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

THIS MASTER SERVICES SOFTWARE DEVELOPMENT, MAINTENANCE AND HOSTING AGREEMENT (“**Agreement**”) is made the ____ day of _____ 20__ (the “**Effective Date**”)

BY AND BETWEEN:

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

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

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

GENERAL TERMS AND CONDITIONS

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

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

1. Definitions

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

“**Acceptance**” means written confirmation by the Government that the System, together with all Equipment and a Service to be provided are accepted as being in accordance with the specifications set out in the Statement of Works attached hereto as **Appendix 3** and the Documents;

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

criteria set out in **Appendix 3**;

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

“**Appendix 1**” 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 Documents and which will integrate with other systems or software which the Government may already have or which is to be supplied by the Supplier as part of this Agreement;

“**Appendix 2**” contains the specifications and requirements for the System and Services;

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

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

“**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 patents, trade secrets, copyright, or other intellectual property right claims, claims connected to Equipment including infringement of Software, costs, penalties, fees and expenses (including legal and professional fees, charges or expenses);

“Commencement Date” means the date of the commencement of the use of the System following Acceptance as set out in Schedule 1;

“Completion Date” means the date of the completion of the development of the System prior to Acceptance as set out in Schedule 1;

“Confidential Information” means the terms of this Agreement as well as any information or Data disclosed to the Supplier 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 us 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 Supplier and us;

“Consents” means any qualifications, rights, permits, immigration approvals, licenses, authorizations or other consents required to provide the Services;

“Data” means logbooks, records or data files used or created pursuant to the Services (including electronic storage media, Software, Source Code, any data base and data base rights, personal or personally identifiable information relating to an identified or identifiable individual voice and data transmissions including the originating and destination numbers and internet

protocol addresses, date, time, duration), and other relevant data connected with the Services;

“Deliverables” shall mean the use of Equipment and Software and implementation of other services incorporating technical specifications in order for the Supplier to achieve the Objective and all Documents provided for the Services;

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

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

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

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

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

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

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

“in writing” shall mean any fax, letter or purchase order on the Government’s letterhead bearing the signature of an authorised person or an e-mail emanating from the personal e-mail address of an authorised person;

“Intellectual Property Rights” or “IP” shall mean all intellectual and other intangible property rights in information, including but not limited to, Confidential Information, Software, System and Documents regardless of whether copyrightable or patentable, and including all tangible embodiments thereof;

“Insurance Policies” means the amounts of not less than the minimum level of insurance required by law or a regulatory body or that is required for the System or Services as set out in



Schedule 1, covering the Supplier and the Supplier's officers, directors, employees, agents, or subcontractors and shall be on an "occurrence basis" unless otherwise stated in Schedule 1. "The Government of Bermuda" shall be endorsed as an additional insured on the required policy or policies and the insurances afforded to the Government of Bermuda shall be primary insurance;

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

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

"Loss" means all losses, Claims, damages, costs, fees, charges, Expenses, disbursements, costs of investigation, litigation, settlement, judgment and interest, lost revenue, loss of opportunity to make money, loss of contracts or for the inability to fulfill customer contracts, lost or damaged data or other commercial or economic loss, whether based in contract, tort (including negligence) or any other theory of liability or other loss not limited to those contemplated at the time of entering into this Agreement and whether such loss or liabilities are direct, indirect, incidental, special, consequential whether foreseen, foreseeable, unforeseen or unforeseeable;

"Objective" means the targets, results or goals to be achieved as specified in Schedule 1;

"PIPA" means the Personal Information Protection Act 2016;

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

"Representative" means, the person(s) providing the Services on your behalf and includes any person engaged by the Supplier;

"Service" means the provision of all services and Deliverables as set out in this Agreement and includes the use of any Equipment provided by the Supplier which is used to provide the Software or System;

"System" means the development of an integrated information system incorporating Software;

"Schedule 1" means the schedule which forms a

part of this Agreement and contains details regarding the parties, Services, Fee, Commencement Date, Completion Date, Insurance Policy and the Term;

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

"Software" means all Supplier provided software or third-party software, (including developed software, Licensed Software or configured software or any parts thereof) including any Documents, provided or licensed to the Government pursuant to this Agreement, including Source Code or computer programs in machine readable object code form and any subsequent updates, upgrades, releases, or enhancements;

"Source Code" means the source code of the Software to which it relates, in the language in which the Software was written, together with all Documents, all of a level sufficient to enable the Government's personnel to understand, develop and maintain that Software;

"Term" means the term of this Agreement as set out in Schedule 1;

"User" means a person who is to use the System or Services;

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

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

2. Provision of Service

2.1 You and the Representative agree to provide the System and perform the



Service in accordance with and subject to these General Terms and Conditions and the following in order to achieve the Objective:

- a) Schedule 1;
- b) Appendix 1, 2 and 3;
- c) Appendix 4 in the event that training is required;
- d) Appendix 5 in the event that maintenance support is required; and
- e) Appendix 6 in the event that hosting services are required; and

the Government agrees to pay the Fee for the System and Services.

- 2.2 In the event of inconsistency between Schedule 1, Appendix 1, Appendix 2 to 6 and these General Terms and Conditions, the order of precedence to resolve any such inconsistency shall be as follows: (i) Schedule 1; (ii) Appendix 1; (iii) Appendix 2; these General Terms and Conditions; and (iv) Appendix 3 to 6.
- 2.3 In the event that it is required and with our prior due diligence and written approval, you may appoint a Representative who shall have full authority to act and provide Services on your behalf. Details of the Representative shall be set out in Appendix 1.
- 2.4 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.
- 2.5 You may not subcontract or outsource your obligations under this Agreement beyond using the Representative, without our prior written consent and you shall ensure that the Representative co-operates with our employees to effectively carry out your obligations under this Agreement. You shall remain responsible for, and liable to pay, all subcontracted or outsourced persons.
- 2.6 We may request, by notice in writing to you, the replacement of the Representative, and agreement with such request shall not

be unreasonably withheld. You shall use your best endeavors to replace the Representative with another qualified individual employed by you, and such replacement shall be subject to approval by us.

