policy limits of at least the amounts stated in this Agreement.

14.15 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 the Government is willing to accept to help ensure full performance of all terms and conditions of this Agreement.

14.16 Waiver of Rights of Recovery: The Supplier hereby waives all rights of recovery against the Government which it may have or acquires 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.

14.17 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.

14.18 Business Continuity: The Supplier 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 the Government .

15. Non-Solicitation

During the Term and for a period of twelve (12) months after expiration or termination of this Agreement, the Supplier shall not solicit, whether directly or indirectly any of the Government's employees or non-employees who were involved in the provision or receipt of the Services, unless otherwise agreed to in writing by the Government .

16. Non-Disclosure of Confidential Information

16.1 Each Party must ensure that all Confidential Information is protected against unauthorized access, use, copying or disclosure. Each Party acknowledges that

the improper use, copying or disclosure of any Confidential Information could be unlawful.

16.2 Each Party will comply with either Party's instructions if it has access to personal data as a result of providing the Services.

16.3 Each Party may disclose information related to this Agreement to its personnel, contractors, consultants and professional advisors, on a '*need to know*' basis as required for the performance of the Services.

16.4 A breach or anticipated breach of the confidentiality provisions of this Agreement, will cause either Party irreparable harm and each Party agrees that monetary damages alone may not be an adequate remedy and, accordingly, either party, may, without prejudice to any other rights or remedies that it may have, be entitled, without proof of special damages and without the necessity of giving an undertaking in damages, to seek an injunction or specific performance together with all other remedies as may be available in law or equity.

16.5 If either the Supplier or its + Representative fail to abide by the confidentiality provisions at any time, then such failure shall constitute a material breach of this Agreement and the Supplier shall pay the Government the equivalent of the Fee paid for the three (3) month period immediately preceding the date of the disclosure of Confidential Information, as liquidated damages, in addition to any attorney's fees and costs of enforcement. The Supplier and its Representative shall be jointly and severally liable to the Government s under this section.

16.6 The Supplier and anyone acting on your behalf shall be jointly and severally liable to the Government under this section.

17. Ownership, Intellectual Property and Copyright

17.1 The Government shall own all Documents provided in accordance with this Agreement.

17.2 <u>Intellectual Property</u>: The Supplier represents and warrants to the Government that it or its Representative has created the Documents for and on the Government's behalf or have obtained a written and valid Consent and assignment of all existing and future intellectual property rights in the Documents.

17.3 Documents created under this Agreement shall be original works created by the Supplier or its Representative and shall:

(a) not include intellectual property owned by or licensed to a third party except for intellectual property which the Supplier has 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.

17.4 The Supplier shall do all things necessary to assign to the Government all existing and future intellectual property rights in the Documents embodying such rights to the fullest extent permitted by law. Insofar as they do not so vest automatically by operation of law or under this Agreement, the Supplier shall hold legal title in such rights on trust for the Government .

17.5 The Supplier and or it Representative agrees that all Documents and other works created in full or in part by it or its Representative for the Services may be maintained, changed, modified and/or adapted by the Government without the consent of either the Supplier or its Representative. Notwithstanding the foregoing, the Parties may agree in writing that certain identified Document's or designated intellectual property rights will remain with the Supplier .

17.6 <u>Copyright</u>: Documents, the Services and corresponding copyright and other

intellectual property in the Documents and the Services shall belong the Government and it may utilize the Documents and the Services freely including by adapting, publishing and licensing.

17.7 Documents or Confidential Information may not be used or copied for direct or indirect use by the Supplier or its Representative after expiry or termination of this Agreement without the Government's express written consent.

17.8 The Government acknowledges that the Supplier and its Representative possess knowledge and expertise relating to the subject matter of a Services ("**Supplier's Know-How**"), which may include intellectual property rights in certain pre-existing tools and materials used by the Supplier in performing a Service. Nothing in this Agreement is intended to transfer us any rights in the Supplier's Know-How, which shall remain its property.

17.9 To the extent that any Supplier's Know-How is included in any Documents and the Supplier hereby grants to the Government a perpetual, unlimited, royalty-free, non-exclusive right and license to use and reproduce the Supplier's Know-How to the extent reasonably necessary to achieve the Objective.

17.10 Government logo: The Supplier may not use Government's name or logo for any publicity or marketing purposes, unless consent for such use is provided in writing.

