

[TYPE THE COMPANY NAME]

# Procurement Agreement

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[enter subject matter of purchase]

MIMOS/xx/2015

Between

**MIMOS BERHAD**

And

**[VENDOR NAME]**

## NOTICE OF PROPRIETARY INFORMATION

All information contained in or disclosed by this document is confidential and proprietary to MIMOS Berhad. By accepting this material, the recipient agrees that this material and the information contained therein will be held in confidence and will not be reproduced, disclosed or used in whole or in part except for purposes of this Contract.

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This Contract is made on the date and year set out in item 1 of SCHEDULE A between the Party named in item 3 of SCHEDULE A (hereinafter referred to as "**the Contractor**") of the one part and MIMOS BERHAD (Company No.: 336183-H) of Technology Park Malaysia, 57000 Kuala Lumpur, Malaysia (hereinafter referred to as "**MIMOS**") of the other part.

RECITALS:

- A. MIMOS is a government owned company incorporated in Malaysia under the Companies Act 1965 and is involved in research and development (R&D) in the area of information and communication technology and microelectronics.
- B. The Contractor is involved in the businesses as set out in item 4 of SCHEDULE A.
- C. The Contractor is willing to supply and deliver the said Goods and/or Equipment and/or Software and/or undertake such work upon the terms of this Contract, as defined below and subject to the conditions hereinafter appearing.

NOW THE PARTIES HEREBY AGREE AS FOLLOWS :

1.1. Duration

This Contract shall commence on the date and year set out in item 5 of SCHEDULE A (hereinafter referred to as the "**Commencement Date**") and shall continue to be in force for the period item 6 of SCHEDULE A (hereinafter referred to as the "**Term**"), unless otherwise terminated in accordance with this Contract. MIMOS shall have the option but shall not be obliged to extend the term of this Contract for such further period set out in item 7 of SCHEDULE A, on the same terms, by giving the Contractor written notice of not less than thirty (30) days prior to the expiry of the Term.

1.2. Conditions Precedent

Notwithstanding the Commencement Date set out in item 5 of SCHEDULE A, this Contract shall only take effect upon the Contractor satisfying the conditions precedent set out in SCHEDULE C.

1.3. Scope of Contract

During the term of this Contract, the Contractor shall undertake such work and deliver such goods/equipment/software/services<sup>1</sup> in accordance with the terms and conditions of this Contract.

1.4. Terms and Conditions

The Terms and Conditions set out in SCHEDULE A, SCHEDULE B, SCHEDULE C, SCHEDULE D, SCHEDULE E and SCHEDULE F (where applicable) shall be binding on the Parties.

1.5. Representations

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<sup>1</sup> Delete where not applicable

The Contractor hereby represents that its signatory(ies) to this Contract are fully authorised to sign on the Contractor's behalf. A copy of the requisite letter of authorisation and/or company resolution, shall be provided by the Contractor at MIMOS' request

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*[The rest of this page is intentionally left blank]*

IN WITNESS WHEREOF the Parties have caused this Contract to be executed in their names by their duly authorised representative the day and year set out in item 1 of APENDIX 1.

For and on behalf of **MIMOS BERHAD**

Company No.: **336183-H**

.....

(Signature)

(Name)

(I.C. No)

(Designation)

In the presence of **MIMOS BERHAD**

Company No.: **336183-H**

.....

(Signature)

(Name)

(I.C. No)

(Designation)

For and on behalf \_\_\_\_\_

Company No.:

.....

(Signature)

(Name)

(I.C. No)

(Designation)

In the presence of \_\_\_\_\_

Company No.:

.....

(Signature)

(Name)

(I.C. No)

(Designation)

## For internal office use

Contract for:	Applicable Schedules:
<input type="checkbox"/> Goods/Equipment	A, B, C, D
<input type="checkbox"/> Software	A, B, C, D
<input type="checkbox"/> Equipment and Services installation, testing, commissioning	A, B, C, E
<input type="checkbox"/> Services - Maintenance of hardware and software	A, B, C, F
<input type="checkbox"/> Services - Professional & Consultancy	A, B, C, F
<input type="checkbox"/> Services - Utilities & Facilities	A, B, C, F

# **SCHEDULE A**

## **PARTICULARS OF CONTRACT**

Item	Subject Matter	Details
1.	Date and Year of Contract: (DD/MM/YYYY)	
2.	Date and Year of Non Disclosure Agreement (DD/MM/YYYY)	
3.	Name of Contractor:  Company No.:  Registered Address:   Business Address:	
4.	Nature of Business:	
5.	Commencement Date:	
6.	Term:	
7.	Extended Period, at MIMOS' discretion	N/A
8.	Contact Persons for: <b>MIMOS</b> Name : Designation : Telephone No : Facsimile No : Email address : Address:  Contact Persons for: <b>The Contractor</b> Name : Designation : Telephone No :	03 - 8995 5000 EXT 03 – <a href="mailto:">mailto:</a>

	Facsimile No : Email address : Address:	
9.	Minimum amount to be guaranteed by performance bond / bank guarantee:	
10.	Liquidated damages:	
11.	Warranty Period:	Software : months / years Hardware: months / years
12.	Currency for payment:	Ringgit Malaysia
13.	Payment term:	30 business days from the receipt of the original undisputed invoice
14.	Invoice addressed to:	MIMOS Berhad Technology Park Malaysia 57000 Kuala Lumpur Malaysia  Attn : Finance Department Tel. No. : +603 8995 5000 Fax No. : +603

[The rest of this page is intentionally left blank]

## SCHEDULE B

### CONDITIONS PRECEDENT

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This Contract shall take effect upon the Contractor:

- B.1. Satisfying MIMOS that it possess all requisite valid and subsisting licences, approvals and permits to undertake all works set out in the Contract, including all necessary licences, approvals and permits for all its employees and workers, whether foreign or local and shall provide a certified true copy of the same to MIMOS.
- B.2. Advising MIMOS of the necessary approvals, if any, which are required to be obtained by MIMOS from the relevant authorities in relation to all works set out in the Contract, and the Contractor shall obtain such approvals for and on behalf of MIMOS.
- B.3. \*Providing MIMOS with a performance bond in the form of an irrevocable and continuing bank guarantee for at least the amount specified in item 9 of SCHEDULE A, which shall:
  - B.3.1. be issued by a bank approved by MIMOS;
  - B.3.2. conform to the format prescribed by MIMOS;
  - B.3.3. remain valid and in force for the Term and thereafter, shall be further extended for an additional period of twelve (12) months if so requested by MIMOS; and
  - B.3.4. in addition to any other remedies that MIMOS may have in respect of this Contract, allow for the sum secured therein to be paid to MIMOS for any breach or non-performance of this Contract by the Contractor.
- B.4. Demonstrating to MIMOS that it possesses sufficient resources to fulfil the obligations under the Contract, including but not limited to the employment and/or engagement of adequate number of employees, workers, personnel and/or consultants with the relevant accreditations, qualifications and competence; and
- B.5. Subscribing and maintaining comprehensive insurance policies to fully cover the liabilities of the Contractor, its permitted sub-contractors and MIMOS in respect of:
  - B.5.1. any personal injuries or death;
  - B.5.2. any injury or damage to any property;
  - B.5.3. workmen compensation;
  - B.5.4. any liability provided under the Occupational Safety and Health Act 1994;
   
arising out of or in the course of carrying out all works set out in the Contract including any acts or omissions in relation thereto.
- B.6. Agreeing to comply with the policies of MIMOS, including but not limited to, MIMOS' IT Policy and best practices series standards in ISO 27001 and Capability Maturity Model Integration (CMMI).

- B.7. The Contractor shall conduct sufficient Factory Tests and inspection to ensure that the Equipment and Software comply with the specifications. The procedures used by the Contractor for Factory Tests and inspection shall as a minimum be in accordance with the ISO 9000 series standards.
- B.8. The Contractor shall ensure compliance by its personnel with all applicable provisions, regulations and ordinances now or hereinafter in force pertaining to safety and health, which shall include but shall not be limited to the Occupational Safety and Health Act 1994 (hereinafter referred to as "**OSHA**") and the Factory & Machinery Act 1967 (hereinafter referred to as "**FMA**"). The Contractor shall at all times be responsible for the discipline of its personnel in ensuring that they perform their duties in a safe, orderly and clean manner as required by MIMOS under the MIMOS' safety manual which is available for review by the Contractor at MIMOS' office by appointment, and in compliance with the OSHA and FMA and other relevant legal provisions, laws and regulations in force. The Contractor agrees and undertakes to review MIMOS' safety manual prior to the commencement of any work.

B.9.

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## SCHEDULE C

### GENERAL TERMS AND CONDITIONS

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#### C.1. Definitions

<b>Affiliate(s)</b>	means any person or entity Controlling, Controlled by, or under common Control with either the Contractor.
<b>Claim(s)</b>	means any and all demands, claims, suits, proceedings, actions, liabilities, losses, damages, costs (including, without limitation, any legal and other professional costs) or expenses arising under the Contract or any statute or at common law.
<b>Confidential Information</b>	means all information of any kind, whether in machine readable or visually readable form, oral or otherwise and whether or not labelled as "Confidential", including but not limited to technical information, data, know-how and information relating to either Party's or their respective Affiliates' business, marketing strategies, financial condition and operations and submitted or howsoever made available by or on behalf of one Party to the other, whether before or after the Commencement Date, for the purposes relating to or in connection with this Contract.
<b>Contract</b>	means these terms and conditions, all Schedules and Appendices attached and any amendments to this Contract in accordance with Clause C.21.3.
<b>Contract Price</b>	means, the total payment to be made by MIMOS to the Contractor for the Goods, Equipment, Software or Services and all deliverables to be supplied under the Contract and for the full and diligent performance by the Contractor of all of its obligations and covenants under the Contract, including all amounts payable to the Contractor for ownership or license rights to any Intellectual Property Rights embodied in or relating to the Equipment, Software and Documentation, and for costs of insurance, freight and all other costs specified by the Contract.
<b>Control</b>	means the possession, directly or indirectly, of the power to direct or cause the direction of management policies of an entity or the majority ownership of the voting securities of such entity. " <b>Controlled</b> ", " <b>Controlling</b> " and " <b>common Control</b> " shall be construed similarly.
<b>Customised Software</b>	means software (including modifications, enhancements, improvements or adaptations of software which is Proprietary Intellectual Property) and related Documentation specially written or developed for MIMOS pursuant to or in connection with this Contract of which the Intellectual Property Rights shall at all times (unless otherwise agreed by the Parties) vest with MIMOS.

<b>Deliver</b>	means the handing over of the Goods, Equipment and/or Software by the Contractor or its agents to MIMOS.
<b>Delivery Date</b>	the Delivery of Goods, Equipment and/or Software shall be the scheduled date for the delivery as set out in Appendix D2 or E2.
<b>Equipment</b>	means the equipment, components or parts of components set out in Appendix D1 or E1. As firmware is embedded in the Equipment, references to "Equipment" includes firmware unless the context otherwise requires.
<b>Force Majeure</b>	means an act, omission or circumstance relied on by one Party as a force majeure event and over which that Party could not reasonably have exercised control including but not limited to acts of God, acts or omissions of Government, riots, acts of war, epidemics, governmental regulations imposed after the Commencement Date, earthquakes or other natural disasters. An event or act shall not be excused or delayed by Force Majeure if it could reasonably be circumvented through use of alternative sources, work around plans or other means within the control of such Party or other means as may be agreed between the Parties.
<b>Goods</b>	means such goods, equipment, materials and/or computer programs and such accessories thereto set out in Appendix D2 or E2, in accordance with the types and respective quantities set out in Appendix D2 or E2.
<b>Intellectual Property Rights</b>	means patents, trademarks, service marks, trade names, registered designs, designs, copyrights and other forms of intellectual or industrial property, know-how, inventions, formulae, confidential or secret processes and trade secrets, and any other protected rights and assets, and any licenses and permissions in connection therewith, in each case in any part of the world and whether or not registered or registerable and for the full period thereof and all extensions and renewals thereof, and all applications for registration in connection with the foregoing.
<b>Invention</b>	means any invention, innovation, improvements or discovery conceived or originated or made by the Contractor during the course of or in any way whatsoever related to the provision of services under this Contract.
<b>Life Span</b>	means the design life of the System, Equipment and/or Software, which extends for a minimum period of ten (10) years from the Delivery Date or as agreed by the Parties in writing in accordance with the provisions of this Contract.
<b>Parties</b>	means MIMOS and the Contractor collectively and "Party" means any one of them.
<b>Price</b>	wherever used in this Contract in relation to any of the Goods shall mean the price set for the said Goods as detailed in Appendix D1 or E1.

<b>Proprietary Intellectual Property</b>	means Intellectual Property Rights, which are:
	(a) an integral part of, or necessary for the System or any Equipment or Software which is not developed or produced by or for MIMOS pursuant to the Contract, and
	(b) prior to the Commencement Date, owned either by the Contractor or a third party from whom the Contractor derives the right to grant a license to MIMOS to enable MIMOS to use the System, Equipment or Software and as otherwise contemplated by the Contract.
	Proprietary Intellectual Property shall not include Customised Software.
<b>Services</b>	means any services which may be contracted by MIMOS pursuant to the Contract and shall include any subscriptions for usage of software or access to information.
<b>Software</b>	means the computer programmes or machine readable/usable instructions stored in any medium, and related data set out in Appendix D1 or E1, needed to control the operation and performance of any Equipment, including firmware, together with any enhancement, modification or new release to be provided by the Contractor. References to "Software" includes Software which are Proprietary Intellectual Property and Customised Software, unless otherwise expressly stated or the context otherwise requires.
<b>Source Code Materials</b>	means the following:
	(a) all source codes, source documentation, listings, job control languages, system/program generation instructions, test cases, test programs and other maintenance tools, programmers' notes and related technical information with respect to the design, use, operation and maintenance of Software and all modifications, enhancements, new versions or releases, additions, code corrections, fix-its and workarounds for all such Software provided under warranty services, or otherwise pursuant to this Contract;
	(b) all proprietary or special tools and other software such as compilers, interpreters or the like reasonably necessary to create object code from the Source Code Materials and to modify the Source Code Materials and related documentation for such tools and software; and
	(c) a description of the development system, hardware, software, compilers, third-party software and the like sufficient for MIMOS to continue development, enhancement and support for such Software, including the names and addresses of any person or entity which owns or controls any such items.
<b>Spare Parts</b>	means any Equipment or any part thereof which may be purchased from the Contractor for use by MIMOS for the replacement or repair of such Equipment and which conform to

the Specifications and the other requirements of the Contract.