- 2.7 Documents: You shall provide Documents as requested or by the date as agreed between the parties and we shall have the right to take possession of and use any completed or partially completed portions of Documents notwithstanding any provisions expressed or implied to the contrary.
- 2.8 You acknowledge that we will be:
 - a) relying on the Documents on the basis that they are accurate and complete in all material respects and are not misleading;
 - b) relying on your and the Representative's skills, expertise and experience concerning the provision of the Service; and
 - c) using your reports and any other advice and assistance provided under this Agreement.
- 2.9 Security Procedures: The Services shall be provided in such place and location as we may instruct to you.
- 2.10 If a Service is required to be provided on the Governments' premises or you use our IT systems, you and the Representative will conduct yourselves in a professional and safe manner and you and the Representative shall at all times comply with and be subject to Security Procedures.
- 2.11 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 of this Agreement for default.
- 2.12 We shall inform you of the Contact, i.e. whom you or the Representative shall be reporting to and who will accept the Services.
- 2.13 Service is provided on a **non-exclusive** basis to the Government.



3. Government Responsibilities

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

4. Additional Services

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

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

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

5. Fees, Invoicing and Payment

5.1 We shall compensate you the Fee for the Service, in arrears, during the Term. The Fee shall be set out in Schedule 1 and paid in BMD\$. The Fee has been calculated to take account of payroll tax and social insurance contributions that, as a non-employee, you are required to pay in full.

5.2 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.

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

- a) where there has been an overpayment to you for any reason;
- b) if you have not delivered a Service or any part of the Service, as required;
- c) where we have suffered loss by your failure to follow instructions or exercise due diligence;
- d) if you cause damage to our property, the value of replacement or repair of the damaged property;

e) if you leave or terminate this Agreement without giving the required notice, the value of the Fee for the notice period; and

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

5.4 You will only be paid the Fee for the hours that you provide a Service. For the avoidance of doubt, you will not be paid during any time that you do not provide a Service and you will not be paid for public holidays.

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

- a) Supplier name, invoice date and invoice number;
- b) Change Order number, if applicable;
- c) Details of Services performed;
- d) Time and Services rendered in hourly (or less than daily) increments with sufficient detail to determine appropriate expenditure of hourly efforts;
- e) Other supporting documentation (including copies of any invoices or receipts for reimbursable expenditures as provided for herein);
- f) Mailing address and the person to whom payment is to be sent or the banking institution and full account information for payment by wire transfer (unless such information has previously been provided to us); and
- g) Your telephone number, fax number and e-mail address.

5.6 We shall pay the Fee and/or undisputed invoices thirty (30) days in arrears. We may dispute an invoice within 30 days of receipt, however, we reserve 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, we reserve the right to recover such payments from you, at your cost (which shall include all legal and collection fees and expenses) or to set off any disputed amounts against unpaid invoices.

- 5.7 Your failure to submit a proper invoice in a timely manner may result in a delay in payment by us. You agree that we are not responsible, nor will it be liable to you or under law or equity for any interest or expenses that you may incur resulting from any delays in payment caused by your failure to comply with your obligations under this Agreement.

6. Expenses

- 6.1 You, or the Representative, are not allowed to incur Expenses associated with the provision of the Service without having received our prior written consent. You shall be liable for all Expenses not prior approved in writing.
- 6.2 If prior approved, all air travel shall be at economy class, unless otherwise agreed in writing.
- 6.3 While performing a Service in or from Bermuda, you or the Representative may require accommodation in connection with the provision of a Service. In the event that accommodation is required, we may assist you or the Representative in acquiring accommodation but we shall not be liable to pay for such accommodation. You shall be liable for all Expenses and utility fees (including water, telephone and other charges) incurred by residing or otherwise staying at a property of your own choosing. You agree to abide by the rules and regulations of the property owner and you shall indemnify us against any losses the property owner may suffer as a result of you, or the Representative, residing or staying at that property.
- 6.4 Except for the Fee and any approved Expenses, no other amounts are payable by us to you. We may set off any amounts owed by you to us against any Fees or Expenses.

- 6.5 We shall pay by direct transfer into your bank account. It is your responsibility to inform us of your current contact and bank details in order that we can contact and make payment to you.

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

7. Taxes

- 7.1 You shall be responsible to register with the appropriate department of the Government in order to pay for all taxes associated with the provision of a Service, including but not limited to payroll tax and social insurance contributions ("**Taxes**") and you consent to us deducting due or outstanding Taxes from the Fee on your behalf, at our option. Your Tax numbers shall be set out in Schedule 1.
- 7.2 In the event that we have not made deductions on your behalf, you shall provide us with proof of payment of amounts due such as any Taxes and all other receivables, prior to you receiving your final payment. In the event that you do not provide written proof, we shall have the right to deduct any outstanding amounts owed, including any Taxes, from final payment of the Fee.