18. Term, Termination and Suspension

18.1 This Agreement shall be effective from the Effective Date for the Term.

18.2 The Services 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.

18.3 The Supplier shall not commence any additional services after the Completion Date or in the event of notification of termination of this Agreement, however, in the event that services are provided to the Government beyond the Completion Date, the terms and conditions of this Agreement shall continue on a day-to-day basis terminable without cause upon twenty-four (24) hours prior written notice by either Party to the other.

18.4 Either Party may terminate the Services 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.

18.5 The Government may terminate this Agreement at any time based upon the Supplier's default of its obligations under this Agreement. The Government , in its sole discretion, may provide the Supplier with a notice to cure ("**Cure Notice**") the breach that would otherwise amount to a basis to terminate this Agreement as a result of the Supplier's failure to fulfill its obligations hereunder. The Supplier shall respond to any such Cure Notice within a reasonable time or within such time as provided therein, and it shall either cure the specified breach or provide assurances to cure the same which the Government , in its sole discretion, deem adequate.

18.6 Either Party may terminate this Agreement immediately, if the other Party:

(a) commits an irremediable breach; or

(b) is subject to a change of control or chooses to discontinue its business; or

(c) its parent or holding entity becomes or is deemed insolvent, is unable to pay its debts as they fall due, has a receiver, administrative received, administrator or manager appointed of the whole or any part of its assets or business, makes any composition or arrangement with its creditors or an order or resolution is made for its dissolution or liquidation other than for the purpose of solvent amalgamation or reconstruction, or it takes or suffers any similar or analogous procedure, action or event in

consequence of debt in any jurisdiction; or

(d) is affected by a force majeure event which lasts Ten (10) Business Days or more.

18.7 In the event of termination of this Agreement, all Fees then due and payable shall be paid to the Supplier .

18.8 Upon expiry or termination of this Agreement, the Supplier shall promptly return all the Government's property or information or it 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.

18.9 Upon expiry or termination of this Agreement, the Supplier shall provide the Government with all such assistance as may be reasonably necessary in order to end the relationship in a manner which causes the least inconvenience to the Government including assisting with the transfer of Data.

18.10 The Government may temporarily suspend the Services hereunder and shall confirm such instruction in writing to the Supplier .

18.11 Upon any such suspension, the Government shall pay all Fees and Expenses up until the time of such suspension of the Services. If, following suspension of the Services, there is no resumption within six (6) months, this Agreement may be terminated by the Supplier , and the Government shall make a payment of all outstanding Fees and Expenses in accordance with this Agreement if such amounts are due.

18.12 The Government may issue a written order to resume the provision of the Services within six (6) months of suspension in accordance with the terms and conditions of this Agreement.

18.13 The rights arising under this termination section represent the Supplier's sole remedy and excludes common law rights to terminate and claim damages for any Loss the Supplier may suffer under this Agreement.

19. Data use and Transfer

19.1 Upon the Government's request and prior to or within sixty (60) days after the effective date of termination, the Supplier will make available to the Government a complete and secure i.e. encrypted and appropriately authenticated files 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.

19.2 The Supplier will be available throughout this transfer of Data period to answer questions about all elements of the Data transfer process so that the Government may fully access and utilize the transferred Data.

19.3 If required, The Supplier shall manage the transfer of all Data and technical assets to a service provider of the Government's choice, at its r Expense.

19.4 The Supplier 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 the Government's personnel to access and use the Source Code.

20. General

20.1 Any notice or other communication required to be given under this Agreement shall be duly given or served if it is, in writing, 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.

20.2 Where this Agreement refers to past or current obligations, this Agreement applies retrospectively from the Effective Date.

20.3 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, purchase orders, emails or otherwise between the parties relating to a Services and is the complete agreement between the parties.

20.4 Any amendments to this Agreement shall be made in writing and signed by each Party.

20.5 The Supplier may not assign or transfer any rights or obligations under this Agreement, for example assigning or factoring invoices, without the Government's prior written consent. Any such transfer by the Supplier in breach of this section shall be void and be an irremediable material breach of this Agreement. The Government may transfer its rights and obligations under this Agreement.

20.6 The Supplier will be an independent contractor and nothing in this Agreement shall render it or its representative an employee, worker, agent or partner of the Government and it shall not hold itself out as such.

20.7 No one other than a Party to this Agreement, their successors and permitted assigns, shall have any right to enforce any of its terms.

20.8 The doctrine of *Contra Proferentem* shall not be applicable in this Agreement.

20.9 Expiry or termination of this Agreement in any manner shall not release the Supplier or its 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.