**Specifications**

means the technical and functional specifications (including the manufacturer's published specifications), specification of services as set out in Appendix D1 or E1, and includes any amendments from time to time agreed between the Parties, for the Goods, Equipment, Software and/or Services.

**Training**

means any training to be provided by the Contractor to MIMOS's personnel in the use, operation, repair and maintenance of the Equipment and/or Software, details of which are set out in Appendix E4.

**Warranty Period**

means, the eighteen (18) month period immediately following the Actual Completion Date, or such other period as may be otherwise agreed between the Parties in writing in accordance with the provisions of this Contract.

**C.2. Interpretation**

- C.2.1. References in this Contract to writing shall include typewriting, printing, lithography, photography, telefax, facsimile and telex messages and any mode of reproducing words in a legible and non-transitory form.
- C.2.2. Words importing the singular shall also include the plural and vice-versa; words importing a gender include every gender; and references to persons include an individual, firm, company, corporation, unincorporated body of persons or any State or agency thereof.
- C.2.3. Clause headings are inserted for convenience of reference only and shall not be deemed to be part of the Contract or in any way affect the interpretation or construction thereof.
- C.2.4. In this Contract, unless the context otherwise requires, references to "**day(s)**" shall mean a twenty-four (24) hour period as in calendar day and references to "**business day(s)**" or "**working day(s)**" shall mean a day on which commercial banks are opened for business in the states where the MIMOS's offices administering this Contract is located (i.e. either Selangor or Kedah or both as the case may be). "**Working hours**" means 8.30 am to 5.30 pm (Mondays through Fridays).
- C.2.5. References to Clauses and Appendices are references to the Clauses of, and the Appendices to, this Contract. References to any statute shall be construed as references to that statute as from time to time amended or re-enacted.
- C.2.6. References to "**personnel**" in this Contract shall mean employees, officers, servants, agents and sub-contractors or any of them.
- C.2.7. Where a word or phrase is given a defined meaning in this Contract, any other part of speech or other grammatical form in respect of such word or phrase has a corresponding meaning.
- C.2.8. No rule of construction applies to the disadvantage of a Party because that Party was responsible for the preparation of this Contract or any part of it.

### C.3. Price

The Price shall be firm and shall not be varied except if specifically agreed in writing between the Parties. If the Price is quoted in Ringgit Malaysia, no variation in the Price shall be made as a consequence of variations in exchange rates. Except for any fees, charges or expenses properly authorised pursuant to a variation agreed in writing, MIMOS shall not be billed or be liable for any fees, charges or expenses of any nature other than those specifically identified in the Contract as the responsibility of MIMOS.

### C.4. Payment

- C.4.1. All payments under this Contract shall be made in the currency stated in item 12 of SCHEDULE A.
- C.4.2. All invoices shall be submitted with the consequential delivery order/certificate of completion/certificate of acceptance, as the case may be, and shall be accompanied by all relevant supporting documentation as may be required by MIMOS substantiating the charges set forth in the invoices.
  - C.4.2.1. Invoices submitted based on milestones related to the issue of any Certificates shall be accompanied by such Certificates in hard copy, duly signed-off by MIMOS' designated representative and the Contractor's Project Manager, or such other designated representatives as the Parties may nominate and notify to the other from time to time.
  - C.4.2.2. Invoices submitted based on delivery of Goods, Equipments and/or Software shall be accompanied by the delivery order or packing list bearing the acknowledgment by MIMOS's Authorised Officers confirming receipt in good order of the complete list of Goods and/or Equipment and/or Software.
  - C.4.2.3. Invoices submitted for provision of services must set out contract numbers, reference numbers, particulars instructions issued or purchase order and sufficient description of the services rendered,
- C.4.3. MIMOS reserves the right to reject any invoices which are not accompanied by the supporting documents or do not have sufficient details as specified in the above Clause C.4.2.
- C.4.4. MIMOS shall have the right to dispute any invoice furnished by the Contractors for any justified reason in the opinion of MIMOS. Without prejudice to the generality of the foregoing, such disputes may include but is not confined to the following circumstances:
  - C.4.4.1. where the Goods, Equipment, Software or Services does not conform to the Specifications;
  - C.4.4.2. MIMOS is of the view that the Contractor has failed to complete the deliverables in accordance with the Implementation Schedule;
  - C.4.4.3. where there is discrepancy in the amount of those invoices.
- C.4.5. In the event of a dispute by MIMOS of any invoice furnished by the Contractor, MIMOS shall forthwith by notice in writing inform the Contractor of such dispute setting out the reasons for such dispute and where applicable, such actions by the Contractor which must be completed before the invoice is accepted by MIMOS. The Parties shall use their best endeavours to resolve the dispute within thirty (30) days from the date of notification of dispute.

- C.4.6. MIMOS shall be entitled to set off any amount owing to MIMOS by the Contractor for whatever reasons against any invoices issued by the Contractor under this Contract.
- C.4.7. Subject to any set off that MIMOS shall have, MIMOS shall pay the Contractor within 30 days:-
  - C.4.7.1. of receipt of the original invoice for all undisputed invoices; and
  - C.4.7.2. of achieving resolution of any disputed invoices.

#### C.5. Intellectual Property Rights

- C.5.1. The Contract Price shall include all amounts paid or payable (including, without limitation, royalties and license fees) for all rights to Intellectual Property Rights embodied in or relating to the Goods, Equipment, Software System and Documentation forming a part thereof.
- C.5.2. MIMOS shall have the exclusive rights and ownership to all Intellectual Property Rights, embodied in, arising out of or in respect of:
  - C.5.2.1. any Invention; and/or
  - C.5.2.2. the Customised Software or any part thereof;

and the Contractor hereby assigns and transfers to MIMOS by way of present assignment and transfer all such present and future Intellectual Property Rights.
- C.5.3. The Contractor shall, forthwith upon request by MIMOS, execute all necessary documents and do all such actions and things, including, without limitation, the execution of patent applications, user agreements, declarations, licenses, and patent and copyright assignments, as in the reasonable opinion of MIMOS are required or desirable to perfect and record the Intellectual Property Rights of MIMOS in such jurisdictions as MIMOS may designate.
- C.5.4. Source Code Materials for Customised Software commissioned pursuant to the Contract shall be provided to MIMOS upon delivery of the Customised Software by the Contractor to MIMOS.
- C.5.5. The Contractor shall grant or procure for MIMOS royalty free, world-wide, perpetual, non-exclusive licenses to all Proprietary Intellectual Property of the Contractor or any third party (including the personnel of the Contractor), in accordance with the terms of this Contract, to enable MIMOS to use the Proprietary Intellectual Property world-wide in connection with the repair, maintenance, operation and use of the System, Equipment, Software and Documentation or any part thereof and any expansion of the System and the services available from the System, to the extent contemplated by this Contract. Such licenses are subject to the following conditions:
  - C.5.5.1. Any relevant Software and Source Code Materials shall be provided in machine editable form or stored in semi-conductor memories;
  - C.5.5.2. The Contractor, at its own cost and expense, shall at any time when requested by MIMOS, place the Source Code Materials in escrow with a reputable software escrow company selected by MIMOS on substantially the same terms and conditions set out in provisions relating to software escrow of Appendix D3 or E5.

- C.5.5.3. Concurrent with the delivery of any additional or modified versions of the Software, the Contractor shall place in escrow any such additional or modified Source Code Materials relating to such Software.
- C.5.5.4. MIMOS shall have the right to maintain, modify or further develop such Software or to appoint a third party to do the same (in which case the Intellectual Property Rights of such developments shall vest solely with MIMOS) if, in MIMOS's opinion, (i) the Contractor is no longer willing, is failing or is unable to support, modify or further develop such Software; or (ii) proceedings have been initiated against the Contractor for the winding up or dissolution or under any applicable bankruptcy or insolvency law and such proceedings have not been stayed or discharged by the Contractor within three (3) months; or (iii) the Contractor enters into any composition or scheme of arrangement with its creditors generally or becomes insolvent or is unable to pay its debts. The Contractor or the escrow agent (as the case may be) shall at such time release to MIMOS the associated Source Code Materials to be used by MIMOS in any manner whatsoever for the repair, maintenance, operation and use of the System, Equipment and Software, including without limitation, adapting, translating, further developing or modifying the Software or as otherwise contemplated by the Contract.
- C.5.6. The Contractor shall cause its personnel to waive all moral rights with respect to any Customised Software developed or produced pursuant to this Contract, including, without limitation, any and all rights identification of authorship and any and all rights of approval, restriction or limitation on use or subsequent modifications.
- C.5.7. Without prejudice to Clauses C.5.2 and C.5.5, if the System or any of the Equipment, Software or Documentation or any part thereof are only partially completed, MIMOS shall nonetheless have and be granted the Intellectual Property Rights and licenses for the Proprietary Intellectual Property referred to in Clauses C.5.2 and C.5.5, and in respect of the partially completed Equipment, Software and Documentation, it being the agreement of the Parties that such Intellectual Property Rights shall reside in, and be licensed to, MIMOS with effect from the date such partially completed Equipment, Software and Documentation are delivered to MIMOS.
- C.5.8. The Contractor hereby represents and warrants to MIMOS that : (i) it owns or will own or is authorized to sub-license (and shall furnish MIMOS with the written confirmation from the owner of the Intellectual Property Rights of the Contractor's authority to sub-license) and shall sub-license to MIMOS all Intellectual Property Rights residing in or arising out of the System and any and all of the Equipment and Software and any part thereof; (ii) the Intellectual Property Rights or licenses granted or to be granted by the Contractor to MIMOS under this Contract, do not infringe or violate the Intellectual Property Rights of any third party; (iv) all Customised Software supplied to MIMOS is proprietary to MIMOS alone and no rights have been granted to any other party in respect thereof and no third party has any right, interest or title in such Customised Software or any part thereof.
- C.5.9. The Contractor shall defend and hold harmless MIMOS at the Contractor's own cost and expense, in any Claim brought by any third party against MIMOS (including the personnel, agents or sub-contractors of the Contractor) insofar as such Claim is based on a claim that the Equipment, Software, Documentation or any part thereof, or any use of any of the Equipment, Software, Documentation or parts thereof infringes any Intellectual Property Rights of such third party, and the Contractor shall fully indemnify MIMOS from and against any and all damages, settlements, costs, expenses and liabilities paid, incurred or suffered as a result of the foregoing, provided that:

- C.5.9.1. MIMOS notifies the Contractor without undue delay of any Claim which would fall within the scope of this Clause C.5.9, and provide the Contractor with all information which it may have in relation to such Claim; and
  - C.5.9.2. MIMOS turns over to the Contractor sole and exclusive control of defending or settling the Claim, subject to MIMOS having the right to be represented by counsel of its choice at its own expense and to participate in, and be kept informed of the status of such Claim. If the Contractor should fail to defend or settle the Claim, MIMOS shall have the right to do so without prejudice to any claim MIMOS may have against the Contractor for indemnity pursuant to this Clause; and
  - C.5.9.3. MIMOS cooperates with the Contractor in relation to the defense or settlement of the Claim.
- C.5.10. In the event that in any such Claim the Equipment, Software, Documentation or any part thereof ("**Infringing Material**") is held, in a final judgment, to infringe upon any third party's Intellectual Property Rights and/or the use of any Infringing Material is enjoined by a court of competent jurisdiction, the Contractor shall, as soon as possible at its own option and at its own expense and with the result that as little disruption as is reasonably practicable is caused to MIMOS' business, either:
- C.5.10.1. procure for MIMOS the right to continue using such Infringing Material; or
  - C.5.10.2. replace such Infringing Material with a non-infringing product which performs substantially the same functions and meets the Specifications and the Contract; or
  - C.5.10.3. modify such Infringing Material to become non-infringing, provided always that the modified Equipment, Software or Documentation perform substantially the same functions and meets the Specifications and the Contract.
- C.5.11. If in the Contractor's reasonable opinion none of the alternatives in the above Clause C.5.10 is reasonably available, the Contractor and MIMOS shall have good faith discussions with the aim of arriving at a mutually acceptable solution, provided that the Contractor shall have the primary responsibility of obtaining and effecting such solution.
- C.5.12. In the event MIMOS is obliged to recall any equipment due to infringing Material supplied by the Contractor, the Contractor shall indemnify MIMOS for all costs incurred for the recall and/or replacement of the recalled equipment.
- C.5.13. Each Party shall promptly inform the other of any Claim of which they become aware in respect of any Intellectual Property Rights and shall make no settlement of any Claim without giving to the other prior notice of the Claim.
- C.5.14. Notwithstanding Clause C.5.9, if the options under Clause C.5.10 is not accomplished within thirty (30) days or such other time as may be agreed in writing by the Parties from the date a Claim is notified to either the Contractor or MIMOS, then MIMOS shall have the right at its sole discretion, to terminate this Contract in accordance with the termination provisions of this Contract.

## C.6. Force Majeure And Extension Of Time

- C.6.1. Subject to Clauses C.6.2, C.6.3 and C.6.4, if the Delivery and/or Commissioning of the Equipment and/or Software or provision of the Services under this Contract is delayed by

Force Majeure, then MIMOS shall grant the Contractor an extension of time for a period corresponding to the duration of the Force Majeure situation for the completion of the works.

