**Annex A - SAMPLE FORM OF AGREEMENT**

**MASTER SERVICES AGREEMENT SOFTWARE DEVELOPMENT AND HOSTING**

THIS MASTER SERVICES AGREEMENT FOR SOFTWARE DEVELOPMENT AND HOSTING is made the ­­­­\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 20\_\_\_ (the “**Effective Date**”)

BY AND BETWEEN:

|  |  |
| --- | --- |
| **Ministry:** |  |
| **Department:** |  |
| **Address:** |  |
|  |  |

 (hereinafter called the “**Government**”) of the one part; and

1. The supplier as identified and set out in Schedule A (hereinafter referred to as the “**Supplier**” or “**you**”) of the other part.

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

This Agreement including Schedule A and the appendices sets out the terms and conditions upon which you will provide services to the Government.

**SCHEDULE A**

This schedule is incorporated into the Agreement. Capitalized terms used but not defined in this schedule 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 will prevail to the extent of such conflict.

1. **Supplier Name and Contact Information:**

|  |  |
| --- | --- |
| **Supplier:** |  |
| **Address:** |  |
|  |  |
| **Tel:**  |  | **Mobile Tel No.:** |
| **Email:** |  |

1. **Term and Termination**
	1. This Agreement shall be effective on the Effective Date. The use of the System or Services shall commence on the Commencement Date and continue until the Completion Date, whereupon this Agreement shall end and expire unless terminated earlier in accordance with its terms.

|  |  |
| --- | --- |
| **Commencement Date:** |  |
| **Completion Date:** |  |
| **Termination Notice Period:** | **30 days prior written notice** |

* 1. In the event that the Services are provided to the Government beyond the Completion Date of this Agreement, 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.
1. **Fee**
	1. The Government will compensate you the Fee as set out in Appendix 1 or Appendix 6 (Hosting, if applicable) subject to the General Terms and Conditions.
	2. 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.
	3. The Fee will be subject to further deductions for the following reasons:
		1. Where there has been an overpayment to you for any reason;
		2. Where the Government has suffered loss by your failure to follow instructions or exercise due diligence;
		3. If you cause damage to Government’s property (including software), the value of replacement or repair of the damaged property (including damage to any software or Government systems by intrusion of viruses or malware as a result of your errors or omissions) shall be deducted from the Fee;
		4. If you leave or terminate this Agreement without giving the required notice, the value of the Fee for the notice period may be deducted;
		5. When you are no longer responsible for providing the System or Services to the Government, there will be a deduction of any overpayments or advances of payment taken in excess of the Fee; and
		6. Where you have outstanding payroll taxes or social insurance contributions.
2. **Insurance**

If required by the Government, you shall acquire the Insurance Policies in the amount as set out below, subject to the insurance section of the General Terms and Conditions:

|  |  |
| --- | --- |
| **Insurance coverage** | **Minimum Coverage Amount** |
| Professional Liability | **BMD$2,000,000** |
| Commercial General Liability | **BMD$2,000,000** |
| Technology Errors and Omissions for damages arising from computer-related 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. | **BMD$2,000,000** |
| Intellectual Property Insurance | **BMD$2,000,000** |
| Data Privacy Protection Insurance | **BMD$2,000,000** |

1. **Expenses**
	1. Any Expenses (as defined below) associated with this Schedule, in addition to the Fees (as defined below), shall be those Fees and Expenses associated with providing the Services in accordance with this Agreement.
	2. If applicable, while providing the System or performing the Services in or from Bermuda, the Representative may require accommodation in connection with the System or the provision of Services. In the event that accommodation is required, the Government may assist you or the Representative in acquiring accommodation but the Government 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 the Government against any losses the property owner may suffer as a result of your or the Representative, residing or staying at that property.
	3. All requested Expenses shall be provided to the Government in writing prior to any such Expenses being incurred. All air travel shall be at economy class, unless otherwise agreed in writing. You, the Representative, are not permitted to incur additional expense, costs or charges without the prior written consent of the Government.
	4. Approved Expenses shall be paid in accordance with this Agreement.
2. **Taxes**

 You will be responsible for tax payments and for providing information as requested:

* 1. To register and pay all taxes including but not limited to, payroll tax and social insurance, in a timely manner.
	2. To provide proof of payment of all amounts due to Government such as payroll tax, social insurance premium and all other receivables to Government, before final payment is made to you.
	3. Your tax information:

|  |  |
| --- | --- |
| **Payroll Tax No** | **Social Insurance No.** |
|  |  |

1. **Invoicing Terms**
	1. You shall provide a monthly invoice for the services performed in accordance with this Agreement, with supporting documentation and itemizing the following:
		1. Your name, invoice date and invoice number;
		2. Change Order number, if applicable;
		3. Details of Services performed;
		4. Time and services rendered in hourly (or less than daily) increments with sufficient detail to determine appropriate expenditure of hourly efforts;
		5. Other supporting documentation (including copies of any invoices or receipts for reimbursable expenditures as provided for herein);
		6. 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 the Government); and
		7. Telephone number, fax number and e-mail address.
	2. Government shall pay all fees and/or undisputed invoices **30 days in arrears**. The Government may dispute an invoice within **30 days of receipt**, however, the Government reserves the right to dispute payments made on an invoice at any time if it suspects fraud or willful misconduct on your part (“**Faults**”). In the event that any Faults are discovered in relation to payments made to you, the Government reserves 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.
	3. Your failure to timely submit a proper invoice as set forth in this section may result in a delay in payment by Government. No interest shall be paid with regard to any late payment to you or your Representatives resulting from your failure to submit a proper invoice or otherwise comply with the terms of this section. You agree that the Government is not responsible, nor will it be liable to you or under law or equity for any and all expenses that you or your Representative’s may incur resulting from any delays in payment caused by your failure to comply with the terms of this Agreement.
	4. Government reserves the right to refuse to pay an invoice in the event that the invoice is presented 6 months after the time when it should have been presented for payment.

