

**PART 1 – SECTION B**  
**CONDITIONS OF CONTRACT**

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## **SCHEDULE**

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## 1. INTERPRETATION

1.1 In this Contract (as hereinafter defined), the following words and expressions shall have the meanings hereby assigned to them except where the context otherwise requires:

“**Account Manager**” means the person designated by the Supplier pursuant to **Clause 12.3**.

“**Additional Services**” means the additional services described under **Schedule 2**.

“**Adviser**” as referred to in **Clause 26** refers to the person or body appointed by the Government. Unless otherwise notified by the Government, the Adviser shall be the Info-Communications Development Authority constituted under the *Info-Communications Development Authority of Singapore Act 1999 (No. 41 of 1999)*, The Government may change the appointment of the Adviser from time to time.

“**Background Information**” means Technical Information which:

- (a) is pre-existing at the date of the Contract or Technical Information subsequently brought into existence other than as a result of the performance of the Contract; and
- (b) is embodied in, or attaches to, the System or parts thereof or is otherwise necessarily related to the functioning of the System or parts thereof.

“**Background IP**” means Intellectual Property which is created prior to or independently of this Contract that is related to the System or any part thereof.

“**Base Services**” means the Production Support Services as specified in **Schedule 2**.

“**Base Charge**” means the Yearly Maintenance Fees payable for the Base Services.

“**Calendar**” means the Gregorian Calendar.

“**Computer System**” or “**System**” means the computer system including Hardware, Software and Documentation as listed in **Schedule 1**. Notwithstanding the listed items in **Schedule 1**, System or Computer System shall also be deemed to include all program products, application software and utility programs necessary for the proper working of the computer systems in Singapore Customs. The list in **Schedule 1** may be amended as necessary from time to time by agreement between the Parties.

“**Contract**” includes the Invitation to Tender, Instructions to Tenderers, the Conditions of Contract, the Requirement Specifications, the Schedules, the Supplier's Tender, the Letter of Acceptance and any other documents agreed to by the Government in writing, amplifying or modifying the said tender and proposals.

“**Contract Period**” means the period stated in **Clause 32** as such may be extended pursuant to the provisions of this Contract.

“**Contract Price**” means the sum specified in the Supplier’s tender for the performance of Works and Services, namely the Yearly Maintenance Fees, under this Contract and where the sum tendered has been varied by written agreement of the Parties it shall refer to such varied sum.

“**Effective Date**” means the date the Contract comes into force as agreed by the Government and the Supplier.

“**Fair Market Value**” shall mean the fair market value in Singapore, or where such goods and/or services are not available in Singapore, in such other country(ies) where such goods and/or services are available, for the maintenance of the Hardware, Product or its equivalent, as the case may be. If the parties are unable to agree on the Fair Market Value, the Fair Market Value shall be determined by an independent public accountant or valuator approved by the Government, whose engagement cost shall be borne equally by the Government and the Supplier.

“**Foreground Information**” means Technical Information which results from or is otherwise created pursuant to or for the purpose of the performance of the Contract or a subcontract as the case may be.

“**Foreground IP**” means Intellectual Property which results from or is generated pursuant to or for the purpose of this Contract.

“**Government**” means Government of the Republic of Singapore as a whole including all its Ministries, government departments and Organs of State.

“**Hardware**” means all computer hardware, other peripherals and ancillary equipment together with all cabling within the System network. The major items of Hardware are set out in **Schedule 1**.

“**IP**” means intellectual property and shall include patents, copyright, industrial design and integrated circuit topography.

**“Invitation to Tender”** means the invitation to participate in the Tender and comprises all tender documents forwarded to the Tenderer inclusive of the Covering Letter, Form of Tender, Instructions to Tenderers, Conditions of Contract, Requirement Specifications, Evaluation Criteria and any other documents and forms enclosed.

**“Letter of Acceptance”** means the letter issued by the Government accepting the Supplier’s tender.

**“Life-Span of the System”** shall be the period of 5 years commencing from the agreed date of commencement with the Government

**“Location”** or **“Site”** shall mean the locations where the various parts of the System are installed as duly notified by the Government to the Supplier.

**“network bandwidth connectivity”** means the interconnecting of users, devices and computers in different locations for information exchange and access. It includes –

Layer 2 network bandwidth connectivity which is connectivity at the “data link” layer of the OSI model and TCP/IP models, and which minimally includes Ethernet frame transmission; and

Layer 3 network bandwidth connectivity which is connectivity at the “network layer” of the OSI model and to the “network/Internet layer” of the TCP/IP model, and which minimally includes IP packet transmission.

**“Next Generation National Broadband Network”** or **“Next Gen NBN”** means the nationwide all-fibre communications network to be designed, built and operated by OpenNet Pte Ltd (pursuant to the award made by the Info-Communications Development Authority on 26 September 2008 for the Next Gen NBN NetCo Request for Proposal) which has been replaced by its succeeding entity CityNet Infrastructure Management Pte Ltd (in its capacity as the Trustee-Manager of the NetLink Trust) (the “NetLink Trust”), and Nucleus Connect Pte Ltd (pursuant to the award made by the Info-Communications Development Authority on 3 April 2009 for the Next Gen NBN OpCo Request for Proposal).

**“Next Gen NBN Operators”** means the NetLink Trust and Nucleus Connect Pte Ltd.

**“Next Gen NBN Retail Service Providers”** means the entities which provide network

bandwidth connectivity over the Next Gen NBN to end-users at the retail service layer using the underlying bandwidth connectivity supplied by Nucleus Connect Pte Ltd and the underlying physical connectivity supplied by the NetLink Trust.

“**Operating Hours**” means the scheduled operating hours of the System which will be from TWENTY-FOUR (24) hours every day, including Sundays and Public Holidays but excluding scheduled downtime.

“**Party**” means either the Government or the Supplier and “**Parties**” means both the Government and the Supplier.

“**Person**” includes any individual, companies and association or body of person, whether corporate or unincorporated.

“**Representative**” means the person appointed by the Government pursuant to **Clause 12** and any persons appointed by the Representative to assist him or perform such duties or functions as may be delegated to him by the Representative.

“**Requirement Specifications**” means:

- (a) the specifications issued by the Government to the Supplier for the purpose of inviting the Supplier to submit its proposal(s) for the application maintenance and support for the computer systems in Singapore Customs as contained in Part 2; and
- (b) other amendments or specifications as may be mutually agreed in writing between the Parties.

“**Software**” means all software covered under **Schedule 1** and shall include system software, program products, application software, and utility programs proposed by the Supplier as being capable of meeting or exceeding the requirements in the Requirement Specifications.

“**Statutory Board**” means any body corporate established by or under written law from time to time to perform or discharge any public function.

“**Subcontractor**” means any person, firm or company furnishing goods and services, Intellectual Property Rights or Technical Information directly to the Supplier or indirectly to the Supplier through one or more persons, firms or companies.

“**Supplier**” means the person, firm or company whose Tender has been accepted by the

Government for this project. It includes the Supplier's duly appointed representatives, successors and permitted assignees and where the context so admits shall include the Supplier employees, agents and SubSuppliers.

**"Support Hours"** means hours from 8.00am to 6.00pm from Mondays to Fridays and 8.00am to 2.00pm on Saturdays, excluding Sundays and Public Holidays.

**"System Availability Level"** shall be determined according to the following formula:

**"System Availability Level"** =  $[\text{Operating Hours} - \text{System Downtime}] \times 100\% / [\text{Operating Hours}]$

**"System Downtime"** means the period of time during the Operating Hours of the System where the System is not operating in accordance with the Requirement Specifications except for occasions where the failure is due to factors for which the Government is responsible or which are not due to the Software, and shall not include the downtime after the Operating hours.

**"System Software"** or **"Product"** means the software proposed in the Supplier's Tender Offer as being capable of meeting or exceeding the requirements in the Requirement Specifications and which the Supplier is to supply under the Contract. The Product shall include all manuals, operating instructions, documentation, and related materials and media pertaining to the Product.

**"System Warranty Period"** means the period under which the System is under warranty as provided under the relevant contract between the Government and the supplier of the System.

**"Tender"** means the Tender Document duly completed and submitted by the Tenderer to the Government.

**"Tenderer"** means the person or persons, firm or company which submits a Tender.

**"Variable Charge"** means the fees payable for the usage of mandays for completed service request.

**"Work Order"** means the Work Order, in the form as described in **Part 2** to be executed for additional services.

**"Works and Services"** means all the works and services to be executed in accordance with this Contract and any applicable Work Order but not limited to the Base Services



and Additional Services.

- 1.2 Words importing the singular shall also include the plural and vice versa where the content requires.
- 1.3 The headings in this Contract are for convenience of reference only and shall not be deemed to be part of this Contract or be taken into consideration in the interpretation or construction of this Contract.
- 1.4 Unless otherwise provided, any reference to any statute or legislation shall be deemed a reference to such statute or legislation as amended from time to time and be deemed to include any subsidiary legislation made thereunder.
- 1.5 The Annexes and Schedules mentioned in and attached to this Contract shall form an integral part of this Contract.