- C.6.2. MIMOS may refuse to grant an extension of time for the completion of the works or any part thereof if the Contractor, within five (5) working days of becoming aware that a delay has been or will be caused by Force Majeure, fails to give notice in writing to MIMOS of the delay and the reasons or circumstances causing or likely to cause the delay and the actual or estimated extent of the delay caused or likely to be caused thereby and the proposed actions by the Contractor to minimize the impact of such delay.
- C.6.3. No extension of time for completion of the works or any part thereof shall be given if MIMOS is of the reasonable opinion that such delay is not caused by Force Majeure and the performance of the work under the Contract by MIMOS and the Contractor shall continue.
- C.6.4. It shall be the duty of the Contractor always to use his best endeavours to prevent or minimize any delay being caused by any of the above mentioned circumstances and to minimize any such delay as may be caused thereby and, to do all that may reasonably be required to the satisfaction of MIMOS to expedite the completion of the works or any part thereof thereby affected. The Parties agree that in the event of any Force Majeure or any delay caused by either MIMOS or the Contractor, the Parties shall discuss, either in person or by telephone, directions and instructions for minimizing any such Force Majeure or delay.
- C.6.5. In the event of Force Majeure having prevented the Contractor from performing its obligations for a continuous period of thirty (30) days or if these conditions, once having ceased, shall reoccur so that the condition of Force Majeure continues for an aggregate of sixty (60) days in any six (6) month period, MIMOS shall be entitled to terminate this Contract by giving fourteen (14) days notice thereof to the Contractor.
- C.6.6. In the event of a Force Majeure situation affecting MIMOS, MIMOS shall be granted an extension of time for the fulfilment of its responsibilities with respect to the works or any part thereof. If MIMOS notifies the Contractor in writing of a Force Majeure situation affecting MIMOS, the Implementation Schedule shall be extended for the duration of such Force Majeure situation.
- C.6.7. The Contractor shall be entitled to terminate this Contract for reason of Force Majeure where the cause of such Force Majeure has continued, uninterrupted for a period of three (3) months by giving fourteen (14) days written notice thereof to MIMOS.
- C.6.8. In the event of termination by MIMOS or the Contractor for reason of Force Majeure in accordance with Clause C.6.5 or C.6.7 respectively, MIMOS shall have the option of either :-

  - C.6.8.1. returning to the Contractor all Equipment and Software delivered to MIMOS. In such an event it is agreed that:
    - C.6.8.1.1. MIMOS will bear all customs duties and sales taxes with respect to the Equipment and/or Software already paid prior to such termination (if any). To this end, the Contractor shall at MIMOS's request provide to MIMOS all relevant documents to support any application by MIMOS to the relevant authorities or bodies for a refund of any customs duties and sales tax borne by MIMOS.
    - C.6.8.1.2. The Contractor will bear all freight (including local transportation), insurance and handling charges, as well as customs clearances charges already incurred prior to such termination.

- C.6.8.1.3. The Contractor will remove the Equipment and Software at its own cost.
- C.6.8.1.4. MIMOS shall pay the Contractor fifty per cent (50%) of the costs of such part of the Services already rendered up to the termination date.
- C.6.8.1.5. The Contractor shall refund to MIMOS all monies already paid to the Contractor less the sum stated in Clause C.6.8.1.4.

**OR**

- C.6.8.2. paying to the Contractor the sums stated in Clause C.9.5, provided that on payment of the said sums, all Equipment, (Customised Software (if any)), material or goods so paid for shall become the property of MIMOS and all licenses granted in respect of Software and Documentation so paid for shall survive for the Life Span of the System or for so long as the Software or Documentation is required to be used by MIMOS whichever is the later.
- C.6.9. Upon the exercise by MIMOS of either option under Clause C.6.8 and the performance of their obligations thereunder by the Parties, neither Party shall have any further claim against the other except for antecedent breach.

**C.7. Warranties**

- C.7.1. The Contractor represents and warrants at all times that:
  - C.7.1.1. it has or will acquire good and sufficient title to the Equipment and every part thereof to enable it to perform its obligations under this Contract;
  - C.7.1.2. the Equipment is sold to MIMOS free from encumbrances;
  - C.7.1.3. all rights to any Equipment, Software and Documentation or any other material or information furnished or used by the Contractor in the performance of the Contract are proprietary to the Contractor or used under license and will not be such as to infringe any Intellectual Property Rights or any other rights whatsoever of any third party;
  - C.7.1.4. the Equipment and Software supplied will be of merchantable quality and fit for the purpose for which they are intended to be used as stated in the Specifications and in accordance with the Contract;
  - C.7.1.5. where MIMOS is purchasing new equipment, the Equipment supplied will be newly manufactured and not second-hand, reconditioned or used items; and where MIMOS is purchasing refurnished or reconditioned equipment, the equipment shall be fit for the purpose made known to the Contractor.
  - C.7.1.6. the Services rendered will be rendered in a professional and diligent manner to the best of the Contractor's abilities and shall be executed in accordance with the Specifications, directions and time period set out in this Contract.
  - C.7.1.7. the Documentation, Software and Training supplied will provide adequate instruction to enable MIMOS to make proper use of all facilities and functions of the Equipment and/or Software and to operate, maintain and (if required by MIMOS) to further develop the System, Equipment and/or Software;

- C.7.1.8. the Contractor has obtained any and all third party licenses and consents (including the right to sub-license the same to MIMOS) necessary to enable MIMOS to use perpetually and world-wide any third party software or Proprietary Intellectual Property comprised within the Software or third party Documentation or materials furnished under this Contract and without any further payment whatsoever by MIMOS at any time to any such third party and shall furnish MIMOS with the requisite confirmation, certification and warranties from the owner of the third party software;
  - C.7.1.9. the System, Equipment and Software shall perform and operate in accordance with the Specifications, the Contract during the Life Span of the Equipment and Software;
  - C.7.1.10. the System will be free from latent engineering or design defects and in the event that latent engineering or design defects result in failure or degradation of durability or performance, the Contractor shall without charge to MIMOS take such remedial action as may be necessary to rectify the defects in accordance with the terms of the Contract;
  - C.7.1.11. as required by the Specifications, each Equipment and Software will be compatible and will integrate with every other component included in the System.
  - C.7.1.12. the Software supplied is the most recent version and the Contractor shall to provide updates of the Software;
  - C.7.1.13. it has procure the owners of any third party software provided under this Contract to continue support the said third party software in the event the Contractor no longer does so for any reason whatsoever;
  - C.7.1.14. it shall continue to support any third party software provided under this Contract in the event the owner of the said third party software no longer provides any support.
- C.7.2. Where Services are provided by the Contractor, the Contractor warrants and undertake to:
- C.7.2.1. provide and perform such Services in a professional manner, consistent with industry standards, and in accordance with this Contract;
  - C.7.2.2. use all reasonable skill, care and diligence in the performance of the Services; and
  - C.7.2.3. perform the Services in a timely manner, in accordance with the Implementation Schedule.
- C.7.3. In addition, the Contractor warrants and represents that:
- C.7.3.1. the System will comply with all applicable statutory and other regulatory and legislative requirements relating to safety and health and to the specification, manufacture, installation and performance thereof;
  - C.7.3.2. the Contractor will carry out its obligations under the Contract promptly and with all due care and skill which as a minimum shall comply with accepted industry standards and has provided and will provide that any of its agents and sub-contractor shall apply the same level of promptness, care and skill;

- C.7.3.3. unless otherwise specified by MIMOS all Software provided is the proprietor's latest and most up to date and appropriate application;
- C.7.3.4. none of the Software will contain any computer viruses or other contaminants or any code, destructive elements, programming instructions or other instructions or devices that are intentionally constructed with the ability to remove, damage, destroy interfere with, corrupt or otherwise adversely affect the System, or any data files of MIMOS;
- C.7.3.5. MIMOS will have the benefit of all third party warranties and indemnities in addition to those under this Contract on the System, the Equipment and/or Software enjoyed by the Contractor;
- C.7.4. For the applicable Warranty Period:
  - C.7.4.1. The System, Equipment and Software shall comply in all respects with the Specifications and the Contract and shall continue to perform in accordance therewith.
  - C.7.4.2. The Contractor shall, at no additional cost MIMOS, promptly investigate the cause of any defect, failure or non-compliance whether requested by MIMOS or otherwise and shall promptly rectify or take such remedial action to ensure the System, Software and Equipment meets the Specifications and the Contract.
  - C.7.4.3. The Equipment, Software and the System shall be free from any and all defects in materials or workmanship and random component failure.
  - C.7.4.4. The Contractor shall, at no additional cost to MIMOS, promptly investigate the cause of any such defect, failure or non-compliance and shall promptly provide the replacement parts to repair and shall repair any faulty or defective Equipment to MIMOS's satisfaction, or replace such Equipment without charge to MIMOS. The Equipment or part thereof accepted in replacement shall become the property of MIMOS.
  - C.7.4.5. The Contractor shall, at its own expense and with prior written approval of, or upon written notification of MIMOS, effect all modifications and changes, including the provision of all additional hardware and software, as required by MIMOS to enable the System to overcome deficiencies in design, manufacture, assembly, installation and perform in accordance with the Contract. The Contractor shall provide all Equipment, Software and parts, special tools and equipment required for any modifications made by the Contractor to the System.
  - C.7.4.6. MIMOS may elect to utilise its inventory of Spare Parts to complete emergency repairs, and in such event, to the extent that the Contractor is responsible for such repair under its warranty, the Contractor shall promptly replace such used inventory with new replacement parts. Emergency repair of the System, Equipment or Software by MIMOS's personnel will not invalidate the warranty, provided that reasonable care is taken during such repair In the event of any failure of the System due to Software faults, MIMOS reserves the right to rectify, after consultation with the Contractor, such faults by temporary measures.
  - C.7.4.7. In the event any Equipment, Software or parts thereof is remedied, repaired or replaced by the Contractor, the Warranty Period for such Equipment, Software or parts thereof shall be the later of ninety (90) days from the date of completion of such remedy, repair or replacement or the end of the original Warranty Period.

- C.7.4.8. If a new revision of Software or amendment or addition to the Software, which may or may not include additional features or functionalities, is needed to rectify any defects, deficiencies or bugs in the Software, this new revision or amendment or addition shall be supplied and implemented free of charge to MIMOS. In addition, the costs of any consequential hardware or software changes required as a result of the implementation of the new revision, amendment or addition to the Software pursuant to this Clause shall be borne by the Contractor.
- C.7.5. The Contractor shall furnish and maintain a record of all inspections and repairs to the System, which shall be made available to MIMOS for inspection upon request. Such record shall include, at a minimum, the following:
- C.7.5.1. Dates, scope and results of and any corrective actions taken pursuant to, routine inspections.
  - C.7.5.2. Date and time of notification of System failure, description of System failure, nature and length of time of response by the Contractor and description of corrective action taken, including all replacement parts used.
- C.7.6. In the event that the Contractor repairs or replaces any Equipment, Software or parts thereof during the Warranty Period and such repaired or replaced Equipment and Software or any part thereof remains unsatisfactory to MIMOS after such repair or replacement, MIMOS reserves the right to purchase the same from another source or to make good any damage or defect in any manner it deems fit and all costs thereby incurred shall be recoverable from the Contractor and maybe deducted from any moneys due or to become due to the Contractor. If the Contractor should fail to remedy any fault or defect in accordance with this Clause, MIMOS may do so at the risk and expense of the Contractor. Any such repair of Equipment, Software or parts thereof by MIMOS's personnel shall not invalidate the Contractor's warranty obligations.
- C.7.7. Notwithstanding Clause C.7, in the event of a fault (Equipment or Software) causing an emergency situation as may be reasonably determined by MIMOS during the Warranty Period that cannot be rectified using the standard operational and maintenance procedures, MIMOS shall contact the Contractor (on a 24 hour basis) and if requested by MIMOS the Contractor will immediately send an Equipment and/or Software specialist at the Contractor's expense and maintain him there at no cost to MIMOS for so long as may be necessary to restore the System. This will include continual processor stoppages which are caused by Software faults.
- C.7.8. If, subsequent to any repairs or replacement by the Contractor of any defect or fault to the Equipment or Software during Warranty Period, it is agreed that the defect or fault is solely due to MIMOS in failing to operate the Equipment or Software in accordance with requirements under the Documentation, then MIMOS will reimburse the Contractor a reasonable cost for such repair or replacement as mutually agreed by the Parties provided any reimbursement by MIMOS shall not exceed the costs of replacing the Equipment or Software.
- C.7.9. Any defective parts or items returned to the Contractor by MIMOS shall, be dispatched carriage paid, to the Contractor's local office in Malaysia and the replacement or repaired parts supplied by the Contractor shall be delivered at the Contractor's cost to the destination specified by MIMOS. For the purpose of the Contractor's obligations under this Clause, during the Warranty Period, the Contractor shall be responsible for all costs, expenses, freight, duties and taxes for the return and/or replacement of any parts to MIMOS at the designated Site(s) covered by the warranty.

C.7.10. During the Warranty Period, the Contractor shall where reasonably requested by MIMOS establish sufficient support services within the locality of the Site to assist in performing its warranty obligations.

**C.8. Injury To Persons and Property**

- C.8.1. Notwithstanding anything to the contrary herein contained, the Contractor shall be liable for, and shall fully indemnify MIMOS against all Claims whatsoever arising out of or in connection with the Contract or works undertaken in respect of personal injury (including death to any persons) or loss or damage to the works or any part thereof or to any property (including without limitation third party property), caused by or contributed to by or resulting from any acts or omissions whether negligent, willful or otherwise of the Contractor or its personnel or any of the Contractor's agents or sub-contractors' personnel.
- C.8.2. The Contractor shall be fully responsible for and be liable in managing the risks arising out of or in connection with this Contract. Without limiting the generality of the foregoing, the Contractor shall within thirty (30) days from the date of execution of this Contract, provide to MIMOS in writing risk reduction strategies in relation to the works to be executed under this Contract, which strategies shall be reviewed and approved by MIMOS. The Contractor shall implement and comply with such approved risk reduction strategies throughout the duration of this Contract.

**C.9. Termination or expiration of the Contract**

- C.9.1. MIMOS may immediately terminate this Contract by notice in writing to the Contractor upon any of the following events:
- C.9.1.1. the Contractor commits any material breach of or fails in any material respect to comply with and observe the provisions of the Purchase Order and such breach or failure is not remedied within thirty (30) days of written notice by MIMOS;
  - C.9.1.2. the Contractor declares or clearly states that the works under the Contract, or any substantial part thereof, will not or cannot be completed by the Scheduled Completion Date (as defined in SCHEDULE E) or thirty (30) days thereafter;
  - C.9.1.3. the Contractor is found to have conducted unlawful or illegal activities;
  - C.9.1.4. the Contractor takes or has taken or instituted against it any action or proceeding, whether voluntary or compulsory, which has as an object or may result in the winding up of the Contractor (other than a voluntary winding up by members for the purpose of reconstruction or amalgamation), or is placed under official management or enters into a compromise or other arrangement with its creditors or any class of them or an administrative receiver or an administrator or receiver is appointed to carry on its business or to take control or possession of any of its assets for the benefit of its creditors or any of them; or
  - C.9.1.5. the Contractor violates any law relating to the prevention of corruption or bribery in the Contractor's home country or any jurisdiction in which the Contractor is carrying out any of the works.
- C.9.2. Upon termination of this Contract, the Contractor shall pay to MIMOS the amount of any other loss and/or damage incurred by MIMOS by reason of the breach by the Contractor and termination of the Contract.