20.10 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.

20.11 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.

20.12 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.

20.13 The Supplier agrees to provide the Government and, if it is requested in writing, to our auditors and competent regulatory authorities with full information on the provision and delivery of the Services in an open and cooperative way and attend the Government's meetings to discuss the Services and this Agreement.

20.14 The Government may disclose any information relating to this Agreement to a regulator, auditor or in accordance with PATI.

20.15 The Supplier consents to the Government processing data relating to it for legal, administrative and management purposes. The Government may make such information available to those who provide a service to us (such as advisers and payroll administrators), regulatory authorities and governmental or quasi-governmental organizations including those outside of Bermuda.

21. Governance

21.1 The Supplier shall inform the Government promptly of all known or anticipated material problems relevant to delivery of the Services.

21.2 The Supplier 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.

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

22. Anti-Corruption

22.1 The Supplier represents, warrants and covenants that, in connection with activities performed under this Agreement or on the Government's behalf, the Supplier has 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.

22.2 The Supplier represents, warrants, and covenants that it has 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, the Supplier represents, warrants, and covenants that the Supplier has 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.

22.3 The Supplier acknowledges and agrees that in the event that the Government believes, in good faith, that the Supplier has breached this section, the Government shall have the right to immediately terminate this Agreement and any or all other agreements that it may have with the Supplier u.

23. Retention of Confidential Information, Records and Audit

23.1 The Supplier 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. The Government will have full access to and the right to examine any Documents, at any time during the Term. The Government must be notified, in writing, prior to any of the Documents being destroyed.

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

23.3 The Supplier shall establish and maintain books, records, and documents (including electronic storage media) in accordance with Bermuda accepted accounting principles and practices 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 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.

23.4 The Government reserves the right to conduct periodic visits to the Supplier's premises to perform audits after the Effective Date to ensure continued compliance.

23.5 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.

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

24. 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.

25. 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.

26. Dispute Resolution

26.1 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.

26.2 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.

26.3 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.

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

26.5 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.

GOVERNMENT OF BERMUDA

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

SIGNED by a Public 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 and schedule 2 are incorporated into the Agreement. Capitalised terms used but not defined in these schedules will have the meanings given to them in the Agreement.

1. The Government

Ministry:		**Health**	
Department:		**Health**	
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:			
Termination Notice Period:			
Hourly Fee payable in arrears:			
Special Conditions related to the Fee:			
Payroll Tax #:		**Social Insurance No.:**	
Insurance Coverage:			

3. Service provided by the Supplier

Provision of medical examinations for Vector Control Inspectors employed by the Government of Bermuda.

SCHEDULE 2

Statement of Work

SCHEDULE 3

Security Protocols

1. Security of Information and Data

1.1 Information and Data: The access, collection, storage and disposal of Confidential Information shall comply with applicable statutes and regulations. Without limiting your obligations pursuant to this Agreement, the Supplier 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, regulations and our instructions. During the term of this Agreement, the Supplier shall at all times cause its Representatives to abide strictly by its obligations pursuant to this Agreement and the Government's internal policies and procedures, copies of which can be provided and incorporated by reference into this Agreement.

2. Data Breach or Data Incident Procedures:

2.1 In the event of a Data breach or Data incident, the Supplier shall (i) notify the Government of a Data breach as soon as practicable, but no later than **2 hours** after the Supplier becomes aware of the Data breach and (ii) notify the Government of a Data incident promptly after the Supplier determines that the Data incident did not rise to the level of a Data breach. Immediately following the Supplier's notification to the Government of a Data breach, each Party shall coordinate with each other to investigate the Data breach. The Supplier shall bear all Expense of the investigation and reporting of Data breach caused by it , and shall cooperate with the Government's personnel, including any insurance carriers to which it has 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. The Supplier expressly agrees that it shall not inform any third party, including law enforcement, consumer reporting agencies, or affected employees or consumers, of any Data breach without first notifying the Government , other than to inform a complainant that the matter has been forwarded to our counsel. The Government 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. The Supplier shall undertake any instructed notice at its sole expense.

2.2 Compliance Oversight: Upon the Government's written request, the Supplier shall confirm compliance with this Agreement and any applicable industry standards, and shall promptly provide to the Government a fully completed written information security questionnaire regarding itd information technology resources, Security Protocols and applicable policies. Failure to provide such information shall be grounds for us to terminate this Agreement immediately.