## **2. CLAUSE REFERENCES**

- 2.1 All references herein to clauses, unless otherwise expressly stated, are references to clauses numbered in the Conditions of Contract and not to those in any other document forming part of the Contract. Where a clause number is quoted, then reference is being made to that clause bearing that clause number and to all the subclauses if any, under that same clause number (E.g. a reference to Clause 9 refers to Clause 9.1 to 9.12 inclusive of all their respective subclauses if any. A reference to Clause 9.11 refers to Clause 9.11.1 to 9.11.4 inclusive of all their respective subclause if any).
- 2.2 References to provisions in the other documents forming part of this Contract shall be identified by the number of the Paragraph (“Para”), Schedule (“Sch”) or Chapter (“Chp”) as the case may be followed by a description of the document referred to.
- 2.3 Where the provision number is stated without a description of any document then it refers to the provision so numbered in the document where the reference appears.

## **3. SERVICES TO BE PERFORMED**

- 3.1 The Supplier shall provide Application maintenance and support for the System

and any other application development software or tools listed in **Schedule 1**.

#### **4. SOFTWARE MAINTENANCE AND SUPPORT**

4.1 Software maintenance and support shall include the following:

- (a) installation, testing and the implementation of standard corrections, updates, supply and installation of new versions and new releases of the Software and updating of related documentation and materials;
- (b) investigation and correction of defects in the Software as reported by the Government including temporary corrections and bypass of the defects until such time as standard corrections and/or updates of the Software are available ("Remedial Support");
- (c) rendering advice on the performance tuning of all items of Software;
- (d) recovering lost data, restoration and repair of damaged data and the correction of erroneous data to the extent possible;
- (e) restoring the System to an operable state where System Downtime is attributable to Software defect or error;
- (f) rendering advice and guidance to the Government in the use of the System;
- (g) at the request of the Government to provide training for the personnel of the Government in the use of the System;
- (h) informing the Government of all future updates and new releases of the Software within one (1) calendar week of their release for general distribution and, when so requested by the Government, supplying and installing the relevant update and releases within four (4) calendar weeks of receipt of the Government's request; and
- (i) providing other software support services including technical advice and assistance as may be required by the Government from time to time.

#### **4.2 Remedial Support**

- 4.2.1 Remedial Support shall be provided during the Support Hours of the System.
- 4.2.2 On receipt of information from the Government of a defect or an error in the System, the Supplier shall immediately dispatch its personnel to the Site to arrive at the Site within two (2) hours of the time the information from the Government was received.
- 4.2.3 Time is of the essence in responding to calls for Remedial Support. The Supplier shall take all measures necessary to ensure that the response time stated in **Clause 4.2.2** of this Contract is complied with and shall, if requested by the Government, provide its personnel with pagers or any other equipment which the Government may require to ensure that the response time is always complied with.
- 4.2.4 The Supplier shall inform the Government of the contact persons and contact telephone numbers of its personnel to whom requests for Remedial Support shall be made. Any report of a defect in the System to any person nominated by the Supplier by name or to a person answering to a telephone number supplied by the Supplier pursuant to this Clause shall be deemed to be a request for Remedial Support contemplated by this Clause.
- 4.2.5 Where the Supplier is not able to remedy the defect or error or successfully implement a temporary correction or bypass within four (4) hours of the arrival at the Site, the Supplier shall, without any cost to the Government, engage the services of an independent expert, who may be an employee or agent of the developers of the particular defective software, to remedy the defect or error and/or effect a temporary correction or bypass. The independent expert shall arrive and commence work at the Site within one (1) days of the request for Remedial Support.

#### **4A. NETWORK BANDWIDTH CONNECTIVITY**

- 4A.1 Where the Supplier is providing any network bandwidth connectivity required under the Contract, the Supplier shall provide such connectivity using the Next Gen NBN by procuring it directly from the Next Gen NBN Operators or from Next Gen NBN Retail Service Providers.
- 4A.2 When submitting its invoices or such other documents as may be required for the purposes of payment, the Supplier shall set out the charges assigned to the

provision of network bandwidth connectivity as a separate cost item under the description “Network Bandwidth Connectivity Charges”. Upon any request made at any time by the Representative, the Supplier shall provide such further information regarding the charges for network bandwidth connectivity as may be specified in the request within five (5) working days from the date of the request.

- 4A.3 The Supplier shall ensure that his assignees, sub-Suppliers or agents who are or may be involved in the performance of the Contract comply with 4A.1.

## **5. EMERGENCY SERVICES**

- 5.1 Emergency Services are Remedial Support for the Application Software provided by the Supplier upon receipt of notification from the Government outside the Support Hours of the System that the Application Software is defective or is malfunctioning.
- 5.2 The Supplier shall provide Emergency Services under this Clause for the Application Software upon request by the Government and **Clause 4** of this Contract shall apply to Emergency Services in the same manner as they apply to Application Software Support.
- 5.3 Notwithstanding anything herein contained the Government and the Supplier shall mutually agree on the scale of charges for Emergency Services under this Clause and in the absence of such agreement, the Government shall pay the Supplier for Emergency Services in accordance with the Supplier's then current charges for such services rendered at Fair Market Value.

## **6. ADDITIONAL ITEMS**

- 6.1 The Government may, with the written consent of the Supplier, include other items of software and/or hardware, whether or not these are included in the System, within the purview of this Contract and all terms and conditions set out therein shall apply to these additional items.

## **7. PAYMENT**

- 7.1 The Government shall pay the Supplier the contract price in the manner as specified in **Schedule 2**. The charges quoted shall be exclusive of GST on the Works and Services to be supplied by the Supplier. The Government shall reimburse the Supplier any GST chargeable on the services.
- 7.2 All charges payable under this Contract shall commence as from the same date. Where any additional item is included within the purview of this Contract after the commencement or renewal thereof, the agreement and charges payable in respect of those items shall be pro-rated on a daily basis on the basis of a 365 day year so as to be renewable as from the same date as the other Software items.
- 7.3 The Supplier shall invoice the Government on a monthly basis in accordance with such means and in such format as may be specified by the Government and the Government shall pay the amounts due within thirty (30) days of receipt of each invoice. All invoices shall be drawn and all payments shall be made in Singapore Dollars. The invoices shall also specify any GST payable by the Government.
- 7.4 Upon renewal of the agreement, the Supplier shall be entitled to increase the charges set out in **Schedule 2** in respect of items which have been covered by this agreement after 3 years of maintenance.

Provided:

- (a) The Supplier has given the Government at least ninety (90) days prior notice in writing of the intended revision; and
  - (b) Any increase proposed by the Supplier shall not exceed five per cent (5%) of the then applicable charges.
- 7.5 Where and whenever a notice of intended revision of charges under **Clause 7.4** of this Contract is received by the Government, the Government may terminate the whole of this Contract or may withdraw any item from coverage under this Contract by giving the Supplier at least thirty (30) days notice in writing of the same to take effect as from the date on which the Supplier's written notice of intended revision expires.

## **8. WARRANTY AND DEFAULT**

- 8.1 The Supplier warrants as follows:

- (a) That all his personnel and those of his Sub Contractor or agents are suitably qualified and competent to carry out the tasks required of him under this Contract;
- (b) That he shall carry out his obligations in conformity with the general accepted standards of skill, care and diligence appropriate to the nature of the service rendered;
- (c) That any equipment or material used by him, including debugging software, firmware or hardware, shall not interfere with the normal operation of the System during its Operating Hours;
- (d) That during the period covered by this Contract, the System Availability Level shall not be less than ninety-nine point five per cent (99.5%) for each calendar month or part thereof; and
- (e) That in the event he fails to conform to the terms of this Contract and in particular the warranties given under this Clause, he shall, without request, take immediate action to remedy the same without any cost to the Government.

8.2 Where the Supplier fails or refuses to carry out his obligations under this Contract and, in particular, the warranties set out above, the Government may itself employ and pay another party to undertake the performance thereof and may charge the Supplier for any expense, cost, damage or loss which the Government sustained on account of the Supplier's default. The Supplier shall not be relieved of his obligations under this Contract by the failure of the Government to make any inspection or discover any defective work or any aspect of the Supplier's default.

## **9. SUPPLIER'S RESPONSIBILITIES**

9.1 The Supplier shall maintain a log of all his activities at the Site pursuant to this Contract. The Supplier shall propose a format for the log and recommend procedures for its usage. The log will include but not be limited to the following:

- (a) date and time the Supplier is notified of any defect for malfunction;
- (b) date and time of arrival of the Supplier's personnel at the Site;

- (c) item or part of the Software subject to investigation;
  - (d) total time the System or part thereof is made unavailable to the Government;
  - (e) description of defect(s), including cause(s);
  - (f) corrective action taken, including temporary corrections, bypasses, etc.;
  - (g) preventive action to be taken; and
  - (h) tests performed and results.
- 9.2 Following every visit to the Site by the Supplier's personnel, the Supplier shall at its own expense within a reasonable period of time, clear away and remove from the Site all surplus materials, rubbish and work of every kind and leave the whole of the Site clean and in workmanlike condition.
- 9.3 Where the Supplier is unable to rectify any defect or malfunction within twenty-four (24) hours from the time the Supplier is notified of the same, the Supplier shall immediately notify the Government giving pertinent details including the time by which it expects to complete the rectification. The notice shall be for information only and it shall not by itself result in a waiver by the Government of any rights or remedies the Government is entitled to under this Contract.
- 9.4 The Supplier shall continue with its efforts to correct or rectify any defect or malfunction in the Software reported to it until such time as the defect or malfunction is corrected or restored such as to enable the System to operate in the manner contemplated in the Requirement Specifications, unless the Supplier is able to satisfy the Government that the defect or malfunction is due to a factor for which the Government is responsible.
- 9.5 The Supplier shall, even where a defect or malfunction in the System is due to a factor for which the Government is responsible, assist the Government to correct and/or rectify the defect or malfunction on the agreement of the Government to pay the Supplier his charges on the same basis as charges for Emergency Services.
- 9.6 Any software or equipment of any kind used by the Supplier to carry out his obligations shall be deemed to be included in the charges payable for such

services and shall not interfere with the normal operations of the System. Any debugging tools incorporated into the System shall become the property of the Government.