**IN WITNESS WHEREOF**, the parties, or their authorized 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: |

**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, capitalized terms have the respective meanings referred to in this Agreement, words by their context importing the plural shall include the singular and vice versa, references to either gender includes any other gender or a neutral entity where appropriate, and a reference to any statute or regulation or law means as amended from time to time and include any successor legislation, regulations or laws. Where the contexts 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 Services to be provided are accepted as being in accordance with the specifications set out in the Statement of Works attached hereto as **Appendix 3**;

“**Acceptance Tests**” means the activities to be carried out to verify that the System, together with all Equipment and Software is in accordance with the acceptance test criteria set out in **Appendix 3** of this Agreement;

“**Agreement**” means this Master Services Agreement For Software Development and Hosting includes these General Terms and Conditions, Schedule A, and Appendix 1 to Appendix 6;

“**Appendix 1**” contains the Service objective, list of Representatives, details of the Fees and other information related to the provision of the Services not contained in Schedule A;

“**Appendix 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 Services which will comply with the Documentation and which will integrate with other systems or software which the Government may already have or which is to be supplied by you as part of this Agreement;

“**Appendix 3**” contains the acceptance criteria for the Services;

“**Appendix 4**” contains the training services to be provided for the System;

“**Appendix 5**” contains the maintenance and support services to be provided for the System; “**Appendix 6**” contains the hosting and support services to be provided for the System;

**“Best Industry Practice”** means the exercise of that degree of skill, care, accuracy, quality, prudence, efficiency, foresight and adherence to timeliness as would be expected from a professional individual or leading company within the relevant industry or business sector;

“**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 Services performed or which ought to have been performed. Claims also includes patent, trade secret, copyright, or other intellectual property right claims, claims connected to Equipment, costs, penalties, fees and expenses (including legal and professional fees, charges or expenses);

“**Commencement Date**”means thedate of the commencement of the use of the System following Acceptance as set out in Schedule A;

“**Completion Date**”means thedate of the completion of the development of the System prior to Acceptance as set out in Schedule A;

“**Confidential Information**” means the terms of this Agreement as well as any information or Data disclosed to you which (i) if in tangible form, is marked clearly as proprietary or confidential, (ii) if oral, is identified as proprietary, confidential, or private on disclosure or (iii) any other information which is not in the public domain, which upon receipt by the Government should reasonably be understood to be confidential, provided, however, that such information or data is provided under or in contemplation of this Agreement;

“**Contact**” means the Public Officer appointed as the liaison between you and the Government;

“**Consents**” means any qualifications, rights, permits, licenses, authorizations or other consents;

“**Data**” means logbooks, records, data files or source code material used or created pursuant to the System (including electronic storage media, software data, 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 IP addresses, date, time, duration), and other relevant data connected with the Services;

**“Deliverables**” shall mean the design, development, supply, delivery, installation, testing and implementation of the System and all other work to be carried out by you under this Agreement and includes all Equipment, Systems, Software, Documentation, Services and other things that you are required to deliver under this Agreement.;

“**Documentation**”means written advice, specifications, designs, drawings, plans, reports, tenders, proposals or other information and related documents provided by you or the Representative related to the System or Services;

“**Equipment**” means any Supplier provided equipment including any hardware, software or cables used to provide the System or Services to be used by the Government;

“**Expenses**” means all expenses, charges and costs (including all costs, fees, charges, fines and penalties related to travel and accommodation), penalties and fines;

“**Fee(s)**”means the fees to be paid to you for the Services provided in accordance with the terms of this Agreement;

**“Government”** means the Government of Bermuda as represented by the Department as set out above;

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

“**Go Live Support**” means support provided by Supplier to the Government 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;

**“Insurance Policies”** means the amounts of not less than the minimum level of insurance required by law or regulatory body or that is required for the System or Services as set out in Schedule A, covering you, or your officers, directors, employees, agents, or subcontractors, professional negligence and errors and omissions, and shall be on an “occurrence” basis unless otherwise stated in Schedule A. “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;

“**Licence”** means the right granted by the Supplier to the Government to use the System or Documentation;

“**Licensed Software**” means the software program(s) and Documentation which is to be licensed to the Government together with any third-party or other proprietary software;

**“Loss”** means all losses, Claims, damages, costs, fees, charges, penalties, expenses including legal and professional fees, expenses and 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;

 **“Objectives”** and / or **“Outcomes”** means the targets, results or goals to be achieved as specified in the Statement of Work or as required by the Government;

“**Public Officer**” means any person employed by, or acting as an agent for, the Government; “**Representative(s)**” means**,** the person(s) providing the Services on your behalf and includes any person engaged by you, if applicable;

“**Service(s)**”means the provision of all work and deliverables and includes the use of any Equipment provided by you or by a Representative under the terms of the Agreement in support of the Software or System;

“**System**” means the development of an integrated information system including development of a website, incorporating Software, as required by the Government;

“**Schedule A**” means the schedule which forms a part of this Agreement and contains information regarding the Fees, Expenses, Insurance and the Term; and

**“Security Procedures**” means rules and regulations governing health and safety procedures while on, Government premises; and information technology security protocols where you or the Representative accesses any Government information technology system;

**“Software”** means all proprietary or third-party software, (including developed software, Licensed Software or configured software or any parts thereof) or other intellectual property rights, including the Documentation, provided or licensed to Government or third party users pursuant to this Agreement, including computer programs in machine readable object code form and any subsequent updates, upgrades, releases, or enhancements thereto developed by Supplier;

“**Term**” means the term of this Agreement as set out in Schedule A;

**“User”** means a person who is to use the System or Services for the purposes of the Government;

**“Version**” means a new or current version of the Software on the System and which is released to the Government 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, computer system or network, or would disable the System or impair in any way operation based on the elapsing of a period of time, exceeding an authorised number of copies, advancement to a particular date or other numeral, or that would permit the Supplier or any other person to access the System to cause such impairment, or which contains any other similar harmful, malicious or hidden procedures, routines or mechanisms which would cause such programs to cease functioning or to damage or corrupt data, storage media, programs, equipment or communications, or otherwise interfere with operations.

1. **Provision of Service**
	1. You and the Representative agree to provide the System and perform the Service in accordance with and subject to the following:
2. Schedule A including payment of taxes;
3. Appendix 1, 2 and 3; and
4. Appendix 4 in the event that training is required;
5. Appendix 5 in the event that maintenance support is required; and
6. Appendix 6 in the event that hosting services are required,

and these General Terms and Conditions in order to achieve the Objective and the Government agrees to pay the Fee for the System and Services.

You shall use your best efforts to complete the System and the Services, or any part of the System or Services, in accordance with the Objectives, including any milestones, as set out in the appendices.

In the event that it is required and with Government prior due diligence and written approval, you may appoint a Representative who shall have full authority to act and provide System and Services on your behalf. The Representative(s) shall be named in Appendix 1.

The Government 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 appointed person with another qualified individual employed by you, and such replacement shall be subject to approval by the Government.

You shall, and ensure that the Representative, co-operates with the Government’s employees where this is necessary to effectively carry out your obligations under this Agreement.

You are responsible for all acts or omissions of a Representative relating to the System or the Services and for ensuring their compliance with the requirements of this Agreement.

You shall provide Documentation 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 completed or partially completed portions of the Documentation notwithstanding any provisions expressed or implied to the contrary.

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

If the Services are required to be provided on the Governments’ premises or use Government 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.

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

You will provide information or sign any other agreements necessary or as requested by the Government, in order that either you or the Government can fulfill their obligations under this Agreement.

Services are provided on a **non-exclusive** basis to the Government in Bermuda.