8. Representations and Warranty

- 8.1 You represent and warrant that you and the Representative, will perform all activities relating to a Service:
- a) in accordance with Best Industry Practice and in a professional and lawful manner;
 - b) if applicable, using appropriately skilled and experienced Representative's whose identity, address and right to live and work in Bermuda and (to the maximum extent permissible) whose absence of relevant criminal records have been verified;
 - c) free from Viruses;
 - d) in strict accordance with the standards, specifications and timelines as set out



- in Schedule 1 and the appendices in order to achieve the Objectives; and
- e) in accordance with applicable law including PIPA, rules, regulations and guidelines or policies provided by us.
- 8.2 You represent and warrant that:
- a) you have the right to license, assign and transfer all intellectual property rights in a Service, Software and Documents to us;
- b) the Software, System and Services will be compatible with existing equipment and software on our systems and upon installation, the Software, System, Equipment and Services will meet all the Objectives and that when used, will perform substantially as described in the Documents and this Agreement;
- 8.3 You represent and warrant that this Agreement is executed by you or your duly authorised Representative and that you have obtained all required authorisations and capacity in order that you can fulfill your obligations.
- 8.4 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.
- 8.5 You shall procure the benefit of any warranties or guarantees in respect of goods and materials you supply to us and provide copies of such warranties or guarantees.
- 8.6 You confirm that all payments to us, including but not limited to, taxes and social insurance, are current. In the event that any payments are delinquent, we may deduct, in part or in full, any payments made to you under this Agreement.
- 8.7 You shall provide information or sign any other agreements necessary or as requested by us, in order that either you or us can fulfill each of our obligations under this Agreement.
- 8.8 You represent and warrant that the Software or Service to be provided pursuant to this Agreement does not and

will not infringe or misappropriate any patent, copyright, or any trade secret or other intellectual or proprietary right of a third party.

- 8.9 You acknowledge and warrant that you are fully satisfied as to the scope and nature of the Service and of your obligations under this Agreement and that you have the corporate power and authority to enter into, and perform your obligations under, the Agreement.

9. Remedies

- 9.1 If the Service does not conform to the warranty as set out in this Agreement, you shall, at your Expense, use best efforts to correct any such non-conformance or non-availability promptly, or provide the Government with an alternative means of accomplishing the desired performance. Without prejudice to any other rights available to the Government, you shall, at your Expense:
- a) repair or replace Equipment where the Equipment is damaged as a result of your, or the Representative's negligence, error, omission or willful misconduct in providing the Service.
- b) if the Documents are inaccurate or misleading or a Service is not performed in accordance with this Agreement, then the Government, in its sole discretion, may:
- i) require correct Documents;
- ii) require, in whole or in part, a Service to be re-performed during the Term or within six (6) months of the Completion Date;
- iii) carry out an assessment of the value of the defective Documents or Service and deduct that value from amounts that we are required to pay you; or
- iv) obtain service and related documents from another service provider and you will be required to pay all amounts payable by us in obtaining alternative documentation or service from another service provider to make good the defective Documents or Service.
- 9.2 Without prejudice to any other rights



available to it, we may, at your Expense:

- 9.3 repair, replace or otherwise fix the Service where the Equipment is damaged as a result of your, or any person providing services on your behalf, negligence, error, omission or willful misconduct; or

- 9.4 obtain Service from another service provider and terminate this Agreement.

10. Progress Report

- 10.1 If required, you shall submit progress reports in connection with the Service ("Reports") on at least a monthly basis, or as otherwise required, to the Government. The Reports shall include a summary of the activities and accomplishments during the previous reporting period.

- 10.2 The Report will also include YTD totals for payments received and work completed (expressed in BMD\$).

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

11. Inspection and Approval of Services

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

- 11.2 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 seven (7) days of notification or a later date if extended by us. In the event that you are required to implement changes with respect to your performance of a Service, such change shall be implemented within a reasonable time, as determined by us in consultation with you.

- 11.3 Your failure to proceed with reasonable

promptness to make necessary corrections shall be a default. If your corrected performance or written work product remains unacceptable, we may terminate this Agreement, reduce the Fee and/or reject the hours submitted in connection with such work to reflect the reduced value of Service received.

12. Time of the Essence

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

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

13. License

- 13.1 You grant to us a non-exclusive, unlimited and royalty-free license to use Software and Documents to enable us to use Equipment and a Service.

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

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

- 13.4 You shall maintain and keep current human and computer readable copies of the Source Code and you shall provide



copies of all Source Code to us.

- 13.5 In the event that we no longer wishes to pay an annual enhancement fee or an annual support and maintenance fee after the first year from the Go Live Date, then the Version of Software that the Government has will crystalize at that time with that application code and cap any further updates going forward. This will allow us the ability to use the System in perpetuity. If, however, in the future we wish to obtain support or upgrades then the current year's enhancement fee(s) and support and maintenance fee(s) will be payable in order to bring the version of the Software or Service, current.