- 9.7 The Supplier shall ensure that the functions and performance standards as set out in **Part 2** of the Contract are provided and met including, whenever applicable, clarifications issued by the Government regarding its requirements. If modifications or changes are necessary to meet the provisions of the Contract, the Supplier shall bear any additional cost involved in modifying or changing their services to achieve this.
- 9.8 The Supplier shall be deemed to be fully informed of the Government's requirements and it shall be the Supplier's duty to clarify any inadequacies or insufficiencies with regard to the objectives of the Contract.
- 9.9 In the event that the Works and Services do not fully meet the terms of the Contract, the Supplier shall at its own expense, provide all the additional resources necessary to ensure compliance therewith and fulfil the requirements of the Government.
- 9.10 The Supplier shall deliver to the Representative written monthly progress and status reports in a format approved by the Representative. The submission and acceptance of these reports shall not in any way prejudice the rights of the Government to make any claims against the Supplier.
- 9.10.1 The Supplier shall notify the Representative of any expected delay in the performance of this Contract. The Supplier shall refer immediately to the Representative any matter likely to impede the progress of the Works and Services under this Contract.
- 9.10.2 The Representative may call progress meetings at regular monthly intervals during which the Account Manager shall attend and report to the Representative on the progress of the Works and Services under this Contract. The progress meetings shall be held at venues chosen by the Representative.
- 9.11 The Supplier shall provide all necessary personnel with adequate skills for the performance of the Works and Services.
- 9.11.1 The Supplier shall communicate in writing for the approval of the Representative the names and particulars of his employees and the employees of any sub-Supplier engaged by the Supplier to carry out any work or perform any services for the purposes of the Contract.



9.11.2 The Supplier shall provide the name and particulars required under **Clause 9.11.1** in the form required by the Representative.

9.11.3 If the Government objects by notice in writing to any personnel assigned or designated by the Supplier or by any sub-Supplier to carry out any work or perform services for the purposes of the Contract who, in the opinion of the Government, has misconducted himself or is a security risk or is deemed unsuitable in any way, the Supplier shall remove such person immediately and furnish a suitable and adequate replacement at no additional expense to the Government. In the event that the Government had other reasons to believe that any personnel employed by the Supplier, or its sub-Suppliers or agents are unsatisfactory in any way, the Supplier and the Government shall meet immediately in order to reach a mutually acceptable solution.

9.11.4 The Supplier undertakes not to change its personnel designated under **Clause 9.11.1** without the Representative's consent, whose consent shall not be unreasonably withheld. The Supplier shall not alter or reduce the quality of its personnel if this may adversely affect the progress or quality of the Works.

9.12 The Supplier shall not, without prior written permission from the Representative, bring any visitor to the Site.

9.13 The Supplier shall fully comply with any written instructions on information security matters (including IT Security Best Practices) that may be issued by the Government.

## **10. GOVERNMENT'S RESPONSIBILITIES**

10.1 The Government shall:-

- (a) ensure that proper environmental conditions are maintained for the System and shall maintain in good condition the accommodation of the Hardware, the cables and fitting associated therewith and the electricity supply thereto;
- (b) provide the Supplier reasonable access to the System to enable the Supplier to carry out his obligations provided that such access shall not interfere with the normal operations of the Government and shall provide the Supplier promptly with any information which the Supplier may

reasonably require from time to time to enable the Supplier to proceed expeditiously with the performance of his obligations under this Contract;

- (c) The Government shall make every reasonable effort to provide space and requisite facilities necessary for the performance of Works and Services for such number of staff as stipulated in **Part 2**;
- (d) not make any modification to the System without the Supplier's prior written consent except for;
  - (i) modifications made in accordance with or pursuant to documentation provided by the Supplier;
  - (ii) modifications to the System to enable it to meet the Requirement Specifications or such additional requirements as may be agreed between the Government and the Supplier;
  - (iii) configuration of the System;
  - (iv) installation of approved software into the System; or
  - (v) installation of software or types of software which the System is intended to work with.
- (e) operate the System in a prudent manner in accordance with the Standard Instructions of the manufacturers of the System or the advice of the Supplier;
- (f) not attempt to adjust, repair or maintain the System nor request, permit or authorise any person other than the Supplier or persons approved by the Supplier to carry out adjustments, repair or maintenance to the System; and
- (g) promptly notify the Supplier if the Software or Hardware or the System as a whole requires maintenance or is not operating correctly.

10.2 The Government shall use only current release of the Software that is available and shall not alter, modify or copy the Software except with the permission of the Supplier.

## 11. SECURITY DEPOSIT

11.1 Within thirty (30) calendar days commencing from the date of issue of the Letter of Acceptance, the Supplier shall lodge with the Government, a Security Deposit of 2.5 per cent (2.5%) of the Contract Price for the due, faithful and complete

performance of this Contract and the observance by the Supplier of all stipulations, terms, conditions and obligations on its part to be observed or performed.

- 11.2 The Security Deposit shall either be in the form of cash or, in lieu of cash, an unconditional Banker's Guarantee or Insurance Bond (as prescribed in **Schedule 4**) from a bank or insurance company established in the Republic of Singapore and duly approved by the Government. In lieu of cash, if the Security Deposit does not exceed S\$300,000, it may also take the form of a performance bond issued by a licensed finance company registered with the Monetary Authority of Singapore. The cost of obtaining such a Banker's Guarantee, Insurance Bond or Performance Bond shall be borne by the Supplier.
- 11.3 In the event that this Contract is extended beyond the expiry date of the Banker's Guarantee, Insurance Bond or Performance Bond, the Supplier shall without demand, secure a renewal thereof or obtain a new Banker's Guarantee, Insurance Bond or Performance Bond for the same amount and on the same terms as the expiring Banker's Guarantee, Insurance Bond or Performance Bond and deposit the same with the Government. If such renewal or new Banker's Guarantee, Insurance Bond or Performance Bond is not deposited with the Government thirty (30) calendar days before the expiry date of the expiring Banker's Guarantee, Insurance Bond or Performance Bond, the Government shall have the right to call upon the bank, insurance company or finance company to pay the sum stated therein.
- 11.4 In the event of any default or breach of any of the obligations by the Supplier under this Contract, the Government may draw on the Security Deposit to satisfy any liquidated or other damages as may become due to the Government under this Contract if the Government has, prior to drawing on the Security Deposit, notified the Supplier in writing of the default or breach and given the Supplier a minimum of thirty (30) days to rectify or remedy the default or breach or (if the default or breach cannot be fully rectified or remedied) to pay damages to the amount specified in the notice and the Supplier has failed to comply fully with the notice.
- 11.5 The Government may also utilize and make payment out of deductions from the Security Deposit in such other manners and for such other purposes, expressly allowed by the Contract.
- 11.6 The Government shall be entitled to make a demand on the Banker's Guarantee, Insurance Bond or Performance Bond as soon as it is satisfied that the conditions

for drawing on the Security Deposit has been fulfilled, notwithstanding that the Supplier disputes the same.

- 11.7 The Government's rights under this **Clause 11** shall be without prejudice to any other rights and remedies available to the Government.

## **12. PROJECT MANAGEMENT**

### **12.1 The Government's Representative**

The Government shall appoint a person to supervise and liaise with the Supplier for the purpose of the Contract and such person may designate others to assist him in such matters.

### **12.2 Project Office**

The Supplier shall at its own expense establish a Project Office in Singapore to coordinate the performance of this Contract.

### **12.3 Account Manager and Other Personnel**

- 12.3.1 The Supplier shall designate an Account Manager and the Account Manager shall be primarily responsible for directing and coordinating all work and services which are to be executed or provided by the Supplier under the Contract and all other matters including contract administration, monitoring of progress, installation and testing of equipment, technical personnel training, logistic support, documentation preparation and operation start-up. The Account Manager shall be deemed to be the Supplier's agent in all dealings with the Government and all actions of the Account Manager shall be binding on the Supplier.

- 12.3.2 The Representative shall have direct access to the Account Manager at all times during the performance of this Contract and if the Account Manager is absent from Singapore for any duration, the Supplier shall designate another employee to perform his duties and functions.

## **13. CONFIDENTIALITY**

- 13.1 The Supplier must keep confidential and undertakes not to divulge or

communicate to any person, firm or company any such information howsoever acquired in connection with this Contract without first having obtained the written consent of the Representative. Such information must not be used for any purpose other than for the performance of the Supplier's obligations under this Contract.