1. **Licence**

Supplier grants to the Government a perpetual, irrevocable, royalty-free, non-exclusive license, for an unlimited number of Users, to the System including to any embedded third party software within the System, for use for the Government’s and its purposes including on- and off-site access and use of the System and Services by authorized third party users, including those persons or entities with which the Government may contract to operate the System, and for the benefit of and use by all Users of the Government.

The Licence granted above includes all major releases, updates or upgrades of the Software access to the source code and training in the use of the System. The Supplier will ensure the continued compatibility of the System with all major releases, updates, or upgrades of any third party software used by the Government for access or operation of the System. In the event Supplier is not able to support any third party software update, upgrade, version or new release that changes major functionality and is not compatible with the System, Supplier shall use its best efforts to resolve such issues and to provide optimal functionality of the System.

Supplier will maintain and keep current human readable and machine readable copies of the source code and Documentation associated therewith as is reasonably required to develop, maintain and operate the System (the “**Source Code Material**”). The Supplier shall provide copies of all Source Code Material for the Software which may reasonably be required by the Government for the purpose of developing interfaces to other systems or for maintaining the System.

In the event that the Government no longer wishes to pay an annual enhancement fee(s) or an annual support and maintenance fee(s) after the first year from the Go Live date, then the Version that the Government has will crystalize at that time with that application code and cap any further updates going forward. This will allow the Government the ability to use the System in perpetuity at that set Version structure. If however in the future the Government wishes 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 System current.

1. **Fee and Taxes**

The Government shall pay you the undisputed Fee within 30 days of receiving a valid invoice setting out information required with the invoice in accordance with Schedule A or any applicable appendix.

The Government may withhold payment of any Fee or Expenses in respect of which it has queries or where the Contact reports unsatisfactory performance of System or Services or in the event of failure of any Acceptance Test. You will cooperate promptly and fully to resolve any such queries. Where the unsatisfactory performance continues for at least 30 days, the Government may suspend payment of the Fee related to that unsatisfactory performance, at no liability to the Government.

Except for the Fee, no other amounts are payable by the Government to you or the Representative. Government may set off any amounts owed by you to the Government against any Fee or Expenses.

The Government shall pay by direct transfer into your bank account. It is your responsibility to inform the Government of your current contact and banking details in order that the Government can contact and pay you.

Taxes: You will be responsible for providing to the Government proof of all amounts due to the Government such as payroll tax, social insurance contributions and all other receivables to the Government, prior to you receiving final payment.

1. **Government Responsibilities**

The Government shall disclose all information and provide reasonable and agreed computer facilities and access necessary for you to provide the System or Services.

1. **Additional Services**

Additional services or variations in the Systems or Services may be required after the date of execution of this Agreement and may be performed upon written approval of the Government. Such written approval shall be evidenced by a change authorization order (“**Change Order**”) or such other written authorization 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.

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

Fees for additional services shall be agreed by the Government in writing prior to any additional services being performed.

Only services which are not required for performance of the System or Services to be provided hereunder shall be deemed additional services.

1. **Supplier Representation and Warranty**

You represent and warrant that you and the Representative, will perform all activities relating to the System and Services:

1. in accordance with Best Industry Practice and in a professional and lawful manner;
2. if applicable, using appropriately skilled and experienced personnel 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;
3. in strict accordance with the standards and timelines set out in Schedule A and the appendices;
4. free from currently-known malware including Viruses (at the time the System and any Version thereof is provided to Government), defects, errors or faults and that Supplier has and will continue, for the Term, use commercially reasonable security measures to ensure the integrity of the System from data leaks, risk of exfiltration, hacks or denial of service in order to meet the needs of the Government; and
5. in accordance with applicable law; rules, regulations, manuals, guidelines or policies, including the current financial instructions issued by the Accountant General of the Government.

The System and Services, provided under this Agreement will provide the functionality and solution to meet the Objectives set out in schedule and appendices of this Agreement, and that when used with the Equipment, will perform substantially as described in the Documentation.

At the time of entering into this Agreement, no claims have been asserted against Supplier (whether or not any action or proceeding has been brought) that allege that any part of the System infringes or misappropriates any patent, copyright, mask copyright or any trade secret or other intellectual or proprietary right of a third party, and that Supplier is unaware of any such potential claim. Supplier also agrees, represents and warrants that its System and Services to be provided pursuant to this Agreement will not infringe or misappropriate any patent, copyright, or any trade secret or other intellectual or proprietary right of a third party.

You acknowledge that the Government will be:

1. relying on the Documentation on the basis that it is accurate and complete in all material respects and are not misleading;
2. relying on your and the Representative’s skills, expertise and experience concerning the provision of the Services;
3. relying on the accuracy of all Deliverables and all the information included in the Documentation; and
4. using your reports, Deliverables and any other advice and assistance provided under this Agreement.

You represent and warrant that this Agreement is executed by you or by your duly authorized Representative and that you have obtained all required authorizations and capacity in order that you can fulfill your obligations.

You are responsible for all acts or omissions of a Representative relating to the Services and for ensuring their compliance with the requirements of this Agreement.

You will seek prior permission from the Government in the event of sub-contracting or outsourcing (“**outsourcing**”) any Service. In the event of any outsourcing, you will be responsible for all outsourced services or personnel.

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

You will provide information or sign any other agreements necessary or as requested by the Government, in order that either you or the Government can fulfill their obligations under this Agreement.You shall procure the benefit of any warranties or guarantees in respect of goods and Documentation you supply to Government and provide copies of such warranties or guarantees.

You acknowledge and warrant that you are fully satisfied as to the scope and nature of the Services 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.

1. **Progress Report**

If required, you shall submit progress reports in connection with the Systems or Services (“**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. The Reports will relate to your itemized invoice for time spent in the prior month and include an itemized forecast of the intended time to be spent on known activities in the coming month (which will require ratifying by Government). It will also include YTD totals for payments received and work completed (expressed in $). 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 Reports for the reporting period shall be determined by the Government.

1. **Inspection and Acceptance of Services and Documentation**

The Government shall at all times retain the right to inspect the work provided by you or the Representative and you consent to visits to your premises in order to inspect the Services or Documentation and Government shall have the right to review, require correction or additional follow up, if necessary, and accept or reject the Services and any Documentation submitted by you or the Representative.

Acceptance of the System or Services or Documentation shall be conducted in accordance with Appendix 3.

Review(s) of any written work product shall be carried out within 30 days of receipt, unless extended to a date certain by the Government, so as not to impede your work.

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 7 days of notification or a later date if extended by the Government. In the event that you are required to implement changes to the System with respect to your performance of Services, such change shall be implemented within a reasonable time, as determined by the Government in consultation with you.

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, the Government may terminate this Agreement, reduce the Fee and/or reject the hours or invoice submitted in connection with such work to reflect the reduced value of services received.