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

- 14.1 Indemnity: You shall fully indemnify, hold harmless and defend the Government and its respective Public Officers, Ministers, agents and subcontractors, (collectively, for the purpose of this section "**Indemnified Party**") from and against any Loss arising from or incurred by reason of any Intellectual Property Rights by the use or possession of any part of the Deliverables provided by you or licensed by you under this Agreement subject to us:
- (a) notifying you in accordance with the notice provisions in this Agreement of any alleged infringement; and
 - (b) allowing you, at your Expense to conduct negotiations for settlement or litigation including defending the Claim, provided that if you shall fail to take over the conduct of negotiations or litigation then we may do so at your Expense, in which case you shall indemnify us against all Expense.
- 14.2 You shall indemnify the Government against all Loss whatsoever, during the period that we are deprived of the use of the System, Service or Deliverables or any portion thereof.
- 14.3 You shall defend, indemnify, hold and keep harmless the Government from all
- Loss hereunder; provided that the Government provides you with: (a) prompt notice of such Loss; (b) sole control over the defense and/or settlement of any Claims (provided that any settlement requiring any act or omission by the 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.
- 14.4 No Liability: In no event shall the Government or a Public Officer be liable to you for Loss.
- 14.5 Limitation of Liability: Without limiting the provisions of this Section, each party's maximum aggregate liability, for all Claims or Loss in connection with this Agreement or the performance thereof arising during its entire term shall be limited to the Fees paid to you under this Agreement for the six (6) months immediately preceding the date the on which the latest Claim(s) or Loss first arose or the coverage limits of any insurance policy that may be required to respond to a Claim or Loss, whichever is the greater.
- 14.6 Nothing in this Agreement shall exclude or limit any liability for wrongful use of Confidential Information, misrepresentation, fraud, willful misconduct or any liability which cannot be lawfully limited or excluded and you shall accordingly maintain in full force and effect during the Term, the Insurance Policies.
- 14.7 All Claims against the Government must be commenced in court within one (1) year after the cause of action has accrued or the act, omission or event occurred from which the Claim arises, whichever is earlier, without judicial extension of time, or said Claim is barred, time being of the essence.
- 14.8 Insurance: If required, you shall maintain Insurance Policies. 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 we require by shall entitle us to either obtain or maintain the Insurance Policies on your behalf at your sole cost and expense, or to terminate this Agreement without prejudice to any other of our rights or remedies in connection with this Agreement.
- 14.9 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.
- 14.10 In the event that you have not paid Insurance Policy premiums, upon signing this Agreement, you consent to us either deducting the Insurance Policy premium from the Fee, or otherwise making such Insurance Policy premium payment, on your behalf and recouping such payment from you, at our sole discretion.
- 14.11 At our sole option, all monies payable under the Insurance Policy shall be applied in making good or recouping expenditure, loss or damage suffered or incurred by the Government as a result of you or a Representative providing the Services.
- 14.12 You shall notify us forthwith of any changes to any of the policies, or of any claims or potential claims which have arisen to which the insurer(s) of the above policy or policies may be required to respond.
- 14.13 The policy clause "*Other Insurance*" or "*Excess Insurance*" shall not apply to any insurance coverage currently held by The Government of Bermuda, or to the Government of Bermuda's Self-Insured Retentions of whatever nature.
- 14.14 If you subcontract or outsource any Service, you shall ensure that each subcontractor maintains insurance coverage with policy limits of at least the amounts stated above.
- 14.15 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 we are willing to accept to help ensure full performance of all terms and conditions of this Agreement.
- 14.16 Waiver of Rights of Recovery. You hereby waive all rights of recovery against us which you may have or acquire because of deductible clauses in or inadequacy of limits of the Insurance Policy or any policies of insurance that are secured and maintained by you.
- 14.17 Force Majeure: Neither of the parties shall be liable for failure or delay to perform obligations under this Agreement to the extent that this delay is caused by flood, fire 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.
- 14.18 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 Services and upon request, provide such evidence to us.
- 14. Non-Solicitation**
- During the Term and for a period of twelve (12) months after expiration or termination of this Agreement, you shall not solicit (whether directly or indirectly) any employee or consultant of the Government who was involved in the performance or receipt of the Services, unless otherwise agreed to in writing by the Government.
- 15. Non-Disclosure of Confidential Information**
- 15.1 You must ensure that all Confidential Information held by you is protected against unauthorised access, use, copying or disclosure. You acknowledge that the improper use, copying or disclosure of



such information could be unlawful.

- 15.2 You will comply with our instructions if you have access to Data as a result of providing the Services.
- 15.3 You may disclose information related to this Agreement to your personnel on a 'need to know' basis as required for the performance of the Services. You will keep strictly confidential any other Confidential Information and you shall only use such Confidential Information as required for providing the Services (and no other purpose).
- 15.4 A breach or anticipated breach of the confidentiality provisions of this Agreement, will cause us irreparable harm and you agree that monetary damages alone may not be an adequate remedy and, accordingly, we 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.
- 15.5 If either you or the Representative fail to abide by the confidentiality provisions at any time, then such failure shall constitute a material breach of this Agreement and you shall pay us the equivalent of the Fee paid to you for a three (3) month period as liquidated damages, in addition to any attorney's fees and costs of enforcement. You and the Representative shall be jointly and severally liable to the Government under this section.

16. Ownership, Intellectual Property and Copyright

- 16.1 We shall own Deliverables provided in accordance with this Agreement.
- 16.2 Intellectual Property: You represent and warrant to us that you or the Representative have created the Documents for and on our behalf or you have obtained a written and valid Consent and assignment of all existing and future Intellectual Property Rights in the

Documents.

- 16.3 Documents created under this Agreement shall be original works created by you or the Representative and shall:
- a) not include Intellectual Property Rights owned by or licensed to a third party except for intellectual property which you have the right to use (including the right to use such intellectual property for the purposes of this Agreement); and
 - b) not subject us to any claim for infringement of any Intellectual Property Rights of a third party.
- 16.4 You shall do all things necessary to assign to us all Deliverables and their existing and future Intellectual Property Rights to the fullest extent permitted by law. Insofar as such rights do not so vest automatically by operation of law or under this Agreement, you shall hold legal title in such rights on trust for us.
- 16.5 You and the Representative agree that all Documents and other works created in full or in part by you or the Representative may be maintained, changed, modified and/or adapted by us without the consent of either you or the Representative. Notwithstanding the foregoing, you and us may agree in writing that certain identified and designated Intellectual Property Rights will remain with you.
- 16.6 Copyright: Copyright and other intellectual property rights in the Deliverables shall belong to us, and we may utilise Documents freely (including by adapting, publishing and licensing).
- 16.7 Deliverables shall not be used or copied for direct or indirect use by you or a Representative after expiry or termination of this Agreement without our express prior written consent.
- 16.8 We acknowledge that you and Representative possess knowledge and expertise relating to the subject matter of a Service ("**Supplier Know-How**"), which may include intellectual property rights in certain pre-existing tools and materials



used by you in performing a Service. Nothing in this Agreement is intended to transfer to us any rights in the Supplier Know-How, which shall remain your property.