- 13.2 The Supplier shall not transfer information acquired in connection with this Contract outside Singapore, or allow parties outside Singapore to have access to it, without first having obtained the written consent of the Government.
- 13.3 The Supplier shall immediately notify the Government when it becomes aware that a disclosure of any information acquired in connection with this Contract may be required by law.
- 13.4 The Supplier shall take all reasonable precautions in dealing with any information, documents and papers passed by the Government to the Supplier so as to prevent any unauthorised person from having access to such information, documents or papers. For the purpose of this Clause 13, all information is to be treated as confidential except such as is or has become public knowledge otherwise than through breach of agreement or other legal obligation of, or through the default or negligence of, the Supplier, his employees, Subcontractor or agents.
- 13.5 The Supplier shall procure and ensure all his employees and agents and those of his Subcontractor or agents who are or may be involved in the execution of obligations under this Contract observes the provisions of this Clause 13 and shall, at any time, if so required by the Government, procure and ensure that such employees and agents and those of his Subcontractor or agents sign an Undertaking to Safeguard Official Information in the form prescribed in Part 1, Section B, Schedule 5.
- 13.6 The Supplier shall immediately notify the Representative where the Supplier becomes aware of any breach of Clauses 13.1 to 13.5 by his employees and agents and those of his Subcontractor or agents who are or may be involved in the execution of obligations under this Contract.
- 13.7 Termination or expiry of this Contract for whatever cause shall not put an end to the obligation of confidentiality imposed on the Supplier, its employees, agents and those of this Subcontractor or agents under this Clause 13.

**13A. DATA SECURITY AND PROTECTION**

- 13A.1 The Supplier shall take all reasonable measures to ensure that personal data held in connection with the Contract is protected against loss, and against unauthorised access, use, modification, disclosure or other misuse.
- 13A.2 The Supplier shall in respect of any personal data held in connection with the Maintenance Contract cooperate with any reasonable requests, directions or guidelines of the Government arising in connection with the handling of personal data.

**14. PATENT AND COPYRIGHT INDEMNIFICATION**

- 14.1 The Supplier shall indemnify the Government against any action, claim, damages, charges and costs arising from or incurred by reason of any infringement or alleged infringement of use of patents, design, copyright or other statutory or common law rights in performing his obligations under this Contract.
- 14.2 The Government shall give the Supplier prompt notice in writing of any such claim.
- 14.3 Without prejudice to the Government's right to defend a claim alleging such infringement, the Supplier shall if requested by the Government, but at the Supplier's expense, defend such claim. The Supplier shall observe the Government's directions relating to the defence or negotiation for settlement of the claim.
- 14.4 The Government shall if requested but at the Supplier's expense provide the Supplier with reasonable assistance in conducting the defence of such claim.
- 14.5 If any of the said items is in any such suit held to infringe intellectual property rights and its use is enjoined, the Supplier shall, if requested by the Government, at the Supplier's own expense:
- (a) procure for the Government the right to continue using the same; failing which,
  - (b) replace or modify the same so as to avoid the infringement; failing which,
  - (c) pay the Government for such infringing items, a sum equivalent to the purchase price of functionally equivalent items upon the return of the infringing items to the Supplier;

PROVIDED ALWAYS that such actions as aforesaid shall not prejudice or affect any right of action or remedy of the Government against the Supplier.

- 14.6 In the event of any actions being contemplated or instituted for an alleged infringement of patents, design, copyright or other statutory or common law rights, the Government reserves the right to terminate this Contract and shall not be liable to compensate the Supplier as a result of such termination. Any such termination shall not prejudice all or any of the Government's rights as contained in this Contract or otherwise.
- 14.7 All royalties and fees claimable by or payable to any person, firm, corporation or government for or in connection with any copyright, invention, patent or software used or required to be used in respect of the System or any part thereof in the performance of the Contract or supplied under the Contract shall be deemed to be included in the prices of the System or part hereof.
- 14.8 The obligations in **Clause 14.1 to Clause 14.6** above do not cover claims of infringement which arises by reason only of:
- (a) any modification of the System or any use of a software other than in its specified operating environment; or
  - (b) the combination, operation or use of the System with any product not supplied by the Supplier.

## **15. DAMAGE AND INJURY TO PERSONS AND PROPERTY**

15.1 The Supplier shall:

- (a) be responsible for and make due compensation for any injury (including injury resulting in death, personal injury or disease or physical damage) occasioned to any person whomsoever, and
- (b) be responsible for and reinstate and make good to the satisfaction of the Government or make due compensation for any injury or damage or any property or right of the Government, being injury or damage arising out of the execution of this agreement.

Provided always that the Supplier shall not be under any such liability if he is

able to show that such injury or damage was neither caused nor contributed to by its negligence, omission or default, or breach of statutory duty or that of its agents or sub-Suppliers, their agents, nor by any circumstances within its or their control, and if it shows that the neglect or default of any other person (not being his agent or sub-Supplier, their agents) was in part responsible for any personal injury or loss of property to which this clause applies, the Supplier's liability under this clause shall not extend to the share in the responsibility attributed to the neglect or default of the person.

## **16. FORCE MAJEURE**

- 16.1 Neither Party shall be liable for any failure to perform his obligations under this Contract if the failure results from events which are beyond the reasonable control of either Party. Provided always that whenever possible the affected Party will resume that obligation as soon as the factor or event occasioning the failure ceases or abates. For purposes of this agreement, such acts shall include acts of God, civil or military authority, civil disturbances, wars, strikes, fires or other catastrophes.
- 16.2 If any force majeure event shall continue for a period exceeding three (3) calendar months the Government may at any time thereafter upon giving notice to the Supplier elect to terminate this Contract.
- 16.3 In any of the events mentioned aforesaid the Supplier or the Government shall for the duration of such event be relieved of any obligation under this agreement including the payment of the charges for services as is affected by the event except that the provisions of this agreement shall remain in force with regard to all other obligations under this agreement which are not affected by the event. Any monies or fees paid in advance by the Government for the period and the services so affected shall be pro-rated and refunded to the Government.
- 16.4 Where the Government elects to terminate this agreement under this clause, the Supplier shall forthwith refund to the Government all amounts paid to the Supplier less the price of goods and services which have been provided to the Government.

## **17. VARIATION OF CONTRACT**

- 17.1 Parties agree that any variation to the Contract shall be in writing and signed by



both parties.

- 17.2 The Government may, at any time during the Contract, require the Supplier to undertake any reasonable alteration or addition to or omission from the Works and Services or any part thereof.
- 17.3 In the event of such a variation being requested, the Government shall formally request the Supplier to state in writing the effect such variation will have on the Contract Price and to the works schedule. The Supplier shall furnish such details within fourteen (14) days of receipt of the Government's request or such other period as may be agreed. The Supplier shall not vary the Works and Services in any respect unless instructed in writing to do so by the Government.
- 17.4 A variation under this **Clause 17** shall not invalidate the Contract but if such variation involves an increase in the cost to the Supplier of carrying out the Works and Services, an appropriate adjustment to the Contract Price shall be made.
- 17.5 The Supplier shall satisfy the Government as to the reasonableness of changes to the applicable schedule and of the extra costs or savings resulting from the variations.
- 17.6 Upon the Government being satisfied regarding the reasonableness of any extensions to the applicable schedule by the variation, the Government shall grant such extension time, and inform the Supplier accordingly in writing.

## **18. CONDITIONS NOT TO BE WAIVED**

- 18.1 No waiver of any breach of the Contract shall be deemed to be waiver of any other or of any subsequent breach. In no event shall any delay, failure or omission on the part of either of the parties in enforcing or exercising any right, power, privilege, claim or remedy, which is conferred by this Contract, at law or in equity, or arises from any breach by any of the other Parties of this Contract, be deemed to be or be construed as, (i) a waiver thereof, or of any other such right, power, privilege, claim or remedy, in respect of the particular circumstances in question, or (ii) operate so as to bar the enforcement or exercise thereof, or of any other such right, power, privilege, claim or remedy, in any other instance at any time or times thereafter.

## 19. DURATION AND TERMINATION

19.1 The Contract shall come into effect on the date of commencement specified in the Letter of Acceptance and shall continue for a period of one (1) year. The Government shall be given the options to renew yearly at a time until the expiry of the Life-Span of the System or such time as it is terminated under the provisions of this Clause, whichever is earlier.

19.1.1 The Government may terminate this agreement by giving at least one(1) month's notice in writing to the Supplier without providing any reason. Upon receipt of such written notice, the Supplier shall cease or reduce his work according to the tenor of the notice, and shall forthwith take reasonable steps to mitigate its losses consequent thereto. The Government shall pay to the Supplier the compensation as determined in accordance with Clauses 19.1.1B to 19.1.1D below ("Termination Compensation"). The Termination Compensation shall be in full and final settlement of all liabilities of the Government arising out of any termination of this Contract by the Government pursuant to this Clause 19.1.1.

19.1.1A Upon receipt of a written notice pursuant to Clause 19.1.1, the Supplier may, subject to Clauses 19.1.1B to 19.1.1D, submit a claim to the Government for compensation.

19.1.1B The Supplier shall set out its claim in a report on an itemised basis and the report shall contain such information that the Government may reasonably require. The compensation:

- (a) shall not exceed the total of the following two components:
  - (i) the reasonable direct costs which the Supplier has reasonably incurred in respect of the terminated portions of the Contract;
  - (ii) any other reasonable costs reasonably incurred by the Supplier in respect of the terminated portions of the Contract; and
- (b) shall, in any event, not be greater than a sum which, in addition to any sums paid or due or becoming due to the Supplier under the Contract, would together exceed the price provided under the Contract for the terminated portion of the Contract.