- C.9.3. No reasonable action taken by MIMOS under this Clause C.9 shall relieve the Contractor from any liability for damages for its failure or omission to perform the Contract nor shall it prejudice the right of MIMOS to recover from the Contractor or to deduct from any money that may be due or become due to the Contractor or from the Performance Bond, all sums of money that may then be due or become due to MIMOS under or in relation to the Contract.
- C.9.4. If either Party is in material breach of any of its obligations under this Contract, which failure is not capable of cure, or if can be cured, if the defaulting Party does not cure such failure within thirty (30) days after written notice thereof from the non-defaulting Party, then the non-defaulting Party shall have the right, at its election and without prejudice to other rights and remedies as provided in this Contract or at law or in equity, to terminate this Contract and recover direct damages from the defaulting Party.
- C.9.5. Notwithstanding anything to the contrary, MIMOS may at any time terminate this Contract for any reason whatsoever, without any liability, by giving thirty (30) days written notice provided always that the termination of this Contract shall be without prejudice to the right of MIMOS to any claim, action or remedy against the Contractor which shall have accrued or shall accrue thereafter to MIMOS. In the event that MIMOS terminates the Purchase Order pursuant to this Clause C.9.5**Error! Reference source not found.**, MIMOS shall pay to the Contractor the cost of labour, materials and overhead (calculated in accordance with the Contractor's normal and reasonable accounting practices) incurred by the Contractor up to the date of termination which cannot be re-deployed and an amount equal to ten per cent (10%) of such cost for loss of profit to the date of termination and for the administration of the termination. The said cost shall be agreed by the Parties at the time of termination. In the event the Parties cannot agree on such cost, the good faith, reasonable determination by MIMOS shall prevail. The Contractor shall use its best efforts to re-deploy surplus materials, including finished articles in the best interests of MIMOS and shall refund any amounts MIMOS upon completion thereof. Payment of such costs by MIMOS shall be in full and final settlement of any and all Claims by the Contractor in respect of the termination and represents MIMOS's total liability to the Contractor whether at law, in equity or under contract.
- On payment of such sum as aforesaid, the Contractor shall have no further claims against MIMOS under the terminated Purchase Order and any Equipment, materials and/or goods so paid shall become the property of MIMOS and all licenses granted in respect of Software and Documentation so paid for shall survive the termination of the Purchase Order for so long as the Software or Documentation is required to be used by MIMOS.
- C.9.6. Without prejudice to any other provisions of this Contract, MIMOS may at any time by notice in writing to the Contractor terminate the Contract or any Purchase Order if the Contractor fails to obtain any regulatory approvals, permissions or licenses required for the operation of the System. In this event, the cost to MIMOS of termination under this Clause C.9.6 shall be the cost as stated in Clause C.9.5 above. The Contractor shall use its best efforts to re-deploy surplus materials, including, finished articles, in the best interests of MIMOS and shall refund any amounts to MIMOS upon completion thereof.
- C.9.7. Termination On Corruption, Unlawful or Illegal Activities:

- C.9.7.1. Without prejudice to any other rights of MIMOS, if the Contractor, its personnel, servants or employees is convicted by a court of law for corruption or illegal activities in relation to this Contract or any other agreement that the Contractor may have with MIMOS, MIMOS shall be entitled to terminate this Contract at any time, by giving immediate notice to that effect to the Contractor.

- C.9.7.2. Upon such termination, MIMOS shall be entitled to all losses, costs, damages and expenses (including costs and expenses) including any incidental costs and expenses incurred by MIMOS arising from such termination.
- C.9.7.3. For avoidance of doubt, the Parties hereby agree that the Contractor shall not be entitled to claim from MIMOS any form of losses including loss of profit, damages, claims or whatsoever upon termination of this Contract.

#### C.10. Assignment, Novation and Sub-Contracting

- C.10.1. The Contractor shall not, without the prior written consent of MIMOS, assign or novate or sub-contract this Contract, or assign, mortgage, charge or encumber any of the moneys due or becoming due under the Contract, or delegate any obligation, or assign any other benefit howsoever arising, or which may arise, under the Contract.
- C.10.2. For any sub-contractors approved by MIMOS pursuant to Clause C.10.1, the Contractor shall be responsible for the acts, defaults and neglects of such sub-contractors and its personnel as fully as if they were the acts, defaults or neglects of the Contractor or its personnel. Any consent given by MIMOS for any sub-contractor shall not relieve the Contractor from any liability or obligation under this Contract.
- C.10.3. The Contractor shall not alter or terminate any approved sub-contract without the prior consent in writing of MIMOS. Such consent shall not relieve the Contractor of any liability or obligation under the Contract.
- C.10.4. MIMOS reserves the right to assign or novate the Contract without prior approval of the Contractor, to any Affiliate of MIMOS, or any person or entity which acquires substantially all of the business and assets of the division of MIMOS which operates the System. The Contractor shall execute all documents as MIMOS may reasonably request to perfect any such assignment or novation. Such right to assignment shall include the right to assign, novate or transfer all licenses granted under this Contract. Without prejudice to the first sentence of this Clause C.10.4, MIMOS may, upon the prior written consent of the Contractor, which consent shall not be unreasonably withheld, assign or novate the Contract or sub-contract or sublet the whole or any part of the benefit of the Contract to any third party.
- C.10.5. The Contractor acknowledges that MIMOS may be required to assign this Contract to its financiers as security for any credit facilities granted to MIMOS. The Contractor hereby consents to such assignment and agrees to reasonably cooperate with the financier to meet the financier's financing requirements.
- C.10.6. Any assignment, mortgage, charge, encumbrance, sub-contract, alteration or termination in contravention of this Clause shall, as against MIMOS, be void and of no effect, and may be ignored by MIMOS.

#### C.11. Confidentiality

- C.11.1. Each Party agrees and undertakes with each other to protect the Confidential Information of the other Party using not less than the standard of care which it treats its own Confidential Information but in no event less than reasonable care and shall ensure that the Confidential Information of the other Party is stored and handled in such a way as to prevent unauthorised disclosure.

- C.11.2. Each Party shall use its best efforts to limit dissemination of the Confidential Information to its and its Affiliates' employees, consultants, officers, agents or sub-contractors (collectively referred to as "**Permitted Persons**") to whom disclosure is necessary for each of them to perform his duties under this Contract. Each Party shall impose the above obligation of confidentiality on their Permitted Persons.
- C.11.3. The foregoing obligations shall not apply, however, to any part of the Confidential Information which:
- C.11.3.1. was already in the public domain or becomes so through no fault of the recipient Party;
  - C.11.3.2. is independently developed by the recipient Party without reference to the Confidential Information of the disclosing Party;
  - C.11.3.3. is approved for release by prior written authorization by the disclosing Party;
  - C.11.3.4. is required by law or regulatory or other authority to be disclosed.
- C.11.4. This Clause C.11 shall survive the expiration or termination of this Contract until such time the Confidential Information comes to the public domain through no fault of the recipient Party.
- C.11.5. Each Party further agrees, upon termination for whatever cause of this Contract to forthwith return to the other upon request all documents and any materials received in connection with the Contract containing any of the Confidential Information of the other Party except such Confidential Information as may be required by MIMOS for continued use of the Equipment, Software, System and Documentation or any part thereof.
- C.11.6. Notwithstanding anything to the contrary in this Contract, MIMOS shall be entitled to disclose this Contract to its financiers or potential financiers, its potential investors and their financial advisors (which shall include public or private investors) for the purpose of an initial public offering of its shares or the shares of its Affiliates.
- C.11.7. The terms and conditions of this Contract shall not be disclosed by either Party to any third party except:
- C.11.7.1. in connection with legal proceedings;
  - C.11.7.2. if required by law or any regulatory or governmental authority to be disclosed;
  - C.11.7.3. if made to either Party's solicitors or auditors provided that such person to whom disclosure is made has given an undertaking in the terms of this Clause.
  - C.11.7.4. as permitted under Clause C.11.6.

## C.12. Statutory and Other Regulations

- C.12.1. The Contractor shall comply with, and shall require compliance by its sub-contractors, with all applicable laws, ordinances, by-laws, rules, regulations and proclamations and with any lawful requirements thereunder and with the lawful requirements of public, municipal and other authorities or agencies in any way affecting or applicable to the execution of any of the works pursuant to this Contract.

C.13. Conflict of Interest

C.13.1. The Contractor and its personnel:

- C.13.1.1. shall use reasonable care to avoid actions and conditions that conflict with the interests of MIMOS. This obligation also applies to the Contractor's employees and their relationship with MIMOS and its subcontractors, representatives, and/or their families. The Contractor shall promptly notify MIMOS of any employees or representative of MIMOS, subcontractors or agents that have or obtain a material or substantial interest in any business of the Contractor or its subcontractors. The Contractor shall notify MIMOS through a disclosure form in the form prescribed by MIMOS and provide such other information as may be required by MIMOS, in the event any service, understanding or agreement with third party is likely to breach this Clause or such service, understanding or agreement with any third party is in conflict interest with MIMOS;
- C.13.1.2. shall not under any circumstances offer or make any gift, payment, loan, reward or other advantage, including, without limitation, entertainment, payment, loans or other valuable goods or services (other than gifts of a nominal value and as permitted by all applicable laws and regulations) to any of MIMOS's directors, its personnel, subcontractors, representatives, and/or their families 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 this Contract or any other agreement with MIMOS or for showing or forbearing to show favour or disfavour to any person in relation to this Contract or any other agreement with MIMOS;
- C.13.1.3. shall not enter into this Contract or any other agreement with MIMOS in connection with any arrangement by which commission has been paid or agreed to be paid by the Contractor on its behalf or to its knowledge, unless before the Contract or other agreement is made, the particulars of any such commission and of terms and conditions of any agreement for the payment thereof have been disclosed in writing to MIMOS's Chief Executive Officer, Chief Operating Officer or Chief Financial Officer.
- C.13.2. If the Contractor or any of its agents or employees is at any time found to have acted in breach of the obligation in this Clause C.13.1 or is convicted of an offence as a result of a breach of the obligations of Clause C.13.1, MIMOS shall be entitled forthwith to terminate the Contract by written notice to the Contractor. Such termination shall be without prejudice to any right or remedy which MIMOS has or may have against the Contractor, and the Contractor shall not be entitled to any compensation whatsoever by reason thereof.

C.14. Taxes and Duties and Records

- C.14.1. MIMOS reserves the right to withhold and pay a portion of the moneys due to the Contractor under this Contract in compliance with the requirements of the Inland Revenue Department or other Government authority in Malaysia.
- C.14.2. MIMOS shall not be responsible for personal income tax which may be payable in respect of the Contractor's personnel or any other corporate taxes, dues and levies in relation to the Contractor or Contractor's personnel in the performance of works undertaken under this Contract.
- C.14.3. All applicable taxes, levies, duties, retentions, fees, fiscal charges and withholding taxes imposed by any Government, excluding customs duties, service tax and sales tax imposed by the Malaysian authorities, shall be borne by the Contractor and the Contractor shall keep

MIMOS fully indemnified in respect of the consequences of failure to pay all such levies or charges. The Contractor undertakes to indemnify MIMOS of any costs or losses suffered by MIMOS as a result of improper or incorrect declaration of dutiable imports by the Contractor.

- C.14.4. The Contractor shall maintain complete and accurate records of all amounts billable to and payments made by MIMOS hereunder in accordance with recognized accounting practices. The Contractor shall retain such records for a period of two (2) years from the date of receipt of payment by the Contractor. The Contractor agrees to provide reasonable supporting documents concerning any disputed amount of an invoice to MIMOS as soon as possible after MIMOS provides written notification of the dispute to Contractor. This Clause shall survive the termination of this Contract.
- C.14.5. During the term of this Contract and the respective periods in which Contractor is required to maintain such records, MIMOS and its authorized agents and representatives shall have access to such records for purposes of audit during Contractor's normal business hours and upon reasonable notice.

#### C.15. Waiver and Acquiescence

- C.15.1. No failure or delay on the part of either Party to exercise any right, power or remedy under this Contract shall operate as a waiver or acquiescence thereof, nor shall any single or partial exercise by either of the Parties of any right, power or remedy preclude the exercise of any further or other right, power or remedy. The rights, powers and remedies provided herein are cumulative and are not exclusive of any other rights, powers or remedies.

#### C.16. Severability and Survival of Clauses

- C.16.1. Any provision of the Contract prohibited by or unlawful or unenforceable under any applicable law actually applied by any court of competent jurisdiction shall, to the extent required by such law, be severed from the Contract and rendered ineffective so far as is possible without affecting the legality, validity and enforceability of the remaining provisions of this Contract. Where, however, the provisions of any such applicable law may be waived, they are hereby waived by the Parties to the full extent permitted by such law to the end that this Contract shall be valid, binding and enforceable in accordance with its terms.
- C.16.2. Those Clauses which by their nature would survive the termination of this Contract shall so survive. This would include, without limitation and in addition, the obligations of the Parties as contained in Clauses C.5, C.7, C.8, C.11 and C.14.

#### C.17. Time and Binding Effect

- C.17.1. Time, wherever mentioned, shall be of the essence in the Contract.
- C.17.2. Subject to any provisions hereof restricting assignment or novation, this Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

#### C.18. Dispute Resolution and Jurisdiction

- C.18.1. The Parties agree to use their best efforts to resolve any disputes arising from this Contract quickly and amicably to achieve timely and full performance of the terms of the Contract.

C.18.2. The performance of the Contract by both MIMOS and the Contractor shall continue during such dispute, controversy or claim unless otherwise required by MIMOS.

C.19. Stamp Duty and Solicitor's Costs

C.19.1. The stamp duty for the Contract shall be borne by the Contractor.

C.19.2. Each Party shall bear its own solicitor's costs in relation to the preparation of the Contract.

C.20. Notices

C.20.1. Any notice or other communication required or permitted to be given by or pursuant to this Contract shall be sufficiently given if given in writing and delivered personally or sent by prepaid registered post or courier or facsimile or email to the addresses for the Parties specified in item 8 of SCHEDULE A or to such other address or such other person as one Party may from time to time notify to the other Party in writing in accordance with the provisions of this Clause.

C.20.2. Any such notice or other communication issued in accordance with Clause C.20.1 shall be deemed to have been received:

C.20.2.1. if delivered personally, the next business day after it has been delivered;

C.20.2.2. in the case of posting or courier, five (5) days after dispatch; and

C.20.2.3. in the case of facsimile or email, upon successful completion of transmission.

C.21. Entire Agreement, Incorporation of Appendices and Amendment

C.21.1. This Contract, including any schedules, appendices or exhibits referred to herein or therein and attached hereto or thereto, each of which is incorporated herein or therein (as the case may be) embodies the entire agreement between MIMOS and the Contractor relating to the subject matter hereof and supersedes all prior agreements and arrangements between the Parties and there are no promises, terms, conditions, or obligations, oral or written expressed or implied other than those contained herein and therein.