- 16.9 To the extent that any Supplier Know-How is included in any Deliverables, you hereby grant to us a perpetual, unlimited, royalty-free, non-exclusive right and license to use and reproduce the Supplier Know-How to the extent reasonably necessary to achieve the Objective.

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

17. Term, Termination and Suspension

- 17.1 This Agreement shall be effective from the Effective Date for the Term. The Services shall commence on the Commencement Date and continue until the Completion Date, whereupon this Agreement shall expire unless terminated earlier in accordance with its terms.

- 17.2 You shall not commence any additional services in the event of notification of termination of this Agreement, however, in the event that services are provided to us beyond the Completion Date, the terms and conditions of this Agreement shall continue on a day-to-day basis terminable without cause upon 24 hours prior written notice by either party to the other.

- 17.3 Either party may terminate a Service or this Agreement, in part or in whole, during the Term upon prior written notice without cause in accordance with the termination notice period as set out in Schedule 1.

- 17.4 We may terminate this Agreement at any time based upon your default of your obligations under this Agreement. We, in sole sole discretion, may provide you with a notice to cure ("**Cure Notice**") the breach that would otherwise amount to a basis to terminate this Agreement as a result of your failure to fulfill your obligations hereunder. You shall respond to any such Cure Notice within a reasonable time or

within such time as provided therein, and you shall either cure the specified breach or provide assurances to cure the same which we, in our sole discretion, deem adequate.

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

- a) commits an irremediable breach;
- b) is subject to a change of control or chooses to discontinue its business;
- c) if the other party has a lack of funding or becomes or is deemed insolvent; or
- d) if the other party's performance is affected by a *force majeure* event which lasts seven (7) days or more.

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

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

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

- 17.9 We may temporarily suspend the Services hereunder and shall confirm such instruction in writing to you.

- 17.10 Upon any such suspension, we 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 six (6) months, this Agreement may be terminated by you, and we shall make a payment of all outstanding



Fees and Expenses in accordance with this Agreement if such amounts are due.

- 17.11 We may issue a written order to resume the provision of Services within six (6) months of suspension in accordance with the terms and conditions of this Agreement.
- 17.12 The rights arising under this termination section represent your sole remedy and excludes common law rights to terminate and claim damages for Loss you may suffer under this Agreement.

18. Data use and Transfer

- 18.1 Upon our request prior to or within sixty (60) days after the effective date of termination, you will make available to us a complete and secure (i.e. encrypted and appropriately authenticated) file of Data in a format to be agreed at the time including all schematics and transformation definitions and/or delimited text files with documented, detailed schematic definitions along with attachments in their native format.
- 18.2 You will be available throughout this transfer of Data period to answer questions about all elements of the Data transfer process so that we may fully access and utilize the transferred Data.
- 18.3 If required, you shall manage the transfer of all Data and technical assets to a service provider of our choice, at your Expense.
- 18.4 You shall guarantee that the Source Code shall be fully source controlled with a complete history of all changes. The Source Code shall adhere to professional standards in terms of quality and organisation where necessary to allow us to be able to access and use the Source Code.

19. General

- 19.1 Any notice or other communication required to be given under this Agreement shall be duly given or served if it is in writing (for the purposes of this section, a notice shall be deemed to be in writing if it is in the form of a printed or hand-written letter or other document, or in the form of an e-mail message), signed and delivered

by hand or sent by prepaid recorded post to the address of the party as first set out above (or such other address as is notified in writing to the other party from time to time); or sent by e-mail to the e-mail address of the party as provided by that party (or such other e-mail address as is notified in writing to the other party from time to time).

- 19.2 Where this Agreement refers to past or current obligations, this Agreement applies retrospectively from the Effective Date.
- 19.3 This Agreement together with any documents referred to in it supersedes, extinguishes and replaces all previous agreements, promises, assurances, warranties, representations and understandings, whether written or oral including whether in invoices, emails or otherwise between the parties relating to the Services and is the complete agreement between the parties.
- 19.4 Any amendments to this Agreement shall be made in writing and signed by each party.
- 19.5 You may not assign or transfer any rights or obligations under this Agreement (for example assigning or factoring invoices) without our prior written consent. Any such transfer by you in breach of this section shall be void and be an irremediable material breach of this Agreement. We may transfer our rights and obligations under this Agreement.
- 19.6 You will be an independent contractor and nothing in this Agreement shall render you an employee, worker, agent or partner of the Government and you shall not hold yourself out as such.
- 19.7 No one other than a party to this Agreement, their successors and permitted assigns, shall have any right to enforce any of its terms.
- 19.8 The doctrine of *Contra Proferentem* shall not be applicable in this Agreement.
- 19.9 Expiry or termination of this Agreement in any manner shall not release you or a Representative from any liability or



responsibility with respect to any representation or warranty. Sections related to indemnification, limitation of liability, non-disclosure of information and intellectual property shall survive termination of this Agreement.

- 19.10 Waiver of any breach of this Agreement must be in writing to be effective and shall not be a waiver of any subsequent breach, nor shall it be a waiver of the underlying obligation. 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.
- 19.11 You consent to us processing data relating to you for legal, administrative and management purposes. We may make such information available to those who provide services to it (such as advisers and payroll administrators), regulatory authorities and governmental or quasi-governmental organisations including those outside of Bermuda.

20. Governance

- 20.1 You will inform Government promptly of all known or anticipated material problems relevant to the delivery of Services.
- 20.2 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.
- 20.3 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.

21. Retention of Confidential Information, Records and Audit

- 21.1 You will retain any part of, or all, Confidential Information during the Term

and following expiry or termination of this Agreement until all appeals processes are complete in the event of any litigation in connection with the Services. We will have full access to and the right to examine any documents connected to the Services, at any time during this period. We must be notified, in writing, prior to any of the aforementioned documents being destroyed.