1. **Time of the Essence**

You are responsible for managing time in order to complete your obligations under this Agreement and shall complete any portion or portions of the Services in such order as the Government may require rather than working a specified amount of time and you recognize that working outside of regular work hours may be necessary in order to fulfil your obligations and responsibilities without additional compensation of any kind.

In the event that there are no specified hours for you to provide Services, you will be required to be available to provide Services during the period as set out in Appendix 1 in order to achieve your objectives and the Services, subject to the needs of the Government. When there is no unscheduled or urgent work involved, any provision of Services will be confined to a 5 day work week.

The Government shall give due consideration to all Documentation submitted by you or your Representatives, 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 work.

1. **Equipment**

You shall ensure that all Equipment used in order to provide the System or Service will perform according to Appendix 2 and published technical specifications for such Equipment and Government’s interface specifications for such Equipment and otherwise complies with Government’s specifications for the Service.

Where software is provided with Equipment that you provide, you grant Government a non-exclusive and non-transferable license to use such software, including any related documentation, to enable the Government to use a Service.

You retain title and property rights to the Equipment that you provide under this Agreement, whether or not the Equipment is embedded in or attached to real or personal property. Unless specifically stated in the Agreement, Government neither owns nor will acquire any right of ownership to any Equipment, including, but not limited to, copies, and any related patents, copyrights, trademarks, or IP addresses assigned to you.

1. **Remedies**

If the System, Services or Equipment does not conform to the warranty as set out in this Agreement, you shall, at your cost and 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.

Supplier acknowledges and agrees that the Deliverables that shall be performed in connection with this Agreement are of critical national interest to the Government and people of Bermuda; material or substantial breaches of this Agreement by the Supplier will cause immediate, irreparable and long term harm, damage, loss and injury to the Government for which damages alone cannot (and will not) fairly or adequately compensate or remediate such harm, damages, loss or injury. The Government is reasonably and fairly entitled to apply to a Court of competent jurisdiction for equitable remedies and relief if any such breach has occurred (or is reasonably expected by the Government to occur); and the Supplier shall not interfere with, obstruct, oppose or otherwise refute the Government’s right to seek and apply for the granting of any such equitable relief and remedy including injunction.

If any defect shall occur in the System, Services or Equipment supplied by Supplier during the period of twelve (12) months from the date of the final Acceptance Test, the Supplier shall forthwith remedy such defect at its own expense by (a) repair or replacement, or (b) by providing to the Government other measures that correct the defect. Any replacement or repaired part shall carry a similar warranty for twelve [12] months from the date of the repair or replacement. If Supplier is unable to correct the defect within a reasonable period of time not to exceed fifteen (15) days, this will constitute a material breach of this Agreement, and the Government shall be entitled to rescind the Agreement and receive a full refund of all amounts paid to Supplier. The remedies in this section are in addition to any other rights and remedies that the Government may have under this Agreement or applicable law.

Without prejudice to any other rights available to it, the Government may, at your cost and expense:

* + 1. repair, replace or otherwise fix the System or Service where the defect in System or Services is caused as a result of your, or the Representative’s, negligence, error, omission or willful misconduct; or
		2. obtain the System or Services from another service provider and terminate this Agreement.
1. **Indemnity, Limitation of Liability, Insurance, Force Majeure and Business Continuity**

Indemnity: You shall fully indemnify, hold harmless and defend the Government its respective Public Officers, directors, agents, subcontractors, assignees and employees (collectively, for the purpose of this section “**Indemnified Party**”) from and against any Loss or other proceeding (collectively, “**Liabilities**”) arising from or incurred by reason of any infringement or alleged infringement of any patent, designs registered or unregistered, trade secret, copyright, trademark or other intellectual property rights including wrongful use of confidential information by the use or possession of any part of the Deliverables provided by you or licensed by you under this Agreement subject to:

1. Government notifying you in accordance with the notice provisions in this Agreement of any alleged infringement; and
2. Allowing you at your own 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 Government may do so at your expense, in which case you shall indemnify Government against all costs, damages, and expenses, including legal fees on a full indemnity basis.

You shall indemnify the Government against all Loss whatsoever, during the period that the Government is deprived of the use of the System or Deliverable or portion thereof.

You shall defend, indemnify, hold and keep harmless Government from all Loss hereunder; provided that Government provides you with: (a) prompt notice of such Loss; (b) sole control over the defense and/or settlement of such Loss (provided that any settlement requiring any act or omission by Government shall be subject to the Government’s consent, not to be unreasonably withheld or delayed); and (c) all assistance reasonably required (at your expense) for the defense of such Loss.

No Liability: In no event shall the Government or a Public Officer be liable to you for Loss, damages (including loss or damage to Equipment) or otherwise.

Limitation of Liability: Without limiting the provisions of this Section, Government’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) month period immediately preceding the date the on which the latest Claim or Loss first arose.

Nothing in this Agreement shall exclude or limit any liability for wrongful use of Confidential Information or Government, fraud, misrepresentation, willful misconduct, personal injury/death or any liability which cannot be lawfully limited or excluded and you shall accordingly maintain in force during the engagement full and comprehensive Insurance Policies.

All actions, claims or demands 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.

Insurance: If required by the Government, you shall maintain at your sole expense, on a primary basis, and an “occurrence basis’, at all times during the Term the Insurance Policies shall be evidenced by delivery to the Government of certificate(s) of insurance executed by the insurer(s) listing coverages and limits, expiration dates and terms of the policy or policies and all endorsements, and upon request a certified copy of each policy including all endorsements. Failure to provide acceptable proof of insurance as required by the Government shall entitle the Government to either obtain or maintain the Insurance Policies on your behalf atyour sole cost and expense, or toterminate this Agreement without prejudice to any other of the Governments rights or remedies in connection with this Agreement**.**

You shall be responsible for the payment of all deductible amounts on such policy or policies and shall on request supply to the Government copies of such Insurance Policies and evidence that the relevant premiums have been paid.

You shall notify the Government 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.

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.

If you subcontract any work under this Agreement, you shall ensure that each subcontractor maintains insurance coverage with policy limits of at least the amounts stated above.

The insurance requirements set forth above do not in any way limit the amount or scope of your liability under this Agreement. The amounts listed indicate only the minimum amounts of insurance coverage that the Government is willing to accept to help ensure full performance of all terms and conditions of this Agreement.

Force Majeure: Neither of the parties shall be liable for failure or delay to perform obligations under this Agreement to the extent that this delay is caused by flood, fire and other event beyond its reasonable control (not caused by its own act or negligent omission) (“***force majeure***”) but each party shall use its best efforts to perform its obligations notwithstanding the *force majeure* event.

Business Continuity: Where applicable, you shall maintain, test and where appropriate implement business continuity procedures to reduce the risk of force majeure impacting the provision of the System or Service and upon request, provide such evidence to the Government.