19.1.1C The Parties shall make all reasonable efforts to reach an agreement on the compensation sum set out in the Supplier's report, and failing such agreement, the report shall be submitted to an independent public accountant or valuator for verification of compliance with Clause 19.1.1B, with any doubts as to whether the costs were reasonably incurred or were reasonable in amount to be resolved in favour of the Government. The appointment of such independent public accountant or valuator shall be subject to the Government's approval, and the cost of such appointment shall be borne by the Government.

- 19.1.1D The Government shall pay to the Supplier:-
- (a) the compensation sum in the Supplier's report, if such sum is mutually agreed upon between the Parties, within sixty (60) calendar days of such agreement; or
  - (b) the compensation sum in the report as verified or varied by the independent public accountant or valuator, if such compensation sum is submitted to an independent public accountant or valuator, within sixty (60) calendar days of the Government's receipt of the report from the independent public accountant or valuator.
- 19.2 The Government may forthwith on giving notice in writing to the Supplier terminate this agreement
- (a) if the System or any substantial part thereof is lost, stolen or damaged beyond economic repair; or
  - (b) if the Supplier, being a company, shall have a receiver or liquidator appointed or shall pass a resolution for winding-up (otherwise than for the purpose of amalgamation or reconstruction) or is subject to a court order having the same effect, or being a partnership shall be dissolved or being an individual shall commit any act of bankruptcy or dies or if the Supplier (whether a company or not) entered into any composition or arrangements with its creditors or becomes insolvent.
- 19.3 The Government may terminate this agreement by giving at least seven (7) days notice in writing to the Supplier where the Supplier has breached or failed to observe any term of this agreement or generally failed to perform his obligations under the agreement in the manner contemplated by this Contract and has failed to remedy the failure or default within a period of thirty (30) days from the receipt of a notice in writing by the Government requiring the Supplier so to do.
- 19.4 The Supplier may terminate this Contract by giving at least seven (7) days notice in writing to the Government where the Government has failed to make any payment due under this Contract or has materially defaulted in carrying out its obligations under this Contract to the extent that the Supplier is unable to properly carry out the Supplier's obligations under the said contract and has failed to make the payments due or remedy the material default within a period of thirty (30) days from the receipt of a notice in writing from the Supplier requiring the Government so to do.
- 19.5 On the termination of this Contract, any monies or fees paid in advance by the Government shall, without affecting any remedy which the Government may have for any breach of this agreement by the Supplier, be pro-rated and refunded

to the Government.

- 19.6 Any termination of this agreement, however occasioned, shall not affect the accrued rights or liabilities of either Party nor shall any remedy which any Party have against the other for breach of this Contract be affected.
- 19.7 In the event of any termination or expiration of this Contract however caused, the Supplier shall conduct a thorough inspection of the System together with the Government or its nominated Supplier to fully ascertain the condition of the System at the date of such termination or expiration and sign a mutually agreed certificate in respect of the findings of such inspection. If any of the following is discovered:
- (a) any obligations of the Supplier under this Contract which remains undischarged;
  - (b) any defect, malfunction or error in the Hardware and/or Software which was rectified in a manner which would render future maintenance effort more costly, inconvenient or cumbersome;

the Supplier shall, upon request by the Government, remedy the foregoing to the Government's satisfaction, failing which, the Government may:

- (i) remedy the matters referred to in paragraphs (a) and (b) above and the Supplier shall indemnify the Government against all costs incurred in relation thereto; or
- (ii) engage the services of a new maintenance Supplier without remedying the matters referred to in paragraphs (a) and (b) above, in which event the Supplier shall indemnify the Government against all increased maintenance charges required by the new maintenance Supplier on account of the matters referred to in paragraphs (a) and (b) above.

## 20. LIQUIDATED DAMAGES

- 20.1 In the event that the Supplier fails to meet the stipulated minimum Service Level requirements as stated in **Part 2** of this Contract, the Government may at its own absolute discretion, impose such liquidated damages based on the computation listed in **Schedule 6 of Part 1, Section B**.

20.2 All monies due to the Government under the aforesaid **Clause 20** shall be paid to the Government in Singapore Dollars not later than thirty (30) calendar days from the date of issue of the Government's written notification to the Supplier informing the Supplier of the total sum payable. If the Supplier fails to pay the said damages, the Government may deduct the amount due from the Security Deposit or other contracts with the Government or recover the same as a debt due from the Supplier in any court of competent jurisdiction.

20.3 The Government may charge interest for any delayed payment at the rate of five percent (5%) per annum.

## **21. APPLICABLE LAW**

21.1 The Contract shall be subject to, governed by and interpreted in accordance with the laws of the Republic of Singapore for every purpose and the Parties to submit to the jurisdiction of the Courts of Singapore.

## **22. COMPLIANCE WITH STATUTES, REGULATIONS, ETC**

22.1 The Supplier shall give all notices and pay all fees required to be given or paid under any law in force in Singapore and hereby undertakes to obtain all necessary export licence for the export of all items from their countries of origin to Singapore in relation to the execution of the Contract.

22.2 The Supplier shall conform in all respects with the provisions of all laws of Singapore and shall keep the Government indemnified against all penalties and liabilities of every kind for the breach of any such laws.

## **23. SUB-CONTRACT, ASSIGNMENT, TRANSFER**

23.1 The Supplier shall not, without the written consent of the Government, sub-contract, assign or transfer the Contract or the benefits or obligations or any part thereof to any other person. The Supplier shall be responsible for the acts, defaults, neglects or omissions of any assignee or Subcontractor, their agents or workmen as fully as if they were the acts, defaults, neglects or omissions of the Supplier, his agents or workmen.

- 23.2 In seeking the written consent of the Government, the Supplier shall provide all information requested by the Government including but not limited to information about a sub-Supplier's registration with the relevant Government Registration Authority. Information on the Government Registration Authority can be found in GeBIZ Partner via Internet at <http://www.gebiz.gov.sg>

## **24. PUBLIC RELEASE OF INFORMATION**

- 24.1 The Supplier shall obtain in writing the prior approval and the consent of the Government before the release of any news item, article, publication, advertisement, prepared speech or any other information or material, pertaining to or related to any part or whole of the Contract including but not limited to the Works to be performed under the Contract, and software licence and support and equipment maintenance associated with the System. Such prior approval shall be sought in reasonable time.

## **25. GIFTS, INDUCEMENT AND REWARDS**

- 25.1 The Government shall be entitled to terminate the Contract at any time and to recover from the Supplier the amount of any loss resulting from such termination, if the Supplier or the Sub-Supplier shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of the Contract with the Government or for showing or forbearing to show favour to any person in relation to any agreement with the Government or if the like acts shall have been done by any person employed by the Supplier or Subcontractor, or if in relation to any Contract with the Government, the Supplier or the Subcontractor or any person employed by the Supplier or Subcontractor shall have committed any offence under Chapter IX of the *Penal Code* or the *Prevention of Corruption Act* of Singapore or shall have abetted or attempted to commit such an offence or shall have given any fee or reward to any person the receipt of which is an offence under the said part of the *Penal Code* or under the *Prevention of Corruption Act* or any legislation enacted in substitution thereof for the time being in force in Singapore.

## **26. ADVISER**

- 26.1 Any person or body appointed by the Government as the Adviser shall have the

authority to deal with the Supplier and the Sub-Suppliers for and on behalf of the Government in all matters (technical or otherwise) in relation to this Contract.

## **27. CORRESPONDENCE**

- 27.1 Any notice, request, waiver, consent or approval shall be in writing and shall be deemed to have been duly given or made when it is delivered by hand or by prepaid registered post, facsimile, telegram or telex to the Party to which it is required or permitted to be given and made at such Party's address specified in the Tender Document.

## **28. CUMULATIVE REMEDIES**

- 28.1 The rights and remedies of the parties under this Contract are cumulative and are in addition and without prejudice to any rights or remedies a Party may have at law or in equity. Further, no exercise by a Party of any one right or remedy under this Contract shall operate so as to hinder or prevent the exercise by it of any other such right or remedy under this Contract, or any other right existing at law or in equity.

## **29. MEDIATION**

- 29.1 Notwithstanding anything in this Contract, in the event of any dispute, claim, question or disagreement arising out of or relating to this Contract, no Party shall proceed to litigation or any other form of dispute resolution UNLESS the Parties have made reasonable efforts to resolve the same through mediation in accordance with the mediation rules of the Singapore Mediation Centre.
- 29.2 A Party who receives a notice for mediation from the other Party shall consent and participate in the mediation process in accordance with **Clause 29.1**.
- 29.3 Failure to comply with Clause **29.1** or **29.2** shall be deemed to be a breach of contract.

## **30. UNAUTHORISED CODE**

- 30.1 The Supplier warrants that all magnetic or other storage media and all software and other materials capable of being stored on such media supplied as a software or part thereof or with any software; or used in the performance of the Works and Services shall not contain any Unauthorised Code.
- 30.2 The Supplier shall conduct a complete and thorough scan for Unauthorised Code using anti-virus software package(s) on all software and materials provided under this Maintenance Contract.
- 30.3 The supplier shall indemnify the Government fully against all costs incurred in the course of or incidental to removing the Unauthorised Code and recovering any lost or damaged data or software.
- 30.4 In this Clause, “Unauthorised Code means any virus, Trojan Horse, worm, logic bomb or other software routine or hardware components designed to permit unauthorised access, to disable, erase, or otherwise harm software, hardware or data, or to perform any such actions.