- 21.2 You shall retain all records pertinent to this Agreement for a period of three (3) years following expiration or termination hereof.
- 21.3 You shall establish and maintain books, records, and documents (including electronic storage media) in accordance with Canadian Generally Accepted Accounting Principles and practices which sufficiently and properly reflect all revenues and expenditures of funds provided by us, including all receipts, invoices, payroll records and/or other documentation used to substantiate requests for payment hereunder. At any time or times before final payment and for three (3) years thereafter, we may cause your records to be audited by a duly authorized Public Officer. Records required to resolve an audit shall be maintained for a period of not less than three (3) years following resolution of the audit or any arbitration or litigation arising hereunder.
- 21.4 We reserve the right to conduct periodic visits to your premises and/or audits after the commencement of this Agreement to ensure continued compliance.
- 21.5 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 and an overpayment is found, you shall reimburse us for such overpayment within thirty (30) days following receipt of written notification thereof.
- 21.6 Duly authorised 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.

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

22. Electronic Communication

We 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.

23. 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.

24. Dispute Resolution

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

shall be English.

- 24.2 The decision and award of the arbitrator shall be delivered within three (3) months of his or her appointment, unless otherwise agreed between the parties, and shall be final and binding on the Parties and enforceable in any court of competent jurisdiction. Nothing in this section prevents or in any way restricts either party from seeking specific performance, injunctive relief or any other form of equitable remedy. The parties shall continue to perform their respective obligations during the dispute resolution process set out in this section, unless and until this Agreement is terminated in accordance with its terms.
- 24.3 The costs of the arbitration, including administrative and arbitrators' fees, shall be shared equally by the parties and each party shall bear its own costs and attorneys' and witness' fees incurred in connection with the arbitration unless the arbitrator determines that it is equitable to allocate such costs and fees differently and so orders in rendering judgment.
- 24.4 In rendering judgment, the arbitrators may not provide for punitive or similar exemplary damages.
25. 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.

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

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



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

**SCHEDULE 1**

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

Objective: Government requires the Supplier to provide the System and Service which shall meet the Government's requirements as set out in this Agreement and satisfy the Acceptance Tests.

1. The Government

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

2. Supplier and Service specific conditions:

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



Insurance Coverage:	Minimum Coverage Amount
Professional Liability:	BMD\$2,000,000
Commercial General Liability:	BMD\$2,000,000
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

3. Services provided by the Supplier



APPENDIX 1

1. **Statement of Work**

Supplier shall create a Statement of Work (“SOW”) which will detail the development and installation of the System and Services. 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.

Example of what the SOW should include:

- (a) the matters set out in the Version of the Bermuda Government Data Management Application;
 - (b) a description of the specifics of the provision of the System or Services;
 - (c) a project plan for the development, implementation and delivery of the Services;
 - (d) proposed applicable Fees and/or proposed fees; and
 - (e) any other applicable terms.
- 1.1 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 us at the time required by us.
- 1.2 Upon delivery of the SOW to us, we shall, within fourteen (14) days following delivery of the SOW:
- (a) approve the SOW;
 - (b) reject the SOW, in which case the Agreement may be subject to termination; or
 - (c) request variations to and/or explanations of any aspect or aspects of the SOW.
- 1.3 If we make no request within the time specified under Section 3. of this appendix, then the SOW shall be deemed to be approved.
- 1.4 If we request variations to the SOW then, upon your reply, the same conditions shall apply as in Section 1.2(a) and 1.2(b) of this appendix with the addition that we may withdraw such requests for a change in the SOW.
- 1.5 The terms of the SOW shall be and are hereby imported as terms of this Agreement.
- 1.6 For the avoidance of doubt, time is of the essence for the Supplier when providing the deliverables under the SOW and any other deliverables in connection with this Agreement.
- 1.7 Acceptance of the Services shall be subject to Appendix 3 of this Agreement.



2. Representative

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

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

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



APPENDIX 2

SYSTEM SPECIFICATION REQUIREMENTS

1. **Specification**

You shall deliver the System and the Services in accordance with the Documents and with the requirements set out in the SOW in order to achieve the Objective.

If required by us, 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 Documents as required by us, as follows:

1.1 Systems Environment

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

1.2 User environment and any constraints

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

1.3 The functional requirements for the System

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

1.4 The performance requirements

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

1.5 Development Methodology requirements

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

1.6 Technical requirements

- (a) Avoid technical details which are not essential.
- (b) Interface specifications with other systems and equipment.
- (c) Technical standards with which compliance is required.



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

1.7 Maintainability

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

1.8 Documents

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

1.9 Training

A description of the training to be provided by the Supplier

2. Services for System Integration and Implementation

2.1 System Development

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

2.2 Delivery of the System

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

1.10 Delivery of Equipment and upgrades

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



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

3. Specification and Design services

- 3.1 You shall be responsible for the System and the Service described in the Agreement and shall deliver all Documents describing the deliverables accurately and in detail. Deliverables shall meet the requirements set out in the Agreement.
- 3.2 We will agree deliverables within an agreed period or notify you of any changes it requires and which you shall incorporate into revised deliverables for our agreement.
- 3.3 If not already set out in the SOW, you shall develop a detailed plan for the development, test integration and installation of the System to meet the specified requirements of the Government including an agreed date for completion of the Software and Services taking into account reasonable standards of productivity and an assessment of the likely risks.
- 3.4 You shall develop detailed technical and design specifications to comply with our specification and our stated requirements and agree these with us. You shall be responsible for ensuring the completeness and accuracy of the detailed design for the System and shall not be entitled to additional payment for any matter or fact relating to the requirement that could reasonably have been verified before entering into the Agreement or during the detailed design stage.
- 3.5 If the result of preparing a detailed plan and detailed specification result in changes to the provision of Service, these shall result in changes to the SOW and the Documents and these amended versions shall be included in this Agreement as appendices and shall replace or amend the current appendices describing the requirements for the software development plan and any specifications for the Service. Otherwise additional details to the plan and specification for the Service shall be included in the Agreement as appendices.