1. **Non-Solicitation**

During the Term and for a period of 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 Services, unless otherwise agreed to in writing by the Government.

1. **Non-Disclosure of Confidentiality Information**

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

You will comply with Government’s instructions if it has access to personal data as a result of providing the Services.

You may disclose information related to this Agreement to its personnel on a ‘*need to know*’ basis as required for the performance of the Services. You will keep strictly confidential any other Confidential Information which you learn in the course of the Services and you shall only use such Confidential Information as required for providing the Services (and no other purpose).

A breach or anticipated breach of the confidentiality provisions of this Agreement, will cause Government irreparable harm and you agree that monetary damages alone may not be an adequate remedy and, accordingly, that the Government will, 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.

If 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 the Government the equivalent of the Fee paid to you for a 3 month period as liquidated damages, in addition to any attorney’s fees and costs of enforcement. You and anyone acting on your behalf shall be jointly and severally liable to the Government under this section.

1. **Intellectual Property, Copyright and Ownership**

Intellectual Property: You warrant to the Government that you or the Representative have created the Documentation for and on behalf of the Government or have obtained a written and valid consent and assignment of all existing and future intellectual property rights in the Documentation.

Documentation created under this Agreement shall be original works created by you or the Representative and shall:

1. not include intellectual property 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
2. not subject the Government to any claim for infringement of any intellectual property rights of a third party.

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

You shall do all things necessary to assign to the Government all existing and future intellectual property rights in the Documentation 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, you shall hold legal title in such rights on trust for the Government.

Copyright: Copyright and other intellectual property in work produced by you in the course of providing the Services to the Government shall belong to Government, which may utilise those deliverables freely (including by adapting, publishing and licensing).

You and the Representative agree that all Documentation and other works created in full or in part by you or the Representative may be maintained, changed, modified, adapted or otherwise used by the Government without the consent of either you or the Representative. Notwithstanding the foregoing, you and the Government may agree in writing that certain identified and designated intellectual property rights will remain with you.

Intellectual property, Documentation or Confidential Information may not be used or copied for direct or indirect use by you after expiry or termination of this Agreement without the express written consent of the Government.

Government acknowledges that you and Representative possess knowledge and expertise relating to the subject matter of the Services and Deliverables (“**Supplier Know-How**”), which may include intellectual property rights in certain pre-existing tools and Documentation used by you in performing the Services. Nothing in this Agreement is intended to transfer to Government any rights in the Supplier Know-How, which shall remain your property. To the extent that any Supplier Know-How is included in any Documentation or Deliverables, you hereby grant to Government a perpetual non-exclusive right and license to use and reproduce the Supplier Know-How to the extent reasonably necessary to exercise Government’s rights in the Deliverables.

Government logos: You may not use Government’s name or logo for any publicity or marketing purposes, unless consent for such use is provided in writing.

1. **Term, Termination and Suspension**

The Term of this Agreement shall be as set out in Schedule A.

Either party may terminate a Service or this Agreement, in part or in whole, without cause, during the Term upon prior written notice in accordance with the termination notice period as set out in Schedule A.

Government may terminate this Agreement at any time based upon your default of your obligations under this Agreement. The Government, in its 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 the Government, in its sole discretion, deems adequate.

Chronic Service Failure: In the event of 2 months of service level non-compliance on your part, the Government may discontinue any or all of the affected Services or terminate this Agreement without liability except for Fees incurred prior to discontinuation of the Services or termination of this Agreement.

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

1. commits a material breach of this Agreement, which is not remedied within 30 days of notice by the other party informing them of the material breach; or
2. commits an irremediable breach; or
3. is subject to a change of control or chooses to discontinue its business; or
4. if the other party has a lack of funding or becomes or is deemed insolvent; or
5. if the other party’s performance is affected by a *force majeure* event which lasts 7 days or more.

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

The rights arising under this termination clause represent your sole remedy and excludes common law rights to terminate and claim damages for loss of this Agreement.

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.

Upon expiry or termination of this Agreement, you shall provide 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.

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

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

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

1. **Transfer of Data**

Upon request by the Government prior to or within thirty (30) days after the effective date of termination, you will make available to Government a complete and secure (i.e. encrypted and appropriately authenticated) file of the 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.

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

1. **General**

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).

This Agreement is effective on the Effective Date. Where this Agreement refers to past or current obligations, this Agreement applies retrospectively from that date. Each of the parties represents that this Agreement is executed by its duly authorized signatories and that it has all required authorizations and capacity to perform its obligations.

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 Services and is the complete agreement between the parties.

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

You may not assign or transfer any rights or obligations under this Agreement (for example assigning or factoring invoices) without the Government’s written consent. Any such transfer by you in breach of this section shall be void and be an irremediable material breach of this Agreement. Government may transfer its rights and obligations under this Agreement.

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.

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

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

Expiry or termination of this Agreement in any manner shall not release you from any liability or responsibility with respect to any representation or warranty. Sections related to Data, Documentation, indemnification, infringement rights, insurance, intellectual property, license, limitation of liability, non-disclosure of information, ownership, publicity, remedies and any entitlement or claims that arose prior to expiry or termination, shall survive termination of this Agreement.

Any other provisions that are expressed to survive expiry or termination or which, although not so expressed, need to survive in order to protect the presumed intention of the parties as expressed in this Agreement shall survive termination or expiry of this Agreement.

Waiver of any breach of this Agreement must be in writing to be effective and shall not be a waiver of any subsequent breach, nor shall it be a waiver of the underlying obligation. Should any court determine that any provision of this Agreement is not enforceable, such provision shall be modified, rewritten or interpreted to include as much of its nature and scope as will render it enforceable.

You consent to the Government processing data relating to you for legal, personnel, administrative and management purposes and in particular to the processing of any sensitive personal data relating to you, as appropriate. The Government may make such information available to those who provide products or services to it (such as advisers and payroll administrators), regulatory authorities and governmental or quasi-governmental organizations including those outside of Bermuda.

1. **Governance**

You will inform Government promptly of all known or anticipated material problems relevant to the delivery of Services.

You agree to provide the Government (and, if Government requests in writing, its auditors and competent regulatory authorities) with full information on the provision and delivery of the Services in an open and cooperative way and attend meetings with the Government to discuss the Services and this Agreement. The Government may disclose any information relating to this Agreement to a regulator or auditor.

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

You will notify the Government immediately if you have any actual or potential conflict of interest which might affect your ability to provide the Services.

In the event that any payments are delinquent, the Government may deduct, in part or in full, any payments made to you under this Agreement.

In connection with the provision of the System and Services, you will not, and will not attempt to, bribe, corrupt or offer any improper inducement or bribe to any person at any time.

1. **Retention of Confidential Information, Records and Audit**

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 System or Services. The Government will have full access to and the right to examine any documents connected to the System or Services, at any time during this period. The Government must be notified, in writing, prior to any of the aforementioned documents being destroyed.