### **31. OWNERSHIP OF INTELLECTUAL PROPERTY**

- 31.1 Nothing in this Contract shall affect any person’s right to own or licence Background IP.
- 31.2 The Government agrees that all rights, title to or interest in, all Foreground IP created by the Supplier shall vest in the Supplier.
- 31.3 The Supplier shall deliver the source codes to all Foreground IP to the Government within 1 month of the Acceptance Date in the following manner:
- (a) 1 soft copy of the source codes in CD, and
  - (b) 1 hard copy of the source codes to be signed-off by both Parties unless otherwise agreed.
- 31.4 In consideration of the Government agreeing to the vesting of the Foreground IP in the Supplier, the Supplier shall obtain for and grant to the Licensee and its agent, free of any additional charge, an irrevocable Singapore, perpetual, non-exclusive licence, to use, modify and reproduce all Foreground IP which is or becomes vested in the Supplier, its subcontractor or supplier so as to:



- (a) use, repair, maintain, refurbish, reproduce, modify, adapt, integrate, develop and to do anything necessary or incidental for those purposes;
- (b) use, reproduce or adapt any documentation delivered under this Contract, and
- (c) in the event of termination of this Contract as a result of the Supplier's breach or default, to complete the supply of any goods, services, software, Application Software or System under this Contract.

31.5 The Supplier shall obtain for and grant to the Government and its agents, free of any additional charge, Singapore, perpetual, non-exclusive licence, to use all Background IP owned by or licensed to the Supplier, its subcontractor or supplier.

31.6 For the avoidance of doubt,

- (a) Clause 31.2 does not vest any title in the Supplier of any IP in any results, report, data or information generated or produced by the use of the System by the Licensee or another person on behalf of the Licensee. The title to all IP in any such results, report, data or information generated or produced by the use of the System by the Licensee or another person on behalf of the Licensee shall be owned by the Licensee who owns the Application Software.
- (b) The Contract (Rights of Third Parties) Act (Cap 53B) shall apply to enable Statutory Boards in their own right to enforce Clauses 31.4 and 31.6 of this Contract against the Supplier.
- (c) The Supplier agrees that the Government shall not be liable or held responsible for the acts or omission of any Statutory Board.

31.7 Intentionally left blank.

31.8 If any licence granted or obtained for Foreground IP or Background IP under Clauses 31.4 or 31.5 is registrable under any IP registration system in Singapore, the Supplier shall:

- (a) register the licence under the IP registration system in Singapore; and
- (b) deliver copies of documentary proof of such licence registration to the Government as soon as possible.

**32. CONTRACT PERIOD**

- 32.1 This Contract shall commence on the date of commencement specified in the Letter of Acceptance and shall continue in force for a period of 36 months (“the Contract Period”).
- 32.2 The Supplier shall not withdraw from its obligations under this Contract or terminate or purport to terminate this Contract prior to the expiry of the Contract Period otherwise than pursuant to a right of termination, if any, expressly conferred in this Contract.

**33. CONTRACTS (RIGHTS OF THIRD PARTIES)**

- 33.1 This Contract does not create any right under the *Contracts (Rights of Third Parties) Act*, which is enforceable by any person who is not a party to it.

**34. CONSORTIUM**

- 34.1 As used in this Contract, “Consortium” means an unincorporated joint venture through the medium of a consortium or a partnership.
- 34.2 Each member of the Consortium shall be jointly and severally responsible to the Government for the due performance of the Contract.
- 34.3 Any introduction of, or changes to, Consortium membership must be approved in writing by the Government.
- 34.4 Should additional member(s) be added to the Consortium at any time with the approval of the Government, he or they shall be deemed to be included in the expression the Supplier.
- 34.5 If any member of the Consortium withdraws from the Consortium, goes into liquidation, is wound up or cease to exist in accordance with the laws of the country of incorporation:
- (i) this Contract shall continue and not be dissolved, and

- (ii) the remaining member(s) of the Consortium shall be obliged to carry out and complete the Contract.

### **35. LIMITATION OF LIABILITY**

- 35.1 In the event of any breach or default of a term of this Contract, the Supplier's cumulative liability shall not exceed the Contract Price.
- 35.2 In the event of any breach or default of a term of this Contract, the Government's cumulative liability shall not exceed the Contract Price.
- 35.3 For the avoidance of doubt, Clause 35.1 and 35.2 shall not apply to any claim relating to any:
  - (a) death or personal injury ,
  - (b) patent, copyright or other intellectual property right infringement,
  - (c) indemnity provided under this Contract, or
  - (d) liquidated damage recoverable under this Contract.

### **36. COEXISTENCE STRATEGY**

- 36.1 In the event that the Government appoints more than one Supplier, whether in this tender or subsequent tenders, the Suppliers are to cooperate with each other to ensure that the service levels and requirements of the Software as stated in the Requirement Specifications are met. If necessary, the operations management procedures will have to be refined by both parties to accommodate each other's System.
- 36.2 The Supplier is also required to work with the facility management (FM) supplier for the IT Infrastructure in the maintenance and support of the System. If necessary, the operations management procedures will have to be refined by both parties to accommodate each other's System.
- 36.3 The Supplier shall if necessary meet on a regular basis with the Government and other suppliers to discuss operational issues and other problems that may be encountered in the provision of the Software and the services. The relevant technical officers involved in the provision of the services shall attend the meetings.

**37. OWNERSHIP OF DOCUMENTATION AND DISPOSAL OF DOCUMENTATION UPON TERMINATION OF CONTRACT OR COMPLETION OF WORKS AND SERVICES**

37.1 The Government shall own all the documentation generated for the purpose of this Contract.

37.2 The Supplier, his employees, agents and Subcontractors shall within seven (7) days upon the termination of this Contract or upon the completion of the Contract:

- (a) return to the Representative all property, documents, papers and copies thereof
  - i. belonging to the Government;
  - ii. received from the Government for the purpose of this Contract; or
  - iii. produced in the course of this Contract

which may be in their possession or under their control ; and

- (b) securely destroy and erase all softcopies of documentation that exist in hard disks, removable storage media and other storage media or facility whatsoever.

37.3 Upon completion of the obligation under Clause 37.2, the Supplier, his employees, agents and/or Subcontractors shall sign the Declaration as stipulated in Part 1, Section B, Schedule 5A.

**38. SET-OFF**

38.1 Whenever under this Contract any sum of money (including liquidated damages and any other damages) shall be recoverable from or payable by the Supplier, the same may be deducted from any sum then due or which at any time thereafter may become due to the Supplier under this Contract [or any other agreement] with the Government.

**39. ENTIRE AND WHOLE AGREEMENT**

39.1 This Contract contains the entire and whole agreement between the Parties and supersedes all prior written or oral commitments, representations, arrangements,

understandings or agreements between them.

- 39.2 Each Party warrants to the other that it has not entered into this Contract on the basis of any prior written or oral commitments, representations, arrangements, understandings or agreements between them.

## **40. POLICY, SECURITY AND AUDIT**

### **40.1 Policy**

- 40.1.1 The Supplier shall fully comply with any written instructions on Government policies pertaining to Information Communications Technology (“ICT”) Management that may be issued by the Government from time to time.

- 40.1.2 Where the Supplier will be performing Extra Work in order to comply with new Government ICT requirements issued by the Government or the Adviser after the Commencement Date of this Contract, the Government shall not be liable for any claims in respect of such Extra Work UNLESS all the conditions in Clause 41 are fully complied with.

### **40.1A Security**

- 40.1A.1 The Supplier is required to maintain strict confidentiality and ensure that all information pertaining to the Site and the Government's work environment must not be disclosed to anyone except the Representative and the Supplier's employees, agents or Subcontractors directly involved with this Contract. The Supplier is to ensure that information is not to be published or communicated to any other person in any form whatsoever except on a strictly “need-to-know” basis. Failure to comply with this confidentiality requirement shall be a ground for termination of this Contract. This clause shall be without prejudice to the provisions of Clause 41.

- 40.1A.2 The Supplier, its employees, agents or Subcontractors shall not, without the prior written permission of the Government, bring any visitor to any location or site on which the Supplier is providing the goods or services under this Contract.

### **40.2 Audit**

- 40.2.1 The Supplier shall allow the Government to conduct periodic audits at all locations and site in which the Supplier is providing or has provided goods or services under this Contract to ensure that there is proper controls and compliance with this Contract. The Supplier shall cooperate with and provide support, information and assistance to the Government for the purpose of such audits.

- 40.2.2 All audits shall be in the form of a government audit, or a third-party audit conducted by a reputable audit firm.
- 40.2.3 The Supplier shall provide all support necessary for the conduct of the audits at no additional cost to the Government.
- 40.2.4 The Government may conduct surprise spot checks on any locations and site in which the Supplier is providing or has provided goods or services under this Contract for the purpose of such audits.

#### **40A. SECURITY AND DATA BREACH PROCEDURES**

40A.1 The Supplier shall:

- (a) provide the Government with the name and contact information of an employee who shall serve as the Government's point of contact for all security and data breach matters, and shall be available to assist the Government at all times (24 hours per day, 7 days per week) in resolving matters associated with a security or data breach;
- (b) notify the Government of any actual, potential, or suspected physical security breach, as soon as practicable, and in any event, immediately after the Supplier becomes aware of the actual, potential, or suspected physical security breach;
- (c) notify the Government of any actual, potential, or suspected cyber-security or data breach, as soon as practicable, and in any event, immediately after the Supplier becomes aware of the actual, potential, or suspected cyber-security or data breach.