4 Requirements of a Project Plan

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

Example of Project Plan

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



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 us and deliver to us a master copy of the Software licensed hereunder in object code form, suitable for reproduction in accordance with this Agreement, in electronic files unless otherwise requested by us. All Government license keys, usernames, and passwords shall be authenticated by the Supplier and perform according to the SOW.

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

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

2. Acceptance Test

- 2.1 You and us shall carry out acceptance tests at regular intervals as required by us to confirm that each part of the System is provided and implemented in accordance with any of our required specifications and following such Acceptance Tests, we may accept the System or a Service prior to the Go Live Date.
- 2.2 The details of the tests and the responsibilities of both parties are set out in this appendix. In the event that the Acceptance Tests have not been agreed by the date set out in the Agreement then either we or you shall prepare Acceptance Test specifications and plans for agreement with the other party within ninety (90) days of the date set out in any SOW or System plan.
- 2.3 In the event of any dispute, our requirements shall prevail. Any changes to the Acceptance Test plan shall be subject to the Change Order procedure.
- 2.4 All plans, data and results produced for the purposes of the Acceptance Tests shall be made available for scrutiny by both parties and either party shall be entitled to be present at any tests and be given reasonable notice of the intention to carry out tests.
- 2.5 By the date in the plan we or you shall prepare the data for use in Acceptance Tests and a statement of the results with which the 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 our prior written approval.
- 2.6 You shall carry out unit and system tests on each part of the System as they are completed. Any faults identified shall be rectified prior to delivery of the System or a Service to us.
- 2.7 You shall carry out system and unit tests on the System and Services at specified stages as required by us prior to delivery to verify that the System is operating in accordance with specifications as set out in the Documents. Any faults identified shall be rectified prior to delivery of the System to us.
- 2.8 You shall carry out all Acceptance Tests on the System and a Service prior to delivery and after installation to ensure that it is working properly in accordance with the Documents.
- 2.9 You shall confirm, in writing to us, prior to, or at the time the System or a Service is delivered and installed, that you have carried out tests and that in your opinion, the System and a Service are in accordance with the specifications and Documents.
- 2.10 We shall carry out the Acceptance Tests to the dates or time scales set out in the plan after delivery of the System or a Service.



- 2.11 You shall provide all necessary assistance to us to perform the Acceptance Tests.
- 2.12 If the System, a Service or any part of them shall fail then a repeat of the Acceptance Tests shall be carried out in accordance with the provisions of this appendix.
- 2.13 You shall re-test all or parts of the System or a Service before delivering the corrected System or a Service to us for repeat Acceptance Tests.
3. **Final Acceptance Testing:** There shall be a testing period during which we shall determine whether the System or a Service: (i) properly functions on the Equipment and with any applicable operating software; (ii) provides the capabilities as stated in this Agreement and in the Documents; and (iii) to the extent stated, meets the acceptance criteria. In the event of a conflict between the acceptance criteria and the Documents, the Acceptance criteria shall prevail.
 - 3.1 The testing period shall commence on the first Business Day after you have informed us in writing that you have completed the System, a Service or Deliverables required to be performed prior to testing and that the System or a Service are ready for testing, and the testing period shall continue for a period of up to thirty (30) days.
 - 3.2 During the testing period, we may notify you in writing of any error or defect in the System so that you may make any required modifications or repairs. If you so elect in writing, testing will cease until you resubmit for final Acceptance testing, at which time the testing period shall be reset to that of a first submission for testing.
 - 3.3 We shall notify you in writing of your final Acceptance or rejection of the System or a Service, or any part thereof, within fifteen (15) days after the end of the testing period, or as same may be extended by us. If we reject the System, a Service or any part thereof, we shall provide notice identifying the criteria for final Acceptance that the System or a Service, failed to meet. Following such notice, you shall have thirty (30) days to (a) modify, repair, or replace the System, Services or any portion thereof, or (b) otherwise respond to our notice. If you modify, repair, or replace the System, a Service or any portion thereof, the testing period shall re-commence consistent with the procedures set forth above in this section.
 - 3.4 In the event you fail to remedy the reason(s) for our rejection of the System, a Service or any portion thereof, within thirty (30) days after our initial notice of rejection, we may elect, in writing, to either accept the System or a Service as it then exists or to reject the System or a Service and terminate the Agreement.
 - 3.5 If we elect to accept the System or a Service as it then exists (partial acceptance), you shall continue to use your best efforts to remedy the items identified in the applicable notice of rejection. If, despite such continuing best efforts, you fail to remedy the issue(s) identified by us within a reasonable time as determined by us, then we shall be entitled at our sole option, to a refund of the sums paid to you or to deduct from future sums due under the Agreement the value of the rejected portion of the System or a Service as mutually determined by the parties. If the parties cannot agree upon such value, we shall have the right to reject the System or a Service and to terminate the Agreement on the terms stated above in this paragraph.
 - 3.6 We shall have final say on: i) criteria for Acceptance Test; and ii) whether you have passed any phase of the Acceptance Test procedure, including Final Acceptance.
4. **ACCEPTANCE CERTIFICATE**
 - 4.1 When the System has been completed in accordance with the Agreement and has passed the Acceptance Tests, you shall be entitled to apply to us for the issue of an Acceptance certificate ("**Certificate**") and we shall issue the Certificate within seven (7) days of an application which you are entitled to make. Minor cosmetic errors or errors for which fixes can be delivered prior to operational use will not prevent the issue of the Certificate but all such errors shall be identified on the Certificate and corrected within the time periods specified in the Certificate