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

You shall establish and maintain books, records, and documents (including electronic storage media) in accordance with International Financial Reporting Standards 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 3 years thereafter, the Government 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 3 years following resolution of the audit or any arbitration or litigation arising hereunder.

Any payment or payment request may be reduced by amounts found by the Government not to constitute allowable costs. In the event that all payments have been made to you by the Government and an overpayment is found, you shall reimburse the Government for such overpayment within thirty (30) days following receipt of written notification thereof.

Duly authorized Public Officers shall have full access to and the right to examine any of the records pertinent to this Agreement at all reasonable times for as long as such records are required to be retained hereunder.

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

1. **Electronic Communication**

Government may communicate with you by email. The internet is not secure and messages sent by email can be intercepted. You shall use your best efforts to keep your security procedures current and all communications by email secure.

1. **Governing law**

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

1. **Dispute Resolution**

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.

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.

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.

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

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.

**APPENDIX 1**

* 1. **Service Objective**

The Supplier shall provide to the Government a System which shall meet the Government's requirements as set out in Appendix 2 and satisfy the Acceptance Tests.

The Supplier shall also provide Services which shall meet the requirements of the Government as set out in this Agreement.

* 1. Statement of Work

You shall create a SOW for the development and installation of the System. 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 Services together with the functions, service levels and performance requirements that the Services shall meet.

The SOW shall include:

1. the matters set out in the Version of the Bermuda Government Data Management Application;
2. a description of the specifics of the provision of the System or Services;
3. a project plan for the development, implementation and delivery of the Services;
4. proposed applicable Fees and/or proposed fees; and
5. any other applicable terms.
	1. 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 the Government at the time required by the Government.
	2. Upon delivery of the SOW to the Government, the Government shall, within fourteen (14) days following delivery of the SOW:
	3. approve the SOW;
	4. reject the SOW, in which case the Agreement may be subject to termination; or
	5. request variations to and/or explanations of any aspect or aspects of the SOW.
	6. If the Government makes no request within the time specified under section 3. of this appendix, then the SOW shall be deemed to be approved.
	7. If the Government requests variations to the SOW then, upon your reply, the same conditions shall apply as in section 3. and section 4. of this appendix with the addition that the Government maywithdraw such requestsfor **a** changein the SOW.
	8. The terms of the SOW shall be and are hereby imported as terms of this Agreement.
	9. For the avoidance of doubt, time is of the essence for the Developer when providing the deliverables under the SOW and any other deliverables in connection with this Agreement.
	10. Acceptance of the Services shall be subject to Appendix 3 of this Agreement

|  |  |
| --- | --- |
| **Go Live Date:** |  |
| **Specific hours of availability to provide Services:** | **Monday to Friday 9am – 5pm** |

* 1. **Fees**

You shall inform the Government of all fees due and payable for the System and Services, including the following:

|  |  |
| --- | --- |
| **Details of Fees** | **Rate** |
| Licence Fee: | **BMD$\_\_\_\_\_\_\_\_\_ quarterly in arrears** |
| System Installation one-time charge: | **BMD$\_\_\_\_\_\_\_\_\_**  |
| System Maintenance Fee: | **BMD$\_\_\_\_\_\_\_\_\_ quarterly in arrears** |
| Professional Services rate (including rate for Training): | **BMD$\_\_\_\_\_\_\_\_ hourly/weekly in arrears** |
| **Total**  | **BMD$** |

* 1. **Representative**

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

|  |  |  |
| --- | --- | --- |
| **Resource** | **Contact Details** | **Role** |
|  | Tel Number: |  |
| Mobile Number:  |
| email: |
|  | Tel Number: |  |
| Mobile Number:  |
| email: |
|  | Tel Number: |  |
| Mobile Number:  |
| email: |

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

**APPENDIX 2**

**SYSTEM SPECIFICATION REQUIREMENTS**

**Specification**

You shall deliver the System and the Services in accordance with the Deliverables and with the requirements set out in the SOW.

If required by the Government, you shall also deliver a Training plan.

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.)

You shall provide specific requirements in the Documentation as required by the Government, as follows:

* 1. Systems Environment
1. The System architecture within which the Licensed and developed Software will operate.
2. 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.
3. Any other software, system and technical standards that are to be complied with.
	1. 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. The functional requirements for the System
1. specific business functions in accordance with the Government requirements.
2. Any legal or statutory regulations that may apply.
3. Optional requirements in addition to mandatory features.
	1. The performance requirements
4. Response times of the System for users for specified transactions.
5. Availability (i.e. 24 hours, 7 days a week).
6. Error rates, mean time between failures and mean time to fix faults.
7. Batch processing times.
8. Volumes of transactions within a given period within performance parameters.
9. Success in processing the volumes.
10. Scalability for future growth in business and System enhancement.
	1. Development Methodology requirements
11. Any standard or methodology with which the software development work is to comply – either the Government’s own standards, those of the Supplier or a recognized published standard.
12. Productivity standards to be achieved
13. Quality standards
	1. Technical requirements
14. Avoid technical details which are not essential.
15. Interface specifications with other systems and equipment.
16. Technical standards with which compliance is required.
17. Detailed specifications of any existing or third party software to be used.
18. Specific specifications agreed between the Government and Supplier for other parts of the systems environment with which the licensed and developed Software will be required to operate.
19. Equipment, storage, memory and computer network capacity and processing power, which the Supplier proposes to run the given volume of transactions. Notwithstanding, the Supplier 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. Maintainability
20. Specific requirements for maintenance and support.
21. Support for the Customer’s own maintenance.
	1. Documentation