40A.2 In the event of an actual, potential, or suspected security or data breach, the Supplier shall extend full cooperation and assistance to the Government, and at no cost to the Government:

- (a) assist the Government with any investigation into the actual, potential, or suspected security or data breach;
- (b) provide the Government with physical access to all the Supplier's personnel, facilities and infrastructure that are used to perform this Contract;
- (c) facilitate interviews with the Supplier's employees;
- (d) make available all records, logs, files, data reports, and materials that may be relevant to the investigation of the security or data breach.

- 40A.3 The Supplier shall, at no cost to the Government, use best endeavours to immediately remedy, according to instructions or direction given by the Government, any actual or suspected security or data breach, or to prevent any potential security or data breach.
- 40A.4 The Supplier shall not inform any third party of any security or data breach without first obtaining the Government's prior written consent.
- 40A.5 The Supplier shall track all details from the point of discovery of the security or data breach to its resolution, and provide the Government with hourly updates, in the format stipulated by the Government.
- 40A.6 Where the actual or potential breach is caused by the Supplier's default, negligence or unlawful act, the Supplier shall reimburse the Government for all reasonable costs incurred by the Government in responding to and mitigating damages caused by any actual, potential, or suspected security or data breach.

#### **41. CLAIMS FOR EXTRA WORK**

- 41.1 The Government shall not be liable for any claims for any extra work performed or to be performed falling outside the scope of this Contract ("Extra Work") UNLESS all the following conditions are fully complied with:
- (a) all claims must be submitted in writing before the performance of any Extra Work, and
  - (b) in submitting any claim under Sub-Clause (a) above, the Supplier shall include the price of the Extra Work and the detailed scope of the Extra Work, and
  - (c) the Government agrees in writing for the Extra Work to be carried out and to the payment of the claim before the performance of any Extra Work.
- 41.2 The Supplier agrees that it is only entitled to claim for any Extra Work provided all the conditions in Clause 41.1 are fully complied with. The Supplier further agrees that it shall not be entitled to additional payments whether under this Contract, restitution, quasi-contract or equitable grounds if all conditions in Clause 41.1 are not fully complied with.
- 41.3 For the avoidance of doubt, Clause 41 applies to all Extra Work including Extra Work initiated at the request of the Government.
- 41.4 For Extra Work initiated at the request of the Government, the Government shall reserve the right to waive any or all or any part of the conditions in Clause 41.1 at her

own discretion.



**CONTENTS OF SCHEDULES**

**Schedule 1: Information on the Network, Hardware, Software and Applications**

**Schedule 2: Terms of Payment**

**Schedule 3: Form of Agreement**

**Schedule 4: Banker's Guarantee**

**Schedule 5: Undertaking to Safeguard Official Information**

**Schedule 5A: Declaration**

**Schedule 6: Liquidated Damages**

**Schedule 7: Undertaking by OEM**

**Reference: Clause 3** of Conditions of Contract

1. Refer to Part 2 A for the Requirements Specifications.
2. Refer to Part 2 B for Technical Specifications.

**Reference: Clause 7** of Conditions of Contract

## **1. PRODUCTION SUPPORT AND SERVICES BASE CHARGE**

Commencing from the Effective Date and thereafter, on the first day of each calendar month following the Effective Date, the Supplier shall be entitled to invoice the Government after the services are rendered and for maintenance services, after maintenance services are rendered at the end of the service month and the Government shall pay the Supplier the Production Support and Services Base Charge for that calendar month as set forth in Letter of Acceptance. The first payment for such Base Charge shall be due and payable within thirty (30) days from the Effective Date and each subsequent Base Charge will be due and payable thirty (30) days following the date of the invoice.

## **2. SERVICE REQUEST VARIABLE CHARGE**

Commencing from the Effective Date and thereafter, on the first day of each calendar month following the Effective Date, the Supplier shall be entitled to invoice the Government and the Government shall pay the Supplier the Service Request Variable Charge as set forth in Letter of Acceptance. The Variable Charge shall be the fees payable by the Government based on the usage of the mandays for completed Service Request. The Service Request is deemed completed when the Government has tested and accepted the Works and Services delivered and installed. The Variable Charge shall be due and payable within thirty (30) days following the date of the invoice.

The Payment Schedule for One-time SharePoint upgrade and Website re-design of SC Connect and common applications, and the File Share Portal as mentioned in Part 2A Clause 2.1.1(i) is as follows:

### **a) SharePoint Upgrade**

<b>Project Milestone</b>	<b>Payment Milestone</b>	<b>% of Contract Price</b>	<b>Cumulative Total</b>
Start of SharePoint upgrade	Thirty (30) days from the start of SharePoint upgrade	10%	10%
SharePoint upgrade – Requirement sign-off	Thirty (30) days from sign-off	10%	20%
SharePoint upgrade - Data Conversion and Migration	Thirty (30) days from sign-off	10%	30%

Plan sign-off			
SharePoint upgrade - Setup and configuration sign-off	Thirty (30) days from sign-off	10%	40%
SharePoint upgrade - UAT sign-off	Thirty (30) days from sign-off	20%	60%
SharePoint upgrade – System implementation and migration sign-off	Thirty (30) days from sign-off	20%	80%
SharePoint upgrade – System acceptance sign-off	Thirty (30) days from sign-off	20%	100%

#### b) Website Redesign

Project Milestone	Payment Milestone	% of Contract Price	Cumulative Total
Start of Website Redesign	Thirty (30) days from the start of Website Redesign	10%	10%
Website redesign - Requirement sign-off	Thirty (30) days from sign-off	10%	20%
Website redesign - Information Architecture sign-off	Thirty (30) days from sign-off	10%	30%
Website redesign - Design sign off	Thirty (30) days from sign-off	10%	40%
Website redesign - UAT sign-off	Thirty (30) days from sign-off	20%	60%
Website redesign – System implementation sign-off	Thirty (30) days from sign-off	20%	80%
Website redesign – System acceptance sign-off	Thirty (30) days from sign-off	20%	100%

### 3. WORK ORDER VARIABLE CHARGE

In consideration for the performance by the Supplier for Additional Services, the Government shall pay to the Supplier, the amounts mutually agreed upon according to

the payment schedule as specified in the Work Order. The charging rates for these Additional Services are set out in Letter of Acceptance. For the purpose of computing part month charges, the number of mandays per month shall be twenty (20).

**Reference:** Clause 25 of Instructions to Tenderers

### **FORM OF AGREEMENT**

THIS AGREEMENT made the \_\_\_\_\_ day of \_\_\_\_\_ BETWEEN the Government of the Republic of Singapore (hereinafter called “the Government”) of the one part and \_\_\_\_\_<sup>1</sup> (name of Supplier) (hereinafter called “the Supplier”) of the other part.

WHEREAS the Government requires Application maintenance and support for the \_\_\_\_\_ (*state Ministry/Department*) and has accepted a Tender by the Supplier for the provision of such maintenance and support.

NOW IT IS HEREBY AGREED as follows:

1. In this Agreement, words and expression shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to.
2. The following documents shall be deemed to form and be read and construct as part of this Agreement:
  - (a) Supplier’s Tender including subsequent correspondence (if any) amplifying or amending the Supplier’s proposals.
  - (b) Instructions to Tenderers (Part 1- Section A)
  - (c) Conditions of Contract (Part 1- Section B)
  - (d) Requirements Specifications (Part 2)
  - (e) Government’s Letter of Acceptance
  - (f) Form of Agreement

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<sup>1</sup> If the tender is submitted by a consortium, each member of the consortium shall be listed. The tender shall be submitted by the Lead Member on behalf of all members of the consortium, it should read “...one part and (Name of Lead Member), acting for and on behalf of (Name of 1st Member), (Name of 2nd Member) and (etc. – List out Names of remaining Members) (“Consultant”) of the other part.”

3. In consideration of the payments to be made by the Government to the Supplier as hereinafter mentioned, the Supplier hereby agrees to provide the Works and services mentioned in the Contract in conformity in all respects with the provisions of the Contract.
4. The Government hereby agrees to pay to the Supplier in consideration for the Works and services provided in the application maintenance and support of the \_\_\_\_\_ (*state Ministry/Department*) in conformity in all respects with the provisions of the Contract.

IN WITNESS WHEREOF the Parties hereto have by their respective duly authorised representatives have hereunto set their respective hands the day, the month and the year first above written.

Signed by : .....  
(Signature)

(NAME AND DESIGNATION)  
for and on behalf of the  
GOVERNMENT OF THE REPUBLIC  
OF SINGAPORE in the presence  
of:

Name : .....  
(Signature of Witness)

Designation : (DESIGNATION)  
(NAME OF MINISTRY/STATUTORY BOARD)

Signed by : (name of Supplier's MD) .....<sup>2</sup>  
(Signature)

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<sup>2</sup> The tender shall be submitted by the Lead Member on behalf of all members of the consortium. The Lead Member's authorised signature must be provided.

**MANAGING DIRECTOR**

for and on behalf of

(name of company)

in the presence of:

Name : (name of witness)

.....