C.21.2. All appendices referred to in the Contract and attached therein, are integral parts of the Contract and are incorporated therein by this reference. However, if anything contained in the abovementioned Appendices is in conflict with the terms and conditions of this Contract, the terms and conditions of this Contract shall take precedence.

C.21.3. Any subsequent alteration, amendment or addition to this Contract, including without limitation any amendments or variations to the works pursuant to the Change Order Procedure, shall be in writing and signed by the authorised representatives of the Parties.

C.22. Governing Law

C.22.1. This Contract shall be governed by, construed and interpreted in accordance with the laws of Malaysia. The rules of the United Nations Convention on Contracts for the International Sale of Goods shall not apply to the Contract.

C.23. No Joint Venture

- C.23.1. Nothing contained in this Contract shall be construed as creating a joint venture, partnership or employment relationship among the Parties nor shall any Party have the right, power or authority to create any obligation or duty, express or implied, on behalf of any other Party. The execution and delivery of this Contract shall not be deemed to confer any rights or remedies upon, nor obligate any of the Parties to, any person or entity other than such Parties.

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## SCHEDULE D

### TERMS AND CONDITIONS FOR PURCHASE OF GOODS/EQUIPMENT/SOFTWARE

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#### D.1. Prices

- D.1.1. The Contract Price is set out in Appendix D1.
- D.1.2. Where the Equipment has associated Software, the Contract Price shall be deemed to include all Software fees payable to the Contractor and all amounts payable for the use of any and all Intellectual Property Rights granted or licensed pursuant to the Contract, including third party licenses (if any) and shall unless otherwise agreed by the Parties in writing, be on the basis of a one-time, irrevocable, perpetual, royalty free and world-wide license(s) for the use of any and all Intellectual Property Rights granted or licensed to MIMOS by the Contractor, including third party license(s).

#### D.2. Insurance of Goods and Equipment

- D.2.1. MIMOS carries its own insurance for the Goods and Equipment purchased.
- D.2.2. Parties shall agree on the freight forwarding agent to be engaged. Where the freight forwarding agent is chosen by MIMOS, MIMOS shall provide the Contractor with the details of the freight forwarding agent. The Contractor shall notify MIMOS and its freight forwarding agent (where the freight forwarding agent is chosen by the Contractor) by telefax the value and details in the packing list of each consignment, at least one (1) week before shipment to enable MIMOS to arrange insurance coverage for each consignment.
- D.2.3. In the event the Contractor fails to comply with Clause D.2.2 above, and the consignment is lost, damaged or destroyed during shipment, the Contractor shall pay to MIMOS, an amount to the value of one hundred per cent (100%) of the value of consignment so lost, damaged or destroyed.

#### D.3. Delivery

- D.3.1. In the event MIMOS or its agent, upon unpacking and inspecting each shipment of the Goods and/or Equipment, discovers that there is damage to the Goods/Equipment/Software and/or missing parts or components, the shipment shall be deemed a short or partial shipment and the Contractor shall immediately rectify such damage to the Goods/Equipment/Software and/or replace such missing parts or components at the Contractor's expense.
- D.3.2. If MIMOS or its agent upon unpacking and inspecting each shipment of the Goods and/or Equipment and/or Software, discovers a discrepancy between the items listed on the packing list or delivery order with the this Contract, such shipment shall be deemed a short or partial shipment.

D.3.3. For all short or partial shipments, the following shall apply:

- D.3.3.1. MIMOS reserves the right, at its sole discretion, to either (i) store such short or partial shipment delivery at its premises or warehouse; or (ii) return such short or partial shipment delivery to the Contractor for storage purposes, and in any case at the Contractor's cost and expense. If MIMOS elects to return the short shipment delivery and gives written notice to the Contractor, the Contractor shall immediately remove such short or partial shipment delivery for storage purposes and shall re-deliver the same together with any missing or replacement items so that the complete and accurate set of Equipment and/or Software is delivered as soon as possible. For the avoidance of doubt, if the short or partial shipment delivery has been cleared through Malaysian customs, the same Equipment or part thereof forming the short or partial shipment delivery must form part of the shipment re-delivered to MIMOS. Risk with respect to such short or partial shipment delivery shall transfer to the Contractor upon MIMOS notifying the Contractor in writing to remove the short or partial shipment delivery until such time the complete and accurate set of Equipment and/or Software is received and acknowledged by MIMOS at the Sites in accordance with the terms of this Contract.
- D.3.3.2. The Contractor hereby agrees to bear all costs and expenses in relation to such short or partial shipment delivery, including without limitation, transportation, insurance and storage charges as well as any additional customs clearance charges, customs duties and sales tax which may be payable.
- D.3.3.3. MIMOS reserves the right to stipulate that all or part of the missing or short or partially shipped items be air-freighted at the Contractor's cost and expense, in which case the Contractor shall promptly do so at its own cost and expense.
- D.3.3.4. Payment of the costs and expenses in connection with short shipment delivery as aforesaid and compliance by the Contractor of Clause D.3.3.3 shall not relieve the Contractor from its obligation to Deliver and/or Commission the Equipment and/or Software by the Scheduled Completion Date or any other obligation under this Contract and shall be without prejudice to all other rights and remedies of MIMOS.

D.3.4. In the event where:

- D.3.4.1. the Contractor fails to deliver the Goods and Equipment purchased within the stipulated time;
- D.3.4.2. short or partial shipments were returned and the Contractor fails to deliver the Goods and Equipment purchased within the stipulated time:  
the Contractor shall pay to MIMOS the liquidated damages set out in item 10 of SCHEDULE A within thirty (30) days of the written notification by MIMOS notifying a claim under this Clause.
- D.3.5. In the event where MIMOS accept the short or partial shipments but the Contractor fails to deliver the balance of the short or partial shipments within the stipulated time, the Contractor shall pay to MIMOS the liquidated damages set out in item 10 of SCHEDULE A

pro rated based on the value of the goods delivered to the value of the goods ordered and within thirty (30) days of the written notification by MIMOS notifying a claim under this Clause.

- D.3.6. Payment of liquidated damages pursuant to Clauses D.3.4 and D.3.5 shall not prejudice any other rights and remedies of MIMOS arising from the breach by the Contractor.

D.4. Title and Risk

- D.4.1. Notwithstanding the terms of delivery set out above, it is hereby agreed that title, ownership and other rights to the Goods, Equipment and Software shall pass to and vest in MIMOS upon payment made for these Goods, Equipment and Software.
- D.4.2. Without prejudice to Clause D.4.1, the Contractor shall have full responsibility for and risk of all Goods, Equipment and Software until the complete and accurate set of Goods, Equipment and/or Software is received by MIMOS.
- D.4.3. Notwithstanding Clause D.4.1 and anything to the contrary herein contained, the Contractor shall be responsible for and shall indemnify MIMOS for any damage or loss to the Goods and/or Equipment and/or Software caused by the Contractor or its personnel. In addition, the Contractor shall be responsible for any delays arising from such damage or loss to the Equipment caused by the Contractor or its personnel.
- D.4.4. In the event that MIMOS at the request of or upon the neglect or default of the Contractor collects, receives, conveys, delivers or stores any Equipment or Software before the payment made, the Equipment shall nevertheless remain the property of the Contractor and the Contractor shall have no claim against MIMOS, its servants or agents for any act, neglect or default in connection with or arising out of such collection, receipt, conveyance, delivery or storage.

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**Appendix D1**  
**Description of Goods/Equipment/Software**  
**Prices and Quantity**

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**Appendix D2**  
**Delivery of Goods/Equipment/Software**

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**Appendix D3**  
**Software Escrow**

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(if applicable)

## SCHEDULE E

### TERMS AND CONDITIONS FOR INSTALLATION AND COMMISSIONING OF EQUIPMENT/SOFTWARE

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E.1. Definitions Applicable to SCHEDULE E

<b>Acceptance Tests</b>	means, for the Commissioning of Equipment and/or Software, the Preliminary Acceptance Tests and the Reliability Run to be carried out pursuant to Clause E.10 to evaluate compliance with the Specifications and the Contract.
<b>Actual Completion Date(s)</b>	means the date(s) set out or determined in accordance with Clauses E.4.1 and E.4.2.
<b>Adjustment Due To Delays</b>	means the price adjustment which MIMOS is entitled to in the event of delay specified in Clause E.14.
<b>Certificates</b>	means collectively the Certificate of Preliminary Acceptance and Certificate of Final Acceptance.
<b>Certificate of Preliminary Acceptance</b>	means the certificate issued by MIMOS pursuant to Clause E.11.1 confirming the successful completion of the Preliminary Acceptance Tests.
<b>Certificate of Final Acceptance</b>	means the certificate issued by MIMOS pursuant to Clause E.12.1 and E.12.2 confirming the successful completion of the Acceptance Tests and “ <b>Final Acceptance</b> ” shall be construed accordingly.
<b>Change Order</b>	means a written record of any change to the Equipment, Software, Services or the System agreed to by the Parties in accordance with the provisions of Clause E.18.
<b>Commission</b>	means the Delivery and carrying out and completion of the Installation, integration and Acceptance Testing of the Equipment and/or Software in accordance with the terms and conditions of this Contract.
<b>Contractor's Project Manager</b>	means the officer appointed by the Contractor in accordance with the Contract who will provide a formal point of contact with MIMOS for all detailed correspondence and discussions in respect of works to be undertaken pursuant to the Contract and who has the authority to exercise the Contractor's rights under the Contract, except where otherwise stated in the Contract.
<b>Documentation</b>	means all relevant documents and data including but not limited to technical drawings, flow charts, programming listings overview, modification details, handbooks and manuals for training, installation, operation, maintenance and testing of both the Equipment and Software, Handover Documents, Site reports, project schedule and project plans, network diagrams,

Site layout diagrams, Acceptance Tests procedures and specifications and any other related materials in machine or human readable form stored in any medium. Documentation also includes all future documents and its revisions to be provided by the Contractor pursuant to this Contract.

<b>Factory Tests</b>	means all tests undertaken by the Contractor at the Contractor's facilities or any other location which are necessary to ensure compliance of the Equipment and Software with the Specifications.
<b>Handover Documents</b>	shall have the meaning assigned in Clause E.11.1.
<b>Implementation Schedule</b>	means, subject to any extensions permitted under the Contract, the schedule specified in Appendix E2 for Commissioning of Equipment and/or Software, Delivery of Goods, Equipment and/or Software, the complete performance of the Services, as the case may be.
<b>Installation</b>	means the erection, cabling complete assembly and installation of the Equipment and Software at the Sites.
<b>Non-Conformity</b>	means any non-compliance of the Equipment, Software, Documentation or parts thereof with the Specifications or failure of the Equipment or Software to meet the criteria stated in any of the Acceptance Tests procedures and specifications, or failure of the System, Equipment or Software to interwork, interface or integrate with the systems, equipment and/or software of third party vendors connected to the Equipment or Software as required by the Specifications, the Contract and as evidenced by any Acceptance Test.
<b>Other Systems</b>	shall have the meaning assigned in Clause E.3.4
<b>Preliminary Acceptance Tests</b>	means that portion of the Acceptance Tests and/or as may otherwise be stated in the Contract including but not limited to verification and functional testing of the Equipment and Software to ensure the performance of the Equipment and Software in conformance with the Specifications and the Contract.
<b>Project Problem</b>	means any of the following: the delay to any milestone in the Implementation Schedule, any material failure of either Party to conform to the requirements of the Contract, or any other problem which could have a material adverse effect on the successful completion of the works under the Contract.
<b>Punch List</b>	means the list setting out the faults, deficiencies and/or any outstanding items which were discovered during Installation and/or Acceptance Testing and which are required to be rectified or made good by the Contractor by the time period stated in the Punch List. For the avoidance of doubt, the faults, deficiencies and/or any outstanding items in the Punch List are those which are minor in nature and do not materially and adversely affect the operation or performance of the System, Equipment or Software.

<b>Reliability Run</b>	means the four (4) week period (or any shorter period as may be determined by MIMOS in its sole discretion) of live traffic testing forming part of the Acceptance Tests commencing after successful completion of the Preliminary Acceptance Tests.
<b>Scope of Work</b>	means the scope of work undertaken by the Contractor as set out in <u>Appendix E1</u> .
<b>Scheduled Completion Date(s)</b>	means the date(s) set out or determined in accordance with Clauses E.4.3 and E.4.4.
<b>Site(s)</b>	mean the specific geographical locations or buildings and supporting facilities where the Equipment and/or Software is to be Delivered, or Commissioned.
<b>System</b>	means collectively all Equipment and Software Delivered or Commissioned under this Contract, working in combination, including without limitation all associated peripherals, facilities and components as described in the Contract.

#### E.2. Prices

- E.2.1. The Contract Price is set out in Appendix E1 shall not be varied except if specifically agreed between the Parties pursuant to a variation in accordance with the Change Order as expressly provided in this SCHEDULE E.
- E.2.2. Where the Equipment has associated Software, the Contract Price shall be deemed to include all Software fees payable to the Contractor and all amounts payable for the use of any and all Intellectual Property Rights granted or licensed pursuant to the Contract, including third party licenses (if any) and shall unless otherwise agreed by the Parties in writing, be on the basis of a one-time, irrevocable, perpetual, royalty free and world-wide license(s) for the use of any and all Intellectual Property Rights granted or licensed to MIMOS by the Contractor, including third party license(s).

#### E.3. Commissioning of Equipment /Software

- E.3.1. For commissioning of Equipment and Software, the Contractor shall undertake such work in accordance with the terms and conditions of this SCHEDULE E.
- E.3.2. The Contractor agrees and undertakes, at no additional charge other than the Contract Price, to:
  - E.3.2.1. design, develop, manufacture, Commission, interwork, interface, integrate and interconnect the Equipment and/or Software in accordance with the Scope of Work, Implementation Schedule, the Specifications and otherwise in accordance with this Contract. All Equipment, Software and Documentation provided shall conform in all respects with the technical, capacity, functionality and performance specifications set out, and contain all of the features described, in the Specifications;

- E.3.2.2. in connection with Software, grant to MIMOS the rights as specified in this Contract;
  - E.3.2.3. perform the works in accordance with the Implementation Schedule and complete each stage of the works by the relevant milestones specified in the Implementation Schedule;
  - E.3.2.4. provide Documentation to MIMOS in accordance with Clause E.13;
  - E.3.2.5. ensure the compatibility and inter-operability of the Equipment and/or Software (without any reduction or degradation in the System) with the System and Other Systems without any modifications to the System or Other Systems;
  - E.3.2.6. carry out the works in a good and workmanlike manner in accordance with the Specifications and otherwise in accordance with this Contract, using materials necessary for the completion of the said works which are of the quality and standards specified in the Specifications and which shall not in any event be less than industry standards;
  - E.3.2.7. be solely responsible for the correct design, quality and adequacy of the works and for the correct quantities of materials, articles and goods necessary for completion of the said works in accordance with this Contract; and
  - E.3.2.8. provide advice to MIMOS on Site preparation.
- E.3.3. In respect of any Software to be Delivered or Commissioned, the Software shall be provided in the medium stipulated in this Contract and the latest commercial release shall be provided unless another release or version is specified by MIMOS in writing. In addition, the Contractor shall provide the latest commercial release of the accompanying Documentation at no additional cost to MIMOS in the number of copies as stated in Clause E.13.
- E.3.4. The Contractor shall at no additional charge to MIMOS take full responsibility for and ensure the seamless interworking, interfacing, interconnect and integration (collectively "**Integration Works**") of the Equipment and Software of the System and all other equipment, software and systems of any third party vendors which are connected to or which interact with the Equipment and Software or the System identified in Appendix E3, which are in accordance with industry accepted standards (collectively, "**Other Systems**") and that such Equipment and Software shall at all times after such Integration Works conform and perform in accordance with the Specifications and the Contract.