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. Training

A description of the training to be provided by the Supplier

**Services for System Integration and Implementation**

* 1. System Development
1. You shall develop the System to provide the facilities and functions and performance set out in the specification and the detailed design to meet the Government’s 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 Documentation.
2. You shall verify that the specification and all Documentation provided are accurate and complete and shall agree with the Government any changes that it may consider to be necessary under the Change Order procedure.
3. You shall keep all work, data and Documentation safe and secure from loss or damage and maintain up-to-date back-up copies in a separate and secure location.
	1. Delivery of the System
		* 1. You shall deliver System and Documentation and install the Software on the System by the date in the project plan.
		1. You shall deliver all Versions of the System to the Government within 5 working days of its general availability and provide all necessary support and documentation for its installation and use.
		2. You shall deliver the System in machine readable format and install the Software on the System and provide the Government with copies of all Documentation before installation is complete.
	2. Delivery of Equipment and upgrades
		* 1. 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 the Government is entitled to use in accordance with the SOW specification.
			2. You shall make available to the Government all fixes, modifications, software changes and revised documentation that it requires for the Equipment and shall provide assistance in installation as necessary.
			3. You shall supply upgrades to the Equipment which are available and required by the Government under these terms and conditions and at a price which shall be set out in the Fee Schedule or the Supplier’s then current list price less the discount as agreed with the Government, whichever shall be the lower.
			4. You shall supply on the written request of the Government such supplies of parts, any documentation and diagnostics or other support software that may be necessary for the Government or a third party contracted to the Government 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.
4. **Specification and Design services**
	1. You shall be responsible for the System and the Services described in the Agreement and shall deliver all Documentation describing the deliverables accurately and in detail. Deliverables shall meet the requirements set out in the Agreement.
	2. The Government will agree deliverables within an agreed period or notify you of any changes it requires and which you shall incorporate into revised deliverables for agreement of the Government.
	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 Services taking into account reasonable standards of productivity and an assessment of the likely risks.
	4. You shall develop detailed technical and design specifications to comply with the specification and the stated requirements of the Government and agree these with the Government. You shall be responsible for ensuring the completeness and accuracy of the detailed design and shall not be entitled to additional payment for any matter or fact relating to the requirement that could reasonably have been verified before entering into the Agreement or during the detailed design stage.
	5. If the result of preparing a detailed plan and detailed specification result in changes to the provision of Services, these shall result in changes to the SOW and the Documentation 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 Services. Otherwise additional details to the plan and specification for the Services shall be included in the Agreement as appendices.
5. **Requirements of a Project Plan**
	1. The Supplier shall carry out the activities and deliver the System and Services in accordance with the project plan for the development of the System, an example of the information required is set out below.
	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.
		* 1. Commence development.
			2. Complete draft for project plan of System.
			3. Deliver System ready for Acceptance Tests.
			4. Achieve Acceptance.
	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** | **Start**  | **End** |
| Appoint Project Managers |  |  |  |
| Develop Detailed Plan |  |  |  |
| Agree Detailed Plan |  |  |  |
| Develop Specification |  |  |  |
| Agree Specification |  |  |  |
| Commence development |  |  |  |
| Provide facilities on Site |  |  |  |
| Recruit development team |  |  |  |
| Develop detailed design |  |  |  |
| Agree detailed design |  |  |  |
| Deliver development environment |  |  |  |
| Licence 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 data |  |  |  |
| 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 |  |  |  |

**APPENDIX 3**

**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 the Government and deliver to the Government 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 the Government. All Government license keys, usernames, and passwords shall be authenticated by Supplier and perform according to the Statement of Work(s).

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

**Documentation**: You shall deliver copies of the Documentation to the Government concurrently with delivery of the System, and thereafter shall promptly provide any updated Documentation as it becomes available during the term of this Agreement. You represent and warrant that the Documentation is 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. Government has the right to copy and modify the Documentation as it deems necessary for its own internal use.

* 1. **Acceptance Test**
	2. You and the Government shall carry out acceptance tests at regular intervals as required by the Government to confirm that each part of the System is provided and implemented in accordance with any required Government specifications and following such Acceptance Tests, the Government may accept the System or Service prior to the Go Live Date.
	3. The details of the tests and the responsibilities of both parties are set out in this appendix. In the event that Acceptance Tests have not been agreed by the date set out in the Agreement then either
		+ 1. the Government; or
			2. you shall prepare Acceptance Test specifications and plans for agreement with the other party within 90 days of the date set out in any SOW or System plan.

In the event of any dispute, Government's requirements shall prevail. Any changes to the Acceptance Test plan shall be subject to Change Order procedure.

* 1. 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. By the date in the plan the Government or you shall prepare the data for use in Acceptance Tests and a statement of the results with which the Services are expected to comply. Either party may request changes to the data and the expected results provided that no change may be agreed without the approval of the Government.
	3. 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 services to the Government.
	4. You shall carry out system and unit tests on the System and Services at specified stages as required by the Government prior to delivery to verify that the System is operating in accordance with specifications as set out in the Documentation. Any faults identified shall be rectified prior to delivery of the System to the Government.
	5. You shall carry out all Acceptance Tests on the System and Services prior to delivery and after installation to ensure that it is working properly in accordance with the Documentation.
	6. You shall confirm in writing to the Government prior to or at the time the System or Services is delivered and installed that you have carried out tests and that in its opinion the System are in accordance with the specifications and Documentation.
	7. The Government shall carry out the Acceptance Tests to the dates or time scales set out in the plan after delivery of the System.
	8. You shall provide all necessary assistance to the Government to perform the Acceptance Tests.
	9. If the System, Services or any part of them shall fail then a repeat of the Acceptance Tests shall be carried out in accordance with the provisions of this appendix.
	10. You shall re-test all or parts of the System or Services before delivering the corrected System or Service to the Government for repeat Acceptance Tests.
	11. **Final Acceptance Testing**: There shall be a testing period during which the Government shall determine whether the System: (i) properly functions on the Equipment and with any applicable operating software; (ii) provides the capabilities as stated in this Agreement and in the Documentation; and (iii) to the extent stated, meets the Acceptance Criteria**.** In the event of a conflict between the Acceptance Criteria and the Documentation, the Acceptance Criteria shall prevail.
	12. The testing period shall commence on the first business day after you have informed the Government in writing that you have completed the System, Services or Deliverables required to be performed prior to testing and that the System or Services are ready for testing, and the testing period shall continue for a period of up to thirty (30) days.
	13. During the testing period, Government 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.
	14. Government shall notify you in writing of your final Acceptance or rejection of the System or Services, or any part thereof, within fifteen (15) days after the end of the testing period, or as same may be extended by the Government. If Government rejects the System, Services or any part thereof, Government shall provide notice identifying the criteria for final Acceptance that the System or Services failed to meet. Following such notice, you shall have thirty (30) days to (a) modify, repair, or replace the System, Services or any portion thereof, or (b) otherwise respond to Government’s notice. If you modify, repair, or replace the System or portion thereof, the testing period shall re-commence consistent with the procedures set forth above in this section.
	15. In the event you fail to remedy the reason(s) for Government's rejection of the System, Service or any part thereof, within thirty (30) days after Government’s initial notice of rejection, Government may elect, in writing, to either accept the System or Service as it then exists or to reject the System or Service and terminate the Agreement.
	16. If Government elects to accept the System or Service as it then exists (partial acceptance), you shall continue to use your best efforts to remedy the items identified in the applicable notice of rejection. If, despite such continuing best efforts, you fail to remedy the issue(s) identified by Government within a reasonable time as determined by Government, then Government shall be entitled at the Government’s 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 Services as mutually determined by the parties. If the parties cannot agree upon such value, Government shall have the right to reject the System or Services and terminate the Agreement on the terms stated above in this paragraph.
	17. The Government 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.
	18. **ACCEPTANCE CERTIFICATE**
	19. When the System has been completed in accordance with the Agreement and has passed the Acceptance Tests, you shall be entitled to apply to the Government for the issue of an Acceptance certificate (“**Certificate**”) and the Government shall issue the Certificate within 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
	20. If the System shall fail to pass the Acceptance Tests and any repeat Acceptance Tests as provided for in this appendix then the Government shall be entitled by written notice to you to exercise at its sole option any of the following rights:
1. To require you to carry out all or any of the Acceptance Tests at such rate as the Government 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 the Government shall have the further rights set out in this clause.
2. Accept the System subject to a reasonable abatement of the Fee to take account of the loss to the Government caused by the failure of the Service or any part thereof to conform to the requirements specified in the Acceptance Tests. The amount of such loss shall be agreed between the parties or, in default of agreement within 14 days of the notice issued by the Government under this appendix, as shall be determined by an expert appointed under the Agreement.
3. Accept that part of the System, which has passed the Acceptance Tests, and reject that part of the System, which has failed the Acceptance Tests. You shall then be entitled to a partial Certificate in respect of that part which has been accepted. Such partial rejection shall not constitute termination of the Agreement but you shall be liable to the Government such compensation for the part of the Service rejected as may be agreed by the parties within 14 days of the notice issued by the Government under this appendix, or in default of agreement, as shall be determined by the expert appointed under the Agreement.
4. Reject the System as not being in conformity with the Agreement and terminate the Agreement for default by you, in accordance with the terms of this Agreement.