- 4.2 If the System or a Service shall fail to pass the Acceptance Tests and any repeat Acceptance Tests as provided for in this appendix then we shall be entitled by written notice to you to exercise at its sole option any of the following rights:
- a) To require you to carry out all or any of the Acceptance Tests at such rate as we shall require at your sole cost and otherwise on the same terms and conditions as the repeat tests. If the System shall pass such Acceptance Tests, then you may then apply for the issue of the Certificate. If the System fails all or any of such Acceptance Test then we shall have the further rights set out in this clause.
 - b) Accept the System or a Service subject to a reasonable abatement of the Fee to take account of the loss to the Government caused by the failure of the System or a Service or any part thereof to conform to the requirements specified in the Acceptance Tests. The amount of such loss shall be agreed between the parties or, in default of agreement within fourteen (14) days of the notice issued by us under this appendix, as shall be determined by an expert appointed under the Agreement.
 - c) Accept that part of the System or a Service, which has passed the Acceptance Tests, and reject that part of the System or a Service, which has failed the Acceptance Tests. You shall then be entitled to a partial Certificate in respect of that part which has been accepted. Such partial rejection shall not constitute termination of the Agreement but you shall be liable to us for such compensation for the part of the System or Service rejected as may be agreed by the parties within fourteen (14) days of the notice issued by us under this appendix, or in default of agreement, as shall be determined by the expert appointed under this Agreement.
 - d) Reject the System or a Service as not being in conformity with the Agreement and terminate the Agreement for default by you, in accordance with the terms of this Agreement.



APPENDIX 4

5. Training and Documents

- 5.1 You shall provide training to a sufficient number of our personnel to secure the satisfactory operation of the Software and to enable our personnel to be able to train other Users ("**Train the Trainer**").
- 5.2 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.
- 5.3 In addition to the Train the Trainer training above, the Documents will describe in detail and in a completely self-contained manner how the Users may access and use the System or Services such that any reader of the Documents can access, use and maintain all of the functionality of the System and Services without the need for further instruction.
- 5.4 All Documents and training materials supplied to us shall be the property of the Government.

Example

1. Develop and provide a training programme for ongoing use of the System ("**Training Programme**") that will result in the employees or other Users obtaining an applicable qualification provided by you as required by us. The qualification is to be made up of a wide range of units covering core management skills such as, understanding how to organise and delegate, plus skills in communication, team leadership, change, innovation and managing people and relationships. The Training Programme allows for flexibility in unit choice which in turn means that the qualification can be tailored to meet the needs of the employee and employer.
2. The Training Programme will be developed and provided to us for:
 - (i) employees seeking to move up to the next level of management; and
 - (ii) managers who need to lead employees through organisational change, budget cuts or other pressures.
3. The benefits of this Training Programme are as follows:
 - (i) Gain a range of key management skills and put them into practice in the employees own role.
 - (ii) Build employee leadership capabilities – motivate and engage teams, manage relationships confidently.
 - (iii) Develop employee leadership and management skills using employees own knowledge, values and motivations.
 - (iv) Develop effective and confident first-line managers.
 - (v) Develop better relationships and communication in teams.
 - (vi) Enhance managers' experience with the tools to develop their own skills and abilities.
4. 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

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

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

Maintenance Service

1. The Maintenance Service shall be provided as set out below:
 - 1.1 provide such maintenance service to ensure that we can continue to use the System as set out in any Service specifications;
 - 1.2 make available to us any information, tools or software necessary to carry out first line fault diagnosis and resolution of a problem;
 - 1.3 provide a specified number of persons skilled and experienced in the design and use of the Service and our use of the System to provide the maintenance service. These persons will be made available to us, at previously agreed charge rates to provide expert consultancy and advice, enhancement development service or training and onsite support as reasonably required by us. Such engagements shall be subject to further agreements;
 - 1.4 the parties shall agree the implementation and operation of any remote diagnostic tools, which you may make available from time to time;
 - 1.5 provide a telephone help desk or on-line service to receive and log calls for assistance and provide an initial fault diagnosis and resolution service. The fault diagnosis and resolution service shall be provided by sufficient competent people for 24 hours per day, 7 days per week [*or during working days between 0800 and 1800*];
 - 1.6 as soon as a defect which has a significant effect on the use of the System or Service is reported by us or you become aware of the defect, you shall promptly commence work on diagnosing the defect and providing a report detailing requirements and cost to fix the defect and continue to work diligently until a fix of the defect can be successfully implemented on any part of the System.
2. Service levels for responding to reports of defects and fixing defects or faults will be provided as a separate document to this Appendix.
3. All changes and corrections made by you shall be documented and revised Documents shall be supplied to us.
4. You shall be responsible for delivering corrected programs or instructions to correct the defect so that the System can be restored to operational use with least possible delay. You may be required by us to provide on-site or other support for reinstallation and recovery of the System.
5. If a defect has no material impact on the use of the System by us, you and us shall agree a reasonable period within which the fault will be fixed and incorporated into a generally available version or release.
6. All corrections made by you shall be free from Viruses and shall execute and/or operate without further defect or impact on other parts of the System.
7. Intellectual Property Rights in any correction, enhancement or modification, made to the System or any new tool or technique or know-how developed as a consequence of correcting a defect shall be the property of the Government except where the intellectual property is an inherent part of the System and is to be made available to other licensees of the System.



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

For System specifically:

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



APPENDIX 6

HOSTING SERVICES TERMS AND CONDITIONS

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

5. Security

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

6. Back-Up Data and Disaster Recovery

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

7. Client Access

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