#### E.4. Completion Dates and Implementation Schedule

- E.4.1. The Actual Completion Date for the Commissioning of Equipment and/or Software, shall be the date when MIMOS issues a Certificate of Final Acceptance.
- E.4.2. The Actual Completion Date for the provision of Services, shall be the date when the Contractor issues a Certificate of Final Acceptance.
- E.4.3. The Scheduled Completion Date for the Commissioning of Equipment and/or Software, shall be the scheduled date for the issue of the Certificate of Final Acceptance for the Equipment and/or Software in accordance with the Implementation Schedule.

E.4.4. The Scheduled Completion Date for the provision of Services shall be the scheduled date for the complete performance of the Services in accordance with the Implementation Schedule.

**E.5. Project Management and Contractor's Personnel**

E.5.1. For the Commissioning of Equipment and/or Software, the Contractor shall appoint a full-time Contractor's Project Manager on the Sites where works are to be carried out who shall:

- E.5.1.1. be acceptable to MIMOS;
- E.5.1.2. be fully conversant with the background, progress and implementation of the works;
- E.5.1.3. have sufficient delegated authority to make day to day decisions on-site during the progress of the works in addition to having full control of the Contractor's personnel on the Sites;
- E.5.1.4. be contactable on a 24 hour basis during the period from the commencement of works until Actual Completion Date or such other period as may be required by MIMOS; and
- E.5.1.5. remain unchanged for the duration of the works except by mutual agreement between the Parties.

E.5.2. The Contractor's Project Manager shall remain at the Sites until the issue of a Certificate of Final Acceptance, or such further period as may be agreed between the Parties.

E.5.3. MIMOS will appoint its designated representative with whom the Contractor's Project Manager shall maintain the close cooperation at all times and comply with any written instructions issued by the MIMOS's designated representative.

E.5.4. The Contractor shall ensure that the personnel it provides are suited in skill, health and temperament for the conditions and environment in which the Installation and Commissioning is to be carried out and that at least one member of such staff at each location where major Installation work is carried out can converse fluently and competently discuss technical matters in the English language. The Contractor shall where requested produce to MIMOS a full curriculum vitae in respect of each of its personnel for the approval of MIMOS.

E.5.5. The Contractor shall, at MIMOS's request, replace any of the Contractor's personnel on the Sites as soon as possible if such personnel misconducts himself, has proved to be unsuitable under the terms herein or is incompetent or negligent in the performance of his duties, and such person shall not be employed again at any Site without the prior written approval of MIMOS.

E.5.6. Progress meetings shall be arranged and be attended by both Parties' relevant personnel at such times as shall be determined by MIMOS. A progress report shall be submitted at least fortnightly by the Contractor showing the progress of development, production, scheduled dates for delivery, any anticipated delivery delays and other relevant information in such form as MIMOS may require and indicating against each item the corresponding activity. Each progress report shall include a statement either confirming that the Scheduled Completion Date will be met or giving a detailed explanation should there be any possibility of delay and any proposed remedial actions or activities to be undertaken by the Contractor to minimize the impact of any delay to MIMOS. With respect to any period covered by a

progress report, in the event that the Contractor fails to inform MIMOS of any Project Problem, MIMOS shall be entitled to presume that no such Project Problem arose during such period. However, submission by the Contractor to MIMOS of the specified progress reports shall not alter, amend or modify the Contractor's obligations pursuant to any other provision of the Contract.

#### E.6. Sites

- E.6.1. MIMOS shall be responsible for providing the Contractor availability of the Sites in accordance with the Implementation Schedule and the requirements specified in the Specifications.
- E.6.2. Notwithstanding Clause E.6.1 above, in respect of Sites identified to the Contractor by MIMOS, the Contractor shall be deemed to have inspected and examined such Sites and their surroundings and beneath and above the surface and have satisfied itself as to the nature of the soil, terrain and environment; the means of access to the Sites and all other pertinent information, unless within fourteen (14) days of MIMOS's identification of any Site, the Contractor notifies MIMOS in writing of any physical impediments to the carrying out of the works thereat. The Contractor will in such situations advise MIMOS and provide all necessary assistance to MIMOS at no additional cost unless otherwise agreed by the Parties in writing (which without prejudice to the generality of the foregoing includes undertaking the necessary remedial works) to rectify, correct or otherwise minimize the impact of any such physical impediments to enable the performance of the works under the Contract.

#### E.7. Design of the Equipment and Software

- E.7.1. The Contractor shall carry out the design of the System, Equipment and Software and all details thereof in accordance with the Specifications, the Implementation Schedule, and otherwise in accordance with this Contract. The Contractor shall be solely responsible for the correct design of the System, Equipment and Software in order to meet the Specifications and to ensure compatibility of the Equipment and Software with the System and where applicable to the Other Systems.
- E.7.2. The Contractor agrees to inform and make available to MIMOS from time to time, information about technical developments and improvements to the System, Equipment or Software and shall provide MIMOS with all relevant information to enable MIMOS to evaluate such development or improvement. The implementation of any developments or improvements shall be at MIMOS's sole discretion. The Contractor warrants and represents that all developments and improvements (including without limitation new features) shall not adversely affect the performance, the features, functionality or operation of the System, Equipment and Software. The Contractor further undertakes to keep MIMOS informed of the latest technology and provide such technology if requested by MIMOS.
- E.7.3. The Contractor shall give reasonable notice to MIMOS of any proposed modification or changes to the System, Equipment or Software which shall not in any event adversely affect the performance, the features, functionality or operation of the System, Equipment and Software and shall provide to MIMOS the procedures and details of all System, Equipment or Software modifications or changes for MIMOS's consideration. Any modifications and changes are to be carried out by the Contractor only with the prior written consent of MIMOS and shall unless otherwise agreed by the Parties, be carried out without any additional costs to MIMOS.

- E.7.4. Notwithstanding anything to the contrary herein, the Contractor shall ensure that any changes, modification, enhancement or upgrade to the System, Equipment or Software is compatible with the existing System and Other Systems used in production. If any changes or modification is required to be implemented by the Contractor for any reason whatsoever including without limitation, to fix or rectify any defect or fault in the System, Equipment or Software, all costs in connection with such implementation (including without limitation any associated hardware and software upgrade costs) shall be borne by the Contractor.
- E.7.5. The Contractor shall use its best endeavours to cooperate with MIMOS in respect of any design work which may be required by MIMOS for the addition of a new technique or sub-system or to interface with another system as may be defined in all applicable international standards, provided that such new techniques, additional facilities, new sub-systems and other types of equipment are at all times compatible with the design philosophy of the System.
- E.7.6. The Contractor shall not change the basic design and construction of the System or any Equipment and Software purchased pursuant to the Contract without the prior written consent of MIMOS.

#### E.8. Quality Assurance and Factory Testing

- E.8.1. The Contractor shall conduct sufficient and adequate Factory Testing and inspection to ensure that the Goods, Equipment and Software complies with the Specifications.
- E.8.2. MIMOS shall be entitled, upon written notification to the Contractor, to have reasonable access to the manufacturing facilities of the Goods or Equipment, to be present at any Factory Testing carried out on all or any part of the Goods or Equipment, to inspect any Factory Testing results, to audit the operations and quality and inspection procedures of the said manufacturing facilities.
- E.8.3. MIMOS reserves the right for itself and/or its nominee to inspect or observe any necessary test and/or measurements on all or any part of the Equipment and Software at any stage in the manufacture and factory integration of the Equipment and to reject all or any part of the Equipment and Software not in accordance with the Specifications. If any portion of the Equipment or Software does not pass any inspection, examination or test carried out under this Clause, the Contractor shall promptly remedy the defect and shall at its own expense perform within a reasonable time and upon the same terms and conditions such inspection, examination or test.
- E.8.4. For the purposes of inspection the Contractor shall accord to MIMOS and/or its nominee right of free and safe access to all parts of its factory concerned with the manufacture of Equipment and Software and shall provide MIMOS and/or its nominee with such inspection facilities, testing apparatus and services as may reasonably be required or as otherwise requested by MIMOS.
- E.8.5. The Contractor shall use its best endeavour to ensure that MIMOS and/or its nominee shall have the same test and inspection rights in respect of any sub-contractor as provided for in Clause E.8.2, E.8.3 and E.8.4 as it has in respect of the Contractor.
- E.8.6. In the event MIMOS does not attend the Factory Testing, two (2) copies of the Factory Test results for each shipment of the Equipment and Software, as evidence of conformity of the Equipment and Software with the Specifications, shall be supplied to MIMOS by the Contractor free of charge to reach MIMOS seven (7) working days before the proposed shipment of the Equipment and Software.

- E.8.7. The Contractor undertakes to implement and maintain a quality system in accordance with ISO 9000 series and in accordance with the Specifications. MIMOS's Quality Assurance representative shall be given reasonable access to all manufacturing locations and inspection or test records as required, to audit the effective operation of the quality and inspection procedures throughout the duration of the Contract.
- E.8.8. The foregoing inspection by MIMOS shall not in any way prejudice the rights of MIMOS or the obligations of the Contractor under this Contract.

**E.9. Installation**

- E.9.1. For the Commissioning of Equipment and/or Software, the Contractor shall submit to MIMOS its Installation manual no later than thirty (30) days prior to the carrying out of the Installation.
- E.9.2. The Contractor shall give MIMOS at least ten (10) working days prior notice in writing of the commencement of the Installation so that MIMOS can either make the necessary arrangements for its representative to be present at such times as shall be advised to it by the Contractor or MIMOS shall advise the Contractor that its representative will not attend. MIMOS reserves the right to ensure that Installation is performed in accordance with the Installation specifications and procedures as detailed in the applicable Contractor's Installation manual.
- E.9.3. The Contractor shall carry out the Installation of the Equipment and the Software in accordance with the Installation manual and shall forthwith certify in writing to MIMOS upon completion of the Installation of the Equipment and the Software.

**E.10. Acceptance Tests**

- E.10.1. Following the successful completion of the Installation of the Equipment and/or Software, the Acceptance Tests shall be conducted comprising two phases, the Preliminary Acceptance Tests and the Reliability Run.
- E.10.2. The Contractor shall submit to MIMOS the recommended specifications and procedures of the Acceptance Tests at least thirty (30) days prior to the carrying out of the Acceptance Tests and such recommendation shall as a minimum be able to demonstrate to the satisfaction of MIMOS the ability of the Equipment and / or Software to perform in accordance with the Specifications and the Contract. If MIMOS considers that the specifications do not provide sufficient details to test all the functions and facilities of the Equipment and the Software, the Contractor shall make any amendments to such specifications as MIMOS may reasonably request. The procedures and specifications of the Acceptance Tests shall include: (i) functional testing of each component of the Equipment and/or Software; (ii) end-to-end testing of all Equipment and/or Software delivered; and (iii) testing to ensure compatibility, inter-operability and interworking of the Equipment and/or Software with the System and Other Systems.
- E.10.3. By the applicable dates set forth in the Implementation Schedule, and in recognition of the critical time factor in the Contract, the Contractor shall perform the Acceptance Tests in accordance with the Acceptance Test procedure which have been jointly defined by MIMOS and the Contractor and agreed by MIMOS, the Implementation Schedule and the Specifications and the Contract.
- E.10.4. MIMOS may, at its option and sole discretion, attend, witness, memorialize, record and document in whatever manner MIMOS may elect (including, without limitation, by video, film

or photographs) each of the Acceptance Tests. The Contractor shall notify MIMOS in writing at least fourteen (14) days in advance of the date that the Acceptance Tests are scheduled to start. MIMOS will either arrange for its representative(s) to be available to witness the Acceptance Tests or advise the Contractor that its representative(s) will not attend.

- E.10.5. MIMOS reserves for itself the right to carry out any of the Acceptance Tests. For the purposes of this Clause, the Contractor shall provide MIMOS with any testing and/or inspection facilities, testing apparatus and services reasonably required by or as requested by MIMOS without any additional costs. Any testing carried out by MIMOS pursuant to this Clause shall not in any way prejudice the rights of MIMOS under this Contract and the Contractor shall not be entitled to claim any compensation or require any waiver or variations of this Contract by reason of any action taken or communications made by a personnel of MIMOS at any such test or any tests witnessed, or participated in, by MIMOS, unless subsequently confirmed in writing.
- E.10.6. The Contractor shall provide to MIMOS free of charge any special test equipment or software used in conducting the Acceptance Tests. The Contractor shall replace all parts necessary to ensure the successful conduct of the Acceptance Tests. Any such replacement part supplied shall be at no cost to MIMOS. In addition, the Contractor shall provide its own installation, test and maintenance tools both during the period of Installation as well as Acceptance Testing of the Equipment and/or Software.
- E.10.7. Following successful completion of the Preliminary Acceptance Tests, the Equipment and/or Software preliminarily accepted shall be subjected to a Reliability Run of satisfactory continuous fully operational working order in which case the Equipment and Software preliminarily accepted must at all times during the Reliability Run perform in accordance with the Specifications and the Contract, with no system breakdown unless caused by external power supply failure, or by errors on the part of personnel not employed by the Contractor or its sub-contractors or agents or as a result of a Force Majeure event. If during the Reliability Run, the Handover Documents referred to in Clause E.11.1 needs to be rectified, the Contractor shall do so promptly. The Contractor shall provide free of charge such services as may be necessary to maintain the Equipment and/or Software preliminarily accepted in full operational working order until the Certificate of Final Acceptance is issued or deemed issued in respect thereof.
- E.10.8. If the results of any of the Acceptance Tests carried out by the Contractor, or if any of the Acceptance Tests carried out by MIMOS, indicate that, in MIMOS's reasonable opinion, there is any Test Non-Conformity, then MIMOS may reject or call for the correction or rectification of any of such Equipment, Software or parts thereof and the relevant Acceptance Tests shall not be considered to have been successfully completed. The Contractor shall investigate the reasons for any Test Non-Conformity and is required to re-run the applicable Acceptance Tests for such purpose to the full satisfaction of MIMOS. The Contractor shall discuss with MIMOS the nature of any such Test Non-Conformity and the Parties shall agree upon the steps required to be taken by the Contractor to rectify any Test Non-Conformity. The Contractor shall provide a written failure analysis report defining the Test Non-Conformity and the corrective or remedial action agreed upon, and shall take such action as soon as possible without cost to MIMOS. In the event of disagreement, the good faith, reasonable business judgment of MIMOS shall prevail. The Contractor shall as soon as possible re-submit the relevant Equipment, Software or parts thereof for the relevant Acceptance Tests, giving to MIMOS at least three (3) business days notice of such further Acceptance Tests. If the relevant Equipment, Software or parts thereof still do not so conform, MIMOS shall have the option to exercise any of the following rights, and MIMOS may subsequently exercise either of the other rights:

- E.10.8.1. have the Contractor make further investigation and repair the Equipment, Software or parts thereof and repeat the steps set out in Clause E.10.8.
- E.10.8.2. accept such Equipment or Software subject to an abatement of the price of the Equipment or Software to be agreed by the Parties, such abatement to be of such amount as, taking into account the circumstances, is reasonable; or
- E.10.8.3. reject the Equipment and/or Software or any part thereof as not being in conformity this Contract and the Specifications in which event the Contractor shall (without prejudice to MIMOS's other rights and remedies) forthwith refund to MIMOS all sums previously paid to the Contractor, together with interest at two percent (2%) above the base lending rate of Malayan Banking Berhad head office in Malaysia. Upon rejection as aforesaid, MIMOS shall be entitled to terminate this Contract in accordance with the termination provisions of this Contract.

#### E.11. Certificate Of Preliminary Acceptance

- E.11.1. When it has been demonstrated to MIMOS's satisfaction that the Equipment and/or Software has successfully met the requirements of the schedule of Preliminary Acceptance Tests, the Contractor shall provide MIMOS all applicable handover documentation, including without limitation site layout, Equipment layout and network design of the Equipment and Software supplied as well as the Preliminary Acceptance Test results (collectively, "**Handover Documents**"). Upon the Handover Documents being provided, a Certificate of Preliminary Acceptance will be issued by MIMOS for such Equipment and/or Software, which will incorporate an agreed Punch List for all Test-Non-Conformities (if applicable). In the event of disagreement on the Punch List items, the good faith, reasonable business judgment of MIMOS shall prevail.

#### E.12. Certificate of Final Acceptance

- E.12.1. For Equipment and/or Software to be Commissioned, MIMOS will issue a Certificate of Final Acceptance for such Equipment and/or Software within ten (10) business days when it has been demonstrated that:
  - E.12.1.1. the Equipment and/or Software (including end-to-end integration of all Equipment and/or Software) has been delivered in accordance with this Contract; and
  - E.12.1.2. the performance of the Equipment and/or Software meets the requirements of the Specifications and the Contract; and
  - E.12.1.3. the Acceptance Tests comprising the Preliminary Acceptance Tests and the Reliability Run for the Equipment and/or Software have been successfully completed in accordance with this Contract; and
  - E.12.1.4. all outstanding Test Non-Conformities as listed in the Punch List discovered during the Acceptance Tests have been rectified to the satisfaction of MIMOS, and all other works and Services required to be completed by the Contractor pursuant to this Contract have been fully and satisfactorily completed in accordance this Contract; and
  - E.12.1.5. any Handover Documents which needs to be rectified pursuant to Clause E.10.7 has been so rectified to the reasonable satisfaction of MIMOS and has been duly provided to MIMOS.

- E.12.2. The Contractor shall issue MIMOS a written notification upon the satisfaction of all the conditions specified in Clause E.12.1 above and if MIMOS has not signed a Certificate of Final Acceptance within ten (10) business days from the date of such notification and fails to notify the Contractor within such period that the Equipment and/or Software or Services has notwithstanding such earlier written notification by MIMOS materially failed to perform in accordance with the criteria specified in Clause E.12.1, the Certificate of Final Acceptance shall be deemed to have been issued.
- E.12.3. The issuance of any Certificates shall nevertheless be without prejudice to any claim of MIMOS in respect of any failure or defects within the Equipment, Software or System or Services not meeting the Specifications and other requirements pursuant to the Contract attributable to the Contractor which may subsequently become apparent or be discovered. The issuance of any Certificates by MIMOS and any comments or suggestions made by MIMOS, shall not relieve the Contractor of its obligations under this Contract or its liability and shall not constitute a waiver by MIMOS of any of its rights under this Contract, except as specifically provided elsewhere in this Contract.

#### E.13. Documentation

- E.13.1. The Contractor shall, at no additional cost to MIMOS, supply three (3) sets of Documentation either in printed form or CD-ROM format (upon the date of general availability in CD-ROM format) for the Commissioning of Equipment and/or Software. All Documentation shall be complete, accurate and fully adequate and fit for the applicable purpose and in accordance with the requirements of the Contract.
- E.13.2. All Documentation shall be supplied by the Contractor in the English language and in accordance with the Specifications within the times stipulated in the Implementation Schedule. The Contractor shall be solely responsible for any delays resulting from failure on its part to provide the Documentation within the times specified.
- E.13.3. MIMOS shall be allowed to reproduce strictly for its own use and for the avoidance of doubt including the use by its agents and contractors all Documentation including without limitation handbooks, manuals and drawings of the Equipment and Software for training, installation, operation and maintenance requirements. To the extent that the Documentation constitutes Confidential Information, the Documentation shall be subject to confidentiality provisions in Clause C.11.
- E.13.4. Upon request of MIMOS, the Contractor shall at no additional cost supply detailed information on the principles and functions of the Software and shall describe clearly the interaction of the Software with the Equipment and the procedures to ensure the continued satisfactory operation of the System.
- E.13.5. Notwithstanding delivery of any part of the System, Equipment or the Software, the Contractor shall retain copies of all Documentation relating to the System, Equipment or Software concerned during the Life Span of the System to enable the Contractor to supply any replacement parts and/or modifications to the System, Equipment or Software should these subsequently be required.
- E.13.6. The Contractor hereby assigns to MIMOS, by way of assignment of present and future rights, all rights of copyright and all other Intellectual Property Rights in all Documentation or other works created for MIMOS under this Contract. The copyright and other Intellectual Property Rights which are pre-existing in any of the Documentation or belonging to any third party shall remain the property of the Contractor or such third party, but, the Contractor shall grant or procure to be granted to MIMOS a perpetual, non-exclusive, royalty free

license to use that Documentation world-wide for all reasonable purposes in connection with the use, assembly, operation and repair of the Equipment and Software and their integration within the System.

- E.13.7. Any apparent omission, inconsistency or ambiguity in detail and/or description in any of the Documentation may be referred by MIMOS to the Contractor for clarification and, in that case, shall (if necessary) be rectified by the Contractor within seven (7) days of such referral.
- E.13.8. The Contractor shall, without cost to MIMOS, forthwith on request by MIMOS, execute all necessary documents and do all other acts and things reasonably required by MIMOS to perfect and record MIMOS's rights to the Documentation as provided in this Contract.
- E.13.9. The obligations of the Contractor under the Contract shall not be regarded as complete until all Documentation required under this Contract, or as reasonably requested MIMOS, has been provided.

#### E.14. Delays and Adjustments Due To Delays

- E.14.1. In recognition of the critical time factor in this Contract, the Contractor shall so execute, provide and complete and procure the execution, provision and completion of the works so that each milestone shall be completed within the time specified in the Implementation Schedule and the Delivery and/or Commissioning of the Equipment and/or Software is completed by the respective Scheduled Completion Dates, subject to any extensions expressly permitted pursuant to this Contract.
- E.14.2. If the Contractor at any time knows or has reason to believe that the Actual Completion Date will occur later than the Scheduled Completion Date for reasons caused by the Contractor or its personnel, agents or sub-contractors, the Contractor shall promptly notify MIMOS in writing of that fact, of the expected period of delay, the cause of delay and the steps proposed to be taken by the Contractor to minimize the delay. If and to the extent that a delay has been caused by events of Force Majeure of which prompt notice has been given hereunder, the Scheduled Completion Date shall be extended in accordance with Clause C.6.1.
- E.14.3. If MIMOS at any time has reason to believe that the Actual Completion Date will occur later than the Scheduled Completion Date for reasons caused by MIMOS or its personnel, MIMOS shall promptly notify the Contractor in writing of that fact, of the expected period of delay, the cause of delay and the steps proposed to be taken by MIMOS to minimise the delay. If and to the extent that such delay may have an impact on the Implementation Schedule or Scheduled Completion Date, MIMOS shall advise the Contractor of the same in writing and the Scheduled Completion Date shall be extended for a period corresponding to the duration of such delay.
- E.14.4. Should the Delivery and/or Commissioning of the Equipment and/or Software be delayed for any reason caused by the Contractor or its personnel, agents or sub-contractors MIMOS reserves the right to stipulate that all or part of the Equipment and/or Software so delayed shall be air-freighted to the Site if such delay is likely to prejudice the Scheduled Completion Date. The Contractor shall bear the costs so incurred.
- E.14.5. In the event that the Actual Completion Date occurs later than the Scheduled Completion Date as a result of an act or omission of the Contractor or its personnel, agents or sub-contractors and such delay is not caused by a Force Majeure event, the Contract Price shall be reduced as Adjustment Due to Delays for such default, and not as a penalty, calculated

commencing from the Scheduled Completion Date up to such time of completion or termination under Clause E.14.7, at the rate of:

- E.14.5.1. Two per cent (2%) per week or part thereof of the Contract Price for the first four (4) weeks of delay; and
- E.14.5.2. Four per cent (4%) per week or part thereof of the Contract Price from the fifth (5th) week of delay.

Provided that the Adjustments Due to Delay as stated in this Clause E.14.5 shall not exceed twenty per cent (20%) of the Contract Price.

- E.14.6. The Parties acknowledge and agree that because of the unique nature of the services provided by the Contractor and the unavailability of substitutes for the services, it is difficult or almost impossible to determine with precision the amount of loss and/or damages that would or might be incurred by MIMOS if the Contractor fails to achieve the Scheduled Completion Date. Consequently, the Contractor and MIMOS have, in good faith, established the sums set forth in Clause E.14.5 for Adjustments Due to Delay as reasonable estimates of the fair and reasonable compensation to which MIMOS would be entitled in the event the Contractor fails to achieve the Scheduled Completion Date.
- E.14.7. If the Actual Completion Date occurs later than thirty (30) days of the Scheduled Completion Date for the Delivery and/or Commissioning of Equipment and/or Software as a result of an act or omission of the Contractor, its sub-contractor or agents, then notwithstanding any other provision of this Contract and notwithstanding the Adjustment Due to Delays pursuant to Clause E.14.5, MIMOS shall be entitled to forthwith terminate this Contract by giving written notice to the Contractor thereof and to recover from the Contractor the amount of all damages and loss suffered by MIMOS by reason of such failure. Upon such termination the remedies provided in Clause C.9 shall apply.
- E.14.8. If MIMOS becomes entitled to Adjustment Due To Delays pursuant to Clause E.14.5, MIMOS may deduct the amount of such damages from any payments which may from time to time be due or become due to the Contractor under the Contract, including, without limitation, from the performance bond set out in item 9 of SCHEDULE A.
- E.14.9. Payment of the Adjustment Due to Delays pursuant to Clause E.14.5 shall not relieve the Contractor from its obligation to Deliver and/or Commission the Equipment and/or Software or from any other liability or obligation under this Contract and shall be without prejudice to MIMOS's other rights under this Contract or at law.

## E.15. Consequences of termination of the Contract

- E.15.1. Upon termination of this Contract where SCHEDULE E is applicable, the following shall apply:
  - E.15.1.1. the Contractor shall forthwith cease work and remove its personnel or the personnel of its agents or sub-contractors from the Site(s);
  - E.15.1.2. the Contractor shall not remove from the Sites any Equipment, Software or Documentation whatsoever nor shall the Contractor remove any temporary buildings, tools, goods or materials that are not Equipment or Software provided by the Contractor until permission in writing is given by MIMOS;
  - E.15.1.3. MIMOS may at its option elect to either:

- E.15.1.3.1. continue work either by itself or by sub-contracting to a third party. In either case, if the cost incurred by MIMOS in so completing or redoing the works under the terminated Purchase Order is greater than the amount for such works which would have been payable under the terminated Purchase Order, then the Contractor shall pay to MIMOS such excess amount. In addition, on demand by MIMOS, the Contractor shall forthwith deliver to MIMOS all Equipment, Software and Documentation in any way commenced, partly executed, or completed and all materials, plant, tools and implements and all other things on or about any Site which are, in the opinion of MIMOS, necessary for the execution and completion of the works. In such an event, the Contractor shall be credited for the value of all such items subject to any liability the Contractor may have to compensate MIMOS for, or to make good at the Contractor's expense, any breach, non-performance, neglect or other non-observance of the Purchase Order or the Contract. MIMOS will give permission to the Contractor in writing to and the Contractor shall remove any Equipment or Software or any such temporary buildings, tools, plant, goods or materials MIMOS does not wish to purchase or use; OR
- E.15.1.3.2. MIMOS shall be entitled to require the Contractor to remove all the delivered Equipment and Software, at the Contractor's own expense, and to refund all monies paid to the Contractor by MIMOS under the terminated Purchase Order together with interest at the rate of two percent (2%) above the base lending rate of Malayan Banking Berhad, head office in Malaysia.
- E.15.1.4. In addition to the remedies provided under above, the Contractor shall pay to MIMOS the amount of any other loss and/or damage incurred by MIMOS by reason of the breach by the Contractor and termination of the Contract.

#### **E.16. Training**

- E.16.1. The Contractor undertakes to provide Training to MIMOS according to Appendix E4. Travel and living expenses for MIMOS's personnel undergoing training for the duration of the training will be borne by MIMOS, unless otherwise agreed in writing. All equipment, software, documentation, materials and facilities to be used in connection with the training shall be provided by the Contractor at its own cost and expense.
- E.16.2. The Training to be provided may, at MIMOS's sole discretion, be accumulated and used at such time as MIMOS may decide.
- E.16.3. For each training course, the Contractor shall provide MIMOS and its designated personnel with copies of all student or other technical materials and manuals relating to:-
- E.16.3.1. such educational or training courses which may be conducted by the Contractor;
- E.16.3.2. the System or MIMOS's anticipated use of the System; and
- E.16.3.3. technical or engineering improvements or changes relevant to the System or any part thereof.

E.17. Insurance

- E.17.1. Without prejudice to the indemnity and obligations set forth in Clause C.8.1 and C.8.2, MIMOS shall effect or cause to be effected a Contractors All Risk insurance policy ("CAR Policy") to cover any works to be carried out for the Commissioning of Equipment and/or Software. The Contractor will be added as co-insured under the CAR Policy. A copy of the CAR Policy may be viewed by the Contractor at MIMOS's office by appointment.
- E.17.2. The CAR Policy shall not cover any plant, machinery, tools, goods, vehicles, property or articles belonging to the Contractor, its employees, agents or sub-contractors ("Contractor's Property") which have been placed at the Site(s) where any works or part thereof are being executed. It is expressly agreed that the responsibility and liability for any loss and damage to the Contractor's Property shall remain solely with the Contractor.
- E.17.3. The Contractor shall give prompt written notice to MIMOS of any accident or incident (whether or not giving rise to a claim under the CAR Policy) as soon as possible but no later than three (3) days after the event. Such notice shall be promptly followed by all necessary documentation and proper details, and the Contractor shall give its full cooperation to MIMOS in respect of such (potential) claims under the CAR policy.
- E.17.4. The Contractor shall be liable for all deductibles/excess in respect of any claim under the CAR Policy save in circumstances where MIMOS is solely responsible for having caused the loss or damage. The Contractor expressly authorises MIMOS to deduct from any payment which may be due to the Contractor, such sums payable to the insurer as deductible/excess and all associated payments.
- E.17.5. All monies received in the payment of a claim under the CAR Policy shall be paid to MIMOS and MIMOS shall be responsible to administer the same for disbursement towards repairs or replacement of the loss or damage to the works or any part thereof.
- E.17.6. Notwithstanding the procurement of the CAR Policy, the Contractor shall be absolutely and solely responsible for and liable to MIMOS and shall make good all loss or damage to the works that are not recoverable by insurance under the CAR Policy in respect of such loss or damage arising from the acts, omission or negligence of the Contractor or its sub-contractors or agents and/or faulty materials supplied or procured by the Contractor or its sub-contractor or agents irrespective of whether the Contractor may be able to claim or recover against any other third party.
- E.17.7. The Contractor shall at its own cost and expense procure and maintain for the duration of this Contract professional indemnity insurance covering the breach of its professional duties in the performance of works under this Contract, with limits of liability of not less than Ringgit Malaysia One Million (RM1,000,000) for any single or series of claims arising out of or in respect of any negligence, act, omission or error of the Contractor or its personnel.
- E.17.8. The Contractor shall ensure that MIMOS is included as a co-insured in the said insurance policy and shall have the benefit of the foregoing insurances. The Contractor shall procure that its insurers shall waive any and all liens and rights of subrogation/recovery against MIMOS. Any deductibles or excess in the insurance policy not recoverable under the insurance policy shall be borne by the Contractor.
- E.17.9. Nothing in this Clause E.17 shall be considered as a waiver or in any way modify the right of MIMOS to be indemnified by the Contractor under this Contract.
- E.17.10. The Contractor shall be deemed to have examined all Schedules, Appendices and other information in relation to this Contract and to have examined and satisfied itself as to all

information which is relevant to the risks, contingencies and other circumstances which could affect this Contract, and which is obtainable by making of reasonable inquiries.

- E.17.11. The Contractor shall be responsible to ensure that the provisions of Clause C.8 and E.17 under this Contract will be incorporated into any sub-contract which the Contractor may enter into with any sub-contractor in accordance with the provisions of Clause C.10.1.

#### E.18. Variations

- E.18.1. Either Party may at any time formally request in writing any changes or additions to or omissions from the Equipment, Software or Services (including any changes to the System, Specifications, Documentation or the Implementation Schedule and any changes to the Contract Price agreed as a consequence thereof). The Change Order procedure set out in this Clause E.18 shall apply to any such change or addition or omission which is requested by either Party, and it shall make no difference to these procedures whether it is MIMOS or the Contractor who shall propose such change or addition or omission.

- E.18.2. If MIMOS shall require a change or addition to or omission from the Equipment, Software or Services it shall notify the Contractor of such requirement in writing specifying in as much detail as MIMOS reasonably believes is practicable the nature of the change or addition to or omission it requires and, to the extent known, any other parameters which it considers desirable should apply in relation to such addition, change or omission.

- E.18.3. If the Contractor shall consider a change or addition to or omission from the Equipment, Software or Services it shall make an outline proposal for consideration by MIMOS (which MIMOS shall not be obliged to pursue). Such outline proposal shall specify in as much detail as the Contractor reasonably believes is practicable, the nature of the change or addition to or omission it requires and state all factors known to the Contractor which MIMOS might reasonably consider to be material in deciding whether to request the Contractor to develop the proposal further.

- E.18.4. Within ten (10) business days (or such other period as may be mutually agreed upon) of:

- E.18.4.1. receiving such a notification from MIMOS as is referred to in Clause E.18.2; or
- E.18.4.2. receiving a notice from MIMOS indicating that MIMOS wishes to pursue further any outline proposal made by the Contractor in a notification as referred to in Clause E.18.3;

the Contractor shall inform MIMOS in writing its estimate of all consequential changes to the Equipment, Software or Services or the Implementation Schedule that is reasonably necessary to accommodate such change, addition or omission. In the case of Clause E.18.2 the Contractor shall advise MIMOS of the technical feasibility of such a change, addition or omission.

- E.18.5. For any change requiring additional work by the Contractor, the Contractor will give MIMOS in writing the Contractor's estimate of the cost to MIMOS of the proposed change or addition to the Equipment, Software or Services or the changes required to the Implementation Schedule. Such quotation shall not be capable of amendment or adjustment once accepted. If MIMOS wishes to proceed with the change or addition, it may do so at its option on a fixed price basis (that is accepting the quotation with such amendments as the Parties may agree) or on a time and materials basis. To the extent that any change involves the omission of any item or items from the Equipment, Software or Services the Contractor shall provide an estimate of the amount of the reduction in the

Contract Price which is fair and reasonable in the light of such omission and the consequent alteration in the payment schedule.

- E.18.6. The proposal, with any revisions which may have been agreed, will be submitted by the Contractor to MIMOS who shall consider such proposed changes, additions or omissions and either:
  - E.18.6.1. accept or confirm the proposed changes or additions to or omissions;
  - E.18.6.2. decide not to implement the proposed changes or additions to or omission from; or
  - E.18.6.3. require the proposed changes or additions to or omissions from to be modified (in which case the contractor shall produce a modified proposal to which Clause E.18.4 shall apply).
- E.18.7. Any changes or additions to or omissions which are agreed pursuant to the above procedures shall be recorded in writing as a Change Order and signed by authorised representatives of both Parties within fourteen (14) days of MIMOS giving notice to the Contractor that it wishes to proceed with the proposal. The Contractor shall have no obligation to commence work in connection with any change or addition to the Equipment, Software or Services, and MIMOS shall have no obligation to make any payment in respect of any such change or addition to the Equipment, Software or Services until the Change Order has been fully agreed and signed, including any amendment to the Contract Price, the timing of payment of the same and/or scheduled impact of the change or addition on the Implementation Schedule. Where the change in question involves an omission proposed by MIMOS, the Contractor shall not, without MIMOS's prior written consent, be entitled to proceed with any further work on the omitted item after MIMOS has proposed the change until either the proposal has been withdrawn or it has been included in a Change Order.
- E.18.8. An instruction by MIMOS requiring the Contractor to comply with its obligations under Clause C.12 or arising from a breach by the Contractor of its obligations under Clause C.12, shall not under any circumstances constitute a change, addition or omission for the purposes of this Clause E.18.
- E.18.9. The value of the changes, additions or omissions shall be ascertained as appropriate by MIMOS after consultation with the Contractor in accordance with the following principles:
  - E.18.9.1. where the varied work is similar in character to and carried out under similar conditions to work set out in Appendix E2, such work shall be valued at the applicable rates and prices in Appendix E1;
  - E.18.9.2. where the varied work is not of a similar character to or not executed under similar conditions to work set out in Appendix E2 then MIMOS shall establish a new rate for such work based upon the rates or prices set out in Appendix E1 in so far as may be reasonable making such allowances thereto by way of addition or deduction as may be necessary to take account of any dissimilarity in the character of the work or the conditions under which the work is carried out;
  - E.18.9.3. where work is omitted, the rates and prices in Appendix E1 shall be used to value the work omitted provided that if part only of an item of work is omitted then MIMOS shall establish a new rate or price by which to value the omitted work which shall be fair and reasonable;

- E.18.9.4. where the varied work cannot be properly valued in accordance with the provisions of Clauses E.18.9.1, E.18.9.2 and E.18.9.3, MIMOS shall establish a new rate or price for such work which shall be fair and reasonable.

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## **Appendix E1**

### **Description of Deliverables & Prices**

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Set out :

- Description of the Equipment, Software and/or Services being ordered, as the case may be;
- Unit price and quantity of deliverables ordered;

## **Appendix E2**

### **Scope of Work, Implementation Schedule & Payment Milestone**

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Set out:

- Scope of Work
- Unit price of labour costs
- Implementation Schedule
- Payment Schedule

## **Appendix E3**

### **Other Systems**

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## **Appendix E4**

### **Training**

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## **Appendix E5**

### **Software Escrow**

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(if applicable)

## SCHEDULE F

### TERMS AND CONDITIONS FOR PURCHASE OF SERVICES

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**F.1. Definitions Applicable to SCHEDULE E**

<b>Contracted Services</b>	means the services to be provided by the Contractor under this Contract as set out in <u>Appendix F1</u> .
<b>Service Levels</b>	means the service levels specified in <u>Appendix F2</u> .
<b>Service Level Report</b>	means the monthly report prepared by the Contractor detailing each of the service level set out in <u>Appendix F2</u> that was achieved for the month.

**F.2. Price**

- F.2.1. The Contract Price is set out in Appendix F3.
- F.2.2. The Contract Price shall be deemed to include all equipments provided or utilised by the Contractor, including third party licenses (if any) for provision of the Contracted Services.

**F.3. Provision of Contracted Services**

- F.3.1. The Contractor shall provide the Contracted Services as set out in Appendix F1 to MIMOS in accordance with the terms of this SCHEDULE F.
- F.3.2. The Contractor shall not sub-contract or appoint any agent in respect of the whole or any part of the work under this Contract unless written approval is obtained from MIMOS. MIMOS shall be entitled to impose such further terms and conditions as it thinks fit for approving to the sub-contracting or appointment of agent.
- F.3.3. Notwithstanding any approval given pursuant to Clause F.3.2, MIMOS shall be entitled to withdraw its approval and request for a change in the sub-contractor or agent if it finds the sub-contractor or agent to be not satisfactory at its sole discretion. The Contractor shall comply with such request and change the subcontractor/agent or undertake the work itself.
- F.3.4. The Contractor shall not be relieved of any of its liabilities or obligations under this Contract by entering into the sub-contracts or agency arrangements referred to in Clause F.3.2 and the Contractor shall remain, in accordance with this Contract, fully liable to MIMOS for the acts, omissions, defaults and neglects of any sub-contractor, agent or any employee of the sub-contractor or agent as fully as if they were the acts, omissions, defaults and neglects of the Contractor or the employees of the Contractor.

**F.4. Exclusivity**

- F.4.1. The Contracted Services provided by the Contractor under this Contract is provided exclusively to MIMOS and the Contractor shall not during the period of this Contract provide similar services to direct competitors of MIMOS within Malaysia without prior written consent of MIMOS.

F.4.2. Notwithstanding F.4.1 above, MIMOS shall be able to acquire the services from an alternative third party service provider which will overlaps in whole or in part with the scope of Contracted Services.

#### **F.5. Service Level**

- F.5.1. The Contractor shall provide the Contracted Services in accordance with service level as specified in Appendix F2 to this Agreement.
- F.5.2. The Contractor shall produce the Service Level Report and delivered the Service Level Report to MIMOS on or before the 15<sup>th</sup> day of each month. The report shall set out the performance of the Contractor for the previous month and signed off by the Contractor.
- F.5.3. The Contractor shall keep all records and data in respect of the Contracted Services provided that is used to produce the Service Level Report.
- F.5.4. MIMOS shall be entitled to request for supporting documents, records and data in respect of the Service Level Report and the Contractor shall provide the documents and data requested by MIMOS.
- F.5.5. MIMOS shall be entitled at its own costs to audit such statistical data and records of the Contractor not more than twice a year and the Contractor will comply with the reasonable requests in relation to such audits subject to the request not impacting the ability of the Contractor to perform its obligations under this Contract or otherwise carry on its business.
- F.5.6. In the event the audit conducted shows an aggregate of more than five per cent (5%) fall of the service level of the Service Level Reports audited, the Contractor shall reimburse MIMOS for all costs incurred for the audit.
- F.5.7. Parties shall review payment already made and shall promptly make any consequent adjustment payments shown to be due in light of the service level established by the audit

#### **F.6. Liquidated damages**

- F.6.1. In the event that the Contractor fails to provide Contracted Services as set out in Appendix F1 to MIMOS, the Contractor shall pay to MIMOS the liquidated damages set out in item 10 of SCHEDULE A within thirty (30) days of the written notification by MIMOS notifying a claim under this Clause.
  - F.6.2. In the event the Contractor fails to achieve the Service Level agreed upon for a particular period, the Contractor shall pay to MIMOS the liquidated damages set out in item 10 of SCHEDULE A pro-rated based on:
    - F.6.2.1. the period for which the Contracted Services have been provided in relation to the Term set out in item 6 of SCHEDULE A; and
    - F.6.2.2. the Service Levels achieved in relation to the Service Levels agreed upon;
- within thirty (30) days of the written notification by MIMOS notifying a claim under this Clause.

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**Appendix F1**  
**Description of Contracted Services**

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## **Appendix F2**

### **Service Level**

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Set out:

- Scope of service level
- KPIs / SLA / Milestone / Deliverables
- Format of Service Level Report

## **Appendix F3**

### **Contract Price**

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