**APPENDIX 4**

**Training and Documentation**

* 1. You shall provide training to a sufficient number of the Government’s personnel to secure the satisfactory operation of the Software and to enable Government’s personnel to be able to train other Users (“**Train the Trainer**”).
	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.
	3. In addition to the Train the Trainer training above, the Documentation will describe in detail and in a completely self-contained manner how the Users may access and use the System or Services such that any reader of the Documentation can access, use and maintain all of the functionality of the System and Services without the need for further instruction.
	4. All Documentation and training materials supplied to the Government shall be the property of the Government.

Example

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 the Government. 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.

1. The Training Programme will be for developed and provided to the Government for:
	* 1. employees seeking to move up to the next level of management; and
		2. managers who need to lead employees though organisational change, budget cuts or other pressures.
2. The benefits of this Training Programme are as follows:
3. Gain a range of key management skills and put them into practice in the employees own role.
4. Build employee leadership capabilities – motivate and engage teams, manage relationships confidently.
5. Develop employee leadership and management skills using employees own knowledge, values and motivations.
6. Develop effective and confident first-line managers.
7. Develop better relationships and communication in teams.
8. Enhance managers’ experience with the tools to develop their own skills and abilities.
9. 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.

**APPENDIX 5**

**MAINTENANCE AND SUPPORT**

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

Charges for the Maintenance Services shall commence at 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.

**Maintenance Services**

The Maintenance Services shall be provided as set out below:

* 1. provide such maintenance services to ensure that the Government can continue to use the System as set out in any Service specification;
	2. make available to the Government any information, tools or software necessary to carry out first line fault diagnosis and resolution;
	3. provide a specified number of persons skilled and experienced in the design and use of the Services and the Government's use of the System to provide the maintenance services. These persons will be made available to the Government, at previously agreed charge rates to provide expert consultancy and advice, enhancement development services or training and onsite support as reasonably required by the Government. Such engagements shall be subject to further agreements;
	4. the parties shall agree the implementation and operation of any remote diagnostic tools, which you may make available from time to time;
	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];
	6. as soon as a defect which has a significant effect on the use of the System by the Government is reported by the Government 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.

Service levels for responding to reports of defects and fixing defects or faults will be provided as a separate document to this appendix.

All changes and corrections made by you shall be documented and revised Documentation shall be supplied to the Government.

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 the Government to provide on-site or other support for reinstallation and recovery of the System.

1. If a defect has no material impact on the use of the System by the Government, you and the Government shall agree a reasonable period within which the fault will be fixed and incorporated into a generally available version or release.
2. 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.
3. 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.
4. You shall be responsible at your own cost for the maintenance and support of any part of the Services which is supplied prior to acceptance and is required for use by the Government or you as part of the System.
5. You shall correct any fault which may be caused by the act or omission of the Government in not using the System in accordance with the Documentation and shall be entitled to charge the Government a reasonable charge at the rates set out in the Fee and payment schedule for such work.
6. If any part of the System is terminated due to your un-remedied default of the System or at your request, then you shall provide all Documentation of the System and internal maintenance instructions to allow the Government to maintain the System itself or to allow the Government to employ 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 cost and expense.

**For System specifically:**

1. You shall accept a request from the Government to recommence previously terminated maintenance and support services at a later date provided that the Government pays reasonable additional charges for the installation of current versions or releases of System which shall be compatible with the Government systems or software.
2. The Government 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 Services and meets the functional and performance requirements of the Government and the charge 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. The Government shall not unreasonably refuse to install such Versions of the System within a reasonable time where it is fully compatible with the System and meets the functional and performance requirements of the Government.
4. You shall continue to provide support on request for a Version of the System in use by the Government.
5. You shall keep up to date and, on request, provide an accurate plan for the release of Versions of the System.

**APPENDIX 6**

**HOSTING SERVICES TERMS AND CONDITIONS**

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 under development and will continue to host in your private and secure cloud until the Government and Supplier can agree on a hosting location.

Specific hosting services shall include but not be limited to:

1. Collocation for the Government server hardware;
2. integration testing of the server hardware and the Government software residing thereon and any Government supplied components as required;
3. installation and testing of the Software on the server hardware;
4. 7 day by 24 hour real-time surveillance and monitoring of the physical environment and Server Hardware;
5. 24 hour on-site security staff; video surveillance; biometric authentication;
6. All necessary power and HVAC, including redundancy;
7. firewall protection of Supplier website servers.
8. back-up of Government data daily or as required;
9. maximum use of mbps in bandwidth as required for hard disc storage space; and
10. providing Reports as required.

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 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 event of failure or intermittent fault or interruptions of your cloud or other environment.

1. Additionally, you shall provide technical and support services for the hosting services (“**Support Services**”) to Government on a 24-hour basis via telephone hotline support, however the Support Services 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 Services Fee | BMD$  |
| Professional service fee  | BMD$ \_\_\_\_\_ hourly rate |
| **Total**  | **BMD$** |

Security

1. 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.
2. 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.

Back-Up Data and Disaster Recovery

1. You shall back up the Site and Government’s data daily and retain those back-ups on or off, the Site.
2. In the event that Government’s data is lost from Government’s servers, you shall restore the back- up data to Government’s servers. Government may wish to mirror its data and/or its Site in another location.
3. 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.

Client Access

1. 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 Government with the ability to set a password for access to the Site.
2. Government’s connection will be secured by the firewall referred to in section 5 of this appendix or by a separate dedicated virtual private network solution.