(Signature of witness)

Designation : General Manager  
(name of company)



**References:** **Clause 30** of Instructions to Tenderers  
**Clause 11** of Conditions of Contract

The Banker's Guarantee or Insurance Bond shall be in the prescribed form that follows:

**TENDER REFERENCE NO.:**

To: \_\_\_\_\_ and his successors in office for and on behalf of the Government of the Republic of Singapore (hereinafter called "the Government").

**Whereas** on the \_\_\_\_ day of \_\_\_\_\_ an Agreement (hereinafter called "the Contract") was made between \_\_\_\_\_ (name of Supplier) of \_\_\_\_\_ (address) (hereinafter called "the Supplier") of the one part and the Government of the other part whereby the Government agreed to \_\_\_\_\_ (state nature of contract) for the sum of Singapore Dollars \_\_\_\_\_ (S\$ \_\_\_\_\_).

**And Whereas** the Supplier is required under the Contract to pay \_\_\_\_ per cent of the total commission awarded as a Security Deposit for the performance of his obligations under the Contract.

Now in consideration of the Government not insisting on the Supplier paying \_\_\_\_ per cent of the total commission awarded under the Contract as a security deposit for the said Contract, **we (at the request of the Supplier) hereby agree** as follows:

1. In the event of the Supplier failing to fulfil any of the terms and conditions of the said contract, we shall indemnify the Government against all losses, damages, costs, expenses or otherwise sustained by the Government thereby up to the sum of Singapore Dollars \_\_\_\_\_ (S\$ \_\_\_\_\_) ("the Guaranteed Sum") upon receiving your written notice of claim for payment made pursuant to Clause 4 hereof.

2. We shall not be discharged or released from this guarantee by any arrangement between yourself and the Supplier with or without our consent or by any alteration in the obligations undertaken by the Supplier or by any forbearance whether as to payment, time, performance or otherwise.

3. Our liability under this guarantee shall continue and this guarantee shall remain in full force and effect from *[insert effective date: \_\_\_\_\_]* until *[insert initial expiry date: \_\_\_\_\_]* *[insert if expiry date is subject to automatic extension]* provided always that the expiry date of this guarantee and our liability thereunder shall be automatically extended for successive periods of *[specify duration of each extension: \_\_\_\_\_ days / months]* unless we give you 90 days' written notice prior to the expiry of our liability of our intention not to extend this guarantee in respect of any future extension and provided further that you shall be entitled, upon receiving such notice of our intention (and within the period specified in Clause 4 hereof), either to:

(a) \_\_\_\_\_ make a claim under this guarantee; or

(b) direct us to pay such amount (not exceeding the Guaranteed Sum) as you may specify into a suspense account to be governed and disbursed by us subject to the Association of Banks in Singapore's Guidelines for operation of a Suspense Account; or

(c) direct us to extend the validity of this guarantee for a further period not exceeding \_\_\_\_\_ days / months (and this guarantee shall then expire at the end of such further period).

4. This guarantee is conditional upon a claim or direction as specified herein being made by you by way of a notice in writing addressed to us and the same being received by us at *[insert address of Bank's notification office: \_\_\_\_\_]* within 90 days from the expiry of this guarantee. Thereafter this guarantee shall become null and void notwithstanding that this guarantee is not returned to us for cancellation except for any claim(s) submitted to us in writing not later than 90 days from the expiry of this guarantee.

5. We shall be obliged to effect the payment required under such a claim or direction within [ \_\_\_\_\_ ] business days of our receipt thereof. We shall be under no duty to inquire into the reasons, circumstances or authenticity of the grounds for such claim or direction and shall be entitled to rely upon any written notice thereof received by us (within the period specified in Clause 4 hereof) as final and conclusive.

6. The Government may make more than one claim on, or direction under, this guarantee so long as the claims or directions are made pursuant to Clause 4 hereof and within the period specified therein and the aggregate amount specified in all such claims and directions does not exceed the Guaranteed Sum.

7. This guarantee is issued subject to the laws of the Republic of Singapore and the jurisdiction of the Singapore courts.

Dated this \_\_\_\_\_ day of \_\_\_\_\_

AS WITNESS our hand

Signed by: \_\_\_\_\_  
(Name and designation of officer)

for and on behalf of the

\_\_\_\_\_  
(Name of Bank)

\_\_\_\_\_  
(Signature)

in the presence of:

Name \_\_\_\_\_

Designation \_\_\_\_\_

\_\_\_\_\_  
(Signature of Witness)

**Reference:** Clause 13.5 and 37.3 of Conditions of Contract

### UNDERTAKING TO SAFEGUARD OFFICIAL INFORMATION

My attention has been drawn to the Official Secrets Act (Chapter 213, Revised Edition 2012) and in particular to Section 5 thereof which relates to the safeguarding of official information.

- 2 I understand and agree that all official information acquired by me in the course of my work and consultancy with any government department, statutory board or government-owned company is strictly confidential in nature, and is not to be published or communicated by me to any unauthorised person in any form at any time, without the official sanction of the relevant Permanent Secretary or the Chief Executive Officer of the statutory board or government-owned company.
- 3 I further understand and agree that any breach or neglect of this undertaking may render me liable to prosecution under the Official Secrets Act.

..... (Signature of Officer)	..... (Full name in BLOCKS and NRIC)
..... (Designation)	..... (Name of Company)
_____ (Date)	
..... (Signature of WITNESS)	_____ (Full name in BLOCKS)
_____ (Designation)	_____ Ministry /Government Dept/ Statutory Board/Government-owned Company
_____ (Date)	

**SCHEDULE 5A**

*Reference: Clause 37 of Conditions of Contract*

**DECLARATION**

1. My attention has been drawn to the *Official Secrets Act* (Chapter 213) and in particular to Section 5 thereof which relates to the safeguarding of official information.
2. I have pursuant to Clause 37 of the Conditions of Contract returned to the Government all data (including, but not limited to, Government Data and Confidential Information) received from the Government for the purpose of this Contract together with all related documentation and all copies thereof owned by the Government; and
3. I further understand and agree that any breach or neglect of my obligation under Clause 37 of the Conditions of Contract may render me liable to prosecution under the *Official Secrets Act*.

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Signature

---

Full Name in BLOCKS

---

NRIC/Passport No

---

Designation

---

Name of Company

---

Date

---

Signature of Witness

---

Full Name in BLOCKS

---

NRIC No

Address: \_\_\_\_\_

Date: \_\_\_\_\_

**Reference: Clause 20.1** of Conditions of Contract

S/No	Specific Clause	Condition	Liquidated Damages
1	Part 2A Clause 13.6	Problem resolution time is longer than the Service Levels (as defined in the Part 2A Requirements Specifications), namely: <ul style="list-style-type: none"><li>- Severity 1 four (4) working hours</li><li>- Severity 2 three (3) working days</li><li>- Severity 3 five (5) working days</li></ul>	10% of the base monthly charge for each hour of default (including Sundays and Public Holidays) or part thereof up to a maximum of 50% of the base monthly charge.
2	Part 2A Clause 14	Service Request (as defined in the Part 2A Requirements Specifications) that exceeds the target completion time for that Service Request during the development of the System, Performance Guarantee period, System Warranty period and System maintenance period.	10% of the service request charge for each service request for each day default up to a maximum of 50% of the service request charge.

Requirement: Clause 21 of Instructions to Tenderers.

The undertaking shall be in the form that follows:

**UNDERTAKING BY OEM (For Software)**

The undertaking shall be in the form that follows:

To: The Government of the Republic of Singapore

TENDER NO.: \_\_\_\_\_

We refer to the above Tender. All words and phrases used herein have the same meaning as in your Invitation to Tender for the above Tender unless otherwise specified.

2. We are the supplier to \_\_\_\_\_ [name and address of Tenderer] (hereinafter called the "Tenderer") of the software set out in Annex A hereto (hereinafter called the "Product") for the purpose of the above Tender.

3. In consideration of you awarding the Tender to the Tenderer, we confirm the following paragraphs.

4. In respect of the Product, we warrant that your right to use the Product will survive the following events:

- (a) the termination of the legal relationship between you and the Tenderer;
- (b) the termination of the legal relationship between the Tenderer and us;

We warrant the continued availability of software patches for the Product for the aggregate of the duration of the Warranty Period and the duration of the maintenance contract entered into pursuant to the Government's exercise of the option for maintenance between the Tenderer and the Government ("Maintenance Contract"). Should the Tenderer be unwilling or unable to provide maintenance for the Product in accordance with the Contract for any reason or should the Maintenance Contract be terminated for any reason, we confirm that we can offer maintenance of the Product (either by ourselves or through a subSupplier) for the remainder of the Warranty Period and the duration of the Maintenance Contract on a mutually agreed set of terms and conditions and at Fair Market Value. "**Fair Market Value**" shall mean the fair market value in Singapore, or where such goods and/or services are not available in Singapore, in such other country(ies) where such goods and/or services are available, for the maintenance of the Product or its equivalent, as the case may be. If the parties are unable to agree on the Fair Market Value, the Fair Market Value shall be determined by an independent public accountant or valuator approved by the Government, whose engagement cost shall be equally borne by the Government and ourselves.

5. We declare that this undertaking is intended to be legally binding and we agree to execute a formal agreement with you in respect of the obligations set out herein upon your written request.

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Signature

---

Full Name in BLOCKS

NRIC/Passport No

---

Designation

---

Name of Company

Date

---

Signature of Witness

---

Full Name in BLOCKS

NRIC No

Address: \_\_\_\_\_

Date: